

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (Income Tax)
(Original Side)

Reserved on : 04.02.2026.

Pronounced on : 21.04.2026

ITA 266 OF 2008

M/S. GRAPHITE INDIA LTD.

...Appellant

-VS-

COMMISSIONER OF INCOME TAX - IV, KOLKATA.

....Respondent

Present:-

Mr. J. P. Khaitan, Sr. Adv.

Mr. Somak Basu, Adv.

Mr. Swagato Kabiraj, Adv.

...for the appellant

Mr. Aryak Datt, Adv.

Mr. Madhu Jana, Adv.

..... for the Respondent

Coram: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
And
THE HON'BLE JUSTICE UDAY KUMAR

Rajarshi Bharadwaj, J:

1. The appellant/petitioner has filed this appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), challenging the order dated 06.12.2007 passed by the Learned Income Tax Appellate Tribunal (ITAT),

Kolkata Bench “B”, for the assessment year AY 2001-02, on the substantial questions of law formulated at the time of admission.

2. The facts of the case in a nutshell are that the assessee, a company incorporated under the Companies Act, 1956, with its registered office at 31, Chowringhee Road, Kolkata is engaged in manufacturing and selling graphite electrodes, calcined petroleum coke and generating power through two captive units (PU-I and PU-II) at Bangalore, filed its return for AY 2001-02. It claimed deduction under section 80-IA of Rs. 18.29 crores on profits from the power units, valuing captively consumed power at KSEB purchase rates per s. 80-IA(8). It also claimed under section 80HHC on electrode export profits (with Form 10CCAC), excluding these from book profits u/s 115JB (100%, via Form 29B) and offered sales tax remission to tax. The AO, in the Section 143(3) order dated 31.03.2004, rejected KSEB pricing for captive power (opting for third-party sale rates), reduced 80HHC-eligible profits by 80-IA deduction (Rs. 12.14 crores) per s. 80-IA(9), allowed only 80% export profit exclusion from book profits and added processing charges to 80HHC turnover.

3. On appeal, CIT(A) upheld KSEB rate minus electricity duty (as no duty liability on captive use), confirmed 80-IA reduction for 80HHC and 80% book profit exclusion per Section 80HHC(1B), but enhanced 80HHC by including processing charges (Rs. 2.53 crores). Thereafter the Tribunal, vide order dated 06.12.2007, excluded duty from transfer price, affirming no duty recovery for captive consumption.

4. Learned counsel appearing for the appellant raises the issue on the following substantial questions of law that have been admitted:

a. Whether, on the facts and in the circumstances of the case and in law, the learned Tribunal was right in holding that, for the purpose of quantifying the deduction under Section 80-IA of the Act, 1961, the transfer price of power had to be computed without taking into account the electricity duty component included in the sale price charged by the Karnataka State Electricity Board?

5. We have heard Mr. Khaitan, learned Senior Counsel for the appellant and Mr. Aryak Dutta, learned Senior Standing Counsel, assisted by Mr. Madhu Jana, for the respondent at length. Since the issues involved are pure questions of law and have been settled by binding precedents of the Hon'ble Supreme Court and this Court, we proceed to decide the appeal on merits.

6. Firstly, the assessee, facing inadequate power supply from the Karnataka State Electricity Board (KSEB), established a captive power generating unit to meet its industrial needs, wheeling surplus power to KSEB at rates fixed under agreement. The Assessing Officer rejected the assessee's claim for deduction under Section 80-IA by excluding the electricity duty component from the market value of power supplied to its units, holding it excessive. The Tribunal followed its own precedent in the assessee's case for AY 2016-17 (ITA No. 127/Kol/2020-21 dated 26.10.2021), which was not then challenged, though the revenue now admits a delayed appeal (ITAT/20/2025) is pending before this Court. Mr. Khaitan, learned senior counsel, relies on **Principal Commissioner of Income Tax Vs. Star Paper Mills Ltd.**, reported in **172 taxmann.com 391 (Cal.)**, passed by the Hon'ble Chief Justice T.S. Sivagnanam and Hon'ble Justice Bivas Pattanayak, most specifically paragraphs 4 and 5.

7. It is noted that the Tribunal followed the assessee's own case for AY 2016-17, which remained unchallenged at the time under Section 260A, though it is now pending with gross delay. The legal issue stands settled by the Hon'ble Supreme Court in **CIT v. Jindal Steel and Power Ltd. 460 ITR 162 (SC)**, involving identical facts where inadequate SEB supply prompted a captive unit setup, with surplus power wheeled to SEB at fixed rates. There, the AO restricted the 80-IA deduction by rejecting market value based on SEB purchase rates, a view affirmed by the DRP. The Tribunal relied on the prior order. Paragraph 5 elaborates that the Supreme Court, including in the appeal from this Court's decision in **CIT v. ITC** reported in **64 taxmann.com 214/236 Taxman 612 (Calcutta)**(CA No. 9920/2016, allowed vide order dated 7.12.2023)held that the market value of power supplied by the assessee is the

SEB's open-market rate to industrial consumers (not the surplus sale rate to SEB), inclusive of components like duty as part of the consumer tariff.

"The market value... should be computed by considering the rate at which the State Electricity Board supplied power to the consumers in the open market..." and "the rate at which the State Electricity Board supplied power to the industrial consumers has to be taken as the market value for computing deduction under section 80-IA"

8. The Tribunal computed this without deducting duty. Mr. Khaitan further relies on paragraphs 30 and 31 of **Commissioner of Income-Tax v. Jindal Steel and Power Ltd.** reported in **460 ITR 162 (SC)**, which confirm that the SEB consumer rate constitutes the market value, not the supplier's sale rate, justifying the Tribunal/High Court's approach. Relying thereon, the learned senior counsel submits that the transfer price includes electricity duty per the KSEB sale price. We accordingly answer substantial question (a) in the negative, i.e., against the Revenue and in favour of the assessee.

b. Whether, on the facts and in the circumstances of the case and in law, the learned Tribunal was correct in holding that the deduction allowed under Section 80-IA of the Act, 1961, needs to be reduced while computing profits of the business eligible for deduction under Section 80HHC?

9. Secondly, the Tribunal held that no reduction in business profits eligible for deduction under Section 80HHC was warranted on account of deduction under Section 80-IA. Learned counsel for the assessee relies on the decision of **the Gujarat High Court in Commissioner of Income Tax - IV v. Shah Alloys Limited**, reported in **2011 (11) TMI - 780**, wherein it was observed that the prior appeal had not been entertained and that, under Section 80-IA(8), transfers were required to be made at market value—for instance, electricity supplied at 5.40 ps/unit inclusive of duty which facilitated the computation without any reduction in the profits eligible for Section 80HHC. He further draws support from the decision in **M/s. Graphite India Limited v.**

Commissioner of Income Tax – IV reported in **ITA/405/2008**, where the Tribunal rightly held that no reduction under Section 80-IA was permissible for the purposes of Section 80HHC. Mr. Khaitan, learned counsel for the assessee, also invokes the authoritative pronouncement of the Hon'ble Supreme Court in **Shital Fibers Ltd. Versus Commissioner of Income Tax**, reported in **(2020) 476 ITR 309 (SC)**, to which the respondent concurs. In view thereof, no reduction in the business profits eligible for Section 80HHC on account of deduction under Section 80-IA is called for. We, accordingly, answer substantial question (b) in the negative, i.e., in favour of the assessee and against the Revenue.

c. Whether, on the facts and in the circumstances of the case and in law, the learned Tribunal was justified in holding that while computing Book Profit under Section 115JB, only 80% of the profit computed under Section 80HHC(3) should be excluded as export profit instead of 100%?

10. Thirdly, the assessee claimed 100% exclusion of profits derived from export of goods eligible for deduction under Section 80HHC from the book profits computed under Section 115JB of the Act. The Tribunal, however, allowed only 80% exclusion. Learned counsel for the assessee relies on the decision of the Hon'ble Supreme Court in **Ajanta Pharma Ltd. vs. Commissioner of Income-tax, Mumbai** reported in **194 Taxman 358 (SC)**, particularly paragraphs 3 to 10 thereof. The Court held that Explanation (iv) to Section 115JB(2) provides for the exclusion of the full "*profits eligible for deduction under Section 80HHC*" as computed under sub-section (3) or (3A) of that section, subject to fulfilment of the requisite conditions thereunder. Such exclusion is not phased down in the manner prescribed under the proviso to Section 80HHC(1B) (i.e., 80%, 70%, etc.). Section 115JB is a self-contained code for computation of book profits and Minimum Alternate Tax (MAT). It draws a clear distinction between eligibility for deduction under Section 80HHC and the extent of such deduction. Consequently, the full amount of export profits, as determined under Section 80HHC(3)/(3A), stands excluded from book profits

under Explanation (iv), thereby exempting the assessee from MAT liability on such profits. This interpretation aligns with the Memorandum to the Finance Bill, 2000. The Department's attempt at a holistic reading of Sections 80HHC and 115JB, treating the mode of computation as irrelevant, stands rejected by the Apex Court. We are in respectful agreement with the above exposition. Accordingly, we answer substantial question (c) in the negative, i.e., in favour of the assessee and against the Revenue.

d. Whether, on the facts and in the circumstances of the case and in law, the learned Tribunal was justified in holding that incentive/subsidy received by the appellant in the form of remission of sales tax is not capital but revenue in nature, although the subsidy is granted for expansion of the unit located in a backward area and is directly related to investment in fixed capital, and hence is not chargeable to tax under the Act?

11. Fourthly, the Tribunal has rightly classified the sales tax remission granted under the West Bengal Incentive Scheme for backward area expansion linked to fixed capital investment as revenue in nature. Learned counsel for the assessee places reliance on **Principal Commissioner of Income Tax, Central 2, Kolkata v. Ankit Metal & Power Ltd.** reported in **109 taxmann.com 93 (Cal.)**, particularly at paragraphs 13 and 23, which apply the well-settled "purpose test" enunciated by the Supreme Court in **CIT v. Ponni Sugars** reported in **(2008) 174 Taxman 87** and **Shree Balaji Alloys** reported in **80 taxmann.com 239**, among others. Under this test, such subsidies qualify as capital receipts when directed towards the establishment or expansion of new units (e.g., fixed capital subsidies), but assume revenue character when aiding operational activities. In the present case, the impugned West Bengal schemes are explicitly designed to promote industrialization in backward areas, aligning with the revenue classification adopted by the Tribunal. We, accordingly, answer substantial question (d) in the negative, in favour of the assessee.

e. Whether, on the facts and in the circumstances of the case and in law, the learned Tribunal was justified in holding that the sales tax incentive received by the appellant cannot be excluded when computing Book Profits under Section 115JB of the Act?

12. Lastly, following the ratio laid down by this Court in **Ankit Metal (Power) Pvt. Ltd. v. ACIT (supra)**, particularly at paragraphs 24 to 29.1, we hold that the capital subsidy granted by the Tribunal for setting up a unit in a backward area stands excluded from the purview of 'income' under Section 2(24) of the Act (prior to the 2015 amendment). Such subsidy, being capital in nature and aimed at promoting industrial setup in underdeveloped regions, does not constitute income, this is distinct from the position in **Apollo Tyres Ltd. vs. CIT (supra)** where receipts were taxable but subsequently exempted. The mode of subsidy whether by way of reimbursement or otherwise remains irrelevant, as affirmed in **CIT vs. Sahney Steel and Press Works Ltd.** and **Union of India vs. Ponni Sugars and Chemicals Ltd.**, thereby rendering it excludible from Book Profits under Section 115JB. Accordingly, we answer the substantial question (e) in the negative, i.e., in favour of the assessee and against the Revenue.

13. For the foregoing reasons, the appeal under Section 260A is allowed in favour of the assessee across all substantial questions of law.

14. Urgent certified copy, if applied for, be supplied upon compliance with requisite formalities.

(RAJARSHI BHARADWAJ, J)

(UDAY KUMAR , J)

Kolkata

21.04.2026
PA(BS)