IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM; NAGALAND; MIZORAM AND ARUNACHAL PRADESH)

ITA 7/2010

Commissioner of Income Tax

- Appellant

- VERSUS –

M/S Meghalaya Steels Ltd.

- Respondent

ITA 16/2011

Commissioner of Income Tax

- Appellant

- VERSUS -

M/S Pride Coke Pvt. Ltd.

- Respondent

B E F O R E
THE HON'BLE MR. JUSTICE I. A. ANSARI
THE HON'BLE MR. JUSTICE P. K. MUSAHARY

Advocates present:

For the appellant	**:**	Mr. K. P. Pathak, Addl. SG Mr. A. Hazarika, Advocate, Mr. B. Chakraborty, Advocate,
For the respondents	**:**	Mr. R. P. Agarwalla, Sr. Advocate Mr. R. Goenka, Advocate, Mr. U.K. Borthakur, Advocate Mr. A. Goenka, Advocate, Mr. D. Sahu, Advocate
Date of hearing	**:**	**10.05.2013**
Date of judgment	**:**	**29.05.2013**

JUDGMENT & ORDER

(*Ansari, J.*)

By this common judgment and order, we propose to dispose of these two appeals, preferred under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), against the orders, dated 19.03.2010, passed by the learned Income Tax Appellate Tribunal (hereinafter referred to as the 'learned Tribunal'), Guwahati, in Income Tax Appeal (in short, 'ITA') Nos. ITA 52/Gau/2009 and ITA 95/Gau/2007

inasmuch as these two appeals, as would be seen, cover all the four *subsidies,* namely, *transport subsidy, interest subsidy, power subsidy* and *insurance subsidy,* which form the subject-matter of controversy in the present set of appeals. While disposing of the two appeals, as indicated above, the learned Tribunal took the view that the assessee-respondents are entitled to claim deduction either under Section 80IB or under Section 80IC of the Act, though the Revenue contends that the assessee-respondents are not entitled to receive, and could not have been legally given, the benefit of deduction either under Section 80IB or under Section 80IC.

2. Whereas, by the impugned order, dated 19.03.2010, the learned Tribunal has dismissed the appeal No. ITA 52/Gau/2009, preferred by the Revenue, by taking the view that the subsidies, namely, *transport subsidy, power subsidy, interest subsidy* and *insurance subsidy,* received by the assessee-respondents, would go on to reduce the corresponding expenses incurred and the resultant profit would be the *profits* and *gains* of the business of the industrial undertaking, that all these *subsidies* are inter-linked, inter-laced and having a direct nexus with the manufacturing activities of the assessee which are inseparable from the expenditure incurred by the assessee on account of transportation of purchase as well as sales, power, interest, insurance cover of the business of the assessee and, therefore, there is a *direct nexus* between the *subsidy* received by the assessee's industrial undertaking and the

resulting *profits and gains* thereof and the assessee is eligible for deduction under Section 80-IB/80-IC of the Act.

3. The learned Tribunal, by its order, passed on the same date (i.e., by the order, dated 19.03.2010), has allowed the appeal No. ITA 95/Gau/2007, preferred by the assessee, by taking the view that the *subsidies*, in question, would go on to reduce the corresponding expenses incurred and the resultant profit would be the *profits* and *gains* of the business of the industrial undertaking, that all these *subsidies* are inter-linked, inter-laced and having a direct nexus with the manufacturing activities of the assessee which are inseparable from the expenditure incurred by the assessee on account of transportation of purchase as well as sales, power, interest, insurance cover of the business of the assessee and, therefore, there is a *direct nexus* between the *subsidy* received by the assessee's industrial undertaking and the resulting *profits and gains* thereof and the assessee is eligible for deduction under Section 80-IB/80-IC of the Act.

4. The principal distinction between the two impugned orders, passed on the same date, i.e., on 19.03.2010, may be set out as follows:

(**i**) By the impugned order, passed in No. ITA 52/Gau/2009, the learned Tribunal dismissed the appeal of the Revenue and allowed deduction under Section 80-IB/80-IC of the Act; whereas, by the impugned order, passed in ITA. 95/Gau/2007, the learned Tribunal allowed the appeal of the assessee and, in consequence thereof, allowed deduction under Section 80-IB/80-IC of the Act.

(**ii**) While, in ITA. 52/Gau/2009, the subsidies involved were *transport subsidy, insurance subsidy, interest subsidy* and *power subsidy,* the ITA 95/Gau/2007 involved *transport subsidy, interest subsidy* and *power subsidy;* and

(**iii**) While, in ITA 95/Gau/2007, the deductions had been claimed under Section 80-IC of the Act, the deductions, claimed in ITA 52/Gau/2009, were claimed under Section 80-IB of the Act. The learned Tribunal, however, as already indicated hereinbefore, allowed the deductions without expressly saying as to whether the deductions, in the said two appeals, had been allowed under Section 80IB or 80IC of the Act. In other words, the learned Tribunal allowed the deductions in respect of the relevant *subsidies*, received by the assessee concerned, without specifically determining if the deductions were allowable under Section 80IB or under Section 80IC.

5. The *substantial questions of law*, which have been framed for hearing of the IT Appeal No. 7/2010, are as under:

> ***Substantial Question of law as framed in pursuant to Order dated 08.12.2010***
>
> *Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that transport subsidy, power subsidy and interest subsidy, received by the respondent, are allowable for computation of deduction under Section 80IB of the Income Tax Act, 1961?*
>
> ***Additional Substantial Question of law as framed in pursuant to Order dated 10.04.2013***

(1) Whether, on the facts and circumstances of the case, the learned Tribunal was right in holding that the amount of transport subsidy, interest subsidy and power subsidy would go on to reduce the expenses incurred under that particular head and the resultant profits and gains of the business of Industrial Undertaking would be eligible for deduction under Section 80IB of the Income Tax Act, 1961?

(2) If the answer to question no.1 is in the negative, whether, on the facts and in the circumstances of the case, the learned Tribunal was right in holding that the transport subsidy, interest subsidy and power subsidy are inter-linked, inter-laced and having a direct nexus with the manufacturing activities of the assessee, which are inseparable from the expenditure incurred by the assessee on account of transportation, purchase as well as sales of the business of the assessee are allowable for deduction under Section 80IB ?

6. The *substantial questions of law*, which have been framed for hearing of the IT Appeal No. 16/2011, are as under:

Substantial questions of law as framed pursuant to the order dated 01.08.2011

Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that transport subsidy, insurance subsidy, interest subsidy and power subsidy received by the respondent are allowable for computation of deduction U/s. 80IC of the Income Tax Act, 1961?

Substantial questions of law as framed pursuant to the order dated 10.04.2013

(1) Whether on the facts and in the circumstances of the case, the learned Tribunal was right in holding that the amount of transport subsidy, insurance subsidy, power subsidy and interest subsidy would go on to reduce the expenses incurred under that particular head and the resultant profits and gains of the business of Industrial

Undertaking would be eligible for deduction under Section 80IC of the Income Tax Act, 1961 ?

(2) If the answer to question no.1 is in the negative, whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the transport subsidy, insurance subsidy, power subsidy and interest subsidy are inter linked, inter laced and having a direct nexus with the manufacturing activities of the assessee, which are inseparable from the expenditure incurred by the assessee on account of transportation of purchase as well as sales of the business of the assessee are allowable for deduction under Section 80IC?

7. From a bare reading of the *substantial questions of law*, which have been framed in the present two appeals, it becomes more than abundantly clear that the questions, raised in the present two appeals, are, in substance, same, the principal difference between the questions raised in these two appeals being that, while in ITA No. 7/2010, the deductions claimed were under Section 80IB of the Act, the deductions claimed, in ITA No. 16/2011, were under Section 80IC of the Act. Therefore, as we shall proceed further, it would become transparent that the *substantial questions of law*, which have been framed in these two appeals, are, in effect, akin to each other.

8. Before entering into the discussion of the merit of the questions, which have been framed, for determination in the present two appeals, it is apposite that the material facts, giving rise to the present two appeals, be taken note of. With this end in view, the material facts, leading to each of these two appeals, are, in brief, set out as under:

FACTS OF THE CASE IN ITA No. 7/2010:

(**i**) The respondent is an assessee under the Act, the respondent being an industrial undertaking engaged in the business of manufacture of Steel and Ferro Silicon.

(**ii**) The respondent submitted, on 19.10.2004, its return of income for the assessment year 2004-2005 disclosing income at Rs. 2,06,970/- after claiming deduction, under Section 80IB of the Act, on the *profits* and *gains* of business of the respondent's industrial undertaking. The assessment of the respondent was completed, on 07.12.2006, under Section 143(3) of the Act, on a total income of Rs.1,33,76,535/-.

(**iii**) During the previous year, relevant to the assessment year under consideration, the respondent had received the following amounts on account of *subsidies*:

Transport subsidy	-	Rs. 2,64,94,817. 00
Interest subsidy	-	Rs. 2,14,569. 00
Power subsidy	-	Rs. 7,00,000. 00
Total	-	Rs. 2,74,09,386. 00

(**iv**) The Assessing Officer, in his assessment order, dated 07.12.2006, held that the amounts, received by the assessee as *subsidies*, were *revenue receipts* in nature and did not qualify for deduction under Section 80IB(4) of the Act. The Assessing Officer accordingly disallowed the respondent's claim for deduction of the amount of Rs. 2,74,09,386/- , under Section 80 IB of the Act, on account of *transport subsidy, interest subsidy* and *power subsidy.*

(**v**) Against the said assessment order, the assessee-respondent preferred appeal before the Commissioner of the Income Tax (Appeals), Guwahati, (in short, 'the CIT (A)'), who, vide his order, dated 08.03.2007, dismissed the appeal of the respondent by taking the view that the *subsidies*, received by the assessee-respondent, were not entitled to deduction under Section 80IB inasmuch the *subsidies* could not be termed as the *profits* and *gains* derived from manufacturing business of the respondent and the profits and gains, in order to be eligible for deduction under Section 80IB of the Act, have to be derived from industrial undertaking and, as the immediate source of *subsidies* was schemes of the Government, it was only incidental to the assessee-respondent's business. The CIT(A) was, however, also of the view that the *subsidies*, received by the respondent's industrial undertaking, had some commercial connection with the business of the respondent and, hence, such receipts were to be assessed as *'business income'* and not as income from other sources.

(**vi**) Aggrieved by the aforesaid order of the CIT(A), the respondent preferred appeal before the learned Tribunal. The said appeal was registered, we have already indicated above, as ITA No. 95/Gau/2007. The learned Tribunal has, by its order, dated 19.03.2010, allowed the appeal of the respondent.

(**vii**) While so allowing the appeal of the respondent concerned, the learned Tribunal followed its own order, passed in the case of **C.I.T. V/s. Meghalaya Steels Ltd. in I.T.A. No. 46/Gau/2009,** for the

assessment year 2006-2007, decided on 19.03.2010. The learned Tribunal held that the *subsidies*, received by the respondent's industrial undertaking, would go on to reduce the corresponding expenses incurred under those particular heads and the resultant *profit* would be the *profits* and *gains* of the business of the industrial undertaking eligible for deduction under Section 80-IB of the Act. The learned Tribunal further held that all the *subsidies* were inter-linked, inter-laced and have direct nexus with the manufacturing activities of the assessee-respondent's industrial undertaking.

(**viii**) Against the order, dated 19.03.2010, so passed by the learned Tribunal, the Revenue is, now, in appeal before us.

FACTS OF THE CASE IN ITA No. 16/2011

(**i**) The respondent is an assessee under the Act, the respondent being an industrial undertaking engaged in the business of manufacture of coke products.

(**ii**) The respondent submitted, on 17.11.2006, its return of income for the assessment year 2006-07 disclosing income at Rs. NIL. The assessment of the respondent was completed, on 31.12.2008, under Section 143(3) of the Act, on a total income of Rs. 87,93,230/-.

(**iii**) During the previous year, relevant to the assessment year under consideration, the respondent had received the following amounts on account of subsidies:

Transport subsidy	-	Rs. 6,55,40,049. 00
Insurance subsidy	-	Rs. 4,84,836. 00

Interest subsidy	-	Rs. 10,11,771. 00
Power subsidy	-	Rs. 1,86,010. 00
Total	-	Rs. 6,72,22,666. 00

(**iv**) The Assessing Officer, in his assessment order, dated 31.12.2008, held that the *subsidies*, so received by the assessee, had no direct nexus with the business of the respondent's industrial undertaking, that the *subsidies* were income incidental to the business of the respondent's industrial undertaking and, therefore, the *subsidies* had to be treated as *'other business income'* and could not be allowed for the purpose of working out the *profits* and *gains* of the respondent's business undertaking within the meaning of Section 80IC. The Assessing Officer accordingly disallowed the respondent's claim of deduction of the amount of 6,72,22,666/-, under Section 80IC of the Act, on account of *transport subsidy, insurance subsidy, interest subsidy* and *power subsidy.*

(**v**) Against the said assessment order, the assessee-respondent preferred appeal before the Commissioner of the Income Tax (Appeals), Guwahati, (in short, 'the CIT (A)'), who, vide his order, dated 09.06.2009, allowed the appeal of the assessee-respondent by taking the view that the *subsidies*, received by the respondent, would go on to reduce the expenditure incurred under those respective heads for the purpose of working out *profits* and *gains* of the business of the assessee-respondent's industrial undertaking within the meaning of Section 80IC of the Act.

(**vi**) Aggrieved by the aforesaid order of the CIT(A), the Revenue preferred appeal before the learned Tribunal. The said appeal was registered, we have already indicated above, as ITA No. 52/Gau/2009. The learned Tribunal, by its order, dated 19.03.2010, dismissed the appeal preferred by the Revenue.

(**vii**) While so dismissing the Revenue's appeal, the learned Tribunal followed its own order, passed in the case of **C.I.T. V/s. Meghalaya Steels Ltd. in I.T.A. No. 46/Gau/2009,** for the assessment year 2006-2007, decided on 19.03.2010. The learned Tribunal held that the *subsidies*, received by the assessee-respondent's industrial undertaking, would go on to reduce the corresponding expenses incurred under those particular heads and the resultant profit would be the *profits* and *gains* of the business of the industrial undertaking eligible for deduction under Section 80-IC of the Act. The learned Tribunal further held that all the *subsidies* were inter-linked, inter-laced and have a direct nexus with the manufacturing activities of the respondent's industrial undertaking.

(**viii**) Against the order, dated 19.03.2010, passed by the learned Tribunal, the Revenue is, now, in appeal before us.

9. We have heard Mr. K. P. Pathak, learned Additional Solicitor General, appearing for the appellants. We have also heard Mr. R. P. Agarwalla, learned Senior counsel, for the assessee-respondents.

SUBMISSIONS MADE BY THE APPELLANTS:

10. Presenting the case of the appellant, Mr. K. P. Pathak, learned ASG, submits that the crux of the matter, which falls for determination in the present appeals, is: Whether the assessee-respondents herein were entitled to deductions, either under Section 80IB or under Section 80IC of the Act, in the light of the Schemes of the various *subsidies* formulated by the Government.

11. The object of granting of the *subsidies,* in the present cases, was, submits the learned ASG, to encourage setting up of new industries in the backward region and the *subsidies* were made available to the industries only after the production commenced.

12. It is, therefore, an admitted position, contends the learned ASG, that the *subsidies*, in question, are *revenue receipts* and not *capital receipts*. What is, however, crucial, for decision, in the present appeals, is, the question, according to the learned ASG, whether the *revenue receipt*, in the form of *transport subsidy, or interest subsidy* or *power subsidy* or *insurance subsidy,,* at the hands of the assessee-respondents herein, goes on to reduce the cost of production of the industrial undertaking concerned and thereby affects the resultant *profits* and *gains derived from,* or *derived by,* the industrial undertaking concerned and whether the amount of *subsidy*, in question, in a case of present nature, would be permitted to be deducted under the provisions of either under Section 80IB or under Section 80IC of the Act, as the case may be.

13. Candidly submits the learned ASG that, in the present appeals, it is not in dispute that the industrial undertakings of the assessee-respondents herein are eligible industrial undertakings, under the relevant Government Policy/Scheme, to receive the *subsidies*, which were received by the assessee-respondents. However, what is in question, once again, points out the learned ASG, is whether any of the *subsidies*, in question, goes on to reduce the cost of production of the industrial undertakings concerned and thereby makes, the assessee-respondents concerned entitled to claim deductions, either under Section 80IB or under Section 80IC of the Act of the amounts of the *subsidies,* which were received, in the form of *revenue receipt*, by the assessee-respondents.

14. Referring to the schemes the of *subsidies,,* the learned ASG submits that the schemes had been introduced by the Government with the main object of promoting industrial growth in the areas, where the schemes had been made available, and this policy had been continued during the relevant year, but, in order to obtain the benefit of deduction of *profits* and *gains*, under the Act, arising out of the schemes of *subsidies*, an industrial undertaking has to satisfy the conditions embodied under Section 80IB or 80IC of the Act, as the case may be.

15. While, in the case of Section 80IB, the fundamental requirement, according to Mr. Pathak, learned ASG, is that the *profits* and *gains* have to be '*derived from'* the industrial undertaking, the *profits* and *gains* have to be '*derived by'* the industrial undertaking if one has to claim deduction

under Section 80IC. Nevertheless, in either case, submits the learned ASG, in order to become entitled to claim deduction of the amount of *subsidy*, received by an industrial undertaking, the assessee must be able to show a direct nexus between the *subsidy* received, on the one hand, and the *profits* and *gains* of the industrial undertaking concerned, on the other, inasmuch as there is no material distinction, contends the learned ASG, between the phrase, *'derived from'* and the phrase, *'derived by'* and any attempt to distinguish the meaning of the said two expressions would be an academic exercise with no substantial gain and it is for this reason that the two phrases, namely, *'derived from'* and *'derived by'*, are used interchangeably.

16. What is, however, according to the learned ASG, imperative to show by an assessee, in order to claim deduction, be it under Section 80IB or under Section 80IC, is that the *profits* and *gains* have been, as the case may be, *derived from* or *derived by* the industrial undertaking, because of the *subsidy* received by the assessee. As a corollary thereto, submits the learned ASG, the assessee would have to show, if the assessee has to claim deduction either under Section 80IB or under Section 80IC, that the *profits* and *gains* of the industrial undertaking concerned are directly relatable to, and connected with, the *subsidies* received and, hence, the *profits* and *gains*, so derived or so received, are not attributable to the *subsidies*, which the assessee received, but either '*derived from'* or '*derived by'*, the industrial undertaking concerned.

17. According to the learned ASG, the word, *'derive'*, which is of material significance, has been the subject-matter of interpretation in various judicial pronouncements without any reference to the suffix *'from'* or *'by'*. A reference, in this regard, is made by the learned ASG to the case of **Pandian Chemicals Ltd. vs. Commissioner of Income Tax [2003] 262 ITR 278**.

18. Further elaborating his submission, the learned ASG points out that the word *'derive'* is of importance and the use of the suffixes, *'from'* or *'by'* to the word *'derive'* are merely a manner of usage rather than an unintelligible differentia. In support of his contention, the learned ASG refers to the case of **National Organic Chemical Industries Limited vs. Collector of Central Excise, Bombay (AIR 1997 SC 690)**, wherein the Supreme Court held as under:

> *"The dictionaries state that the word* ***'derive'*** *is usually follows by the word 'from' and it means get or trace from a source, arise from, originate in, show the origin or formation of'.*
>
> ***It, therefore, suggests that the root word is 'derived' and the suffix 'from' or 'by' or 'directly', etc., are indistinguishable and do not impinge on the interpretation at hand. In other words, there is no greater significance in the word 'from' following the word 'derived' other than the fact that it is the usual linguistic practice****……..."*
>
> (Emphasis added)

19. The learned ASG has also placed reliance on the decisions rendered by various High Courts as well as the Supreme Court, in **Sharavathy Steel Products (P) Ltd vs. ITO [2011], 347 ITR 371,**

Commissioner of Income-tax vs. Maharani Packaging (P) Ltd [2012] 209, reported in **Taxman 49 (HP) (Mag), Commissioner of Income Tax in [2010] 193 Taxman 12, Janak Raj Bansal vs. CIT [2010], 228 CTR 167, Commissioner of Income Tax Karnal vs. Accent for living [2010],** reported in **191 Taxman 88**, and **Pine Packaging (P) Ltd vs. CIT,** reported in **250 CTR 45**, on the controversy if any distinction, between the meaning of the expressions, *'derived from'* and *'derived by'* really exists.

20. From the decisions referred to above, further submits the learned ASG, it can be safely said that a number of superior judicial authorities have chosen to ignore the word *'from'* or *'by'*, appearing after the word '*derived'*, while considering the subject-matter involving and/or using the said two expressions.

21. According to the learned ASG, since there is no existing authority or decided case, which establishes any intelligible distinction between the two expressions, namely, *'derived from'* and *'derived by,* what has to be considered by this Court, in the present appeals, is whether the *profits* and *gains* of the industrial undertakings, in question, were *'derived from'* or *'derived by'* the industrial undertakings concerned and whether the *profits* and *gains,* so derived, have a first degree nexus with the *subsidies*, which were received by the industrial undertakings. In consequence thereof, one can also safely gather, contends the learned ASG, that if no first degree nexus is established between the *profits* and *gains* derived by the industrial undertaking, on the one hand, and the *subsidy* or *subsidies*

received by the industrial undertaking concerned, on the other, the assessee would neither be entitled to deduction under Section 80IB nor would the assessee be entitled to deduction under Section 80IC.

22. In his endeavour to establish his contention, that there does not really exist any distinction or difference between the two expressions, *'derived from'* and *'derived by',* the learned ASG has chosen to refer also to Chapter VI-A of the Act, particularly, Section 80-IA, Section 80-ID, Section 80-IAB, Section 80-HHE, Section 80-HHF, etc. of the Act and submits that after going through the Sections, as mentioned hereinbefore, it is not at all difficult for a prudent person to come to the conclusion that the phrases, '*derived from'* and *'derived by'*, used in these Sections of the Act, are, by no means, of any material significance and statutorily, it does not matter whether the *profits* and *gains* are *derived from* or *derived by* an industrial undertaking.

23. The learned ASG submits that considering the fact that the expression, '*derived from'*, appearing in Section 80IB, as well as the expression, *'derived by'*, appearing in Section 80IC, are narrower in scope than the expression, *'attributable to'*, it becomes transparent that if one has to receive the benefit of Section 80IB or Section 80IC, he must show that the source of *profits* and *gains* is directly from the manufacturing activities of the assessee and that the *profits* and *gains*, so derived, are directly affected by *subsidy* or *subsidies* received.

24. Mr. Pathak has also submitted that merely because the scheme, in question, provides for various *subsidies*, it does not mean that the

subsidies have a direct nexus with the *profits* and *gains* of the assessee-respondents' industrial undertakings. Had any *subsidy* been given on the cost of the raw materials actually consumed by the assessee-respondent's industrial undertakings, the *subsidy*, on raw materials, would have, perhaps, been, according to the learned ASG, eligible for deduction under Section 80IB or 80IC.

25. Referring to the cases of **Janak Raj Bansal vs CIT [2010],** reported in **228 CTR 167**, **CIT vs. Maharani Packaging (P) Ltd,** reported in **[2012] 209 TAXMAN 49 (Mag.)**, **Eastman Exports Global Clothing (P) Ltd vs. ACIT,** reported in **[2011] 331 ITR 232**, **Karnal vs. Accent of Living [2010],** reported in **191 TAXMAN 88,** and **M.M. Forgings Ltd vs. Addl. CIT [2010],** reported in **349 ITR 643**, the learned ASG submits that in these cases, the Courts have taken the view that the Duty Drawback is not a *profit* or *gain* derived from industrial activity and, hence, Duty Drawback would not be eligible for deduction under Section 80IB.

26. The learned ASG has further pointed out that, in the case of **Supriya Gill vs. Commissioner of Income Tax [2010],** reported in **193 TAXMAN 12,** the Himachal Pradesh High Court has held that that *freight subsidy*, received from the government by the assessee, will not be eligible for deduction, under Section 80-IA of the Act, on the ground that the source of *freight subsidy* was not the business of the assessee, but a scheme of the Central Government and, therefore, the same could not be treated as a profit *'derived from'* business.

27. Pointing out to the case of **Sri Umesh M. Joshi, Mumbai vs. ITO [ITA No. 4287/Mum/2010,** dated **23.12.2011],** the learned ASG submits that in this case, the learned Income Tax Appellate Tribunal, Mumbai, confirmed the action of the Assessing Officer in disallowing the assessee's claim for deduction, under section 80-IA of the Act, in respect of *sales tax incentives* on the ground that the immediate source of the incentives, received by the assessee, was the relevant scheme of the State Government and not the business of the industrial undertaking of the assessee.

28. Referring to the case of **CIT vs. Gheria Oil Gramudyog Workers Welfare Association,** reported in **[2011] 330 ITR 117 (HP)**, the learned ASG submits that in this case, the Court has taken the view that *interest subsidy*, received by the assessee, under a scheme formulated by the State Government, is not a *profit* derived from business, because it not an operational profit.

29. Referring to the case of **CIT vs. Kiran Enterprises [2010],** reported in **189 TAXMAN 457**, the learned ASG also submits that *transport subsidy*, received by the assessee, was not a *profit* derived from business, for, it was not an operational profit and that the source of the *subsidy* is not the business of the assessee, but a scheme of the Central Government and, hence, the *subsidy*, received by the assessee, was not entitled to deduction under the Act.

30. Mr. Pathak, learned ASG, contends that the *ratio* of the judgment, rendered by this High Court, in **Pancharatna Cement Vs. Union of**

India, reported in **(2009) 6 GLR 459**, which is relied on by the assessee-respondents, is not an issue in *lis,* in the present case, and the *ratio* of the said judgement of this High Court is, therefore, not applicable to the substantial questions of law, framed by this Court, in the present cases.

31. In the cases at hand, submits the learned ASG, none of the *subsidies* can be said to be reducing the cost of production of the industrial undertakings concerned and no first degree nexus can be said to have been established between the *profits* and *gains derived from*, or *derived by,* the assessee-respondents' industrial undertakings concerned, on the one hand, and the *subsidies,* received by the assessee-respondents, on the other, and it is for this purpose that a *subsidy*, in a case of present nature, cannot be regarded as a *subsidy,* which helps in the *profits* and *gains* of the industrial undertaking and, in such a case, the *profits* and *gains, derived from,* or *derived by*, cannot be attributed to the *subsidy* received and, in a case of this nature, deduction, neither under Section 80IB nor under Section 80IC, would be available to the assessee concerned.

32. Heavily relying upon the case of **Liberty India vs. CIT**, reported in **[2009] 317 ITR218: (2009) 9 SCC 328**, the learned ASG submits that the '*profits* and *gains' derived from,* or *derived by,* the industrial undertakings of the assessee-respondents, are, in effect, the *subsidies* provided by the Government and, although the *profits* and *gains* of the industrial undertakings concerned may be attributable to the *subsidies*

received by the industrial undertakings concerned, the fact of the matter remains that the *subsidies* are *revenue receipts* and are liable to be taxed.

33. The issue, in these appeals, if a *subsidy* is or is not entitled for deduction under Section 80IB or 80IC has, submits the learned ASG, no longer remained *res integra* inasmuch as the issue is fully covered by the decision in **Liberty India** (supra). By referring to the case of **Liberty India** (supra), the learned ASG submits that, in this case, the issue, which fell for consideration, was: *Whether the profit from Duty Entitlement Passbook Scheme and Duty Drawback Scheme could be said to be profit derived from the business of industrial undertaking eligible for deduction under Section 80-IB of the Act.?*

34. Referring to the case of **Liberty India** (supra), it is contended by Mr. Pathak, learned ASG, that, in **Liberty India** (supra), the Supreme Court has unambiguously laid down that the tax incentives, under Chapter VI-A of the Act, are attracted only to the generation of operational profits and that the benefit of deduction will not be available in respect of the receipts, which do not have any direct nexus with the operation of industrial undertaking of the assessee, i.e., whose source is beyond the *'first degree'*. The learned ASG refers to paragraph 17 and 18 of the case of **Liberty India** (supra) and contends that the Supreme Court has already held, in **Liberty India** (supra), that DEPB and Duty Drawback are incentives, which flow from the Schemes framed by Central Government, and these incentives do not, in any way, establish a nexus between the *profits* and *gains* of the industrial undertakings and

cannot, therefore, entitle the assessee-respondents to seek exemption under Section 80IB or 80IC. In fact, it has been clearly held, in **Liberty India** (supra), reiterates Mr. Pathak, that these incentives are *revenue receipts*, which belong to the category of ancillary profits of the industrial undertakings concerned and shall be taxed accordingly.

35. In other words, submits the learned ASG, the Supreme Court has held, **Liberty India** (supra), that incentives, originating from a Government Scheme, such as the one in **Liberty India** (supra), fall beyond the *'first degree'* rule and, hence, are not entitled to deduction under Chapter VI-A of the Act. In paragraph 18 of the decision, in **Liberty India** (supra), the Supreme Court has held, points out Mr. Pathak, as under:

> *"We are satisfied that remission of duty is on account of the statutory/policy provisions of Custom Act/Scheme(s) framed by the Government of India. In these circumstances, we hold that profits derived by way of such incentives do not fall within the expression" profits derived from industrial undertaking" in section 80-IB."*

36. Mr. Pathak, learned ASG, has also submitted that there is no material difference between an incentive scheme, such as, DEPB and Duty drawback, which were dealt with by the Supreme Court, in **Liberty India**'s case (supra), and the *subsidies*, which have fallen for consideration in the present cases. It cannot be disputed, according to the learned ASG, that the various kinds of *subsidies* may flow from Governmental schemes and, therefore, the subject-matter, which was

dealt with by the Supreme Court, in **Liberty India**'s case (supra), cannot be distinguished from the cases at hand and that the **Liberty India**'s case (supra) is squarely applicable to the cases at hand inasmuch as the *subsidies*, in the present cases, cannot but be regarded as non-operational profits, having no direct nexus with the activities of the undertakings of the assessee-respondents. Any argument to the contrary, further submits Mr. Pathak, would be perverse and in breach of Article 141 of the Constitution of India.

37. Assailing the contention of the assessee-respondents, that the *subsidies*, received by the assessee-respondents, in the present cases, go to reduce the expenditure actually incurred by the industrial unit of the assessee-respondents and, hence, the same ought to be regarded as operational profits, Mr. Pathak submits that this contention of the assessee-respondents cannot hold water on the ground that the classification of a particular receipt, by an industrial unit, is required to be done at the time of its receipt and the subsequent classification, in its books of account, under different heads, is immaterial.

38. Illustrating his above contention the learned ASG submits that for a textile industry producing cloth, the main industrial components for *profits* and *gains* would be the manufacture and sale of cloth itself. If any *profits* and *gains* are derived by the industry by operation of a canteen for its employees in the industry, the same would not be entitled for special deduction under Section 80 IB or Section 80 IC and it is in this context that the Supreme Court has observed, **Liberty India**'s case

(supra), *"……profits derived by way of such incentives do not fall within the expression 'profits derived from industrial undertaking in Section 80-IB'.*

39. In support of his above contention, the learned ASG has also referred to paragraph 24 of **Liberty India**'s case (supra), wherein the Supreme Court has observed as under:

> *"In the circumstances, we hold that Duty drawback/DEPB benefits do not form part of the net profits of eligible industrial undertaking for the purposes of section 80I/80-IA/80-IB of the Act."*

SUBMISSIONS BY THE RESPONDENTS:

40. Interestingly enough, Mr. R.P. Agarwalla, learned Senior counsel, while resisting the appeals, does not dispute the fact that there is a difference between the two expressions, namely, *'derived from'* and *'attributable to'*. In fact, Mr. Agarwalla submits that there can be no two opinions that the said two expressions carry two different meanings inasmuch as the expression *'derived from'* is narrower than the expression *'attributable to'*.

41. The meaning of the word *'derived'* is, according to Mr. Agarwalla, learned Senior counsel, not a subject matter of controversy, but the attempted question, raised by the Revenue, regarding the expressions *'derived from'* and *'derived by'* is incorrect. It can be easily comprehended, submits Mr. Agarwalla, learned Senior counsel, that the *'profits* and *gains', 'derived from'* an industrial undertaking means that it is the business of the undertaking, which is the direct source of the *'profit* and

gains'; whereas the expression *'derived by'* means that the business of the undertaking is the recipient of the *profits* and *gains*.

42. At any rate, submits Mr. Agarwalla, the question of interpreting the expression *'derived from'* or the expression *'derived by'* would arise only when this Court finds that the nexus, between the *subsidies*, in question, on the one hand, the manufacturing process/production of the industrial undertaking, on the other, is not direct, or else, the question of distinguishing the expression *'derived by'* from the expression *'derived from'* would be, contends Mr. Agarwalla, irrelevant.

43. While resisting the appeal, Mr. R.P. Agarwalla, learned Senior counsel, makes it also clear that it is not material, as far as the assessee-respondents are concerned, whether deduction is required to be allowed under Section 80IB or 80IC of the Act for the *subsidies*, which the assessee-respondents' industrial undertakings have received during the relevant year inasmuch as the assessee-respondents, in either case, according to Mr. Agarwalla, would be entitled to deductions if the assessee-respondents can show that the *subsidies*, given in the form of *transport subsidy, or interest subsidy, or power subsidy, or insurance subsidy,* are aimed at reducing the **cost of production of the assessee-respondents' industrial undertakings and thereby directly affect the *profits* and *gains* made by the industrial undertakings concerned**.

44. Referring to the case of **Liberty India Vs. CIT,** reported in **(2009) 9 SCC 328,** Mr. Agarwalla, learned Senior counsel, submits that the issue, raised in **Liberty India** (supra), was distinct and different from the

issues, which the cases at hand raise inasmuch as the subjects for consideration, in **Liberty India** (supra), were Duty Entitlement Passbook Scheme (DPEB) and Duty Drawback Scheme, which were schemes providing for incentives to augment export and these schemes were not meant for directly reducing the cost of production of the industrial undertaking. In fact, in **Liberty India** (supra), submits Mr. R.K. Agarwalla, the assessee concerned, unlike the facts of the case at hand, was not involved in manufacturing activities.

45. From the decision, in **Liberty India** (supra), it is clear, according to Mr. Agarwalla, that DPEB and Duty Drawback Scheme, being export incentives, were not related to the business of industrial undertaking *per se* for its manufacturing or production.

46. Entitlement of DPEB and Duty Drawback Scheme arose, in **Liberty India** (supra) points out Mr. Agarwalla, when the undertaking made *export* after manufacturing or production and remained restricted only to export component. Consequently, points out Mr. Agarwalla, when there was no *export*, the question of any entitlement, either under the DPEB or under Duty Drawback Scheme, did not arise and, as a result thereof, the relation of DPEB and/ or Duty Drawback Scheme with the manufacturing activities was not proximate or direct. This apart, DPEB entitlement was freely transferable or saleable resulting in *profit* or *loss*, which is not the case at hand.

47. Coupled with the above, it is submitted by Mr. Agarwalla that the Supreme Court, in **Liberty India** (supra), clearly pointed out that so far

as the Duty Drawback was concerned, the same envisaged repayment of customs and excise duty paid by an assessee, but the refund of the amount shall not arithmetically be equal to customs duty or central excise duty actually paid by an individual importer or manufacturer.

48. It is, therefore, clear, submits Mr. Agarwal, that the Duty Drawback was not related to the business of industrial undertaking so far as manufacturing or production was concerned and, that is why, the Supreme Court held, in **Liberty India** (supra), that the *profits*, derived by way of incentive, such as, DEPB, do not fall within the expression *'profits derived from industrial undertaking'* appearing in Section 80IB; whereas the present cases are the ones, wherein the *subsidies* directly affect the cost of production of the industrial undertakings concerned and are inextricably linked to the assessee-respondents' manufacturing activities.

49. **Liberty India** (supra) is, thus, according to Mr. Agarwalla, an authority for the proposition, which governs the statutory schemes or provisions of DEPB and Duty Drawback inasmuch as the said scheme relate to the export of an industrial undertaking and is not at all an answer to the question of deduction arising in each and every incentive embodied scheme, more particularly, a scheme, which is directly connected with reduction of cost of production/manufacture of an industrial undertaking. By no means, therefore, contends Mr. Agarwalla, learned Senior counsel, **Liberty India** (supra) can be said to be a decision applicable to the facts of the present case.

50. Referring to the case of **Liberty India** (supra), Mr. Agarwalla submits that though the Revenue has heavily relied on the decision, in **Liberty India** (supra), the fact of the matter remains that the chief question, which has fallen for determination, in the present cases, was not at all a question, which was raised and decided in **Liberty India** (supra) and, hence, the reference, made by the Revenue to the decision, in **Liberty India** (supra), or to the observations made therein, which is not in the context of a case of present nature, cannot be said to be the answer to the question(s) raised in the present appeals.

51. In fact, the Supreme Court has, in the past, points out Mr. Agarwalla, cautioned the courts not to mechanically rely upon a decision of the Supreme Court without taking into account the facts of the case, which render colour to the decision of the Court, and that the decision of the Supreme Court is not to be read like a statute and the words or the sentences are not to be read *de hors* the context in which the question arose. Unless, therefore, an issue is raised and decided by the Supreme Court in a case, the question of applying the decision of the Supreme Court would not, contends Mr. Agarwalla, learned Senior counsel, arise. A reference, in this regard, is made by Mr. Agarwalla, to the case of **Commissioner of Income Tax vs. Sun Engineering Works P. Ltd. [1992] 198 ITR 297 (SC)**, wherein the Supreme Court observed as under:

> *"It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this court, divorced from the context of*

the question under consideration and treat it to be the complete " law " declared by this court. ***The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this court. A decision of this court takes its colour from the questions involved in the case in which it is rendered and, while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this court, to support their reasonings****. In Madhav Rao Jivaji Rao Scindia Bahadur v. Union of India [1971] 3 SCR 9 / AIR 1971 SC 530, this court cautioned (at page 578 of AIR 1971 SC).* (Emphasis supplied)

It is not proper to regard a word, a clause or a sentence occurring in a judgment of the Supreme Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment."

52. The question, points out Mr. Agarwalla, which was raised in **Liberty India** (supra), was: *Whether profit from the Duty Entitlement Passbook Scheme (DEPB) and Duty Drawback Scheme could be said to be profit derived from the business of the industrial undertaking eligible for deduction under section 80-IB of the Income Tax Act, 1961 (1961 Act) ?*

53. Thus, the question, in **Liberty India** (supra), as can be clearly gathered, was, submits Mr. Agarwalla, learned Senior counsel, whether the *profits*, which were received from Duty Entitlement Passbook Scheme and Duty Drawback Scheme, could be regarded as *profits* derived from the business of the industrial undertaking and, if so,

whether the *profits*, so derived, were permissible to be deducted under Section 80IB.

54. The Supreme Court, while answering the above question in the negative, pointed out, submits Mr. Agarwalla, that DEPB is an incentive and it is given under Duty Exemption Remission Scheme and that DEPB is not related to the business of industrial undertaking per se for its '*manufacturing or production'* inasmuch as DEPB's entitlement would arise, when the undertaking goes on to '*export'* after *'manufacturing or production'* and is restricted only to *'export product'*. Therefore, it is clear, reiterates Mr. Agarwalla, that if there was no export, there was no DEPB entitlement. Further, the entitlement was based on the artifice of *'deemed import content of export product'* and not even based on '*actual import content of the export product'*.

55. The decision, in **Liberty India** (supra), according to Mr. Agarwalla, is an exposition of law in respect of statutory schemes/ provisions of DEPB and Duty Drawback, which were related to export of an industrial undertaking and not at all an exposition on the question of each and every incentive scheme, more particularly, those schemes, which as are inextricably and directly connected to the reduction in the cost of production/manufacture of an industrial undertaking, and the schemes, such as the present ones, did not even fall for consideration in **Liberty India**'s case (supra). Therefore, contends Mr. Agarwalla, the Revenue's reliance, on **Liberty India** (supra), is wholly misplaced.

56. No wonder, therefore, contends Mr. Agarwalla, that in **MEPCO INDUSTRIES LTD. V/s C.I.T., D9 319 ITR 208 (S.C.)**, which is a later decision, the Court has clearly pointed out that the nature of a *subsidy*, in each case, is separate and distinct and, therefore, the nature of *subsidy* has to be examined, in each case, independently. Illustrating this principle, the Supreme Court held, in **MEPCO INDUSTRIES LTD.** (supra), as under:

> *"Sahney Steel and Press Works Ltd. [1997] 228 ITR 253 (SC) was a case which dealt with production subsidy, Ponni Sugars and Chemicals Ltd. [2008] 306 ITR 392 (SC) dealt with subsidy linked to loan repayment whereas the present case deals with a subsidy for setting up an industry in the backward area.* ***Therefore, in case, one has to examine the nature of the subsidy****. The judgment of this court in Sahney Steel and Press Works Ltd. [1997] 228 ITR 253 was on its own facts; so also, the judgment of this court in Ponni Sugars and Chemicals Ltd. [2008] 306 ITR 392 (SC).* ***The nature of the subsidies in each of the three cases is separate and distinct. There is no strait jacket principle of distinguishing a capital receipt from a revenue receipt. It depends upon the circumstances of each case****. As stated above, in Sahney Steel and Press Works Ltd. [1997] 228 ITR 253 (SC), this court has observed that the production incentive scheme is different from the scheme giving subsidy for setting up industries in backward areas. In the circumstances, the present case is an example of change of opinion. Therefore, the Department has erred in invoking section 154 of the Act."*
>
> (Emphasis is added)

57. In the light of the decision, in **MEPCO INDUSTRIES LTD** (supra), one can have no escape from the conclusion, submits Mr.

Agarwalla, that the nature of *subsidy* has to be examined by the Court, in each case, in order to determine if an asseessee's undertaking is entitled to deduction under Section 80IB or 80IC of the Act.

58. The exact nature and character of *transport subsidy*, points out Mr. Agarwalla, were examined and considered by the Supreme Court, in **JAI BHAGWAN OIL & FLOUR MILLS V/S. Union of India,** reported in **(2009) 14 SCC 63**, and having examined the nature of the *transport subsidy*, the Supreme Court, in **JAI BHAGWAN OIL & FLOUR MILLS** (supra), laid down, in emphatic words, that *transport subsidy* was '*not*' meant to augment revenue, by levy and collection of tax or duty, rather, the object was to '*improve*' trade and commerce between the remote parts of the country with other parts so as to bring economic development to remote backward regions and this scheme was introduced to make it feasible and attractive for industrial entrepreneurs to start and run industries in remote parts by giving them a level playing field so that they could compete with their counterparts in the non-remote areas.

59. The Court has also pointed out, in clear words, in **JAI BHAGWAN OIL & FLOUR MILLS** (supra), submits Mr. Agarwalla, that huge *transportation cost*, for the purpose of bringing the raw materials to the industrial unit and carrying of finished goods to the existing market outside the State, was making it unviable for industries in remote parts of the country to compete with industries in the central areas and that is why, *transport subsidy* was developed as a device so

that the industries can become competitive and become economically viable. Thus, industrial units, in remote areas, were extended the benefit of subsidized transportation. For industrial units in Assam and other north eastern States, the benefit was given, in the form of *transport subsidy,* in respect of a percentage of the cost of transportation between a point in central area (Siliguri in West Bengal) and the actual location of the industrial unit in the remote area, so that the industry could become competitive and economically viable. Mr. Agarwalla has also referred to paragraph 18 of the decision of the Supreme Court, in **JAI BHAGWAN OIL & FLOUR MILLS** (supra), which read as under:

> *"**Any goods which goes in as a raw material required/used in the manufacturing programme of an industrial unit situated in a notified remote area, or any finished goods that is produced in the industrial unit situated in such area and exported out of the State, was eligible for the transport subsidy under the Scheme**. The Scheme itself specifically defines "finished goods" as goods actually produced by an industrial unit in accordance with the manufacturing programme as approved by the Central Government and/or the Government of the State where the industrial unit is located."*
>
> *(Emphasis is added).*

60. The Revenue, according to Mr. Agarwalla, has not even attempted to comment, far less distinguish the decision in **JAI BHAGWAN OIL & FLOUR MILLS** (supra). There is, therefore, direct nexus, submits Mr. Agarwalla, between the *subsidies* and manufacturing activities, in the present cases, entitling the assessee-respondents to receive deductions for the *subsidies* received.

61. Similarly, submits Mr. Agarwalla, learned counsel for the assessee-respondents, that the issue of *power subsidy* is directly covered by the decisions, in **C.I.T. V/S. Rajaram Maize Products 251 I.T.R. 427 (S.C.),** and **C.I.T. V/S. Eastern Electro Chemical Industries,** reported in **(1999) 9 SCC 20**, and that the nature and character of *interest subsidy* and *insurance subsidy,* being identical to that of *power subsidy, interest subsidy and insurance subsidy* are also covered by the decisions, in **Rajaram Maize Products** (supra) and **Eastern Electro Chemical Industries** (supra).

RIVAL CONTENTIONS VIS-À-VIS LEGAL PROPOSITIONS :

62. Shorn off rhetorical legal arguments, compassionate pleas and emotionally surcharged submissions, what surfaces from beneath the mass of materials placed before this Court, by way of pleadings and otherwise, is that there is no dispute, in this set of appeals, that, in order to claim deduction either under Section 80IB or under Section 80IC, an assessee has to establish that there is a direct, intrinsic and *first degree* nexus between a *subsidy,* on the one hand, and the *profits and gains,* on the other, *derived from,* or *derived by,* the industrial undertaking concerned. There is also no dispute that if any of the *subsidies,* in question, goes on to reduce the cost of production of an industrial undertaking, the resultant *profits and gains* are deductible under the provisions of Section 80IB or 80IC, as the case may be. Surfacing from beneath this statutory requirement, the legal proposition is that if the *subsidy* is non-operational in nature, there will be no entitlement of

deduction; but the *subsidy,* if operational, would entitle an assessee to claim deduction.

63. There is no dispute at the bar that the *subsidies,* which we are required to deal with, are *revenue receipts*. The question, however, is: these *revenue receipts*, if help an industrial undertaking in earning *profit* and making *gains*, whether the undertaking is entitled to seek deduction if the undertaking satisfies, otherwise, the conditions prescribed by Section 80IB or 80IC, as the case may be ?

64. Though Mr. Pathak, learned ASG, is correct to some extent in contending that there is no substantial distinction between the two expressions, namely, *'derived from'* and *'derived by'*, what we must point out is that the expression *'derived from',* occurring in Section 80IB, implies that the *profits and gains* have to be derived from the activities of the industrial undertaking. In other words, as rightly contended by Mr. Agarwalla, learned Senior counsel, when the expression, '*derived from,* has been used in Section 80IB, it means that it is the business of the undertaking, which is the direct source from which the *profits* and *gains* are derived. In the case of a *subsidy,* the expression, '*derived from'*, appearing in Section 80IB, would, logically extended, mean that the *subsidy,* provided by the State, directly affects the business activity of the industrial undertaking. In the case at hand, the assessee-respondents contend that the *subsidies,* provided to them, go on to reduce the cost of production of the industrial undertakings concerned and the resultant effect is generation of more money resulting into higher profits. In the

case of 80IC, however, one has to show that it is the industrial undertaking, which is the recipient of *profits and gains* arising from a *subsidy,* which the industrial undertaking has received. It is immaterial as to what Section has been invoked by an assessee for the purpose of claiming deduction so long as an assessee is entitled to statutory deduction. Consequently, the deduction must be allowed even if an assessee refers to an incorrect statutory provision for claiming deduction.

65. The fact of the matter remains that, in the case at hand, since the *subsidies,* in question, are claimed to have helped the undertakings in generating *profits* and making *gains* by reducing the operational cost of the activities of the industrial undertaking concerned, the statutory provision for deduction, apposite to a case of present nature, is Section 80IC inasmuch as the recipient of the *profits and gains*, arising out of the *subsidies,* is, eventually, an industrial undertaking.

66. What is, therefore, required to be decided, in the present set of appeals, is as to whether there is direct nexus between the *subsidies*, on the one hand, and the manufacturing activities of the industrial undertaking, on the other. If there is a direct nexus between the two, then, the industrial undertaking is, undisputedly, entitled to claim deduction in respect of the *profits and gains*, if any, made by the industrial undertaking.

67. In order to sustain its plea, that there is no direct nexus between the *subsidies,* received by the industrial undertakings of the assessee-

respondents, on the one hand, and the manufacturing activities of the industrial undertakings, on the other, the Revenue contends that *subsidies,* received by the industrial undertakings of the assessee-respondents, are non-operational, in nature, meaning thereby that it does not have any bearing on the manufacturing activities of the industrial undertakings, while the assessee-respondents contend that the *subsidies,* in question, directly affect the operation of the manufacturing activities of the industrial undertakings and have, therefore, direct bearing on the earning of *profits* and making of *gains* by the industrial undertakings concerned. The controversy, thus, lies in a narrow compass, though the arguments addressed are varied and repetitive.

68. The moot question, which, therefore, falls for determination in the present set of appeals is: Whether there is *direct and first degree* nexus between the *subsidies,* on the one hand, and the *profit and gains,* on the other, of the industrial undertakings concerned?

69. While answering the question, posed above, one has to bear in mind, as already indicated above, that there are four distinct *subsidies,* namely, *transport subsidy, interest subsidy, power subsidy* and *insurance subsidy,* which are involved in the present set of appeals.

70. Let us, first, deal with ***transport subsidy***, which would, *per force*, bring us to the object with which ***transport subsidy*** was introduced and the manner in which the scheme of ***transport subsidy*** was to operate so that we can determine if there was a *direct nexus* between ***transport***

subsidy, on the one hand, and the resultant ***profits*** and ***gains*** of the industrial undertakings concerned, on the other.

SCHEME OF TRANSPORT SUBSIDY:

71. A new industrial policy was unfurled by Notification, dated 23rd of July, 1971, issued by the Government of India embodying a scheme for grant of *subsidy* on the *transport* of *raw material*s actually required and used by an industrial unit in its manufacturing programme as approved by the Government of India and/or Government of the State/Union Territory, where the industrial unit is located, and also *transport*ation of *finished goods* actually produced by an industrial unit in accordance with the manufacturing programme approved by the Government of India and/or Government of the State/Union Territory, where the industrial unit is located.

72. In the present appeals, we are concerned not only with **Transport Subsidy Scheme** (as embodied in the Industrial Policy announced by Notification, dated 23rd of July, 1971, and extended by Office Memorandum, dated 24.12.1997), but also with *subsidy* on *interest*, *subsidy* on *power*, and *subsidy* on *insurance*. The relevant portion of the Scheme embodied in Clause (**iv**) of the Notification, dated 23rd of July, 1971, aforementioned, and titled as the **Transport Subsidy Scheme, 1971,** reads as under:

> *"(**iv**) **In the case of North-Eastern region** comprising the States of Assam, Meghalaya, Nagaland, Manipur, Tripura and the Union Territories of Arunachal Pradesh and Mizoram the **transport subsidy will be given on the transport costs between Siliguri and the***

> ***location of the industrial unit in these states/Union territories****. While calculating the transport costs of raw materials the cost of movement by rail from Siliguri to the railway station nearest to the location of the industrial unit and thereafter the cost of movement by road to the location of industrial unit will be taken into account. Similarly, while calculating the transport costs of finished goods the costs of movement by road from the location of industrial unit to the nearest railway station and thereafter the cost of movement by rail to Siliguri will be taken into account.* ***In the case of North Eastern region, for materials moving entirely by road or other mode of transport the transport costs will be limited to the amount which the industrial unit might have paid had the raw materials moved from Siliguri by rail upto the railway station nearest to the location of the industrial unit and thereafter by road. Similarly in the case of movement of finished goods moving entirely by road or other mode of transport in the North Eastern region, the transport costs will be limited to the amount which the industrial unit might have paid had the finished goods moved from the location of the industrial units to the nearest railway station by road and thereafter by rail to Siliguri****.*
>
> (Emphasis is added)

73. For helping in the growth of industries, development of economy and generation of employment, Sub-Clause (**iv**) of Clause 6 of the Scheme was amended by Government of India's Notification, dated 28.02.1974, which made it clear that *transport subsidy* would cover movement of '*raw materials*' from one State to another within the North Eastern Region and, further, *transport subsidy* would cover *inter-State* movement of '*finished goods*' within the region, but the *subsidy* available

would, under the amended Scheme, be 50% of the *transport cost* on the movement of the goods from the location of the industrial units to the nearest Railway Station by road and, thereafter, by rail and *vice-versa*.

74. Under the unamended Scheme, *transport subsidy* was to cover 75% of the *air freight* on movement of electronic component/products by air to, and from, Calcutta up to the location of the industrial unit and *vice-versa*. The Scheme, on amendment, clarified that in case of movement of goods moving partly by air and partly by rail/road, the *transport subsidy* would be admissible @ 75% on air freight from Calcutta up to the airport nearest to the location of the industrial unit and, thereafter, at the rate of 90% for movement by rail/road up to the location of the industrial unit and *vice versa*.

75. In order to check that no misuse of *transport subsidy* takes place, Sub-Clause (iii) of Clause 6 of the Scheme made it a duty of the Directorates of Industries, in the State/Union Territories, to carry out periodical checks to ensure that the *raw material*s and the *finished goods*, in respect of which *transport subsidy* had been given, were actually used for the purpose by adopting a system of scrutinizing of consumption of *raw material*s and the output of the *finished goods*.

76. Before proceeding further, we may point out that Clause 4 of the **Transport Subsidy Scheme** contain various definitions. The *definitions*, relevant for the purpose of this appeal, are of *raw material* and *finished goods* as defined by Sub-Clauses (**h**) and (**i**) of Clause (4) of the Scheme and, therefore, reproduced below:

(h) *'Raw material' means any* ***raw material actually required and used by an industrial unit*** *in its manufacturing programme as approved by the Government of India and/or by the Government of State/Union Territory in which the industrial unit is located.*

(i) *'Finished goods' means the* ***goods actually produced by an industrial unit in accordance with the manufacturing programme approved*** *by the Government of India and/or the Government of the State/Union Territory in which the industrial unit is located.*

(Emphasis is added)

77. From the *definition* of *raw material* and *finished goods*, it is crystal clear that the term, *raw material*, under the Scheme, means any *raw material* actually required and used by an industrial unit in its manufacturing programme as approved by the Government of India and/or by the Government of State/Union Territory in which the industrial unit is located. Similarly, the definition of *finished goods* makes it abundantly clear that the term, *finished goods,* under the Scheme, means the goods actually produced by an industrial unit in accordance with the manufacturing programme approved by the Government of India and/or the Government of the State/Union Territory in which the industrial unit is located.

78. From the *definition* of *raw materials* and *finished goods,* embodied in the **Transport Subsidy Scheme, 1971,** and the details of the Scheme as contained, particularly, in Sub-Clause (**iv**) of Clause 6 of the Scheme shows that in the case of North-Eastern Region, the Scheme promised that the *transport subsidy* would be given on the *transport* costs, between Siliguri and the location of the industrial unit concerned, on the *raw*

materials actually required and used by the qualified industrial unit in its manufacturing programme as may have been approved by the Government concerned. The **Transport Subsidy Scheme, 1971,** also promised to make available *transport subsidy* on *finished goods,* actually produced by the industrial unit in accordance with the manufacturing programme approved by the Government concerned.

79. What logically follows from the above discussion is that *subsidy*, on *transportation* of *raw materials* as well as *finished goods,* was promised to be made available to the industrial units concerned in a manner, which would directly affect the cost of production inasmuch as *transportation subsidy*, on the *raw materials,* was not meant to cover all the *raw materials,* but only that part or portion of the *raw materials,* which was actually required and used by an industrial unit in its manufacturing programme approved by the Government concerned and, similarly, *transport subsidy,* on the *finished goods,* too, help in reduction of the cost of manufacturing of the industrial unit concerned inasmuch as *subsidy* on *transportation* of *finished goods* was promised to be given on the *finished goods* actually produced by the industrial unit in accordance with the manufacturing programme approved by the Government concerned.

80. When the *transport subsidy*, so received, both, on the *transportation of the raw materials* as well as *transportation of the finished goods*, does go to reduce the cost of production of an industrial undertaking, the resultant

effect of such a reduction, on the cost of production, would, obviously, help generate profits and, at times, higher profits.

81. Thus, it is transparent that there is a *direct nexus* between the *transport subsidy,* on the one hand, and the *profits* earned, and *gains* made, by the industrial undertakings, on the other. Such a *direct nexus* cannot but be termed as *first degree nexus* between the two, namely, *transport subsidy,* on the one hand, and the resultant *profits and gains,* on the other.

82. Unless, therefore, the Revenue succeeds in showing that the *transport subsidy* has no bearing on the cost of production of the industrial undertakings, the claims for deductions, which have been made by the assessee-respondents as recipient of *transport subsidy,* cannot but have to be necessarily held to be covered by Section 80IB or 80IC.

83. The nature and character of ***transport subsidy*** fell for consideration in **JAI BHAGWAN OIL & FLOUR MILLS V/S. Union of India,** reported in **(2009) 14 SCC 63**, wherein, the Supreme Court, taking note of, amongst others, the definition of *raw material* and the definition of *finished goods*, observed that the object of the ***transport subsidy*** scheme is not augmentation of revenue by levy and collection of tax or duty. The relevant observations, appearing, in this regard, at paragraph 14, read, *"**The object of the Transport subsidy Scheme is not augmentation of revenue, by levy and collection of tax or duty**".*

(Emphasis provided)

84. From the above cogent and emphatic observation, made by the Supreme Court, in **JAI BHAGWAN OIL & FLOUR MILLS** (supra), as regards the object of ***transport subsidy***, it goes beyond the pale of doubt that ***transport subsidy*** Scheme was never meant to be a means of earning revenue by the State or collection of tax or duty by the State.

85. Far from being a source of earning revenue, the object of the Scheme, as pointed out by the Supreme Court, in **JAI BHAGWAN OIL & FLOUR MILLS** (supra), has been to improve trade and commerce between remote parts of the country with other parts so as to bring about economic development of remote backward regions. This was sought to be achieved by the Scheme by making it feasible and attractive to industrial entrepreneurs to start and run industries in remote parts by giving them a *'level playing field'* so that they could compete with their counterparts in the central (non-remote) areas. The relevant observations, appearing, in this regard, at para 14 of **JAI BHAGWAN OIL & FLOUR MILLS** (supra), read as under:

> *"14. **The object of the Transport subsidy Scheme is not augmentation of revenue, by levy and collection of tax or duty**. The object of the Scheme is to improve trade and commerce between the remote parts of the country with other parts, so as to bring about economic development of remote backward regions. This was sought to be achieved by the Scheme, by making it feasible and attractive to industrial entrepreneurs to start and run industries in remote parts, by giving them a level playing field so that they could compete with their counterparts in the central (non-remote) areas."*
>
> (Emphasis provided)

86. Explaining as to why the ***transport subsidy*** had become necessary, the Supreme Court further observed, in **JAI BHAGWAN OIL & FLOUR MILLS** (supra), as under:

> *"15. The huge transportation cost for getting the raw materials to the industrial unit and finished goods to the existing market outside the State was making it unviable for industries in remote parts of the country to compete with industries in the central areas.* ***Therefore, industrial units in remote areas were extended the benefit of subsidized transportation****. For industrial units in Assam and other north eastern States, the benefit was given in the form of a subsidy in respect of a percentage of the cost of transportation between a point in central area (Siliguri in West Bengal) and the actual location of the industrial unit in the remote area,* ***so that the industry could become competitive and economically viable****.*
>
> *** *** ***
>
> *** *** ***
>
> *18. Any goods, which goes in as a raw material required/used in the manufacturing programme of an industrial unit situated in a notified remote area, or any finished goods that is produced in the industrial unit situated in such area and exported out of the State, was eligible for the transport subsidy under the Scheme. The Scheme itself specifically defines "finished goods" as goods actually produced by an industrial unit in accordance with the manufacturing programme as approved by the Central Government and/or the Government of the State where the industrial unit is located."*

(Emphasis provided)

87. From a careful reading of the observations, at para 14, 15 and 18 made by the Supreme Court, in **JAI BHAGWAN OIL & FLOUR MILLS**

(supra), what becomes abundantly clear is that huge transportation cost, for bringing the *raw material*s to the industrial unit, located in the North-Eastern Region, and in carrying *finished goods* to the existing market outside the States of North-Eastern Region, had been making it unviable for any one to establish industries in the North Eastern Region and it was, in order to '*neutrailse*' this heavy transportation cost that the ***transport subsidy scheme*** was evolved as a device and, therefore, the object of *transport subsidy* had never been, as concluded by the Supreme Court at para 14, "*..... augmentation of revenue, by levy and collection of tax or duty.*"

88. In the light of what have been discussed above, there can be no escape from the conclusion that *transport subsidy* was aimed at reducing the cost of production of the industrial undertakings covered by *transport subsidy* Scheme. Thus, there was a *first degree nexus* between the *transport subsidy*, on the one hand, and cost of production, on the other. When cost is reduced, it naturally helps in earning of profit and, at times, higher profits. Such profits and gains ought to have been treated, and has rightly been treated, by the learned Tribunal, to be profits and gains derived from, or derived by, the industrial undertaking concerned.

89. The Revenue, it has been rightly contended by Mr. Agarwalla, learned Senior counsel, has not even attempted to distinguish the decision, in **JAI BHAGWAN OIL & FLOUR MILLS** (supra), in any manner whatsoever, when this decision makes it more than abundantly

clear that *transport subsidy* goes on to reduce the cost of production of the industrial undertaking leading to earning of profits and making of gains by the industrial undertaking.

90. Upon analyzing the cases of **Merinoply and Chemicals Ltd. Vs. CIT,** reported in **209 ITR 508 (Cal),** and **Sarda Plywood Industries Ltd. Vs. CIT,** reported in **238 ITR 354 (Cal),** which the assessee-respondents have relied upon, when the facts of these cases and the law, laid down therein are considered, we find that both these decisions, in our respectful opinion, takes a correct view of the law, when it is laid down, in **Merinoply and Chemicals** (supra), that transport expenditure is an incidental expenditure of the assessee's business and it is that expenditure, which the *subsidy* recoups, and that the purpose of the recoupment is to make up possible profit deficit for operating an industry in a backward area and, therefore, there is no room for doubt that the *subsidies* were inseparably connected with the profitable conduct of the business. The relevant observations, made in **Merinoply and Chemicals Ltd.** (supra), read as under:

> "*We do not find any perversity in the Tribunal's finding that the scheme of transportation subsidies is inseparably connected with the business carried on by the assessee. It is a fact that the assessee was a manufacturer of plywood, it is also a fact that the assessee has its unit in a backward area and is entitled to the benefit of the scheme.* ***Further is the fact that transport expenditure is an incidental expenditure of the assessee's business and it is that expenditure which the subsidy recoups and that the purpose of the recoupment is to make up possible profit deficit for operating in a backward area.***

> ***Therefore, it is beyond all manner of doubt that the subsidies were inseparably connected with the profitable conduct of the business and in arriving at such a decision on the facts the Tribunal committed no error.***"
>
> (Emphasis is added)

91. Broadly in tune with **Merinoply and Chemicals Ltd.** (supra), **Sarda Plywood Industries Ltd.** (supra) holds that *transport subsidy* is granted only for the purpose of recouping or reimbursing a portion of transport cost, incurred by an owner of a manufacturing unit, set up in a backward area, in order to enable the owner of the manufacturing unit to recoup the loss, which he may suffer by way of additional transport cost. The relevant observations, appearing, in this regard, in **Sarda Plywood Industries Ltd.** (supra), read as under:

> " *Keeping in view the facts and circumstances of this case we, therefore, find ourselves in complete agreement with the Division Bench decisions of this court in Jeewanlal (1929) ltd. v. CIT [1983] 142 ITR 448, Merinopoly and Chemicals ltd. v. CIT [1994] 209 ITR 508 and Kesoram Industries and Cotton Mills Ltd. v. CIT [1991] 191 ITR 518,* ***and hold that transport subsidy is granted only for the purpose of recouping or reimbursing a portion of transport costs incurred by an owner of a manufacturing unit set up in a backward area, so as to enable him to recoup the loss which he may suffer by way of additional transport cost.***"
>
> (Emphasis added)

92. We find ourselves in complete agreement with the position of law laid down in **Merinoply and Chemicals Ltd.** (supra), **Sarda Plywood Industries Ltd.** (supra).

93. Before proceeding further, it needs to be pointed out that Mr. Agarwalla, learned counsel for the assessee-respondents, submits that the issue of *power subsidy* is directly covered by the decisions, in **C.I.T. V/S. Rajaram Maize Products 251 I.T.R. 427 (S.C.),** and **C.I.T. V/S. Eastern Electro Chemical Industries,** reported in **(1999) 9 SCC 20**, and that the nature and character of *interest subsidy* and *insurance subsidy*, being identical to that of *power subsidy, interest subsidy and insurance subsidy* are also covered by the decisions, in **Rajaram Maize Products** (supra) and **Eastern Electro Chemical Industries** (supra).

94. Put shortly, there is an existence of *direct nexus* between *transport subsidy*, on the one hand, and the manufacturing/production activities of industrial undertaking, on the other, stands well established. Unless shown otherwise, the industrial undertakings, in the present set of appeals, which have been granted *transport subsidy,* are entitled to claim deductions in terms of the directions of the learned Tribunal.

POWER SUBSIDY:

95. The Industrial Policy, 1997, as extended by the Industrial Policy of Assam, 2003, provides for *Power Subsidy* to be given to eligible industrial units (under such scheme) for a period of 5 (five) years from the date of commercial production, the *power subsidy* being available in the form of reimbursement of fully paid power bills with certain ceiling.

96. The reimbursement of the fully paid power bills, i.e., electrical charges, will obviously reduce the cost of production of an industrial undertaking contributing thereby to the profits and gains *derived from,* or

derived by, the industrial undertaking concerned and augmenting thereby the income of the industrial undertaking concerned. More so, when such a *subsidy* neutralizes the expenses incurred on consumption of power and this reinforces, if we may borrow the language from the case of **Pancharatna Cement Pvt. Ltd. Vs. Union of India,** reported in **317 ITR 259 (Gau),** *the eventual income of the business undertaking* and establishes thereby *direct and first degree nexus* between the industrial activities of the assessee-respondents, on the one hand, and the *subsidy,* in the form of *power subsidy,* on the other, received by the assessee-respondents.

97. The issue of *power subsidy* is well explained by the Supreme Court, in **C.I.T. Vs. Rajaram Maize Products,** reported in **251 ITR 427 (SC),** and **CIT Vs. Eastern Electro Chemical Industries,** reported in **(1999) 9 SCC 20.**

98. Before, however, we deal with the cases of **Rajaram Maize Products** (supra) and **Eastern Electro Chemical Industries** (supra), in order to answer the question as to whether *power subsidy* or *subsidy on the electrical charges* has a *direct nexus* with the profits and gains *derived from,* or *derived by,* an industrial undertaking, let us take note of the case of **Sahney Steel and Press Works Ltd & others Vs. CIT,** reported in **228 ITR 253 (SC).**

99. In **Sahney Steeel** (supra), the Supreme Court has pointed out, while dealing with *various subsidies*, including *subsidy* on *electricity*, that these *subsidies* were given to encourage setting up of industries in the

State of Andhra Pradesh in order to make business of production and sale of goods more profitable. The Supreme Court has also pointed out, in **Sahney Steel and Press Works Ltd.** (supra), that *subsidies* were to be paid on establishment of the industry and not for the purpose of setting up of industry and it was aimed at extending helping hand to the person concerned so as to meet competitive level with other established industries. The relevant observations, appearing, in this regard, in **Sahney Steel** (supra), read as under:

> *"..... **Similarly, subsidy on power was confined to "power consumed for production". In other words, if power is consumed for any other purpose like setting upthe plant and machinery, the incentives will not be given. Refund of sales tax will also be in respect of taxes levied after commencement of production. It is difficult to hold these subsidies as anything but operation subsidies. These subsidies were given to encourage setting up of industries in the State of Andhra Pradesh by making the business of production and sale of goods in the State more profitable.***
>
> *** *** ***
> *** *** ***
> *** *** ***
>
> *In the case before us, payments were made only after the industries have been set up. **Payments are not being made for the purpose of setting up of the industries. But the package of incentives were given to the industries to run more profitably for a period of five years from the date of the commencement of production. In other words, a helping hand was being provided to the industries during the early days to enable them to come to a competitive level with other established industries."***
>
> (Emphasis provided)

100. From the observations made, and the law laid down, in **Sahney Steel and Press Works Ltd.** (supra), it becomes clear that various *subsidies*, including *subsidies on electrical charges*, were given by the

Government concerned for the purpose of enabling industries to run more profitably by obviously reducing the cost of production. Such a *subsidy* would, undoubtedly, be, in the light of the decision, in **Sahney Steeel** (supra), operational in nature. No doubt, such a relief, given by way of *electricity subsidy*, is not a *capital receipt*, but *revenue receipt* and can be taxed, if not, otherwise, deductible in terms of the relevant provisions of the Act. When the cost of production is reduced by granting *subsidy on electricity charges*, it necessarily helps the industry to run more profitably. Here again, a direct nexus between the *power subsidy*, on the one hand, and cost of production, on the other, stands well established. Consequently, the profits earned and the gains made from the industrial undertakings concerned will amount to profits and gains *derived from*, or *derived by*, the industrial undertakings concerned entitling the assessees to claim deduction under Section 80IB or 80IC, as the case may be.

101. **Sahney Steeel** (supra) lays down an immensely important aspect of a *subsidy vis-à-vis liability to pay tax.* What **Sahney Steeel** (supra) clarifies is that when a *subsidy* is given for the purpose of setting up of an industry, such a *subsidy* is a *capital receipt*. When, however, the *subsidy* is given, for the purpose of operating an industry more profitably, then, the *subsidy* would be *revenue receipt* and, being *revenue receipt*, the same has to be taxed in accordance with law meaning thereby that the profits and gains, *derived from*, or *derived by*, an industrial undertaking in a case, where operational cost is reduced by

providing *subsidy*, in any form, the profits and gains earned, because of such *subsidy*, would be eligible for deduction under Section 80IB or under 80IC, as the case may be.

102. The fact that the *subsidies*, in the present cases, are *revenue receipts*, has, in fact, not been disputed. The question is whether these *revenue receipts* can result in earning of profits and making of gains by an industrial undertaking, because of reduction in the cost of production. This question, in the light of the scheme, as have been analysed above, has to be answered in the affirmative.

103. Reverting to the case of **Rajaram Maize Products** (supra), we may point out that the Supreme Court has reiterated, in **Rajaram Maize Products** (supra), its decision, in **Sahney Steel and Press Works Ltd.** (supra), by taking the view that the *subsidies* are *revenue* in nature and taxable accordingly. Though taxable, when the *revenue receipt*, as pointed out above, does go towards reduction of *electric bills* and generation of profits by an industrial undertaking, the profits, so earned, are eligible for deduction in terms of Section 80IB or 80IC, as the case may be. The relevant observations, appearing, in this regard, in **Rajaram Maize Products** (supra), read as under:

> *"This court in Sahney Steel and Press Works Ltd. V/s. CIT (1997) 228 ITR 253, has held that power subsidies are of revenue nature and have to be taxed accordingly. We also find that the terms under which the subsidy was given in the present cases clearly suggest that the subsidy was of a revenue nature in* ***as much as it went towards reduction of the electric bills*****".**

(Emphasis provided)

104. Similar view has been expressed in **Eastern Electro Chemical Industries** (supra). The relevant observations, appearing in **Eastern Electro Chemical Industries** (supra), read as under:

> ***"Looking to the facts, circumstances, and the nature of the subsidy, which is a power subsidy based on a percentage of electricity bills, it is clear that the subsidy is to meet a certain percentage of expenditure on power.*** *The receipt is, therefore, revenue in nature and is covered by the decision of this Court in Sahney Steel & Press Works Ltd. v C.I.T. The appeal is allowed accordingly."*
>
> (Emphasis provided)

105. From a combined reading of the two decisions, rendered in **Rajaram Maize Products** (supra) and **Eastern Electro Chemical** (supra), what becomes transparent is that *power subsidy* is meant to enable a person meet a certain percentage of expenditure on power and is, therefore, revenue in nature. However, though revenue in nature, the fact remains that it helps in not only growth of the industrial undertaking, but also help an industrial undertaking to earn profits and make gains. Such a *subsidy*, though revenue in nature and taxable accordingly, is nonetheless covered by the provisions embodied in Section 80IB or 80IC, as the case may be.

106. Situated thus, the principle, deducible from the cases of **Sahney Steel** (supra), **Rajaram Maize** (supra) and **Eastern Electro** (supra), is that when a *subsidy*, granted by Government, is operational in nature, which helps in generation of profits for any industrial undertaking, such

a *profit* is, indeed, covered by the provisions embodied in Section 80IB or 80IC, as the case may be.

107. An analogy can be drawn between the *subsidies*, which are subject-matters of discussion, in the present set of appeals, on the one hand, and the Explanation 10 to Section 43(1) of the Act, on the other. Explanation 10 to Section 43(1) reads as under:

> "*Explanation – 10. – Where a portion of the cost of an asset acquired by the assessee has been met directly or indirectly by the Central Government or a State Government or any authority established under any law or by any other person, in the form of a subsidy or grant or reimbursement (by whatever name called), then, so much of the cost as is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset to the assessee:*
>
> ***Provided*** *that where such subsidy or grant or reimbursement is of such nature that it cannot be directly relatable to the asset acquired, so much of the amount which bears to the total subsidy or reimbursement or grant the same proportion as such asset bears to all the assets in respect of or with reference to which the subsidy or grant or reimbursement is so received, shall not be included in the actual cost of the asset to the assessee."*

108. From the Explanation 10 to Section 43(1), what becomes transparent is that if any portion of cost of any asset is met, by any *subsidy*, grant or reimbursement, then such a *subsidy*, grant or reimbursement would go on to reduce the cost of such asset and the depreciation to the assessee will be allowed on the reduced cost. Similarly, a *subsidy*, such as, *transport subsidy*, or *power subsidy*, when goes on to reduce the cost of transportation of the goods, actually used,

and the *finished goods,* actually produced, by an Industrial undertaking, and carried to the existing market, resulting into earning of profits by any industrial undertaking, one can reasonably infer and hold, in such a case, that the industrial undertaking, as an assessee, will be entitled to deduction, under Section 80IB or 80IC, as the case may be, on the resultant *profit*.

109. We, now, turn to the case of **Pancharatna Cement Pvt. Ltd. Vs. Union of India,** reported in **317 ITR 259 (Gau),** wherein Amitava Roy, J., (as his Lordship, then, was), has, upon consideration of the *subsidy* involved, took the view that the amount of *subsidy*, given by way of assistance or grants by the Government, serves as stimulus to the willing industrial establishments to cater to the growth of the region and, thus, reinforce the eventual income of the business of the undertaking. Though the case of **Pancharatna Cement** (supra) is, as rightly pointed out by the learned ASG, arose out of a writ petition and not an appeal under the Act, the fact remains that the law, laid down therein, is relevant in determining the controversy, which is required to be dealt with in this set of appeals. The relevant observations, appearing at para 32, in **Pancharatna Cement** (supra), is, therefore, quoted below:

> "……*It cannot be* gainsa*id that having regard to the layout of investment and income designed for any commercial or business venture, reimbursement of the expenses incurred to whatever extent, would logically contribute to the* profits and gains *derived from the related enterprise and thus would augment the overall income. The amounts of subsidies as the facts of the case reveal are by way of*

> *Government assistance or grants under the schemes to provide stimulus to the willing industrial establishments to cater to the industrial growth in the region and,* ***therefore, the same (subsidy) are aimed necessarily at neutralizing the expenses incurred and thus reinforce the eventual income of the business undertaking.***"
>
> (Emphasis provided)

110. We respectfully agree with the above observations, made in **Pancharatna Cement Pvt. Ltd.** (supra), and the law laid down therein.

INTEREST SUBSIDY:

110a. Under the Industrial Policy, 1997, all eligible industrial units (under such scheme) are given *interest subsidy* to the extent of 3% on the *working capital* advanced to them by Scheduled banks or Central/ State financial institutions for a maximum period of 10 (ten) years from the date of commencement of production.

111. The scheme of *interest subsidy* clearly shows that it reduces the *interest* payable on *working capital* advanced to an industrial undertaking by a scheduled bank or Central/State financial institutions. There is no dispute that the assessee-respondents concerned have received *working capital*, whereupon they have been paying *interest* to the scheduled banks or Central/State financial institutions, as the case may be.

112. The facts are, therefore, not in dispute on this aspect. The dispute is: Whether the *interest subsidy* is payable on non-operational or operational *subsidy* ? If the object of the relevant Scheme is borne in mind, it clearly shows that *interest subsidy*, having aimed at reducing the *interest* payable on *working capital* by an industrial undertaking, helps

directly in reducing the cost of manufacturing or production activities and establish thereby *direct and first degree nexus* between the industrial activities of the assessee-respondents, on the one hand, and the *interest subsidy,* on the other, received by the assessee-respondents and, in consequence thereof, since *interest subsidy* results into profits and gains *derived from,* or *derived by,* an industrial undertaking, there is no reason as to why such profits and gains, earned by an industrial undertaking on the strength of such a *subsidy,* namely, *interest subsidy,* be not allowed to be deducted from the taxable income of the industrial undertaking concerned.

INSURANCE SUBSIDY:

113. So far as the *insurance subsidy* is concerned, it is under the Central Comprehensive Insurance Scheme, 1997. Under this Scheme, the insurance premium paid by eligible industrial units (under such scheme), set up in the North Eastern Region, are reimbursed by the nodal insurance company. It may be mentioned here that all banks/ financial institutions insist upon taking out comprehensive insurance policy on the business assets and stocks offered as primary/ collateral security for the purpose of obtaining the loan. In fact, this factual aspect has not been disputed by the Revenue.

114. The *insurance subsidy,* thus, helps in reducing the running cost of the industrial unit concerned establishing thereby *direct and first degree nexus* between the industrial activities of the assessee-respondents concerned, on the one hand, and the *subsidy,* in the form of *insurance*

subsidy, on the other, received by the assessee-respondents. The resultant profits and gains, *derived from*, or *derived by*, an industrial undertaking, because of the *insurance subsidy*, have to be treated as deductible in terms of the provision of Section 80IB or 80IC, as the case may be.

115. Let us, now, turn to the case of **Liberty India** (supra).

116. As we have already noticed, the appellants heavily relied on the decision in **Liberty India** (supra) in order to sustain these appeals by contending that the various *subsidies*, which have been provided under the Scheme, are non-operational *subsidies*, there is no direct nexus between the *subsidies* received and the profits and gains *derived from*, or *derived by*, the industrial undertakings concerned.

117. What is, however, of paramount importance to note is that the Revenue does not contend, because it could not have obviously contended, in the light of the decisions in **Sahney Steel and Press Works Ltd.** (supra), **Mepco Industries Ltd.** (supra) **JAI BHAGWAN OIL & FLOUR MILLS** (supra),**Raja Ram Maize Products** (supra) and **Eastern Electro Chemical Industries** (supra), that the *subsidies*, in question, do not reduce the cost of production of the industrial undertakings concerned.

118. Bearing in mind, therefore, the fact that the *subsidies*, provided by the Government, in the cases at hand, do come to reduce the cost of production of manufacturing and thereby help the industrial undertakings concerned in earning profits and making gains, when we

turn to the case of **Liberty India** (supra), we find that the question, raised in **Liberty India** (supra), was not the question raised in the present set of appeals inasmuch as the question, which had fallen for consideration, in **Liberty India** (supra) (as formulated by the Supreme Court) was, *"Whether profit from the* ***Duty Entitlement Passbook Scheme*** *(DEPB) and* ***Duty Drawback Scheme*** *could be said to be profit derived from the business of the industrial undertaking eligible for deduction under Section 80-IB of the Income Tax Act, 1961 (1961 Act) ?"*

119. In the backdrop of the question, formulated above, Mr. Agarwalla, learned Senior counsel, is not incorrect, when he points out that the decision, in **Liberty India** (supra), proceeds on the basic premise that *profit* is what is received from **DPEB** and the **Duty Drawback scheme** and, hence, when the question was as to whether the profits, which are derived from DPEB and Duty Drawback Scheme, and not from the operation of manufacturing activities of an industrial undertaking, would be eligible for deduction under Section 80IB or Section 80IC, the cases at had cannot be treated to be cases, wherein the moot question raised is also the principal question, which was raised and answered in **Liberty India** (supra).

120. Turning to the question, which was formulated by the Supreme Court, in **Liberty India** (supra), it needs to be pointed out that the Supreme Court answered the question, formulated in **Liberty India** (supra), by pointing out that **DEPB** is an incentive given under Duty Exemption Remission Scheme and it is essentially an export incentive.

121. Thus, the Supreme Court itself made it clear that, in **Liberty India** (supra), that **DEPB** and the **Duty Drawback schemes** are incentives for export. **DEPB** is not related to business operation of industrial undertaking *per se* for its 'manufacturing or production'. **DEPB**'s entitlement arises, according to the Supreme Court, in **Liberty India** (supra), when the undertaking goes on to '*export*' after *'manufacturing or production'* and is restricted only to '*export product*'. Therefore, the position, points out the Supreme Court, in **Liberty India** (supra) is: If there is no export, there is no **DEPB** entitlement and its relation to the manufacturing/ production is neither proximate nor direct.

122. Further, rightly points out Mr. Agarwalla, that the entitlement of incentive in **DEPB** was based on the artifice of *'deemed import content of export product'*, and not even based on *'actual import content of the export product'*; whereas in the cases at hand, a *subsidy* is made available to the amount actually paid in the form of *transport cost, electricity bills, interest* or *insurance premium*. This position is borne out of the following observations made in **Liberty India** (supra):

> *"16…….This factual matrix of the case unequivocally shows that* ***DEPB is not related to business of industrial undertaking per se for its 'manufacturing or production'. DEPB's entitlement arises when the undertaking goes on to 'export' after 'manufacturing or production' and is restricted only to 'export product'. Therefore, the position is: if there is no export, there is no DEPB entitlement and the relation to manufacturing/ production is not proximate or direct, it is one step removed. Further, the entitlement is based on the artifice of 'deemed import content of export product', not***

even based on 'actual import content of the export product'."

(Emphasis provided)

123. From the above observations, appearing in **Liberty India** (supra), it becomes more than abundantly clear that **DEPB** and **Duty Drawback** were not provided by the Government as a means to reduce the cost of production of the industrial undertaking. Viewed from this angle, Mr. Agarwalla, learned Senior counsel, is correct, when he submits that the Supreme Court itself has pointed out, in **Liberty India** (supra), that neither **DEPB** nor **Duty Drawback Scheme** relates to the business of the industrial undertaking *per se* for its manufacturing or production inasmuch as **DEPB** entitlement arose as and when an industrial undertaking decided to export after manufacturing or after production of goods and, naturally, therefore, **DEPB** was restricted to the export of product. In other words, it was the export content of the entire production, which was to receive incentive provided by **DEPB**. Consequently, as rightly contended Mr. Agarwalla, learned Senior counsel, the Supreme Court pointed out, in **Liberty India** (supra), that if there was no export, there was no **DEPB** entitlement nor entitlement under the **Duty Drawback Scheme**.

124. Logically extended, this would mean that there was no relationship or nexus between the export incentive, on the one hand, and manufacturing/production, on the other. **DEPB** entitlement was based on the artifice of deemed import content of export product and was not even based on actual import content of the export product;

whereas, in the cases at hand, the *transport subsidy* was made available on the *raw material* actually consumed in the manufacturing process and *finished goods*, which were actually produced and taken to the existing market for sale and, similarly, *power subsidy*, *interest subsidy* and *insurance subsidy* are, as already indicated above, made available on the actual amount of the power bill, interest and insurance premium paid by the assessee-respondents concerned. The inference, so drawn, gets reinforced from the fact that **DEPB** entitlement was freely *transferable* and *saleable* resulting in *profit* or *loss*.

125. That the case of **Liberty India** (supra) is not applicable to the cases at hand is also evident from the fact that the object behind **DEPB** was to neutralize the incidence of customs duty payment on the import duty of the export product and, hence, the **DEPB** scheme was not aimed at neutralizing the cost of production; rather, as observed by the Supreme Court, it was an incentive for export and entitlement arose, when export was made and not otherwise. The relevant observations, appearing, in this regard, in **Liberty India** (supra), read as under:

> *"26.* ***No doubt, the object behind DEPB is to neutralize the incidence of customs duty payment on the import content of export product****. This neutralization is provided for by credit to customs duty against export product. Under DEPB, an exporter may apply for credit as percentage of FOB value of exports made in freely convertible currency. Credit is available only against the export product and at rates specified by DGFT for import of raw materials, components etc.* ***DEPB credit under the Scheme has to be calculated by taking into account the deemed import content of the export product as per***

> ***basic customs duty and special additional duty payable on such deemed imports****. Therefore, in our view, DEPB/Duty Drawback are incentives which flow from the Schemes framed by Central Government or from Section 75 of the Customs Act, 1962,* ***hence, incentives*** **profits** ***are not*** **profits** ***derived from the eligible business under Section 80-IB. They belong to the category of ancillary*** **profits** ***of such Undertakings***".
>
> (Emphasis supplied)

126. On turning to the question as to what is Duty Drawback scheme, the Supreme Court pointed out that Section 75 of the Customs Act, 1962, and Section 37 of the Central Excise Act, 1944, empowers the Government of India to provide for repayment of customs and excise duty, which may be payable by an assessee, and the refund, under the Duty Drawback Scheme, was of the average amount of duty paid on materials of any particular class or description of goods used in the manufacturing of export goods of a specified class.

127. Most importantly, pointed out the Supreme Court, in **Liberty India** (supra), that the Rules do not envisage a refund of an amount *'arithmetically equal'* to exemption duty or central excise duty actually paid by an individual importer/manufacturer. This is the striking difference between *subsidies* on *transportation* cost, *power, interest and insurance*, in the cases at hand, on the one hand, and Duty Drawback Scheme, on the other, inasmuch as the *subsidies*, so provided to the assesses concerned, are arithmetically equivalent to the cost of *raw material*s actually used in the manufacturing process and the *finished goods*, which is actually taken to the existing market for sale within and

outside the north-eastern region and, similarly, the assesses concerned have the right to receive *power subsidy*, arising out of power bills paid, or *interest subsidy* or *insurance subsidy*, equivalent to the amount paid on *interest* and *insurance* respectively. These aspects of **DEPB** and **Duty Drawback Scheme** give rise to the inference that the decision, in **Liberty India** (supra), was rendered, in the light of its own facts, and not for universal application. This inference gets strengthened from the following observations made in **Liberty India** (supra):

> *"The next question is - what is duty drawback? Section 75 of the Customs Act, 1962 and Section 37 of the Central Excise Act, 1944 empower Government of India to provide for repayment of customs and excise duty paid by an assessee. The refund is of the average amount of duty paid on materials of any particular class or description of goods used in the manufacture of export goods of specified class.* ***The Rules do not envisage a refund of an amount arithmetically equal to customs duty or central excise duty actually paid by an individual importer-cum-manufacturer.*** *Sub-section (2) of Section 75 of the Customs Act requires the amount of drawback to be determined on a consideration of all the circumstances prevalent in a particular trade and also based on the facts situation relevant in respect of each of various classes of goods imported. Basically, the source of duty drawback receipt lies in Section 75 of the Customs Act and Section 37 of the Central Excise Act."*
>
> (Emphasis provided)

128. In short, thus, **DEPB** and **Duty Drawback Scheme** were not, as already indicated above, related to the business of industrial undertaking *per se* for its manufacturing or production. Entitlement for **DEPB** or **Duty Drawback** arose, when the undertaking decided to

export after manufacturing or production and this incentive was restricted only to the export of goods of a specified class. Consequently, if there was no export, there was no incentive from **DEPB** or **Duty Drawback**. This apart, **DEPB** or **Duty Drawback Scheme** did not provide refund of exemption from Central Excise Duty actually paid.

129. Thus, the relationship under the **DEPB** or **Duty Drawback Scheme**, on the one hand, and the manufacturing or production, on the other, was not proximate and direct. The entitlement was based on the artifice of average amount of duty paid. In the case of *transport subsidy, power subsidy and insurance subsidy, the* relation between *subsidy* received, on the one hand, and the profits earned or the gains made, by an industrial undertaking, stand, as already observed at paragraph **127,** well established.

130. Analysing further the concept of **Duty Drawback Scheme** and the **DEPB**, the Supreme Court took the view that the remission of duty is on account of the statutory/policy provisions in the Customs Act/Scheme(s) framed by the Government of India. In the circumstances, the Supreme Court took the view that profits, derived by way of such incentives, do not fall within the expression 'profits *derived from industrial undertaking*' in Section 80-IB. The relevant observations read:

> *"18. Analysing the concept of remission of duty drawback and DEPB, we are satisfied that the remission of duty is on account of the statutory/policy provisions in the Customs Act/Scheme(s) framed by the Government of India. In the circumstances, we hold that* profits *derived*

*by way of such incentives do not fall within the expression "*profits *derived from industrial undertaking" in Section 80-IB"*

131. **Liberty India** (supra), it may be noted, is, thus, an exposition of law on the schemes of **DEPB** and **Duty Drawback Scheme**, which relate to export of goods by an industrial undertaking; whereas the Scheme of *transport subsidy, interest subsidy, power subsidy* and *insurance subsidy,* is inextricably and directly connected with the reduction of cost of production and manufacturing of an industrial undertaking entitling thereby the eligible industrial undertakings to claim deduction under Section 80IB or 80IC, as the case may be.

132. The decision, in **Liberty India** (supra), is, therefore, not, in our considered view, relevant to the schemes of *subsidies* at hand.

133. Clearly held the Supreme Court, in **Liberty India** (supra), that incentive profits, as envisaged by **DEPB** and **Duty Drawback Scheme**, are not profits derived from eligible business under Section 80-IB inasmuch as **DEPB** and **Duty Drawback** belong to the category of ancillary profits of the industrial undertaking meaning thereby that the profits, derived by way of incentives, such as, **DEPB** and **Duty Drawback Scheme**, cannot be credited against the cost of manufacture of goods debited in the profit and loss account and they do not fall within the expression, "profits *derived from industrial undertaking under Section 80-IB"*.

134. Dealing with **Sahney Steel & Press Works Ltd.** (supra), the Supreme Court, in **Mepco Industries** (supra), observed as under:

> *"Sahney Steel and Press Works Ltd. [1997] 228 ITR 253 (SC) was a case which dealt with production subsidy, Ponni Sugars and Chemicals Ltd. [2008] 306 ITR 392 (SC) dealt with subsidy linked to loan repayment whereas the present case deals with a subsidy for setting up an industry in the backward area.* ***Therefore, in each case, one has to examine the nature of the subsidy.*** *The judgment of this court in Sahney Steel and Press Works Ltd. [1997] 228 ITR 253 was on its own facts; so also, the judgment of this court in Ponni Sugars and Chemicals Ltd. [2008] 306 ITR 392 (SC). The nature of the subsidies in each of the three cases is separate and distinct. There is no strait jacket principle of distinguishing a capital receipt from a revenue receipt. It depends upon the circumstances of each case. As stated above, in Sahney Steel and Press Works Ltd. [1997] 228 ITR 253 (SC), this court has observed that the production incentive scheme is different from the scheme giving subsidy for setting up industries in backward areas. In the circumstances, the present case is an example of change of opinion. Therefore, the Department has erred in invoking section 154 of the Ac*t."
>
> (Emphasis is supplied)

135. Thus, the case of **Liberty India** (supra) was limited to only two schemes, namely, **DEPB** and **Duty Drawback**. Both these Schemes, it deserves to be noticed, related to exports and not meant to reduce the cost of production. Consequently, if no export was made, there was no entitlement to receive the benefit of **DEPB** or the benefit derivable by **Duty Drawback Scheme**.

136. No wonder, therefore, that **Mepco Industry's** case (supra), clearly lays down that in each case, the nature of *subsidy* needs to be examined by the Court. Consequently, without determining the nature of *subsidy*, including the object thereof, the impact of the *subsidy* on the operation of

the industrial undertaking cannot be determined. The decision, in **Liberty India** (supra), cannot, therefore, be applied to all cases and to all kinds of *subsidies.*

137. In short, **Liberty India** (supra) was a case of non-operational *subsidy* inasmuch as the *subsidy,* provided in **Liberty India** (supra), did not relate to production; whereas the *subsidies*, in the present set of cases, are operational in nature inasmuch as the *subsidies* are related to the production of the industrial undertaking concerned.

138. What crystallizes from the above discussion is that the assessee's income, with the cost of production being reduced, because of the *subsidies* received, would obviously rise and, in consequence thereof, the profits earned, and the gains made, by the industrial undertaking concerned would also increase. The profits, so increased, would be part of the *gross total income* of the assessee as defined under Section 80B of the Act subject to deductions, as provided under Chapter VIA of the Act, which includes deductions under Section 80B as well as 80C. If an assessee becomes eligible for deduction under Section 80IB or 80IC, he will not be liable to pay income tax on the increased profit. Conversely put, the *subsidies* serve no purpose if he has to pay increased tax on the profits, which he has made, because of the operational *subsidies* received by him.

139. Situated thus, there can be no escape from the conclusion that the *subsidies,* in question, being operational in nature, help the assessee concerned earn profits and the profits, so earned, because of the

subsidies, in question, are deductible in terms of the provisions of Section 80IB of the Act.

140. In the case of **CIT Vs. Andaman Timber Industries Ltd,** reported in **242 ITR 204 (Cal),** which the learned ASG has relied upon, the issue whether *transport subsidy* would have the effect of reducing transportation cost was not considered by the Court and, hence, the decision, **Andaman Timber Industries Ltd** (supra) cannot help in advancing the case of the appellants.

141. Even in **C.I.T. V/S. STERLING FOODS, 237 I.T.R. 579 (S.C.),** the issue, under consideration, before the Supreme Court, was whether 'profits *from sale of import entitlements'* were derived from Industrial undertaking within the meaning of Section 80HH of the Act. Thus, the issue before the Supreme Court, in **Sterling Foods** (supra), was entirely different from the one at hand.

142. So far as **PANDIAN CHEMICALS LTD. V/S. C.I.T.,** reported in **262 I.T.R. 278 (S.C.),** concerned, the issue, considered by the Supreme Court, was whether '*interest income*' from fixed deposits can be treated as income derived from industrial undertaking under Section 80HH of the Act. Thus, the issue for consideration, in **Pandian Chemicals** (supra), was wholly different from what we are dealing with.

143. A finding of fact, reached by a Tribunal, cannot be disturbed in an appeal under Section 26A of the Act unless perversity is alleged. This proposition is not in dispute. No substantial question was raised in the present set of appeals impugning the learned Tribunal's orders, in

question, as *perverse.* Looked at from this angle, these appeals cannot be really sustained. Though Mr. Pathak, learned ASG, has submitted that even a wrong decision on law can be regarded as *perverse,* the fact remains that there is no allegation, while raising the questions of law by the appellants, that the findings, reached by the learned Tribunal, are *perverse,* because of wrongly applying the law contained in that behalf and, hence, in such circumstances, the findings cannot be disturbed.

RESISTANCE TO APPEALS IN ABSENCE OF PLEA OF PERVERSITY

144. Resisting the appeals at its threshold, Mr. Agarwalla has pointed out that the question as to whether there is direct nexus between the *subsidies,* in question, and the operation of the industrial undertakings of the assessee-respondents, has been answered in the affirmative by the learned Tribunal and so long as this finding remains, the learned Tribunal's decision cannot be disturbed at any stage. In the memorandum of appeal, the Revenue, points out Mr. Agarwalla, has not contended at all that the said finding of the learned Tribunal was *perverse* and, therefore, in the absence of any perversity having been alleged in the finding of the learned Tribunal, the present appeals deserve to be dismissed.

145. Support for his submission is sought to be derived by Mr. Agarwalla from the case of **Sudarshan Silk and Sarees vs. C.I.T.,** reported in **(300 ITR 205**), wherein the Supreme Court held as under:

> *"Question as to perversity of the findings recorded by the Tribunal on facts was neither raised nor referred to the High Court for its opinion. The Tribunal is the final court of fact.* ***The decision of the Tribunal on the facts can be gone into by the High Court in the reference jurisdiction only if a question has been referred to it which says that the finding arrived at by the Tribunal on the facts is perverse, in the sense that no reasonable person could have taken such a view****. In reference jurisdiction, the High Court can answer the question of law referred to it and it is only when a finding of fact recorded by the Tribunal is challenged on the ground of perversity, in the sense set out above, that a question of law can be said to arise.* ***Since the frame of the question was not as to whether the findings recorded by the Tribunal on facts were perverse, the High Court was precluded from entering into any discussion regarding the perversity of the finding of fact recorded by the Tribunal****."*
>
> (Emphasis is added)

146. Reacting to the above submission of Mr. Agarwal that the Revenue has not challenged the finding of the learned Tribunal as *perverse*, the learned ASG has submitted that perversity need not always be factual, but it can also be perversity in law and since the conclusion, reached by the learned Tribunal, in the present cases, on the questions of law, was erroneous by wrongly interpreting the provisions of Section 80IB and 80IC *vis-à-vis* the Scheme of the *subsidies,* in question, one cannot help, but hold that the learned Tribunal's finding suffers from perversity.

147. The learned ASG contends that the learned Tribunal, for no good reason, has not followed the decision rendered in **Liberty India** (supra).

It is also pointed out by the learned ASG that when an authority draws a conclusion, which cannot be drawn by any reasonable person on the disclosed state of facts, then, a *perverse* decision is entered and a perverse decision is wrong in law. The learned ASG has referred, in this regard, to the case of **Kejriwal Enterprises Vs. CIT,** reported in **[2003] 260 ITR 341 (Cal)**.

148. Referring to the case of **Poothender Plantations Pvt. Ltd. Vs. Agri. Income Tax Officer [1996] 221 ITR 557 (SC)**, the learned ASG further submits that if the Supreme Court has construed the meaning of a Section, then, any decision to the contrary, given by any other authority, must be held to be erroneous and such error must be treated as an error apparent on the face of the record.

149. While considering the submissions, made by Mr. Agarwalla, learned Senior counsel, that the finding, reached by the learned Tribunal, has not been challenged as *perverse,* the impugned decision, rendered by the learned Tribunal, would not call for any interference and the reply to this submission by Mr. Pathak, learned ASG, by contending that a wrong or incorrect interpretation of law is *perversity*, what needs to be borne in mind is that if a finding of fact is based on interpretation of facts or purely on facts, such a finding cannot be interfered with, in an appeal, under Section 260A of the Act, inasmuch as no *substantial question of law* can, in such a case, be said to have arisen if a finding of fact, based purely on facts, is not challenged as *perverse.* If, however, a finding of fact is based not purely on facts but is based on

mixed consideration of fact and law, such a finding can be interfered with, in an appeal, under Section 260A of the Act provided that a *substantial question of law* is raised.

150. Clarified the Supreme Court, in **CIT vs. Manna Ramji & Co.,** reported in **86 ITR 29 (SC),** that when a question is framed essentially on the facts and circumstances of a case, it means the facts and circumstances found by the Tribunal and not on the facts and circumstances as may be found by the High Court. The relevant observations, appearing in this regard, in **Manna Ramji** (supra), read:

> *"It may also be mentioned that Mr. Hajarnavis has assailed the findings of fact of the Tribunal.* ***In this respect we are of the view that the Tribunal is the final fact finding authority. It is for the Tribunal to find facts and it is for the High Court and this court to lay down the law applicable to the facts found****. Neither the High Court nor this court has jurisdiction to go behind or to question the statement of facts made by the Tribunal. The statement of case is binding on the parties and they are not entitled to go behind the facts of the Tribunal in the statement.* ***When the question referred to the High Court speaks of "on the facts and circumstances of the case", it means on the facts and circumstances found by the Tribunal and not on the facts and circumstances as may be found by the High Court*** *(see Karnani Properties Ltd. v. Commissioner of Income-tax)."*
>
> (Emphasis is added)

151. In the cases at hand, which have given rise to the appeals, it is the clear finding of the learned Tribunal that there is a direct nexus between the *subsidies*, in question, on the one hand, and the *profits* and *gains derived by, or derived from,* the industrial undertakings concerned. This

finding is a finding, which is not purely a finding of fact inasmuch as this finding has been reached on the interpretation of the Schemes of *subsidies,* in question, and the questions of law, which were raised in the learned Tribunal. In other words, the finding, as indicated hereinbefore, has been arrived at by the learned Tribunal by taking into account the relevant Schemes of *subsidies* in light of the questions of law raised in the learned Tribunal.

152. Situated thus, it is clear that the finding, which the learned Tribunal has reached to the effect that there is a direct nexus between the *subsidies,* in question, on the one hand, and the *profits* and *gains derived by, or derived from,* the industrial undertakings concerned, is not a finding on pure facts but is finding based on facts and law. Such a finding can be interfered with, in an appeal under Section 260A of the Act even if such a finding is not alleged as *perverse* provided that the finding can be shown to have been reached by wrongly applying the law or by resorting to incorrect interpretation of law.

153. The question, therefore, which stares at us is: Whether the present appeals have raised any *substantial question of law,* and if so, what is, or what are, the *substantial question or questions of law?*

154. Reverting to the *substantial questions of law,* which have been formulated in the present set of appeals, it may be pointed out that in the light of the discussions, which we have held above, the impugned decisions of the learned Tribunal do not suffer from any infirmity, legal

or factual, and, hence, no question of law, far less *substantial questions of law,* can be said to have been arisen in any of the present appeals.

155. Because of what we have pointed out above, we have no hesitation in arriving at the conclusion that these appeals are devoid of merit and need to be, therefore, dismissed.

156. In the result and for the discussions held above, these appeals fail and the same shall accordingly stand dismissed.

157. No order as to costs.

JUDGE **JUDGE**

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