-VS- — ITA No. 407/2008

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2026:CHC-OS:129-DB IN THE HIGH COURT AT CALCUTTA SPECIAL JURISDICTION (Income Tax) (Original Side) Reserved on : 04.02.2026. Pronounced on : 21.04.2026 ITA 407 OF 2008 . M/S. GRAPHITE INDIA LTD. ...Appellant -VS- COMMISSIONER OF INCOME TAX - IV, KOLKATA. ....Respondent Present:- > Mr. J. P. Khaitan, Sr. Adv. > Mr. Somak Basu, Adv. > Mr. Swagato Kabiraj, Adv. > ...for the appellant Mr. Aryak Datt, Adv. > Mr. Madhu Jana, Adv. > ..... for the Respondent Coram: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ, And THE HON'BLE JUSTICE UDAY KUMAR Rajarshi Bharadwaj, J: > 1. The appellant/petitioner has filed this appeal under of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), challenging the order dated January 10, 2008 passed by the Learned Income Tax Appellate Tribunal ITA 407 of 2008 -2- 2026:CHC-OS:129-DB (ITAT), Kolkata Bench "B", for the assessment year AY 2002-03, on the substantial questions of law formulated at the time of admission. > 2. The facts in a nutshell are that the assessee, a company under the , with its registered office at 31, Chowringhee Road, Kolkata, manufactures and sells graphite electrodes and calcined petroleum coke, while also generating power through three units (PU-I, PU-II hydel, PU-III) at Bangalore and Nashik, mostly for captive use by its electrode division. For AY 2002-03, it claimed Rs. 35,65,09,296 deduction on power profits, computed via transfer pricing at KSEB/MSEB purchase rates as per L81: IA(8) and export profits under on electrode exports, without reducing 80-IA profits, treating 80HHC as self-contained. It excluded sales tax remission subsidy (Rs. 70,45,931) as capital receipts, 100% export profits from MAT book profits u/s 115JBand capital profits from fixed assets/investments sales.

3. The Assessing Officer disallowed the assessee computation of transfer price for captively consumed power at full KSEB/MSEB purchase rates, instead of adopting rates from third-party sales. The AO also reduced the profits eligible for deduction under by the amount of profits as per , treated the sales tax remission subsidy as revenue receipt, permitted exclusion of only 70% of export profits from book profits under citing sub-section (1B) of and included capital profits from sale of fixed assets and investments in book profits.

4. On appeal, the CIT(A) partially allowed the transfer pricing claim by permitting KSEB/MSEB rates minus the electricity duty component, but upheld all other adjustments made by the AO. Being aggrieved, the assessee preferred an appeal under , contesting Tribunal errors on market value, double deduction, subsidy nature and book profit exclusions

5. Learned counsel appearing for the appellant raises the issue on the following substantial questions of law that have been admitted: ITA 407 of 2008 -3- > 2026:CHC-OS:129-DB a. Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that, for the purpose of quantifying the deduction under of the Act, the transfer price of power had to be computed without taking into account the electricity duty component included in the sale price charged by KSEB and MSEB? > "The market value... should be computed by considering the rate at which the State Electricity Board supplied power to the consumers in the open market..." and "the rate at which the State Electricity Board supplied power to the industrial consumers has to be taken as the market value for computing deduction under "

11. The tariff payable to SEBs is a composite price and includes statutory levies such as electricity duty. Once the statute requires adoption of the price that electricity would ordinarily fetch in the open market, it is impermissible to artificially exclude components forming an integral part of such price.

12. The Tribunal, therefore, erred in directing exclusion of the electricity duty component while computing the transfer price. We accordingly answer substantial question (a) in the negative, i.e., in favour of the assessee and against the revenue. b. Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that deduction allowed of the Act needs to be reduced while computing Profits of the Business eligible for deduction of the Act?

13. Secondly, the assessee carries on distinct activities such as generation of power through independent undertakings eligible for deduction under and manufacture and export of graphite electrodes, eligible for deduction under . It is not in dispute that the power undertakings are separate units maintaining independent accounts and are not engaged in export activity. Likewise, the export division has not claimed any deduction under . The Assessing Officer reduced the business profits eligible under by invoking . The Tribunal affirmed such reduction relying on earlier orders. The interpretation adopted by the Tribunal ITA 407 of 2008 -5- 2026:CHC-OS:129-DB cannot be sustained in view of subsequent judicial pronouncements. The deduction granted under cannot be reduced while computing profits eligible for deduction under where the deductions arise from independent businesses. The Supreme Court in (376 ITR 309) has explained that is intended only to prevent double deduction in respect of the same profits and does not authorize reduction where the deductions relate to different sources of income. Similarly, the Gujarat High Court in (335 ITR 210) held that profits of an eligible power undertaking cannot be reduced while computing deduction under when there is no overlap of income. In the present case, the profits derived from generation of power are not export profits at all and are not eligible for deduction under . Hence, there arise no question of double deduction. We accordingly, answer substantial question

19. The Supreme Court in (255 ITR 273) held that while computing book profit under the MAT provisions, the Assessing Officer cannot make adjustments other than those specifically provided in the statute. Following the purpose test, the Court in Ankit Metal & Power Ltd. (supra) held that capital subsidies intended for industrial development do not partake the character of income and must be excluded from computation of book profit under .The character of the receipt does not change merely because it is routed through the profit and loss account. As held in (228 ITR 253) and reaffirmed in (supra), the object of the subsidy determines its nature. ITA 407 of 2008 -7- 2026:CHC-OS:129-DB

20. Accordingly, the sales-tax remission, being capital in nature, could not have been included in the computation of book profit. We accordingly answer substantial question (d) in the negative, i.e., in favour of the assessee and against the revenue.

21. For the foregoing reasons, the appeal under is allowed in favour of the assessee across all substantial questions of law.

22. Urgent certified copy, if applied for, be supplied upon compliance with requisite formalities. (RAJARSHI BHARADWAJ, J) (UDAY KUMAR , J) Kolkata 21.04.2026 PA(BS)