

Calcutta HC Graphite India Ruling

Section 80-IA Captive Power Tariff Must Include Electricity Duty + Sales Tax Remission Subsidies are Capital Receipts

INCOME TAX

CASE LAW

CAPTIVE POWER

STATE SUBSIDIES

Decision Date: April 21, 2026 | **Calcutta High Court** | ITA 407 of 2008
| 2026 TAXSCAN (HC) 600

Case Snapshot in 60 Seconds

A landmark two-issue decision by the Calcutta High Court that overturns three major ITAT positions. Bench: **Justices Rajarshi Bharadwaj and Uday Kumar** | Assessment Year: **2002-03** | Assessee: **M/s Graphite India Ltd**

Issue	ITAT Position	Calcutta HC Verdict
Section 80-IA Captive Power transfer price	Exclude electricity duty	INCLUDE full SEB tariff (incl. duty)
West Bengal Sales Tax Remission Subsidy	Revenue receipt, add to book profit	CAPITAL receipt, exclude under 115JB
Section 80HHC vs 80-IA stacking	Reduce 80HHC by 80-IA	DISTINCT sources, both available

Issue 1 — Captive Power Tariff Must Include Electricity Duty

The Legal Framework

Section 80-IA(8) requires captive power transfer at "**market value**". For internal consumption, market value = State Electricity Board tariff to comparable consumers.

Authority Followed: CIT vs Jindal Steel and Power Ltd (Supreme Court)

Key Ratio: Excluding electricity duty artificially understates Section 80-IA eligible profits. The full SEB tariff — inclusive of electricity duty — is the correct benchmark for computing deductible profits from captive power generation.

Why It Matters Now

Every captive power plant claim filed pre-2026 may have understated 80-IA profits

Reassessment Window

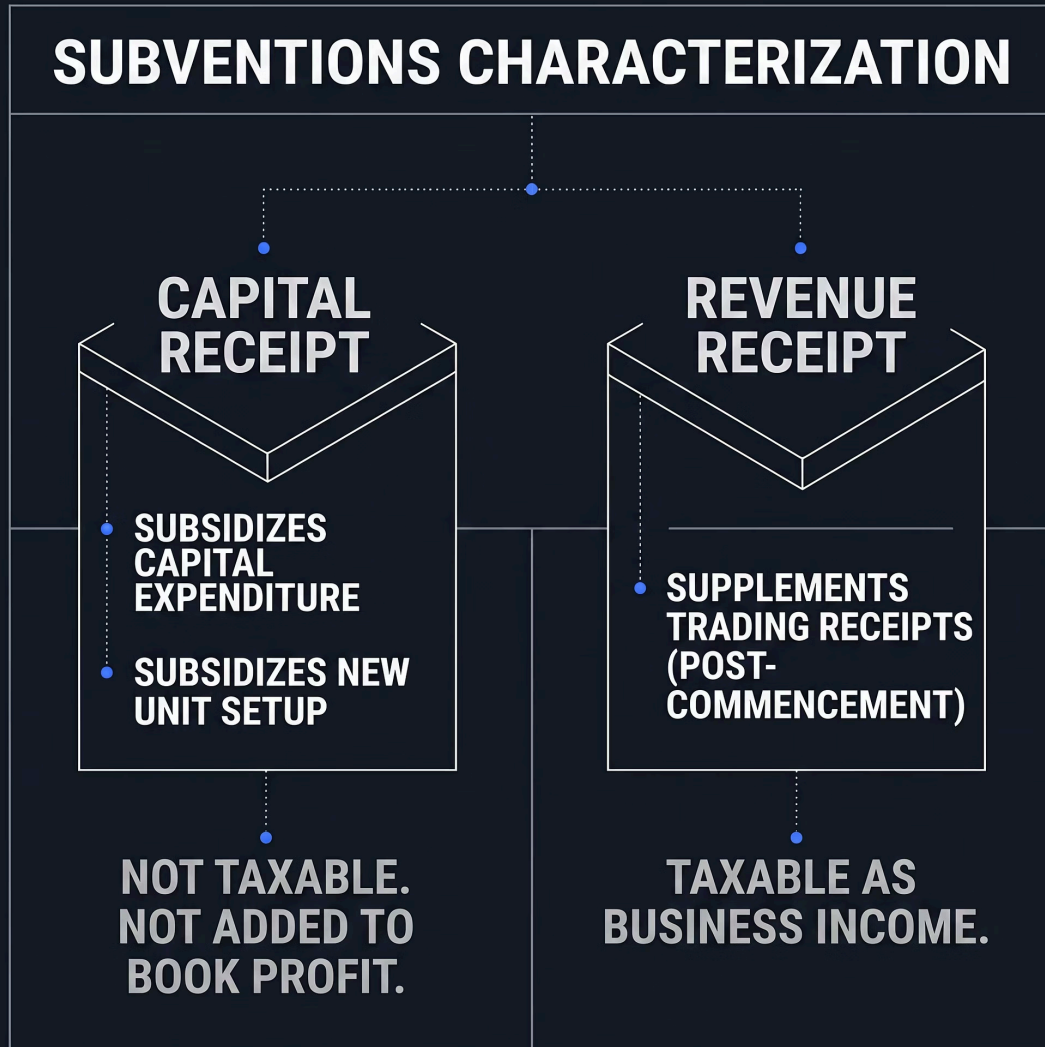
Still open for AY 2019-20 to AY 2024-25 under Sections 148/149

Continuing Relevance

Equivalent provision continues under the Income-tax Act 2025



Issue 2 — Sales Tax Remission Subsidy is Capital



The Purpose Test — CIT vs Ponni Sugars (SC)

The character of a subsidy is determined by the **PURPOSE of the grant**, not the mode of payment. The method of computation (e.g., percentage of sales tax collected) is entirely irrelevant.

✓ **West Bengal Incentive Scheme 1993:** Granted to incentivise industrial investment in backward areas → Held: **CAPITAL receipt**

- Not taxable as business income
- Not added to book profit under Section 115JB (now Section 206 of Income-tax Act 2025)
- Method of computation (% of sales tax) is irrelevant to characterisation

The Quantum at Stake

4

Issues Decided

Total issues adjudicated by the Calcutta HC in this ruling

3

ITAT Positions Overturned

Major reversals from the Income Tax Appellate Tribunal

6

Open Reassessment Years

Years still open for similar claims under reassessment provisions

40%+

Captive Power Tariff

Typical portion of SEB tariff attributable to electricity duty — now includible

100%

Sales Tax Remission

Characterised as capital receipt — fully excluded from book profit

Where Subsidy Treatment Now Stands

Subsidy Type	Treatment	Authority
Pre-investment capital subsidy	Capital receipt	Ponni Sugars + Graphite India
Production-linked incentive	Revenue receipt	Sahney Steel
Sales tax remission for new unit	Capital receipt	Graphite India 2026
GST-linked reimbursement (purpose-based)	Apply purpose test	Ponni Sugars principle

Three Groups That Must Act Now



Manufacturers with Captive Power

- Graphite, cement, steel, aluminium, paper, sugar, textiles
- Tariff benchmark must include electricity duty
- Audit all pending 80-IA computations immediately



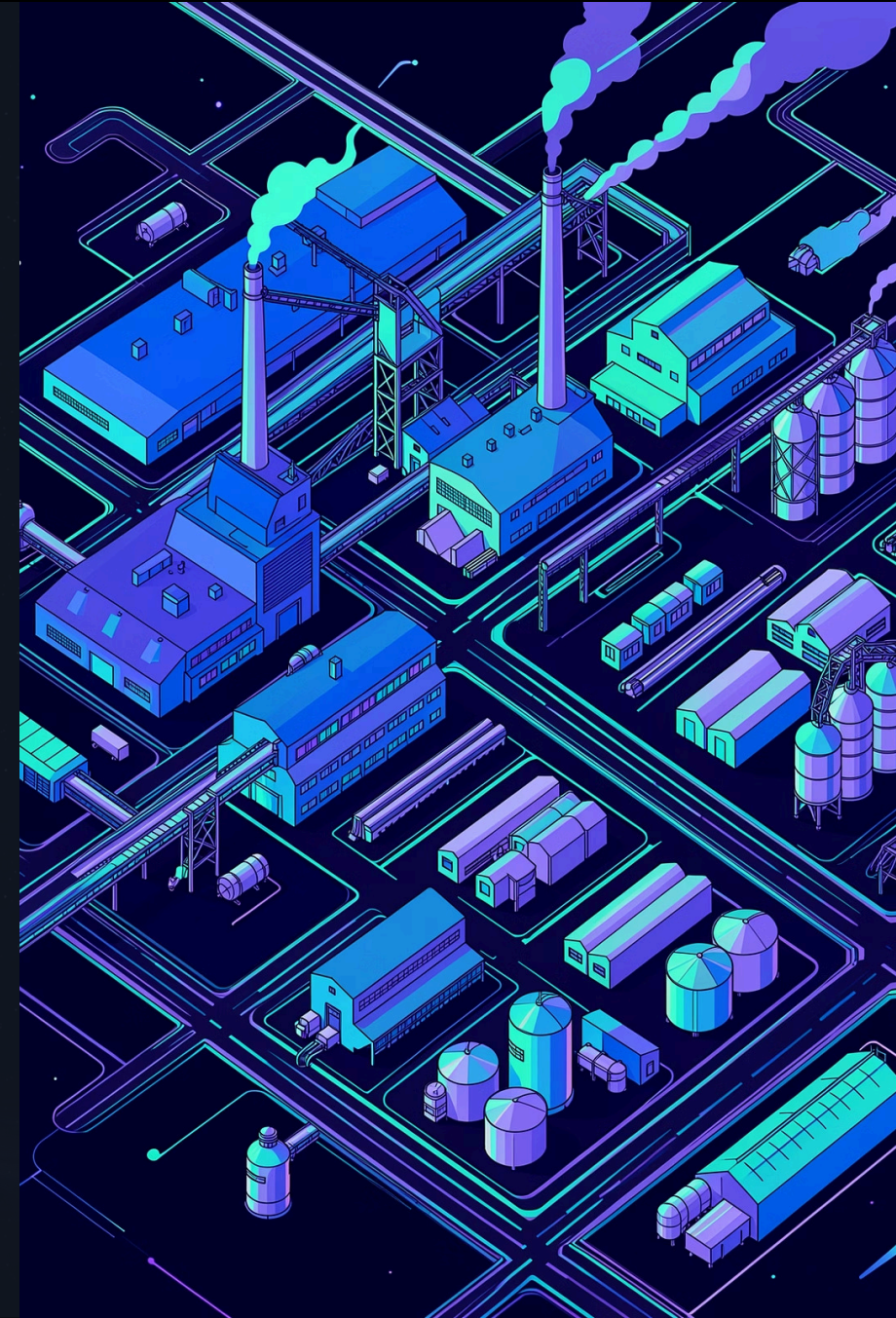
Recipients of State Industrial Subsidies

- West Bengal, Gujarat, Maharashtra, Rajasthan, MP schemes
- Sales tax remission, VAT refund, electricity duty waiver
- GST-linked reimbursement schemes (post-July 2017) inherit original character

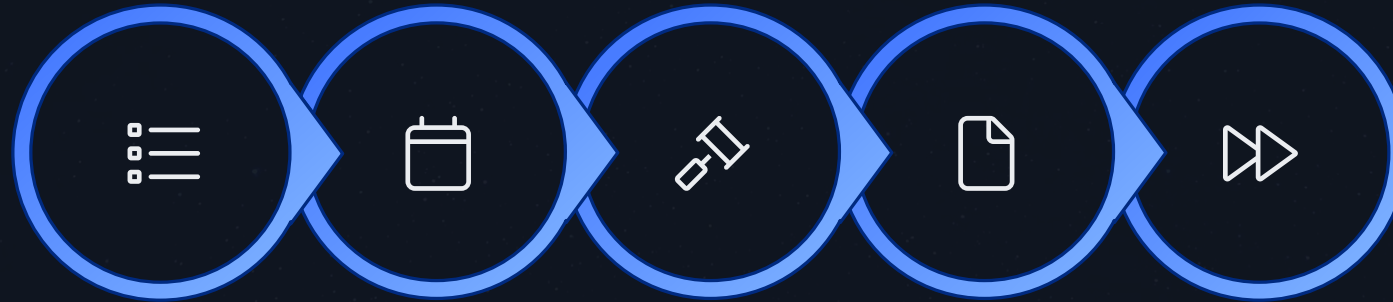


Companies Computing Book Profit (Section 115JB)

- Subsidy characterisation directly affects MAT liability
- Capital receipts excluded from book profit
- Re-examine FY 2019-20 onwards for refund claims



5-Step Action Plan for CAs and CFOs



Inventory

**Reassessment
Window**

**Cite
Authority**

**Refund
Claims**

**Going
Forward**

01

Inventory

List all captive power and subsidy positions across your entire client portfolio

02

Reassessment Window

Identify open AYs — FY 2019-20 to FY 2024-25 still in scope under Section 148/149

03

Cite Authority

Add *Graphite India 2026* to all live submissions and pending appeals on these issues

04

Refund Claims

File rectification applications under Section 154 for completed assessments where subsidy was added to book profit

05

Going Forward

Apply purpose test for FY 2025-26 and FY 2026-27 returns under the Income-tax Act 2025

4 Important Caveats Before You Apply This

1

MAT Amendment 2015

Explanation to Section 115JB was amended to specifically include certain items. Capital receipt that is NOT income still does not enter book profit — but verify the specific subsidy is not deemed-income under the amendment before filing.

2

Purpose Test is Fact Sensitive

Read the actual scheme document to identify the State's stated purpose. The Income Tax Department may distinguish on facts. Do not apply this ruling mechanically without reviewing the scheme notification.

3


80HHC Limited Future Relevance

Section 80HHC was phased out from AY 2005-06. The distinct-source principle established here still helps for old reassessments and pending appeals relating to earlier years.

4

SLP Risk

The Department may file a Special Leave Petition before the Supreme Court. The position is currently favourable — but actively track SLP filing status before treating this as settled law.

 Always verify the specific subsidy scheme document and consult with a qualified tax advisor before filing revised positions based on this ruling.

Critical Dates and Next Steps

April 21, 2026

Calcutta HC decision date
— *Graphite India* ruling
pronounced

April 24, 2026

TaxScan publication —
2026 TAXSCAN (HC) 600

May 31, 2026

End of typical
reassessment period for
FY 2019-20 under Section
149

March 31, 2027

End of reassessment
period for FY 2020-21 —
final deadline for action

Critical Reminder

Files where subsidy was added to book profit **before March 31, 2024** may still be eligible for rectification under **Section 154** within 4 years of the assessment order.

Need Help Auditing Your Positions?

Talk to an expert on captive power and subsidy characterisation issues.

A S Banka Advisors Private Limited

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