IN THE INCOME TAX APPELLATE TRIBUNAL õB ö BENCH: KOLKATA

[Before Honøble Shri Mahavir Singh, JM & Honøble Shri B.P.Jain, AM]

I.T.A No.1032/Kol/2012
Assessment Year: 2008-09

Coal India Limited Kolkata (PAN : AABCC 3929 J)	Vs	Addl. C.I.T., Range-5, Kolkata

I.T.A No.1238/Kol/2012
Assessment Year: 2008-09

D.C.I.T., Circle-5, Kolkata (Appellant)	Vs.	M/s.Coal India Limited, Kolkata (Respondent) (PAN:AABCC 3929 J)

For the Assessee : Shri Aakash Mansinka, FCA & Shri Vivek Rui
For the Department : Shri Varinder Mehta, CIT

Date of hearing : 09.04.2015.
Date of pronouncement: 13.05.2015.

ORDER

Per Shri B.P.Jain, AM :

These cross appeals of the Assessee and Revenue arise from the order of ld.CIT(A)-VI, Kolkata dated 03.04.2012 for Assessment Year 2008-09.

2. The assessee has raised the following grounds of appeal :

"1(a) That on the facts and circumstances of the case, the learned CIT(Appeals) erred in holding that proportionate business expenditure of Rs.31,58,18,185/- was alleged to be utilized to earn dividend income and thereby erred in disallowing the said proportionate business expenditure for the purpose of determination of income under the head "Profits and gains of business or profession".
1(b) That the observation of the learned CIT(Appeals) is contrary to the facts of the case.
1(c) That the learned CIT(Appeals) erred in upholding the action of the assessing officer in applying Rule 8D in the instant case.
2(a) That on the facts and circumstances of the case, the learned CIT(Appeals) erred in holding that proportionate business expenditures of Rs.31,58,18,185/- was alleged to be utilized to earn dividend income and thereby erred in adding the said

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proportionate business expenditure for the purpose of computing book profit under section 115JB of the Act.
2(b) That the observation of the learned CIT(Appeals) is contrary to the facts of the case.
2(c) That the learned CIT(Appeals) erred in upholding the action of the assessing officer in applying Rule 8D in the instant case.
3. That on the facts and circumstances of the case, the learned CIT(Appeals) erred in confirming the disallowance made by the assessing officer on account of prior period expenses amounting to Rs.5,93,000/- under the normal provisions other than section 115JB of the Act.
4. That on the facts and circumstances of the case, the learned CIT(Appeals) erred in confirming the disallowance made by the assessing officer on account of provision for market to market foreign exchange transactions amounting to Rs.23.30 crores under the normal provisions other than section 115JB of the Act.
5. That on the facts and circumstances of the case, the learned CIT(Appeals) erred in confirming the disallowance made by the assessing officer on account of provision for market to market foreign exchange transactions amounting to Rs.23.30 crores for the purpose of computing book profit under section 115JB of the Act.
6. That the appellant craves leave to add to and/or alter, amend, modify or rescind the grounds hereinabove before or at the hearing of this appeal."

2.1. The Revenue has raised the following grounds of appeal :-
"1. That on the facts and circumstances of the case the Ld. CIT(A) has erred in law as well as on the facts of the case in holding that the Rule 8D(ii) is not applicable and has erred in deleting the disallowance of expenditure of Rs.1,19,45,03,740/- made by the AO by applying rule 8D under section 14A of the Income tax.
2. That the appellant craves for leave to add, delete or modify any of the grounds of appeal before or at the time of hearing."

3. The brief facts of the case are that the assessee is a public sector company constituted by Government of India through Coal Mines Nationalisation Act 1973. The assessee is primarily engaged in the business of coal mining and is a company wholly owned by Govt. of India in the present year under consideration. The Govt. of India gave funds to the assessee for further investments in its subsidiary and wholly owned companies as approved by the Govt. of India. The money received in the form of share capital was compulsorily required to be invested and the assessee was to subscribe the shares of the subsidiary companies. All the money invested in the subsidiary companies was received by the assessee from Govt. of India for making direct investments in equity for running and controlling the production, distribution, business of all the subsidiary and wholly owned companies. There is no private investment in any of the eight subsidiary companies from which assessee had received the dividend.

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3.1. During the year the assessee has earned dividend income of Rs.2,62,907.86 lakhs which have not been claimed as exempt u/s 10(34) of the Act from the tax. During the year assessee had made the total investment of Rs.6,31,63,637/- lakhs as their details below :

Investment (Unquoted)	CURRENT YEAR
In Fully Paid up Equity Shares of Subsidiary Companies (Valued at cost)	(Rs. in lacs)
22184500 Equity Shares of Rs.1000/- each in Eastern Coalfields Ltd. (Previous Year 221,84,500 Equity Shares of Rs.1000/- each	221845.00
21180000 Equity Shares of Rs.1000/- each in Bharat Coking Coal Ltd. (Previous Year 211,80,000 Equity Shares of Rs.1000/- each	211800.00
94,00,000 Equity Shares of Rs.1000/- each in Central Coalfields Ltd. (Previous Year 94,00,000 Equity Shares of Rs.1000/- each	94000.00
2971000 Equity Shares of Rs.1000/- each in Western Coalfields Ltd. (Previous Year 29,71,000 Equity Shares of Rs.1000/- each	29710.00
1,90,400 Equity Shares of Rs.1000/- each in Central Mine Planning and Design Institute Ltd. (Previous Year 1,90,400 Equity Shares of Rs.1000/- each	1904.00
1864009 Equity Shares of Rs.1000/- each in Mahanadi Coalfields Ltd. (Previous Year 18,64,009 Equity Shares of Rs.1000/- each	18640.00
1776728 Equity Shares of Rs.1000/- each in Northern Coalfields Ltd. (Previous Year 17,76,728 Equity Shares of Rs.1000/- each	17767.28
3597000 Equity Shares of Rs.1000/- each in South Eastern Coalfields Ltd. (Previous Year 35,97,000 Equity Shares of Rs.1000/- each	35970.00
TOTAL	631636.37

3.2. According to the assessee it had incurred no expenditure to earn the aforesaid dividend income amounting to Rs.2,62,907.86 lakhs. The AO did not accept the aforesaid contention of the assessee and observed that the earning of dividend is not an automatic process and the assessee was required to keep regular control of the investments made. The AO made addition of Rs.1,51,03,21,925/- on this ground comprising of addition of Rs.1,19,45,03,740/- under Rule 8D (2)(ii) of the IT Rules

and Rs.31,58,18,185/- under Rule 8D(2)(iii) of the IT Rules. The AO further disallowed the provision of foreign exchange transactions amounting to Rs.23.30 crores and prior period expenses of Rs.5,93,000/-.

3.3. The matter was carried to the ld. CIT(A) wherein the ld. CIT(A) partly allowed the appeal of the assessee. On the question of disallowance u/s 14A of the Act, the ld. CIT(A) observed that Rule 8D(2)(ii) of the IT Rules was not applicable to the facts of the case since no borrowed funds have been invested in the subsidiary companies and deleted the addition made under Rule 8D(2)(ii) amounting to Rs.119,45,03,740/-. However, the addition made under 8D(2)(iii) was held to be applicable and addition of Rs.31,58,18,185/- was confirmed by ld. CIT(A). The addition made on account of prior period expenses as well as foreign exchange transactions stood confirmed by the ld. CIT(A).

3.4. In ground no.1(a),1(b),1(c), 2(b) and 2(c) with regard to disallowance made u/s 14A of the Act the case of the assessee is that application of section 14A of the Act cannot be mechanically made by AO in an automatic fashion without recording reasons for his satisfaction that the assesseeøs claim is incorrect. The ld. Counsel for the assessee had further contended that the assessee made the investment for the purpose of holding controlling stake in the group concern and not for the purpose of earning dividend. According to the assessee it has not incurred any expenses to earn the dividend income and therefore Rule 8D(iii) is not applicable. The ld. Counsel for the assessee inter alia relied upon various judicial pronouncements to advance his effective grounds of appeal listed as under :

(i) M/s. Balram Chini Mills Ltd. vs DCIT ITA No.504/Kol/2011 for AY 2008-09 dated 29.07.2011

(ii) CIT vs REI Agro Limited [GA 3022 of 2013, ITAT 161 of 2013 Calcutta High Court order dated 23rd December, 2013

(iii) REI Agro Ltd. vs DCIT, Central Circle-XXVII, Kolkata. ITA No.1331/Kol/2011

4. The ld.DR, on the other hand, has opposed the contention put forth by the ld. AR and has sought our attention to the orders of ld. CIT(A) and AO.

5. We have heard the rival contentions and perused the facts of the case. The ld. AR has strongly argued that no satisfaction as to the correctness of the claim made u/s 14A read with 8D(iii) has been recorded by the AO as well as the ld. CIT(A). The aforesaid contention of the assessee is not acceptable for the reasons hereinafter. The order passed by the AO goes to show that AO has complied with the requirement of section 14A of the Act by observing that as to why he is not satisfied with the correctness of claim of the assessee that no expenditure was incurred. The AO has recorded the findings that earning of dividend was not an automatic process and the assessee was required to keep regular control over the investments made.

5.1. The contention put forth by the ld. AR that it had earned dividend income of Rs.262907.86 lakhs without incurring any expenses does not convince us at all. The term ÷expenditureø as per section 14A would include the expenditures that are related to investments made i.e. expenditures on administration, capital expenses, travelling expenses, operating expenses etc. It is difficult to accept that the assessee company was making investments decisions to the tune of Rs.6,31,637 lakhs of public money without incurring a single penny out of its pocket. Such decisions are highly strategic in nature and are required to be made by highly qualified and experienced professionals. The same would also require market research and analysis. The assessee company by acquiring controlling interest in the subsidiary companies would also be required to attend board meetings and make policy decisions with regard to the aforesaid huge amount of investments made. By no stretch of imagination, it can be assumed that such activities were done without incurring any expenditure. It is pertinent to mention here that even the assessee did not rebut the findings of AO that the assessee was required to supervise and administer all the investments made.

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5.2. It is pertinent to refer to the observations made by the Honøble Supreme court in the case of CIT vs Walfort Share & Stock Brokers (P) Ltd. (2010) 326 ITR 1 (SC) defining the scope of section 14A of the Act incorporated retrospectively from 1st April, 1962. Relevant portion is reproduced herein below :

> *"**17.** The insertion of S. 14A with retrospective effect is the serious attempt on the part of the Parliament not to allow deduction in respect of any expenditure incurred by the assessee in relation to income, which does not form part of the total income under the Act against the taxable income (see Circular No. 14 of 2001 dt. 22nd Nov., 2001). In other words, S. 14A clarifies that expenses incurred can be allowed only to the extent they are relatable to the earning of taxable income. In many cases the nature of expenses incurred by the assessee may be relatable partly to the exempt income and partly to the taxable income. In the absence of S. 14A, the expenditure incurred in respect of exempt income was being claimed against taxable income. The mandate of S. 14A is clear. It desires to curb the practice to claim deduction of expenses incurred in relation to exempt income against taxable income and at the same time avail the tax incentive by way of exemption of exempt income without making any apportionment of expenses incurred in relation to exempt income. The basic reason for insertion of s. 14A is that certain incomes are not includible while computing total income as these are exempt under certain provisions of the Act. In the past, there have been cases in which deduction has been sought in respect of such incomes which in effect would mean that tax incentives to certain incomes was being used to reduce the tax payable on the non-exempt income by debiting the expenses, incurred to earn the exempt income, against taxable income. The basic principle of taxation is to tax the net income, i.e., gross income minus the expenditure. On the same analogy the exemption is also in respect of net income. Expenses allowed can only be in respect of earning of taxable income. This is the purport of s. 14A. In s. 14A, the first phrase is "for the purposes of computing the total income under this Chapter" which makes it clear that various heads of income as prescribed under Chapter IV would fall within s. 14A. The next phrase is, "in relation to income which does not form part of total income under the Act". It means that if an income does not form part of total income, then the related expenditure is outside the ambit of the applicability of s. 14A. Further, s. 14 specifies five heads of income which are chargeable to tax. In order to be chargeable, an income has to be brought under one of the five heads. Secs. 15 to 59 lay down the rules for computing income for the purpose of chargeability to tax under those heads. Secs. 15 to 59 quantify the total income chargeable to tax. The permissible deductions enumerated in ss. 15 to 59 are now to be allowed only with reference to income which is brought under one of the above heads and is chargeable to tax. If an income like dividend income is not a part of the total income, the expenditure/deduction though of the nature specified in ss. 15 to 59 but related to the income not forming part of total income could not be allowed against other income includible in the total income for the purpose of chargeability to tax. The theory of apportionment of expenditures between taxable and non-taxable has, in principle, been now widened under s. 14A. Reading s. 14 in juxtaposition with ss. 15 to 59, it is clear that the words "expenditure incurred" in s. 14A refers to expenditure on rent taxes, salaries, interest, etc. in respect of which allowances are provided for(see ss.30to37)."*

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5.3. It is further apposite to refer to the decision of the ITAT Mumbai Bench in the case of ACIT vs Citicorp Finance (India) Ltd. (2007) 108 ITD 457 dated 21st November, 2006 wherein on similar facts, the contention of the assessee that it had incurred no expenditure for earning high dividends was negated. The relevant portion of the decision is reproduced herein below :-

> *" Briefly stated, the facts of the case are that the assessee company was engaged in the business of providing financial services like commercial vehicle financing, equipment **finance,** advances against financial assets and inter-corporate loans and deposits. During the course of the assessment proceedings, the AO noticed that the assessee had earned dividend of Rs. 4,85,24,362 which was exempt from tax. Taking note of s. 14A of the IT Act, he called upon the assessee to furnish the details of expenditure incurred in earning the aforesaid dividend and also to explain as to why expenditure on pro rata basis should not be apportioned to the earning of the aforesaid dividend. In reply, the assessee submitted before the AO that it had not incurred any expenditure in earning the aforesaid dividend and hence the prorate basis could not be applied to allocate the expenditure for earning the said dividend. In the absence of details, the AO applied pro rata basis for allocating the total expenditure of Rs.90,64,63,336 between exempt income (i e., dividend) and non-exempt income in the ratio of the receipts (total receipts being Rs. 119,48,19,592 including dividend receipts of Rs. 4,85,24,362). In this manner, he quantified the expenditure at Rs. 3,68,02,411 being 4.06 per cent of total expenditure as having been incurred in relation to earning the dividend and therefore disallowed the same while computing non-exempt income. On appeal, the learned CIT(A),by his order dt. 16th June, 2003, directed the AO to allow deduction on the gross amount of dividend without allocating any expenditure. Department is aggrieved by the aforesaid order and is now in appeal before this Tribunal."*
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> *13. It is difficult to accept the hypothesis that one can earn substantial dividend income without incurring any expenses whatsoever including management or administrative expenses. By same logic, it is equally difficult to accept that the only expenses involved in earning the dividend income are those incurred on collection of dividend or on encashing a few dividend warrants. A company cannot earn dividend without its existence and management. Investment decisions are very complex in nature. They require substantial market research, day-to-day analysis of market trends and decisions with regard to acquisition, retention and sale of shares at the most appropriate time. They require huge investment in shares and consequential blocking of funds. It is well known that capital has cost and that element of cost is represented by interest. Besides, investment decisions are generally taken in the meetings of the board of directors for which administrative expenses are incurred. It is therefore not correct to say that dividend income can be earned by incurring no or nominal expenditure. This aspect of the matter has also received careful attention of Chennai Bench of this Tribunal in Southern Petro Chemical Industries vs. Dy. CIT (2005) 93 TT] (Chennai) 161. After comprehensive consideration of all the relevant aspects of the case including the provisions of law, the Chennai Bench has held that*

*investment decisions are very strategic decisions in which top management is involved and therefore proportionate management expenses are required to be deducted while computing the exempt income from dividend. In Harish Krishnakant Bhatt vs. ITO (2004)85TT](Ahd) 872 : (2004) 91 ITD 311 (Ahd), the Ahmedabad Bench of this Tribunal has held that, the dividend income being exempt under S. 10(33), the interest on capital borrowed for acquisition of relevant shares yielding such dividend cannot be allowed deduction by operation of S.14A.In Dy. CIT vs. S.G. Investments & Industries Ltd. (2004) 84 TT] (Kol) 143 : (2004) 89 ITD 44 (Kol), the Calcutta Bench of this Tribunal has laid down two propositions: one, in view of s. 14A inserted in the IT Act with retrospective effect from 1st April, 1962, pro rata expenses on account of interest relatable to investment in shares for earning exempt income from dividend are to be disallowed against taxable income and only the net dividend income is to be allowed exemption after deducting the expenses; and two, the expression "expenditure incurred by the assessee in relation to income which does not form part of the total income" in s. 14A has to be given a wider meaning and would include both direct and indirect relationship between expenditure and exempt income. Following the decision of the Hon'ble Supreme Court in CI Tvs. United General Trust Ltd. (1994) 116 CTR (SC) 194 : (1993) 200 ITR 488 (SC), the Calcutta Bench of the Tribunal has also held that the interest paid by the assessee being attributable to the money borrowed for the purpose of making the investment which yielded the dividend and other expenses incurred in connection with or for making or earning the dividend income can be regarded as expenditure incurred in relation to dividend income. In Everplus Securities& **Finance** Ltd. vs. Dy. CIT (2006) 102 TTJ (Del) 120, the Delhi Bench of this Tribunal has held that merely because the assessee did not earn the dividend out of investment in certain shares does not imply that the provisions of s. 14A would not apply to that extent. In Asstt.CIT vs. Premier Consolidated Capital Trust (I) Ltd. (2004) 83 TTJ (Mumbai)843,the Mumbai Bench of this Tribunal has held that the AO is justified in attributing a part of the financial and administrative expenses as expenditure in relation to exempt income and disallowing the same in view of the provisions of s.14A."*

We find that the aforesaid judgement is squarely applicable to the present case of the assessee.

5.4. The findings recorded by us as regards the expenditure required to be incurred by the assessee company for carrying out the investments and earning dividends income also finds force from the decision rendered by ITAT, Chennai Bench in the case of Southern Petro Chemical Industries vs DCIT (2005) 3 SOT 157 dated 20th October, 2004 relevant part of which is reproduced as under :-

"6. We have considered the rival submissions and perused the records of the case. Admittedly, these investments in shares were made during the course of the carrying on of business and as is evident from the

records, substantial investments had been made by the assessee in earlier years, and during the current year as well the assessee made an investment of Rs. 19 crores. Whether to invest or not to invest and whether to retain the investments or to liquidate the same are very strategic decisions which the management is called upon to take. These are mind-boggling decisions and top management is involved in taking these decisions. This decision making process is very complicated and requires very careful analysis. Moreover, the assessee has to keep track of various dividend incomes declared by the investee companies and also to keep track of the dividend income having been regularly received by the assessee. This activity itself calls for considerable management attention and cannot be left to a junior clerk. The Hon'ble Supreme Court in the case of United General Trust Ltd. (supra), applying the decision of Hon'ble Supreme Court in the case of Distributors (Baroda) (P) Ltd. vs. Union of India (1985) 47 CTR (SC) 349 : (1985) 155 ITR 120 (SC), reversed the decision of the Hon'ble Bombay High Court in CIT vs. United General Trust (P) Ltd. (supra), wherein the question was as under:

"Whether, on the facts and in the circumstances of the case and in law, the Tribunal was justified in applying the decision of the Bombay High Court in the case of CIT vs. New Great Insurance Co. Ltd. (1973) 90 ITR 348 (Born) to the assessment year in question without considering the effect of the amendment operative from 1stApril, 1968, and in thus holding that the assessee would be entitled to the deduction under s. 80M on the gross dividend before deduction of the proportionate management expenses ?"

Thus, when the decision of the Hon'ble Bombay High Court has been reversed, the proportionate management expenses are required to be deducted while computing the dividend income. In the decision of the Hon'ble Calcutta High Court, relied upon by the learned counsel for the assessee, Mr. Dastur, in the case of CIT vs. United Collieries Ltd. (supra), it has been held that if the facts of a particular case so warrant, the allocation can be made towards expenses. In view of the aforementioned discussion and keeping in view the submissions of the learned Departmental Representative, we restore this matter to the AO to verify the quantum of deduction claimed by the assessee in earlier years under s. 57(i) from the dividend income (when it was taxable) and make a pro rata adjustment on the basis of subsequent investments made, inflation, etc. This ground is, accordingly, allowed for statistical purposes."

5.5. Since the assessee had claimed that no expenditure was incurred, the assessing authorities were correct to estimate the incurring of such expenditure u/s 14A read with Rule 8D. It is pertinent to refer to the observations made by ITAT Chennai Bench in

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the case of .Lakshmi Ring Travellers vs ACIT in ITA No.2083/Mads/2011 dated 2nd March,2012 wherein it was held as under (relevant portion reproduced) :-

> *"Therefore, it becomes clear that even in a case where the assessee claims that no expenditure was so incurred, the statute has provided for a presumptive expenditure which has to be disallowed by force of the statute. In a distant manner, literally speaking, it may even be considered for the purpose of convenience as a deeming provision. When such deeming provision is made on the basis of statutory presumption, the requirement of factual evidence is replaced by statutory presumption and the Assessing Officer has to follow the consequences stated in the statute."*

5.6. The decisions relied upon by the assessee to support the aforesaid grounds of appeal are distinguishable on facts and law and does not help the cause of assessee. The assessee relied upon the decision of various courts of law listed as under :

(i) Maxopp Investments Ltd. Vs CIT 347 ITR 272 (Del)
(ii) Godrej & Boyce Mfg.Co.Ltd. vs DCIT 328 ITR 81 (Bom)
(iii) Relaxo Footwears Ltd. Vs Addl.CIT (2012) 50 SOT 102
(iv) REI Agro Ltd. Kolkata vs D CIT ITA No.1331/Kol/2011
(v) DCIT vs Ashish Jhunjhunwala

In all of the aforesaid judgements, the ratio was that the AO failed to record any satisfaction u/s 14A read with rule 8D whereas in the present case proper satisfaction was recorded by the AO u/s 14A of the Act. Reliance was placed on the judgments rendered in the case of REI Ltd., Kolkata (supra) In the aforesaid decision, the issue with respect to the disallowance made under section 14A read with Rule 8D(2)(iii) was restored to the file of AO and no judgment was rendered on merits of the contentions of assessee. The assessee has submitted that for disallowing the expenditure incurred for earning the exempt income there must be a nexus between the two. To substantiate the same, the assessee has relied upon the decisions of various courts listed as under :

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(i) Balram Chinni Mills Ltd. Vs DCIT in ITA NO.504/Kol/2011
(ii) CIT vs Hero Cyccles Ltd. 323 ITR 518 (Pun&Har)
(iii) Saurabh Agrotech (P) Ltd vs DCIT in ITA No.786/JP/2011
(iv) Hindusthan paper Corporation Ltd. In ITA No.47/Kol/2012.

The aforesaid judgements will not support the case of the assessee as the same are rendered in the different facts altogether. In the aforesaid decisions, the ratio was that only those expenditures which has nexus to the exempt income are to be disallowed. However in the present case the nexus between the expenditure incurred and the dividend income was established by the revenue authorities.

5.7. The ld. AR submitted that in subsequent years i.e. A.Yrs. 2009-10 and 2010-11, the aforesaid issue has been decided in favour of the assessee. The aforesaid orders of the ld. CIT(A) will not help the assessee as the same has no bearing on the present case.

5.8. The ld. AR submitted without prejudice to the aforesaid grounds that there is a computational error in calculation under rule 8D(iii) and the AO has included the investments of the subsidiaries, which have not paid dividends to the assessee. In view of submission made, the said issue is remanded to the file of AO to make a correct computation without including the investments of companies which have not paid any dividend to the assessee company. The aforesaid grounds are, therefore, held to be against the assessee on merits and on the issue of computation under rule 8D(iii), the matter is remanded back to the file of AO. Accordingly Grounds 1(a), 1(b), 1(c), 2(b) and 2(c) of the assessee are dismissed.

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5.9. As regards the issue in relation to section 115JB, the ld. Counsel for the assessee in support of the aforesaid grounds of appeal submitted that disallowance computed as per Rule 8D of the Rules cannot be applied u/s 115JB of the Act and the provisions of section 14A are restricted to computation of income under normal provisions of the Act which cannot be extended to the computation of income u/s 115JB of the Act. The ld. AR relied upon the decisions of ITAT Delhi Bench in the case of Goetze (India)ltd vs CIT (2009) 32 SOT 101 and ITAT Ahmedabad Bench in the case of Cadila Healthcare Ltd. Vs ACIT in ITA No.354/Ahd/2012. The issue is squarely covered in the favour of the assessee. Accordingly, we partly allow ground no.2(a) of the assessee as regards the addition to book profit made u/s 115JB of the Act.

5.10. As regards ground no 4 and 5 the AO has disallowed expenses pertaining to foreign exchange fluctuation in view of CBDT instruction No.3/2010 and has disallowed Rs.23.30 crores which are debited in P&L A/c of the assessee. The ld. AR has relied upon the decision of the Honøble Supreme Court in the case of CIT vs Woodward Governor India (P)Ltd 312 ITR 254 (SC) and submitted that market to market loss is an expenditure incurred by the assessee and thus allowable as deduction. The Honøble Apex Court in the aforesaid case has held as under (relevant portion reproduced):-

> *"In conclusion, we may stated that in order to find out if an expenditure is deductible the following have to be taken into account (i) whether the system of accounting followed by the assessee is mercantile system, which brings into debit the expenditure amount for which a legal liability has been incurred before it is actually disbursed and brings into credit what is due, immediately it becomes due and before it is actually received (ii) whether the same system is followed by the assessee from the very beginning and if there was a change in the system, whether the change was bona fide; (iii) whether the assessee has given the same treatment to losses claimed to have accrued and to the gains that may accrue to it; (iv) whether the assessee has been consistent and definite in making entries in the account books in respect*

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of losses and gains; (v) whether the method adopted by the assessee for making entries in the books both in respect of losses and gains is as per nationally accepted accounting standards; (vi) whether the system adopted by the assessee is fair and reasonable or is adopted only with a view to reducing the incidence of taxation."

The assessee has further submitted that in the subsequent year the assessee has paid taxes on profit arising out of foreign exchange fluctuation. In view of the submissions made by the ld. AR the issue is restored back to the file of AO to examine as to whether the assessee has in fact booked profit on account of foreign exchange fluctuation. If that be so, the same shall be dealt with in accordance with aforesaid judgement in the case of Woodward Governor India (Supra). We, accordingly allow ground no.4 & 5 for statistical purposes only.

6. Now we take up ground no.3 of the assessee with regard to the prior period expenses . The brief facts of the case are reproduced for the sake of convenience as under :-

õFrom the audited accounts, it is evident that assessee has debited certain Prior Period expenses in the Profit and Loss account amounting to Rs.5.93 lakhs. The assessee was asked regarding allowability of these expenses as the assessee company is following mercantile system of accounting. The assessee replied vide letter 11.11.2010 stating that
õIn this regard please note that the prior period expenses represents liability that has been crystallised during the year under consideration. Hence it should not be added back while computing total income for the year. The contention of the assessee is not accepted. The assessee has been unable to prove whether the amount has been crystallised during the financial year or not. The onus of proving it fell on the assessee, which he has failed to utilise. Therefore, in the absence of any evidence regarding crystallisation of these expenditures of Rs.5.93 lakhs are added back to normal computation of income. Penalty initiated on this issue u/s 271(1)(c)of theI.T.Act,1961.ö

6.1. The ld. CIT(A) confirmed the action of AO. The relevant findings are reproduced herein under :-

õI have carefully considered the observations of the Assessing Officer in the assessment order, and submissions of the appellant. The Assessing Officer has added back an amount of Rs.5,93,000/- in the assessment order while computing the income u/s 115JB. The appellant informed that it is a typographical mistake and actually it is Rs.5,93,000/- which has been wrongly mentioned by the Assessing Officer as Rs.5,93,000/-. The appellant has filed copy of the account showing the amount is

actually Rs.5,93,000/-. The appellant has filed an application u/s 154 which has not been disposed of till date. The Assessing Officer is hereby directed to correct the figure from Rs.5,93,000/- to 5,93,000/-. The appellant had stated that this expenditure is being allowed over the period in earlier year also. The appellant had some coal Dumps against which some deposits were received by it. The appellant had earned interest income on the said deposits and certain legal disputes against the claim by the coal dealers of coal dumps are in the courts and the appellant feels that such interest may have to be paid back by it to the said claimants. It is observed that there is a possibility of refunding the said amounts but it is all dependent upon the future date. Merely the matter is disputed cannot make it allowed as a provision of expenditure.

The appellant has not accounted the prior period expenses which crystallised during the year. It is still a contingent liability which is not finalised and the appellant has made a provision in apprehension to write off it as bad debts. It is not a bad debt since the money has not been advanced by the appellant to such security deposits. It is a reverse case where the appellant is a creditor because of receiving security deposits and earned interest income thereon. The appellant cannot claim the same as bad debt. The Circular No.551 and other case laws relied upon by the appellant are not applicable on the facts of the case. The A/R of the appellant has also submitted that in the last year my Ld.Predecessor CIT(A)-VI, Kolkata in appeal No.IT(A)/VI/Kol/944/Cir-5/2009-10 dated 16.6.2010 has allowed the prior period expenses. I have gone through the appellate order and found that the issues and facts are different and distinguishable. The expenses being claimed of Rs..5,93,000/- are a mere contingent liability and it cannot be allowed as expenditure. Therefore the *ratio decindi* of the said appellate order is not applicable. Therefore, the addition made by the Assessing Officer is upheld but he will correct the figure from Rs.5,93,00,000/- to Rs.5,93,000/-. This ground of appeal is dismissed subject to the correction of figure.ö

7. We have heard the rival contentions and perused the facts of the case. It was stated that the assessee had coal dumps against which deposits were received by it. The assessee had earned interest income on the said deposits and certain legal disputes against the claim by the coal dealers of coal dumps are pending in the courts. The assessee feels that such interest may have to be paid back to the said claimants. It is a fact that the assessee has not accounted the prior period expenses which had been stated to have been processed during the year. It is still a contingent liability which had not yet finalised and the assessee had made a provision in apprehension to write off it as bad debts. In the circumstances and facts of the case we find no infirmity in the order of the ld. CIT(A), who has rightly disallowed the claim of assessee. Thus ground no.3 of the assessee is dismissed.

8. Ground NO.6, being general in nature does not require adjudication.

9. In the result the appeal of the assessee is partly allowed for statistical purposes.

10. Now we take up the revenue's appeal in ITA No.1238/Kol/2012 as under :-

10.1. The AO vide order dated 2nd December, 2010 after recording the satisfaction as required u/s 14A of the Act made disallowance under Rule 8D(2)(ii) and Rule 8D(2)(iii) of IT Rules. In the present appeal we are concerned with the correctness of the deletion of addition of Rs.1,19,45,03,740/- made by the ld. CIT(A) as regards Rule 8D(2)(ii).

10.2. Before adverting the issue of the concerned it should be apposite to refer to Rule 8D(2)(ii) of the IT Rules which is extracted herein below :-

"8D(2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely :-

(i) The amount of expenditure directly relating to income which does not form part of total income;

(ii) In a case where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt, an amount computed in accordance with the following formula namely :-

$$A \times \frac{B}{C}$$

Where A = amount of expenditure by way of interest other than the amount of interest included in clause (i) incurred during the previous year;

B = the average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;

C = the average of total assets as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;

(iii) An amount equal to one half per cent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year. "

10.3. Rule 8(2)(ii) can be invoked when the assessee had incurred expenditure by way of interest during the previous year relevant to assessment year which is not directly attributable to any particular income or receipt. In this regard we have gone through the Balance sheet of the assessee for A.Yr.2008-09. The assessee had invested Rs.6,31,637.37 Lakhs in its subsidiaries and had received the same amount

from Govt. of India as subscribed share capital. It is pertinent to mention here that the assessee is a public sector undertaking of the Govt. of India and whole of the subscription of the share capital was subscribed by Govt of India till the present A.Yr. and there was no private placement in the form equity before A.Yr.2008-09. The entire share capital invested in the subsidiary companies from which exempt income in the form of dividend was earned was received by the assessee from the Govt. of India. The assessee had not raised loan or borrowed money for making investment in the subsidiaries. In the written submissions filed before the ld. CIT(A) the assessee had also explained the interest expenditure incurred by it was relatable to the business income of the asessee, which was non exempt. In view thereof, we do not find merit in the contentions raised by the revenue. Accordingly ground no.1 raised by the revenue is dismissed.

11. Ground No.2 of the revenue, being general in nature does not require adjudication. Accordingly the appeal of the revenue is dismissed.

12. In the result the appeal of the assessee is partly allowed for statistical purposes in ITA No.1032/Kol/2012 and appeal of the revenue in ITA No.1238/Kol/2012 is dismissed.

Order pronounced in the court on 13.05.2015.

Sd/-
[Mahavir Singh]
Judicial Member

Sd/-
[B.P.Jain]
Accountant Member

Date: 13.05.2015.
R.G.(.P.S.)

Copy of the order forwarded to:

1. M/s. Coal India Limited, 10, N.S.Road, Kolkata-700001.
2. D.C.I.T., Circle-5, Kolkata
3. CIT(A)-VI, Kolkata
4. CIT - Kolkata.
5. CIT-DR, Kolkata Benches, Kolkata

True Copy,

By order,

Deputy /Asst. Registrar, ITAT, Kolkata Benches

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