

IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH 'A', KOLKATA

[Before Shri P.M. Jagtap, AM & Shri S.S. Viswanethra Ravi, JM ]

I.T.A. No. 335/Kol/2015  
Assessment Year 2009-10

*M/s. Merlin Resources (P) Ltd.....Appellant*  
*9B, Wood Street*  
*Kolkata - 700 016*  
*[PAN: AABCM7285P]*

*ITO Ward 8(1), Kolkata.....Respondent*  
*P-7, Chowringhee Square*  
*5<sup>th</sup> Floor,*  
*Kolkata - 700016*

I.T.A. No. 383/Kol/2015  
Assessment Year 2009-10

*ITO Ward 8(1), Kolkata.....Respondent*  
*P-7, Chowringhee Square*  
*5<sup>th</sup> Floor,*  
*Kolkata - 700016*

*M/s. Merlin Resources (P) Ltd.....Appellant*  
*9B, Wood Street*  
*Kolkata - 700 016*  
*[PAN: AABCM7285P]*

**Appearances by:**

*Santosh Kr. Bajaj, FCA appearing on behalf of the Assessee.*  
*Shri Sallong Yaden, Addl. CIT appearing on behalf of the Revenue.*

Date of concluding the hearing : September 07, 2017

Date of pronouncing the order : September 22, 2017

**ORDER**

**SHRI P.M. JAGTAP, AM**

These two appeals, one filed by the assessee being ITA No. 335/K/2015 and the other filed by the revenue being ITA No. 383/K/2015, are cross appeals which are directed against the order of Ld. CIT (A) - 3, Kolkata dated 29.01.2015.

2. The assessee in the present case is a company which is engaged in the business of finance and securities. The return of income for the year under consideration was filed by it on 29.09.2009 declaring a total income of Rs. 6,57,656/-. In the profit and loss account filed along with the said return, a sum of Rs. 1,75,00,000/- was debited by the assessee on account of bad debts written off. In this regard, it was noticed by the AO that the loan of Rs. 4 crores was given by the assessee to M/s. Elbee Services Ltd. on 10.05.1997 and the total amount outstanding on account of the said loan along with the interest to the tune of Rs. 9.85 crores as on 31.03.2003 was written off in part by the assessee from A.Y. 2005-06 and 2009-10. When the assessee was called upon by the AO to offer its explanation in the matter, it was submitted by the assessee that efforts were being made for the recovery of outstanding loan from M/s. Elbee Services Ltd. and as agreed mutually between the assessee and the said party, part of the outstanding amount was written off in the relevant years including the year under consideration. According to the AO, any debt written off as per the mutual understanding between the assessee and the concerned debtors would not qualify for deduction u/s 36(1)(vii) and accordingly the claim of the assessee for deduction on account of bad debts written off amounting to Rs. 1,75,00,000/- was disallowed by him.

3. In the computation of total income filed along with the return, a disallowance of Rs. 2,39,165/- was offered by the assessee u/s 14A on account of expenses incurred in relation to the management of investment, the income of which was exempt from tax. Since the said disallowance was not computed as per Rule 8D, the AO invoked the

said rule and made a disallowance u/s 14A at Rs. 7,66,226/-. Accordingly the total income of the assessee was determined by the AO at Rs. 1,73,69,405/- in the assessment completed u/s 143(3) vide an order dated 28.11.2011.

4. Against the order passed by the AO u/s 143(3), an appeal was preferred by the assessee before the Ld. CIT (A) and after considering the submissions made by the assessee as well as the material available on record, the Ld. CIT (A) deleted the disallowance made by the AO on account of assessee's claim for bad debts written off by relying on the decision of Hon'ble Supreme Court in the case of TRF Ltd. vs CIT 323 ITR 397 wherein it was held that the only condition for allowing the deduction on account of bad debts written off as per section 36(1)(vii) as amended from 01.04.1989 is that the relevant debts should be written off in the books of accounts of the assessee. The Ld. CIT (A) however confirmed the disallowance made by the AO u/s 14A by applying Rule 8D by holding that the said rule was mandatory. Aggrieved by the order of the Ld. CIT (A), the revenue and the assessee both are in appeal before the Tribunal on the following grounds.

Grounds raised in the assessee's appeal

*"1. For that ld. CIT (A) erred in holding the disallowance of Rs. 7,66,226 under Rule 8D(2)(iii) out of administrative expenses. The disallowance/addition made is arbitrary, illegal, unjust and erroneous. The purported findings of the lower authorities in this behalf is without any materials and are contrary to the facts of the case and are arbitrary, unreasonable, erroneous and perverse.*

*2. For that the order appealed against is otherwise erroneous on facts and/or in law."*

Grounds raised in the revenue's appeal

*“1. That on the facts and circumstances of the case and in law, the Ld. CIT (A) erred in direction the AO to recomputed allowing write off bad debt by considering the amended section 36(1)(vii) and judgement of the Hon'ble Supreme Court in the case of TRF Ltd. vs CIT (2010) 323 ITR 397.*

*2. That on the facts and circumstances of the case and in law, the decision of the Ld. CIT (A) is contrary to an existing Circular laid down by the CBDT.*

5. We have heard the arguments of both the sides and also perused the relevant material available on record. As regards the issue involved in the appeal of the assessee relating to the disallowance made by the AO u/s 14A and confirmed by the Ld. CIT (A), the learned counsel for the assessee has relied on the decision of Hon'ble Madras High Court in the case of Redington (India) Ltd. vs ACIT 392 ITR 633 wherein it was held that where there is no exempt income earned by the assessee in the relevant year, no disallowance u/s 14A can be made on account of any expenditure incurred in relation to any notional or anticipated income. He has contended that no exempt income was earned by the assessee in the year under consideration and therefore the disallowance made by the AO u/s 14A and confirmed by the Ld. CIT (A) is not sustainable. We find merit in this contention of the learned counsel for the assessee and direct the AO to delete the disallowance made u/s 14A after verifying the claim of the assessee that no exempt income was earned by it in the year under consideration. The appeal of the assessee is accordingly allowed.

6. As regards the revenue's appeal, it is observed that the issue involved therein relating to the assessee's claim for deduction on

account of bad debts written off is squarely covered in favour of the assessee by the decision of Hon'ble Supreme Court in the case of TRF Ltd. (supra) as rightly held by the Ld. CIT (A). Even the CBDT has accepted this position and issued a circular no 12/2016 on 30.05.2016 directing that if any appeal is already filed by the revenue on this issue before any Court or Tribunal, the same may be withdrawn. We accordingly treat the appeal filed by the revenue on this issue as withdrawn and dismiss the same.

**7. In the result, the appeal of the assessee is allowed while the appeal of the revenue is dismissed.**

Order Pronounced in the Open Court on 22<sup>nd</sup> September, 2017.

Sd/-  
(S.S. Viswanethra Ravi)  
(JUDICIAL MEMBER)

Sd/-  
(P.M. Jagtap)  
ACCOUNTANT MEMBER

**Dated: 22/09/2017**  
Biswajit, Sr. P.S.

Copy of order forwarded to:

1. M/s. Merlin Resources Pvt. Ltd., 9B, Wood Street, Kolkata.
2. I.T.O. Ward 8(1), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.  
ITAT, Kolkata