IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH
KOCHI

BEFORE S/SHRI GEORGE GEORGE K., JM & MANJUNATHA G., AM

ITA Nos.77, 78 & 91/1Coch/2017
(Asst Years : 2010-11, 2011-12 & 2012-13)

M/s. Kannan Devan Hills Plantations Co. Pvt. Ltd. KDHP House, Door No. IX/2226, N.H. 47, Devikulam, Munnar, Idukki-685 612.	Vs	The Asst. Commr. Of Income tax, Circle-1(2), Kochi
(Appellant-Assessee)		**(Respondent-Revenue)**

ITA Nos.131, 163 164/Coch/2017
(Asst Years : 2010-11, 2011-12 & 2012-13)

The Asst. Commr. Of Income tax, Circle-1(2), Kochi	Vs	M/s. Kannan Devan Hills Plantations Co. Pvt. Ltd. KDHP House, Door No. IX/2226, N.H. 47, Devikulam, Munnar, Idukki-685 612.
(Appellant-Revenue)		**(Respondent-Assessee)**

PAN No.	AACCK 5399M
Assessee By	
Revenue By	Sh A Dhanaraj, Sr DR
Date of Hearing	21/12/2017
Date of pronouncement	04/01/2018

ORDER

PER BENCH:

These are cross appeals, directed against three separate orders of the CIT(A)-I, Kochi of different dates. The relevant assessment years are 2010-11, 2011-12 and 2012-13.

2. Since common issues are raised in these appeals and they pertain to the same assessee, they were heard together and are being disposed of by this consolidated order for the sake of convenience and brevity.

3. We shall first take up for adjudication assessee's appeal in I.T.A. No. 77/Coch/2017.

ITA NO. 77/Coch/2017 (Assessee's appeal) AY 2010-11

3.1 In the grounds in the Memorandum of Appeal, two issues are raised namely,

(i) Rejection of claim for deduction under section 80IA of I.T. Act.
(ii) Disallowance of expenditure relating to cost of cattle keepers.

i) Rejection of claim for deduction under section 80IA of the Act

3.2 The assessee had claimed deduction under section 80IA of the I.T. Act for the income from distribution of electricity. The claim was negative by the Assessing Officer The view taken by the Assessing Officer was confirmed by the CIT(A). The CIT(A) denied the benefit of deduction under section 80IA of the I.T. Act for the reason that ITAT in assessee's own case for the assessment year 2008-09 had disallowed the claim of the assessee.

3.3 Before us, the Ld. AR submitted that the issue in question is squarely covered in favour of assessee by the judgment of the Hon'ble High Court of Kerala in assessee's own case for the assessment year 2008-09 (ITA No. 48/2015, judgment dated 16/11/2017). A copy of the judgment of the Hon'ble High Court is placed on record. The Ld. DR was unable to controvert the submission of the Ld. AR.

3.4 We have heard the rival submissions and perused the material on record. The issue in question is squarely covered by the judgment of the Hon'ble Jurisdictional High Court in assessee's own case for the assessment year 2008-09 (supra). Since the facts in the current assessment year are identical to the facts considered by the Hon'ble High Court, respectfully following the judgment of the Hon'ble High Court, we allow ground no. 1 raised in assessee's appeal in ITA No. 77/Coch/2017. The Assessing Officer is directed to compute deduction u/s. 80IA of the Act in accordance with law.

ii) Disallowance of expenditure relating to cost of cattle keepers

4. The brief facts in relation to the above issue are as follows:

The assessee is engaged in the business of growing tea in its estate in Munnar. As a labour welfare measure, in line with accepted industry practice, the assessee-company maintained cattle owned by the employees under the cattle grazing scheme approved by the Plantation Labour Committee, Kerala. The expenditure relating to the maintenance of cattle was considered as expenditure of tea operation by the assessee. The recoveries from employees against such expenditure was disclosed under other income. According to the assessee, since the expenditure is treated as part of tea operation for Rule 8 income namely, the minor recoveries relating to the same were also to be treated as Rule 8 income. Since the expenditure was more than the recoveries from the employees of the assessee, the net expenditure was treated as relatable to tea business of the assessee. The Assessing Officer held that the recoveries from the employees of the assessee is to be taxed under Central Income and

the expenditure incurred under the Scheme is allowable as expenditure relating to tea business.

4.1 On appeal before the first appellate authority, the CIT(A) held that the recoveries made from the employees of the assessee and expenditure incurred under the Scheme can neither be treated as central income or under tea operations and hence, the net expenses of cattle maintenance was not allowable as business expenditure.

4.2 Aggrieved by the order of the CIT(A), the assessee has raised this issue before Tribunal. It was contended by the Ld. AR that the expenditure incurred is purely a labour welfare measure and is in line with the accepted industry practice. The Ld. AR submitted that since it is a labour welfare measure which is necessary for cultivation of tea, the same needs to be taken as expenditure incurred in the course of operating tea estate. The Ld. DR on the other hand supported the orders of the lower authorities.

4.3 We have heard the rival submissions and perused the material on record. Tea plantation is very labour intensive industry. In order to attract the workers/employees of the assessee to work in its tea estate, the employees were allowed to rear their cattle in the specified areas of the assessee's estates. To take the cattle for grazing, the assessee had engaged cattle keepers and incurred expenditure. There were minor recoveries from the employees. However, since the cattle keepers were paid more than the recoveries made from the employees, the net expenditure was claimed as deduction

under Rule 8 from the tea business. Allowing the employees to rear their cattle in assessee's estate in order to attract them to work in its estate, is purely a labour welfare measure and the same is in tune with the accepted plantation practice. This labour welfare measure has been approved by the Plantation Labour Committee of Kerala and a copy of the resolution of the Plantation Labour Committee is placed at pgs. 106 to 115 of the paper book filed by the assessee. On a perusal of the resolution of the Plantation Labour Committee, it is very discernable that the scheme of cattle grazing in various estates is an accepted norm in the plantation industry and it is nothing but a labour welfare measure in order to attract labourers which is otherwise scarce. Since the expenditure incurred on cattle keepers is purely a labour welfare measure which is approved by the Plantation Labour Committee, we are of the view that the expenditure incurred is directly relatable to the tea business of the assessee. Therefore, the same shall be treated as expenditure under Rule 8 of the I.T. Rules. Thus ground no. 2 in I.T.A. No. 77/Coch/2017 is allowed.

4.4 In the result, the appeal filed by the assessee in I.T.A. No. 77/Coch/2017 is allowed.

I.T.A. Nos. 78 & 91/Coch/2017 (Assessee's appeals) : A.Ys 2011-12 & 2012-13

5. The only issue raised in these appeals is regarding disallowance of expenditure relating to the cost of cattle keepers. We had adjudicated this issue in favour of the assessee in I.T.A. No.77/Coch/2017. Since the facts are identical, for the reasons

mentioned at para 4.3 of I.T.A. No. 77/Coch/2017, we allow this ground of the assessee in ITA Nos. 78 & 91/Coch/2017.

5.1 In the result, the appeals filed by the assessee in ITA Nos. 78 & 91/Coch/2017 are allowed.

6. The assessee has also raised additional grounds. The additional grounds raised are connected with the appeals filed by the Revenue, except additional ground No. 3 in ITA No. 77/Coch/2017. Since additional grounds are connected with departmental appeals, they shall be adjudicated after the departmental appeals are adjudicated, except additional ground No. 3 in I.T.A. No.77/Coch/2017. The additional ground No. 3 in I.T.A. No.77/Coch/2017reads as follows:

> *"3. The learned CIT(A) erred in enhancing the assessment without giving an opportunity to the appellant under section 251(2) of the Income Tax Act."*

6.1 The above additional ground raised is connected with disallowance of expenditure relating to the cost of cattle keepers. We have already allowed the assessee's appeal on this issue. Thus, additional ground no. 3 raised in ITA No. 77/Coch/2017 has become infructuous and the same is dismissed as infructuous.

7. We shall now adjudicate Revenue's appeals. We shall first take up for adjudication the Revenue's appeal in I.T.A. No. 131/Coch/2017.

I.T.A. No. 131/Coch/2017 (Revenue's appeal) : AY 2010-11)

7.1 The first issue is with regard to disallowance of the claim under section 10(30) of the IT Act for the subsidy received from Tea Board of India taxed 100% under the IT Act.

7.2 The brief facts in relation to the above issue are as follows:

The subsidy given by Tea Board was treated as exempt under section 10(30) of the IT Act. Alternatively, it was contended before the Assessing Officer that the subsidy is to be treated as capital receipt. The Assessing Officer disallowed the claim of the assessee stating that the subsidy scheme details were not notified under section 10(30) of the Act and hence, was not eligible for the claim u/s. 10(30) of the Act.

7.3 Aggrieved, the by the disallowance of the claim made by the assessee, an appeal was preferred to the first appellate authority. The CIT(A) held that the term 'subsidy' notified in sec. 10(30) of the Act is only directive and not mandatory and therefore, the assessee was entitled to exemption u/s. 10(30) of the Act in respect of the subsidy received from the Tea Board. The alternative ground of the assessee to treat the subsidy received from Tea Board as capital receipt was not adjudicated by the CIT(A).

7.4 Aggrieved by the order of the CIT(A), the Revenue has filed the present appeal before us.

7.5 We have heard the rival submissions and perused the material on record. The assessee is in the business of growing tea in its estate in Munnar. The Tea Board which is coming under the Ministry of Commerce, Government of India had given subsidy to the assessee for replanting, replacement planting and rejunevation planting as per the scheme notified by the Central Government through its nodal agency. The Tea Board every year gives subsidy for the above said purpose but the name of the schemes would be different. During the relevant year, the subsidy received was called Special Purpose Tea fund Scheme. A copy of the scheme is enclosed in the paper book filed by the assessee (pg nos. 26 to 56). The CIT(A), after threadbare examination of the scheme of Tea Board providing the subsidy for replanting, replacement planting and rejunevation planting, gave a categoric finding that the assessee is entitled to the benefit of the claim u/s. 10(30) of the I.T. Act (Refer pgs. 34 to 41 of the CIT(A) order for the assessment year 2010-11). The relevant finding of the CIT(A) at page 37 of the impugned order for the assessment year 2010-11 is reproduced below:

> *"The text of Section 10(30) of the Act states "as the Central government may, by notification in the Official Gazette, specify", which means that if there is no specification, then the substantive text of the statutory provisions would apply. In the instant case of the Appellant therefore:*
>
> *(i) Since the Replantation Subsidy Scheme of the Tea Board has been notified iits amended version w.e.f. 01st January, 1972, and no further amendments have been notified thereafter;*
>
> *(ii) Since there is no requirement (in view of the use of the word "as" in the manner defined and interpreted by the Hon'ble Supreme Court above) that such notification is a mandatory requirement to render the statutory provisions of Section 10(30) operational;*

(iii) Since even prior to 1972, such notification was not made for certain periods such as from 13th May, 1970 to 31st December, 1971; and

(iv) Since the clarification and confirmation provided by the Tea Board clearly shows that it was for the Tea Board to trigger the Government into making the necessary notification and as there was no fundamental change in the nature and essence of the qualifying activities of or replacement, replantation, rejunevation, etc. in the SPTF Scheme, the Tea Board did not consider it necessary to make a "separate Gazette Notification in lieu of the existing gazette notification" (to employ the phraseology of the Tea Board)".

7.6 We do not see any infirmity in the finding of the CIT(A) to take a contrary view. Even if the provisions of sec. 10(30) of the I.T. Act is not applicable, since the subsidy is given for replantation, replacement planting and rejunevation planting of the tea bushes, it can only be termed as a capital receipt and not as a revenue receipt. For the aforesaid reasons, we confirm the order of the CIT(A) and reject the ground No. 1 raised by the Revenue in I.T.A. No. 131/Coch/2017.

8. The second issue that is raised in the Revenue's appeal in I.T. A. No. 131/Coch/2017 is additions made by the A.O. towards disallowance of expenditure incurred in relation to exempt income u/s 14A read with Rule 8D of the Income-tax Rules, 1962. The A.O. made additions towards expenditure in relation to exempt income u/s 14A by invoking Rule 8D(2)(ii) and (iii) on the ground that the assessee has made huge investments in shares and securities which yield exempt income. However, no disallowance has been made towards expenditure incurred in relation to exempt income. According to the A.O., from the assessment year 2008-2009 onwards disallowance of expenditure incurred in relation to exempt income is mandatory and such disallowance should be

worked out as per the prescribed method provided under Rule 8D(2) of Income-tax Rules, 1962. Accordingly, A,O, has worked out disallowances in respect of interest expenditure under Rule 8D(2)(ii) and other expenses at the rate of 0.5% of average value of investment under Rule 8D(2)(iii) of the Income-tax Rules, 1962. It is the contention of the assessee that its investments in shares and securities is out of its own funds and no part of interest bearing funds has been utilized for investment which yield exempt income. The assessee further submitted that the company having its own funds in the form of shares capital and reserves which exceeds investment in shares and securities which yield exempt income and in such circumstances a general presumption is drawn that the investment in shares and securities is out of own funds even though the assessee is having borrowed funds. The assessee further contended that it has borrowed term loans from various banks and financial institutions for the purpose of acquisition of business as well as capital assets. Therefore, unless there is a direct nexus between borrowed funds and investment in share and securities, interest cannot be disallowed by invoking Rule 8D(2)(ii) of the Income-tax Rules, 1962. The assessee further contended that in respect of disallowance of expenses under Rule 8D(2)(iii), the investments are made in previous financial years and also the assessee has not incurred any specific expenditure, which is having direct nexus with exempt income. Therefore, the disallowance of expenditure under Rule 8D(2)(iii) is unwarranted. Though it has incurred certain common expenses under various administrative and general expenses, all expenses are for its regular business activities and therefore, no part of expenditure can be attributable to the exempt income.

8.1 We have heard both the parties and considered the material on record. The Assessing Officer disallowed expenditure incurred in relation to exempt income u/s 14A by invoking Rule 8D(2)(ii) and 8D(2)(iii) of the income-tax Rules, 1962, in respect of interest expenditure and other expenses. The A.O. has worked out disallowance of interest debited in the profit and loss account by invoking Rule 8D(2)(ii). Similarly, the A.O. has worked out disallowance of expenditure at the rate of 0.5% of average value of investment. According to the A.O., the disallowances contemplated u/s 14A is mandatory in nature with effect from assessment year 2008-2009 and such disallowances shall be worked out as per the prescribed method provided under Rule 8D(2)(ii). The A.O. has relied upon various judicial pronouncements including the decision of the Hon'ble Supreme Court in the case of *CIT v. Rajendra Prasad Mody (115 ITR 519)* to hold that even if no dividend income is earned, the provision would still be applicable. It is the contention of the assessee that the A.O. was erred in disallowing expenditure incurred in relation to exempt income u/s 14A by invoking Rule 8D(ii) without establishing the nexus between the expenditure incurred and exempt income. The assessee further contended that its investments are covered out of its own interest free funds in the form of share capital and reserves and no part of interest bearing funds has been used in investment which yield exempt income, which is evident from the fact that its interest expense relates to term loans availed for taking over business as well as bank overdrafts which is used for working capital requirements of the company. The assessee further contended that without there being any observation with regard to the nexus between the interest payment and investment in shares,

disallowance of interest paid on regular term loans u/s 14A by invoking Rule 8D is incorrect.

8.2 Having considered both the sides, we find merits in the contention of the assessee for the reason that the assessee has demonstrated with evidences that no part of interest bearing funds has been used to make investment in shares which yield exempt income. The A.O. has not brought on record any reasons for disallowing expenditure incurred by the assessee on term loan and working capital u/s 14A by invoking Rule 8D(2)(ii) of the Income tax Rules, 1962. On the other hand, the assessee has categorically proved that its interest expenditure is not relatable to exempt income. Therefore, we are of the view that the A.O. was incorrect in disallowing interest u/s 14A by invoking Rule 8D(2)(ii) of the Income-tax Rules, 1962. The CIT(A), after considering the relevant submission, has rightly deleted the additions made by the A.O. towards disallowance of interest.

8.3 Insofar as the disallowance of administrative and general expenses under Rule 8D(2)(iii) is concerned, the assessee claims that it did not incur any expenditure for earning exempt income. The assessee further contended that though it has incurred certain expenses under general administrative expenses, such expenditure are directly relatable to its business activities. Therefore, the A.O. was incorrect in disallowing the expenses under Rule 8D(2)(iii) without arriving at a satisfaction that there is a direct nexus between the expenses incurred by the assessee and the exempt income. We find

no merits in the argument of the assessee for the reason that when there is substantial investment in shares which yield exempt income, possibility for incurring certain general and administrative expenses attributable to investment in shares and securities which yield exempt income cannot be ruled out. Though the assessee claims to have not incurred any specific expenses, it is abundantly clear that the assessee has incurred various administrative and general expenses which are in common nature. Therefore, we are of the view that the A.O. was right in computing the disallowance towards expenses incurred in relation to exempt income by invoking Rule 8D(2)(iii). We further observed that though the A.O. was right in disallowing expenses under Rule 8D(2)(iii), disallowance contemplated u/s 14A can in any case swallow the entire exempt income earned by the assessee. The window for disallowance for invoking the provisions of section 14A is only to the extent of disallowing expenditure incurred by the assessee in relation to the exempt income. This proportion or portion of the tax exempt income surely cannot swallow the entire amount. In other words, the disallowance contemplated u/s 14 A shall not exceed exempt income earned by the assessee. On perusal of the details available on record, we find that the assessee has earned exempt income of Rs.55,00,000. The disallowance worked out by the A.O. under Rule 8D(2)(iii) at the rate of 0.5% of average value of investment works out to Rs.2,27,440. Therefore, we are of the view that the disallowance worked out by the A.O. under Rule 8D(2)(iii) is less than the exempt income earned by the assessee for the relevant period and hence we are of the view that the A.O. was right in disallowing expenditure at the rate of 0.5% of the average value of investment. In any case, if the disallowance

worked out by the A.O. is in excess of exempt income earned by the assessee, such disallowance should be restricted to exempt income earned for the relevant financial year. The CIT(A) without appreciating the fact has simply deleted the addition made by the A.O. towards disallowance of expenditure under Rule 8D(2)(iii) of the Income-tax Rules, 1962. Therefore, we reverse the finding of the CIT(A) and uphold the additions made by the A.O. towards disallowance of expenditure at the rate of 0.5% of average value of investment under Rule 8D(2)(iii) subject to our observations that such disallowance shall not exceed exempt income earned by the assessee for the relevant financial years. Accordingly, the ground No. 2 raised by the Revenue in I.T.A. No. 131/Coch/2017 is partly allowed.

9. The third issue that is raised in the Revenue's appeal in I.T.A. No. 131/Coch/2017 is regarding computation of profit on sale of green leaves.

9.1 The brief facts in relation to the above issue are as follows:

Profit on sale of green leaves is not taxable under the Income Tax Act, 1961 and is taxable only under Kerala Agricultural Income Tax Act. The difference between the profit on sale of green leaves as per the cost audit report and as per the return of income filed by the assessee was treated as central income by the Assessing Officer The CIT(A), following the order of the Cochin Bench of the ITAT, in assessee's own case in I.T.A. No. 335/Coch/2014 dated 14/01/2015 for the assessment year 2009-10,

directed the Assessing Officer to delete the adjustment made by adding differential amount to the Central income.

9.2 Aggrieved by the order of the CIT(A), the Revenue has filed the present appeal before the Tribunal.

9.3 We have heard the rival submissions and perused the material on record. A similar addition was made to the Central income in assessee's own case for the preceding assessment year, namely AY 2009-10 which was the subject matter of appeal before the ITAT, Cochin Bench in I.T.A. No. 335/Coch/2014 dated 14/01/2015. While giving effect to the ITAT order, the Assessing Officer deleted the addition made for the assessment year 2009-10 on account of cost audit report driven profit differential on the sale of green leaves. Following the above order of the ITAT in assessee's own case for the assessment year 2009-10 (supra), the CIT(A) had deleted the addition. Therefore, we see no reason to interfere with the order of the CIT(A) and we confirm the same. Thus ground No. 3 raised by the Revenue in I.T.A. No. 131/C/2017 is dismissed.

10. The fourth issue raised in the Revenue's appeal is regarding taxation of income from sale of import license.

10.1 The brief facts in relation to the above issue are as follows:

On export of tea leaves, the assessee is entitled to certain benefits such as duty drawback, import licenses etc. The income from the sale of import license received on account of export of tea was claimed by the assessee to be inextricably linked to tea business and hence is to be treated as taxable under Rule 8 of I.T. Rules. Assessing Officer treated such income as taxable under Central income. The CIT(A) following the judgment of the Hon'ble High Court of Guwahati in the case of McLeod Russel India Ltd. vs. CIT 260 CTR 337 deleted the addition made by the Assessing Officer.

10.2 Aggrieved by the order of the CIT(A), the Revenue has filed the present appeal before the Tribunal.

10.3 We have heard the rival submissions and perused the material available on record. The import licenses were obtained by the assessee company on account of a scheme for promoting tea exports. The income from sale of import licenses received on account of export of tea, is an integral part of the plantation operations of the company. The assessee company undertakes exports taking into consideration the import license benefits. Therefore the import license benefits are clearly part of the tea income. The assessee company has not claimed the income as exempt income (agricultural income), but as a part of the combined operation and hence the CIT(A) was correct in treating the said income as tea income as per Rule 8. Thus Ground no. 4 of the Revenue's appeal in I.T.A. No. 131/Coch/2017 is allowed.

11. The fifth issue that is raised in the Revenue's appeal is with regard to taxability of miscellaneous income.

11.1 The brief facts in relation to the above issue are as follows:

Certain items of miscellaneous income which were an integral part of the plantation operations of the assessee company were treated as central income by the Assessing Officer on the ground that the said income is not derived from tea operations. The CIT(A) allowed the claim of the assessee and held that the income/recoveries should be treated as income from tea operations.

11.2 The details of miscellaneous incomes received which are treated by the assessee as tea income are as follows:

i) Fixed Management fee income for management of estates of Tata Global Beverages Ltd.
ii) Service charge for system support to Tata Global Beverages Ltd.
iii) Income from tea and soil analysis
iv) Scrap Sales
v) Miscellaneous income from electricity
vi) Other Miscellaneous income

11.3 According to the assessee, the description of the above incomes are as follows:-

i) Fixed management fee is towards recovery of expenses incurred under the business. Since the expenses are considered under tea business, its recovery should also be under tea business. Variable management fee is correctly taken under central income by the appellant.

ii) Software and hardware maintenance support is given to TGBL establishments in Munnar. This is towards reimbursement of tea business expenses hence recovery should also be under tea business.

iii) Income arising from R&D Lab attached to plantation operations for rendering services to TGBL

iv) In the course of Tea Operations of the company large quantity of scrap materials arise from the field and factory operations of the Company especially of stores and materials consumed in tea operations and manufacture. Therefore cost of such stores/materials was borne by Tea Operations and treated as expenses. Being a recovery of such items it is to be treated as tea business.

v) Income from electricity operations by way of penalties for delayed payments, replacement of wires etc. Included in income from electricity operations and treated as combined income.

vi) Other sundry receipts which are connected to its main business being tea.

11.4 We have heard the rival submissions and perused the material on record. The CIT(A), after considering each of the incomes received by the assessee had held that these are incidental and directly connected with the operation of tea business and the same is to be treated as income under Rule 8 of the I.T. Rules. The finding of the CIT(A) which are from pgs. 51 to 54 for the assessment year 2010-11 are very categoric and no interference is called for and we confirm the same. Thus ground No. 5 raised by the Revenue in I.T.A. No. 131/Coch/2017 is dismissed.

12. The sixth issue that is raised for our consideration is with regard to disallowance of foreign agents commission and reimbursement of expenses for non deduction of tax at source.

12.1 The brief facts in relation to the above issue are as follows:

In order to obtain exports, foreign agents were paid commission. It was contended by the assessee that the commission payments to foreign agents were not taxable in India and hence, no tax was deducted at source. The Assessing Officer however held that tax ought to have been deducted under section 195 of the I.T. Act and having not deducted tax at source, the expenditure claimed was disallowed by invoking the provisions of sec. 40(a)(i) of the Act. On appeal, the CIT(A) held that the commission was not taxable in India and hence provisions of sec. 195 of the Act does not have application. (Refer pgs. 54 to 62 of the CIT(A) order).

12.2. Aggrieved by the order of the CIT(A), the Revenue has filed the present appeal before us.

12.3 We have heard the rival submissions and perused the material available on record. A perusal of the expenditure incurred by the assessee, we notice that these are payments made as reimbursement of expenditure incurred by the foreign agents plus their commission. The foreign agent commission and reimbursement of expenditure are not taxable in India and hence, the provisions of section 195 of the I.T. Act have no

application. In taking the above view, we refer to the following judicial pronouncements:

i) Homefashions vs. ACIT (I.T.A. No. 52/Coch/2015 dated 10/12/2015 ITAT Cochin)
ii) CEAT International vs. CIT 237 ITR 859 (Bom.)

iii) CIT vs. Toshoku Ltd. 125 ITR 525 (SC)

iv) Armayesh Global 51 SOT 564 (Mumbai ITAT)

v) Ardeshi and Cursetjee Sons Ltd. 7 DTR 51 (Mumbai ITAT)

12.4 For aforesaid reasons, we confirm the order of the CIT(A) on this issue. Thus ground No. 6 raised by the Revenue in I.T.A. No. 131/Coch/2017 is dismissed.

13. The seventh issue is with regard to the taxability of income from electricity operations. This issue is connected with the claim of deduction under section 80IA which we have already decided in assessee's appeal in I.T.A. No. 77/Coch/2017. We have held that electricity distribution is a separate undertaking and therefore the claim of the assessee u/s. 80IA is to be allowed. This finding is based on the judgment of the Hon'ble Jurisdictional High Court (supra). Thus Ground no. 7 raised by the Revenue has been rendered infructuous and same is dismissed as infructuous. In the result, the appeal of the Revenue in I.T.A. No. 131/Coch/2017 is partly allowed as indicated above.

14. The issues raised in Revenue's appeals in I.T.A. Nos. 163 & 164/Coch/2017 are identical to the issues raised in I.T.A. No. 131/Coch/2017. In I.T.A. No. 163/Coch/2017, the issues raised are as follows:

1) Disallowance of claim under section 10(30) for subsidy received from Tea Board of India and taxed 100% under Income Tax Act.

2) Disallowance under section 14A.

3) Computation of profit on sale of green leaves.

4) Taxation of Income from sale of import license.

5) Taxability of miscellaneous income

6) Disallowance of foreign agents commission and expense reimbursement for non deduction of tax.

14.1 In I.T.A. No.164/Coch/2017, the following issues are raised:

i) Disallowance of claim under section 10(30) for subsidy received from Tea Board of India and taxed 100% under Income Tax Act.

ii) Disallowance under section 14A.

iii) Taxation of Income from sale of import license.

iv) Taxability of miscellaneous income

v) Disallowance of foreign agents commission and expense reimbursement for non deduction of tax.

14.2 Since issues raised in Revenue's appeals in I.T.A. No. 163/Coch/2017 and 164/Coch/2017 are identical to the issues raised in I.T.A. No. 131/Coch/2017, our

reasoning/finding in I.T.A. No. 131/Coch/2017, will hold good for I.T.A. Nos. 163/Coch/2017 and 164/Coch/2017. It is ordered accordingly.

14.3 In the result, the appeals filed by the Revenue in I.T.A. Nos. 131, 163 & 164/Coch/2017 are partly allowed.

15. As regards the additional ground raised in assessee's appeals in I.T.A. Nos. 77, 78 & 91/Coch/2017, we find that apart from the additional Ground No. 3 in I.T.A. 77/Coch/2017, the assessee has raised only two issues namely,

i) The Tea Board subsidy should be treated as capital subsidy in the event of assessee's claim under section 10(30) of the I.T. Act is not allowed.

ii) The disallowance under Rule 8D r.w.s. 14A of the Act may be restricted to Rs.2,27,440/- instead of Rs.22,74,400/- made by the Assessing Officer.

15.1 As regards the claim of receipt of Tea Board subsidy, whether it should be treated as capital receipt, we have held that the assessee is entitled to the benefit of deduction under section 10(30) of the I.T. Act. Since we have decided that the assessee is entitled to the benefit of deduction under section 10(30) of the Act, the alternate plea raised, namely Tea Board subsidy should be taken as capital receipt, has been rendered infructuous and dismiss the additional ground raised as dismissed.

15.2 As regards the claim of restricting disallowance by invoking the provisions of Rule 8d r.w.s. 14A of the Act, we have restricted the disallowance to Rs.2,27,440/-

during the relevant assessment year 2010-11 from Rs.22,74,440/-. Hence this additional ground raised by the assessee has also been rendered infructuous and the same is dismissed as infructuous.

16. In the result, the appeals filed by the assessee are allowed and the appeals filed by the Revenue are partly allowed as indicated above.

Order pronounced in the open Court on this 4th January, 2018.

sd/-	sd/-
(MANJUNATHA G.)	**(GEORGE GEORGE K.)**
ACCOUNTANT MEMBER	**JUDICIALMEMBER**

Cochin: Dated 4th January, 2018
GJ
Copy to:
1. M/s. Kannan Devan Hills Plantations Co. Pvt. Ltd. KDHP House, Door No. IX/2226, N.H. 47, Devikulam, Munnar, Idukki-685 612.
2. The Assistant Commissioner of Income-tax, Circle-1(2), Kochi.
3. The Commissioner of Income-tax(Appeals)-I, Kochi.
4. The Pr. Commissioner of Income-tax, Kochi.
5. ITAT/DR.
6. Guard File

By order

Assistant Registrar
ITAT, COCHIN