

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH (A), KOLKATA**

**[Before Shri P.M. Jagtap, AM & Shri Aby. T. Varkey, JM]**

**I.T.A. No. 771/Kol/2016  
Assessment Year: 2011-12**

***Joonktollee Tea & Industries Ltd.....Appellant***  
***21, Strand Road,***  
***Kolkata - 700 001***  
***[PAN: AAACJ 6577 G]***

***D.C.I.T., Cir - 4, Kolkata.....Respondent***  
***Aayakar Bhawan, 8<sup>th</sup> Floor,***  
***P-7, Chowringhee Square,***  
***Kolkata - 700 069***

**Appearances by:**

***Shri B.K. Chaturvedi, AR appearing on behalf of the Assessee.***

***Shri P.K. Mondal, Addl. CIT appearing on behalf of the Revenue.***

Date of concluding the hearing : December 21, 2017

Date of pronouncing the order : January 31, 2018

**ORDER**

**PER P.M. JAGTAP, A.M.**

This appeal filed by the assessee is directed against the order of Ld. CIT(Appeals) - 6, Kolkata dated 22.02.2016.

2. The issue involved in ground no 1 relates to the disallowance made by the A.O. under section 14A read with Rule 8D which is sustained by the Ld. CIT(A) to the extent of Rs. 22,91,567/-.

3. The assessee in the present case is a company which is engaged in the business of cultivation and manufacture of tea at its estates situated in the States of Assam and Karnataka. It also owns coffee estate in the state of Karnataka and Tamil Nadu. The return of income for the year under consideration was filed by it on 20.09.2011 declaring a loss of Rs. 38,69,233/- and book profit of Rs. 74,11,410/-

under section 115JB of the Income Tax Act, 1961. Thereafter the assessee filed a revised return on 14.03.2012 declaring a loss of Rs. 54,46,806/-. During the year under consideration, the assessee company had earned a dividend income of Rs. 9,29,752/- and the same was claimed to be exempt from tax under section 10(34) of the Act. The disallowance on account of expenses incurred in relation to the said exempt income was also offered by the assessee to the extent of Rs. 54,353/- as required by section 14A of the Act read with Rule 8D of the Income tax Rules 1962. According to the A.O., the said disallowance worked out by the assessee was not in accordance with the CBDT Circular No. 5/2014 dated 11.02.2014. He, therefore, worked out the disallowance to be made under section 14A read with Rule 8D at Rs. 42,95,972/- in accordance with the said circular and made a disallowance to that extent.

4. The disallowance made by the A.O. under section 14A read with Rule 8D was challenged by the assessee in the appeal filed before the Ld. CIT(A). After considering the submissions made by the assessee as well as the material available on record, the Ld. CIT(A) accepted the stand of the assessee that the investment in shares having been made by the assessee out of its own fund, disallowance on account of interest was not required to be made under section 14A read with Rule 8D. He, however, did not accept the other contention raised on behalf of the assessee company that only the investment of Rs. 20,85,595/- made in the shares having fetched the exempt dividend income during the year under consideration, the disallowance as per Rule 8D(2)(iii) was required to be worked out by taking into

consideration only the said investment. According to him, the entire investment made by the assessee company in shares was capable of yielding the dividend income and therefore, the disallowance under Rule 8D(2)(iii) was required to be worked out by taking into consideration such investment entire as rightly done by the A.O. He accordingly sustained the disallowance made by the A.O. under section 14A read with Rule 8D to the extent of Rs. 22,91,567/-.

5. We have heard the arguments of both the sides and also perused the relevant material available on record. As agreed by the learned representative of both the sides, this issue raised in ground no 1 of the assessee's appeal is squarely covered in favour of the assessee by the decision of this Tribunal in the case of REI Agro Ltd. vs DCIT (ITA No. 1331/Kol/2011 dtd. 19.06.2013) as affirmed by the Hon'ble Calcutta High Court wherein it was held that the disallowance as per Rule 8D(2)(iii) is required to be worked out by taking into consideration only that investment, which has actually earned exempt income during the relevant year and not the entire investment made by the assessee. Respectfully following the said decision, we delete the disallowance made by the A.O. u/s 14A and sustained by the Ld. CIJT(A) and allow Ground No. 1 of the assessee's appeal.

6. The issue raised in ground no 2 relates to the disallowance made by the A.O. and confirmed by the Ld. CIT(A) on account of assessee's claim for deduction under section 80IC of the Act.

7. In the assessment completed under section 143(3), the claim of the assessee for deduction under section 80IC amounting to Rs. 1,34,98,674/- was disallowed by the A.O. by following the Tribunal's order in assessee's own case for the earlier years on the similar issue. On appeal, the Ld. CIT(A) confirmed the said disallowance by observing that a similar disallowance made in A.Y. 2004-05 was confirmed by the Tribunal.

8. We have heard the arguments of both the sides and also perused the relevant material available on record. As submitted by the learned counsel for the assessee, a similar issue involved in assessee's own case relating to the disallowance under section 80IC has been set aside by the Hon'ble Kolkata High Court to the Assessing Officer in A.Y. 2004-05 and 2005-06 vide its order dated 15<sup>th</sup> June, 2016 passed in ITA 58 of 2011 with the direction to decide the same in accordance with law without being influenced by the observations made in the impugned order by the Tribunal. Respectfully following the said decision of the Hon'ble Jurisdictional High Court in assessee's own case for the earlier years on a similar issue, we set aside the impugned order of the Ld. CIT(A) on this issue and restore the matter to the file of the A.O. for deciding the same afresh as per the same direction as given by the Hon'ble Kolkata High Court for A.Y. 2004-05 and 2005-06. Ground no 2 of the assessee's appeal is accordingly treated as allowed for statistical purpose.

9. The issue involved in ground no 3 relates to the disallowance made by the A.O. and confirmed by the Ld. CIT(A) on account of

assessee's claim for deduction under section 33AB of the Act with respect to the income earned from Northern Division.

10 The deduction claimed by the assessee u/s 33AB of the Act with respect to income earned from Northern Division was disallowed by the A.O. During the course of appellate proceedings before the Ld. CIT(A), it was contended on behalf of the assessee company in this regard that the Assessing Officer should have allowed the deduction u/s 33AB at 40% on the income earned in Northern Division and not on the income earned from the entire business. It was also contended on behalf of the assessee company that deposit of Rs. 65,00,000/- was made, by it as required by section 33AB and in order to enable the assessee company to claim the maximum benefit of the deposit so made the income earned in Northern Division which was more than the income of the entire business should have been taken into consideration for allowing deduction under section 33AB. This contention of the assessee was not found acceptable by the Ld. CIT(A) and he proceeded to uphold the action of the A.O. on this issue for the following reasons given in paragraph no 6.2 of his impugned order:

*"I have considered the appellant's submissions. The appellant has accepted that the deduction allowable u/s 33AB of the Act is of a sum equal to the amount deposited with NABARD or 40% of the profits of the tea business computed under the head 'profits and gains of business or profession' before making any deduction u/s 33AB whichever is less. It is not the appellant's cases that for the purpose of section 33AB, the profits and gains of tea business have been computed incorrectly. The appellant wants computation of the deduction different from the method prescribed u/s 33AB in respect of Northern Region only with a view to claiming the deduction considered correct by it under the Assam Agricultural Income Tax Act. The deduction u/s 33AB, the profits and gains of the business or profession and the total income are to be computed in accordance with*

*the provisions of the Income Tax Act, 1961 and there is no reference to Assam Agricultural Income Tax Act in the relevant provisions of the Act. Hence, this ground is rejected and it is held that deduction u/s 33AB was computed correctly by the A.O.”*

11. We have heard the arguments of both the sides and also perused the relevant material available on record. As rightly contended by the learned DR, the provisions of section 33AB are very clear in this regard and the assessee carrying on business of growing and manufacturing tea in India is entitled to deduction of a sum equal to the amount or the aggregate of the amounts deposited or sum equal to 40% of the profits of such business as computed under the head 'profits and gain of business or profession' before making any deduction under section 33AB, whichever is less. The deduction u/s 33AB thus is required to be computed on the entire profit of the business of growing and manufacturing tea in India by the assessee and not in respect of income earned by the assessee in Northern Division only. At the time of hearing before the Tribunal, the learned counsel for the assessee has not been able to dispute this position which is clearly manifest from the relevant provisions of section 33AB. We, therefore, find no infirmity in the impugned order of the Ld. CIT(A) on this issue and upholding the same, we dismiss ground no 3 of the assessee's appeal.

12. Ground no 4 raised by the assessee company in its appeal relating to its claim for MAT Credit Entitlement is not pressed by the learned counsel for the assessee at the time of hearing before the Tribunal. The same is accordingly dismissed as not pressed.

**13. In the result, the appeal of the assessee is partly allowed.**

Order Pronounced in the Open Court on 31<sup>st</sup> January, 2018.

Sd/-

(Aby.T. Varkey)  
JUDICIAL MEMBER

Sd/-

(P.M. Jagtap)  
ACCOUNTANT MEMBER

**Dated: 31/01/2018**

Biswajit, Sr. PS

Copy of order forwarded to:

1. Joonktollee Tea & Industries Ltd., 21, Strand Road, Kolkata – 700 001.
2. DCIT, CIR-4, Aayakar Bhawan, 8<sup>th</sup> Floor, P-7, Chowringhee Square, Kolkata – 700 069.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

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