



ITA No.6659/Mum/2014 & Co.No.96/Mum/2016
Mahindra UGINE Steel Co.Ltd
Assessment Year 2009-10

आयकर अपीलीय अधिकरण "आई" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, MUMBAI

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No.6659/Mum/2014
(निर्धारण वर्ष / Assessment Year: 2009-10)

Deputy Commissioner of Income Tax Circle-7(2)(1) Room No.338,3 rd Floor Aaykar Bhavan,M.K.Road Mumbai-400 020	बनाम/ Vs.	Mahindra CIE Automotive Limited (The merged entity of Mahindra UGINE Steel Co.Ltd) 74,Ganesh Apartment Opp.Sitladevi Temple Lady Jamshedji Road, Mahim Mumbai-400 016
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.AAACM-4998-G/AABCM-6632-J		
(पीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

&

Cross Objection No.96/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2009-10)

Mahindra CIE Automotive Limited (The merged entity of Mahindra UGINE Steel Co.Ltd) Mahindra Towers,1 st Floor Dr.G.M.Bhosale Marg, Worli Mumbai-400 018	बनाम/ Vs.	Assistant Commissioner of Income Tax Range-6(3) Room No.573,5 th Floor Aaykar Bhavan, M.K.Road Mumbai-400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.AABCM-6632-J/AAACM-4998-G		
(पीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

Revenue by	:	Saurabh Kumar Rai, Ld.DR
Assessee by	:	H.P.Mahajani & Prasad Bapat,Ld.AR's

सुनवाई की तारीख / Date of Hearing	:	05/04/2018
घोषणा की तारीख / Date of Pronouncement	:	11/04/2018



ITA No.6659/Mum/2014 & Co.No.96/Mum/2016
Mahindra UGINE Steel Co.Ltd
Assessment Year 2009-10

आदेश / ORDER

Per Bench

1.1 The captioned appeal by revenue for Assessment Year [AY] 2009-10 contest the order of the Ld. Commissioner of Income-Tax (Appeals)-12 [CIT(A)], Mumbai, *Appeal No.CIT(A)-12/ACIT.6(3)/IT-136/2011-12* dated 04/08/2014. The assessment for impugned AY was framed by *Ld. Assistant Commissioner of Income Tax Circle -6(3), Mumbai [AO] u/s 143(3) of the Income Tax Act, 1961* on 30/12/2011 wherein the loss has been assessed at Rs.22.78 Crores after certain disallowances as against returned loss of Rs.25.57 Crores *e-filed* by the assessee on 29/09/2009. The assessee is in cross objection against the same.

1.2 The erstwhile assessee namely *Mahindra UGINE Steel Company Limited* has merged with *Mahindra CIE Automotive Limited* with effect from 01/10/2013 in terms of the order of *Hon'ble Bombay High Court* dated 31/10/2014, a copy of which has been placed on record. Accordingly, the revenue has filed revised *Form No.36* reflecting the aforesaid change and the same is in order.

1.3 The registry has noted that assessee's cross objection has been filed with a delay of 50 days and the assessee has sought condonation of delay on the strength of an affidavit dated 21/06/2016 executed by *Managing Director* of the assessee company. Upon perusal of the same, we find that delay has been attributed to change in management / Tax consultant in view of the fact that the erstwhile assessee company merged with the new



entity which involved huge migration from and integration of data, records, manpower and operations of the two companies. Finding the same to be a plausible one and keeping in view the principle of natural justice, we condone the delay and proceed to dispose-off the same.

1.4 The effective grounds raised in revenue's appeal reads as under:-

1. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the A.O to verify and to take remedial action, as regards interest component attributable to capital work-in-progress in view of the proviso to section 36(i)(iii), without appreciating the fact that the A.O.is not empowered under the Act to revisit the assessment once completed u/s.143(3).*
2. *Whether on the facts and circumstances of case and in law, the Ld. CIT(A) erred in giving direction to A.O to examine applicability of the proviso to section 36(1)(iii) after giving opportunity of being heard to the assessee, without appreciating the fact that the Ld. CIT(A) is empowered by virtue of section 251(1)(a) of the I.T. Act to confirm, reduce, enhance or annul the assessment but has no power to set aside an issue not arising from the assessment order to the A.O for verification.*
3. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the A.O to verify and to take remedial action as regards interest component attributable to interest-free loans and advances given by the assessee, without appreciating the fact that the A.O. is not empowered under the Act to revisit the assessment once completed u/s 143(3).*
4. *Whether on the facts and circumstances of case and in law, the Ld. CIT(A) erred in giving direction to A.O to verify whether any interest paid is attributable to interest-free loans and advances given by assessee, after giving opportunity of being heard to the assessee, without appreciating the fact that the Ld. CIT(A) is empowered by virtue of section 251(1)(a) of the I.T. Act, to confirm, reduce, enhance or annual the assessment but has not power to set aside an issue not arising from the assessment order to the A.O for verification.*
5. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the A.O to verify and to disallow, provision for diminution in value of assets as the same not being allowable under any provision of the Act and also the same being directly relatable expenditure u/s 14A, without appreciating the fact that the A.O. is not empowered under the Act to revisit the assessment once completed u/s 143(3).*
6. *Whether on the facts and circumstances of case and in law, the Ld. CIT(A) erred in giving direction to A.O to verify whether the provision for diminution in value of assets is debited in the Profit and Loss Account, after giving opportunity of being heard to the assessee, without appreciating the fact that the Ld. CIT(A) is empowered by virtue of section 251(1)(a) of the I.T. Act, to confirm, reduce, enhance or annual the assessment but has no power to set aside on issue not arising from the assessment order to the A.O. for verification.*
7. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the A.O making adjustments u/s 145A to the opening*



ITA No.6659/Mum/2014 &Co.No.96/Mum/2016
Mahindra UGINE Steel Co.Ltd
Assessment Year 2009-10

and closing stocks of this year i.e. A.Y.2009-10 alone, without making similar adjustments in the opening and closing stocks of the earlier years, without appreciating the fact that such an adjustment will result in discordant results.

8. *The appellant prays that the order of the Ld.CIT(A) on the above grounds be confirmed the order of the AO.*

1.5 The effective grounds raised in assessee's cross-objection reads as under:-

1. *On the facts and in the circumstances of the case and in law, the Respondent objects that the Learned CIT(A) erred in upholding the disallowance of interest u/s 36(1)(iii) of the Income-tax Act,1961 ('the Act'), at Rs.1,51,23,277, rejecting the contentions of the Respondent.*
2. *On the facts and in the circumstances of the case and in law, the Respondent Objects that the learned CIT(A) also erred in directing the Assessing Officer to examine whether any interest needs to be attributed to Capital Work-in-Progress and interest free loans, for the purpose of disallowance u/s 36(1)(iii) of the Act, without appreciating the fact that in any event the learned CIT(A) failed to give the appellant an opportunity of being heard in this regard and that the learned CIT(A) had no power to set aside an issue to the AO.*
3. *Without prejudice to the above, on the facts and in the circumstances of the case and in law there should be no duplication of disallowance u/s 14A and 36(1)(iii) in respect of the same investment.*
4. *On the facts and in the circumstances of the case and in law, the Respondent objects that the learned CIT(A) erred in confirming the disallowance of Rs.54,14,362/- u/s 14A r.w. Rule 8D of the Act as having been incurred in relation to exempt income.*
5. *On the facts and in the circumstances of the case and in law, the Respondent object that the learned CIT(A) erred in not directing the AO to reduce the amount of Rs.35 lacs being provision for diminution in value of investments while calculating disallowance u/s 14A of the Act.*
6. *On the facts and in the circumstances of the case and in law, the Respondent objects that the learned CIT(A) also erred in directing the AO to verify the Profit and Loss Account and disallow the expenditure in respect of provision for diminution in the value of investments without appreciating the fact that learned CIT(A) had not power to set aside an issue not arising from an assessment order to the AO for verification.*
7. *On the facts and in the circumstances of the case and in law, the Respondent objects that the learned CIT(A) erred in not directing the AO to recomputed the addition u/s 145A without appreciating the fact that section 145A was tax/revenue neutral.*

The assessee, vide letter dated 20/02/2018 has pleaded for admission of additional ground of cross-objection which reads as under:-



ITA No.6659/Mum/2014 & Co.No.96/Mum/2016
Mahindra Ugine Steel Co.Ltd
Assessment Year 2009-10

On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the disallowance of Rs.59,87,867/- towards payment for JCMM School u/s 40A(9).

The assessee has submitted that the said ground could not be raised due to inadvertent omission. We find that this ground was contested by the assessee before Ld. first appellate authority also and therefore, accepting the submission of the assessee, the same is admitted as Ground No.8.

In the above backdrop, we proceed to dispose-off the appeal as well as cross objections in succeeding paragraphs.

2.1 Facts in brief are that the assessee being *resident corporate assessee* engaged in *manufacturing of Tools, Alloy Steel, Special Steel & pressing of metal sheets* was assessed u/s 143(3) on 30/12/2011 wherein it has been saddled with following disallowances:-

No.	Nature of Disallowance	Amount (Rs.)
1.	Interest disallowance u/s 36(1)(iii)	1,51,23,277/-
2.	Disallowance u/s 14A	54,14,362/-
3.	Disallowance u/s 145A	14,53,332/-
4.	Disallowance u/s 40A(9)	59,87,867/-
	Total	2,79,78,838/-

All the above disallowances as stated above are the subject matter of this appeal.

2.2 During assessment proceedings, it was noted that the assessee claimed interest expenditure of Rs.36.05 Crores whereas it was having investment of Rs.14.09 crores and therefore, interest disallowance u/s 36(1)(iii) was called for against the aforesaid investment. The assessee submitted that the interest expenditure was mainly against working capital



ITA No.6659/Mum/2014 & Co.No.96/Mum/2016
Mahindra UGINE Steel Co.Ltd
Assessment Year 2009-10

loan and no specific loan was obtained for capital expenditure and therefore, fully allowable to the assessee. However, not convinced, Ld. AO computed a proportionate interest disallowance u/s 36(1)(iii) against investments vis-à-vis total loan fund of the assessee and worked out the disallowance at Rs.1,51,23,277/-.

2.3 Further, it was noted that the assessee earned exempt dividend income of Rs.12,355/- which called for disallowance u/s 14A. The assessee contended that no expense was incurred to earn the exempt income and therefore, no disallowance was made / called for. However, not convinced, Ld. AO applying Rule 8D worked out aggregate disallowance of Rs.54,14,362/- which comprised of interest disallowance u/r 8D(2)(ii) for Rs.50,51,612/- and expense disallowance u/r 8D(2)(iii) for Rs.3,62,750/-.

2.4 Upon perusal of *Tax Audit Report*, it was observed that the assessee had unutilized *Cenvat / Modvat credit balance* of Rs.1,22,04,676/- at year-end which, in the opinion of Ld. AO, was required to be added back to the figures of closing stock in terms of the provisions of Section 145A. The assessee contended that the company followed *exclusive method* of accounting to account excise duty and accordingly, Cenvat Credit availed was adjusted in material consumption or cost of fixed assets / stores & spares and balance unutilized credit was carried forward as loans and advances for similar adjustment in future period. However, not convinced, Ld. AO applying the ratio of judgment of Hon'ble Bombay High Court rendered in *The Mahalaxmi Glass Works* worked out the net disallowance



ITA No.6659/Mum/2014 & Co.No.96/Mum/2016
Mahindra UGINE Steel Co.Ltd
Assessment Year 2009-10

of 14,53,332/- which was arrived at after adjusting the Cenvat credit on opening stock from Cenvat Credit on closing stock.

2.5 The last disallowance of Rs.59,87,867/- was made u/s 40A(9). This payment represented reimbursement of payment to an educational society towards a school namely *J.C.Mahindra School*, where mainly the children of assessee's employees were studying. The same, in the opinion of Ld. AO, was not incurred for the business purposes of the assessee and therefore, not allowable in terms of Section 40A(9).

3. Aggrieved, the assessee contested the same with partial success before Ld. CIT(A) vide impugned order dated 04/08/2014 where disallowance u/s 36(1)(iii), 14A & 40A(9) has been confirmed whereas disallowance u/s 145A has been remitted back to the file of Ld. AO with certain directions. From the perusal of appellate order, we find that, Ld. CIT(A) while confirming the aforesaid disallowances u/s 36(1)(iii) & 14A, *in the process*, has issued several other directions to Ld. AO to carry out examination / verification of some more aspects which is evident from *paras-3.3.2 & 4.3.4* of the appellate order. For the sake of ready reference, the same are extracted below:-

3.3.2 Notwithstanding the fact that the ground of appeal raised by the appellant on the issue of disallowance of interest u/s.36(1)(iii) stands rejected as discussed heretofore, another issue that arises here is that as to whether the A.O. considered the attributability of interest component also to capital work-in-progress as appearing in the Balance Sheet and applicability of the proviso to section 36(1)(iii) of the Act after necessary verification and providing opportunity of being heard to the appellant and take necessary remedial action as per law, if found deemed fit. Along with this issue, the A.O. is also directed to examine as to whether there are interest-free loans and advances (as per Balance Sheet as at 31.03.2009, a sum of Rs.35.27 crore is appearing on account of "loans & advances" and as per Profit & Loss Account for the year, interest income is shown at



ITA No.6659/Mum/2014 &Co.No.96/Mum/2016
Mahindra UGINE Steel Co.Ltd
Assessment Year 2009-10

Rs.1.14 crore) and if so, the same can also be attributed to interest claim made by the appellant.

.....

.....

- 4.3.4 *Notwithstanding the dismissal of appellant's ground of appeal against the disallowance u/s.14A of the Act, attention of the A.O. is brought to the appellant's claim of reducing the value of its investments by a sum of Rs.35 lakh as appearing in the Balance Sheet. However, whether the same claim of reduction of its investments as 'provision for diminution in value of assets' has also been made by the appellant in its Profit & Loss Account or not, it is not visibly clear from the Profit & Loss Account owing to broad groupings. The A.O.is directed to go through the groupings and sub-groupings of all the expenses claimed in the Profit & Loss Account and if it is found that the appellant has made such claim even in its Profit & Loss Account for the year, he should disallow the same on two counts, viz. (1) being provision for diminution in value of assets which is not admissible under any provision of the Statute; and (2) being directly relatable expenditure u/s.14A in accordance with clause(i) of sub-rule (2) of Rule 8D. The A.O. is also advised to go through a judgment of the Hon'ble Mumbai ITAT in the case of one of the subsidiaries of the appellant company viz. Mahindra Intertrade Limited reported in [2012] 72 DTR 138 wherein even the penalty levied on the disallowance of 'provision for diminution in value of assets' has also been confirmed.*

Aggrieved by the aforesaid directions of the Ld. CIT(A), the revenue is in further appeal before us whereas the assessee, in its cross-objections, has, *inter-alia* assailed the confirmation of disallowances by Ld. CIT(A).

4. The Ld. Authorized Representative [AR], taking us through the documents placed in the *paper-book*, contested the additions sustained by Ld. first appellate authority whereas the Ld. Departmental Representative [DR] pointed out that the Ld. CIT(A) erred in giving further directions to Ld. AO which he was not empowered to do so in terms of Section 251(1)(a) of the Act.

5. We have carefully heard the rival contentions and perused relevant material on record including documents placed in the *paper-book*. We find



ITA No.6659/Mum/2014 & Co.No.96/Mum/2016
Mahindra Ugine Steel Co.Ltd
Assessment Year 2009-10

all the issues primarily to be factual one and therefore, proceed to deal with the same by adjudicating assessee's cross objections at the outset.

6.1 We find that the issues of disallowance u/s 36(1)(iii) & 14A to be interconnected one since the additions under both the sections have been made by Ld. AO with reference to investments held by the assessee during the impugned AY. At the outset, it is observed that disallowance under both these sections have resulted into double disallowance since both disallowances have been computed with reference to investments held by the assessee. Hence, we proceed to deal with the same concurrently.

6.2 Upon perusal of "*Schedule 'F-Investments'*" of financial statements as placed before us, we find that no fresh investment has been made by the assessee in the impugned AY except investment of Rs.14 crores in an entity namely *Wardha Power Company Private Limited as Share Application Money under Share Subscription Agreement*. The explanation of the same has been provided in *Note No.2 of Schedule 'L' Notes to Accounts* which reads as under:-

The Company has entered into a Share Subscription Agreement with Wardha Power Company Private Limited on 29th February, 2008 to invest Rs. 22.75 crores by way of subscription to 6,167,778 class A Equity shares of Rs 10 each and 7,832,222 Class A 0.01% Redeemable Preference Shares of Rs. 10 each and 8,750,000 Class C 0.01% Redeemable Preference Shares of Rs 10 each. The Company will be entitled to 35 MW of power generated from the Group Captive Power Plant as per the power delivery agreement dated 29th February, 2008. The Company has paid share application money of Rs. 14 crores for Class A Equity and Redeemable Preference Shares.



ITA No.6659/Mum/2014 & Co.No.96/Mum/2016
Mahindra Ugine Steel Co.Ltd
Assessment Year 2009-10

A perusal of the *Power Delivery Agreement & Share Subscription Agreement* both dated 29/02/2008 as placed on record corroborate / substantiate the above facts. The Ld. AR has contended that the investment represent obligation of the assessee to apply for shares to the said entity, which in turn, would entitle the assessee to source 35MW of power generated by the said entity. Thus the investment in question was made in the course of and for furtherance of business interest of the assessee since the assessee was in continuous requirement of power supply keeping in view its nature of business. Upon due consideration of the same, we find strength in the argument of Ld. AR since we find that the assessee was engaged in production of various steel items which was capital intensive and therefore, in continuous need of uninterrupted power supply. The power supply was of utmost importance to carry out day to day activities of the manufacturing and the aforesaid agreement entitled the assessee to obtain 35KWH power supply at average rate of Rs.2.75 per unit. Therefore, the said agreement was beneficial for the business interest of the assessee and the investment in the said entity was to finance the power project and hence, part and parcel of the same transaction. Further, the assessee was under an obligation to make the aforesaid investment before becoming entitled to obtain power in terms of the agreement. Hence, on factual matrix, proportionate disallowance u/s 36(i)(iii) as made by Ld. AO was not justified. Our view is fully supported by the analogy of the



ITA No.6659/Mum/2014 & Co.No.96/Mum/2016
Mahindra Ugine Steel Co.Ltd
Assessment Year 2009-10

decision of Hon'ble Apex Court rendered in *S.A.Builders Vs. CIT [2006 288 ITR 1]* where Hon'ble Court has observed as under:-

34. we agree with the view taken by the Delhi High Court in *CIT Vs. Dalima Cement (Bharat) Ltd. (2002) 254 ITR 377* that once it is established that there was nexus between the expenditure and the purpose of the business (which need not necessarily be the business of the assessee itself), the Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximize its profit. The income tax authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act. The authorities must not look at the matter from their own view point but that of a prudent businessman. As already stated above, we have to see the transfer of the borrowed funds to a sister concern from the point of view of commercial expediency and not from the point of view whether the amount was advanced for earning profits.
35. We wish to make it clear that it is not our opinion that in every case interest on borrowed loan has to be allowed if the assessee advances it to a sister concern. It all depends on the facts and circumstances of the respective case. For instance, if the Directors of the sister concern utilize the amount advanced to it by the assessee for their personal benefit, obviously it cannot be said that such money was advanced as a measure of commercial expediency. However, money can be said to be advanced to a sister concern for commercial expediency in many other circumstances (which need not be enumerated here). However, where it is obvious that a holding company has a deep interest in its subsidiary, and hence if the holding company advances borrowed money to a subsidiary and the same is used by the subsidiary for some business purposes, the assessee would, in our opinion, ordinarily be entitled to deduction of interest on its borrowed loans.

Hence, on factual matrix, we delete the impugned additions made by Ld. AO u/s 36(1)(iii). Ground No. 1 of assessee's cross-objection stands allowed.

6.3 Now, coming to interest disallowance u/s 14A read with Rule 8D(2)(ii) *qua* the above investments, we find the same also to be unsustainable since the investment was only in the shape of *Share Application Money*



ITA No.6659/Mum/2014 & Co.No.96/Mum/2016
Mahindra Ugine Steel Co.Ltd
Assessment Year 2009-10

pending Allotment of actual shares and these investments *per-se* were unable to earn any exempt dividend income since dividend is payable only to a shareholder and not to a share applicant. The said investment, therefore, in our opinion, was incapable of yielding any exempt dividend income and therefore, could not be taken into account for the purpose of computing interest disallowance u/s 14A. We have already noted that it was the only fresh investment made by the assessee during impugned AY. Therefore, upon consideration of aforesaid facts, the interest addition u/r 8D(2)(ii) could not be sustained and therefore, the same is deleted.

6.4 So far disallowance for expenses u/s 14A *read with* Rule 8D(2)(iii) is concerned, we find that the assessee has earned nominal exempt income of Rs.12,355/- against which it has been saddled with disallowance u/r 8D(2)(iii) for Rs. 3.62 Lacs, which was not justified. We find that in catena of various judicial pronouncements of Hon'ble High Courts, it has been held that disallowance u/s 14A could not exceed the exempt income earned by the assessee. To cite a few:-

- (i) Hon'ble Delhi High Court in Cheminvest Ltd. v. CIT [2015 378 ITR 33]
- (ii) Hon'ble Delhi High Court in Joint Investments (P.) Ltd. v. CIT [2015 372 ITR 694]
- (iii) Hon'ble Delhi High Court in CIT v. Holcim India (P.) Ltd. [2015 57 Taxmann.com 28]
- (iv) Hon'ble Delhi High Court in *PCIT Vs. IL&FS Energy Development Co. Ltd.* [84 Taxmann.com 186 dated 16/08/2017]
- (v) Hon'ble Punjab & Haryana High Court in PCIT Vs Empire Package Private Limited [2017 81 Taxmann.com 108]



ITA No.6659/Mum/2014 & Co.No.96/Mum/2016
Mahindra UGINE Steel Co.Ltd
Assessment Year 2009-10

Therefore, without delving much deeper into the issue, we restrict the impugned expenses disallowance u/s 14A to Rs.12,355/-, being exempt income earned by the assessee. Ground No. 4 of assessee's cross objection stands partly allowed. Accordingly, Ground No. 3, 5 & 6 of assessee's cross objection becomes *infructuous*.

7. We find that the next issue of disallowance u/s 145A on account of unutilized closing balance lying as *Cenvat / Modvat Credit* stood squarely covered in assessee's favor by the judgment of Hon'ble Bombay High Court rendered in *CIT Vs Diamond Dye Chem Limited [2017 88 Taxmann.Com 499]* where the Hon'ble Court has held as under:-

1. *The present appeal pertains to Assessment Year 2008-09.*
2. *The present appeal is filed on account of deleting the addition of Rs.1,14,11,300/- on account of un-utilized Cenvat credit to closing stock.*
3. *Mr. Malhotra, the learned Counsel for the appellant submits that the un-utilized Cenvat credit pertain to purchase and sale of goods and inventory and not to any capital goods and services as per the provisions of Section 145A of the Income Tax Act. The Tribunal erred in deleting the said addition. The Assessing Officer had considered the reply of the assessee and thereafter had added the amount of Rs.1,14,11,300/- to the closing stock. The same was rightly done by the Assessing Officer. The Tribunal, relying on the order passed by this Court in an earlier assessment year, has passed the order without actually considering the factual matrix involved in the present case. The Assessing Officer had considered the deficiencies in the order of the earlier assessment year and thereafter has passed the order. The assessee had un-utilized the said Cenvat credit meaning thereby that excess amount was paid, the same was rightly added to the closing stock.*
4. *The learned Counsel for the respondent submits that the respondent follows exclusive method of accounting, in which the amount of Cenvat credit is not added to the sales and purchases but are shown separately. Whether exclusive method of accounting is adopted or inclusive method of accounting is adopted, the net result would be the same and there is no difference in profit. The learned Counsel for the respondent relied upon the judgment in the case of CIT v. Indo Nippon Chemicals Co. Ltd. [2003] 261 ITR 275/130 Taxman 179 (SC).*
5. *We have considered the submissions. It is not disputed that the assessee was liable to excise duty. The assessee got credit in the excise duty already paid on the raw*



ITA No.6659/Mum/2014 & Co.No.96/Mum/2016
Mahindra Ugine Steel Co.Ltd
Assessment Year 2009-10

materials purchased by it and utilized in the manufacturing of excisable goods. The assessee was adopting the exclusive method i.e. valuing the raw-materials on the purchase price minus (-) the Modvat credit. The same would be permissible. The Apex Court in the case of Indo Nippon Chemicals Co. Ltd. (supra) while affirming the order of High Court, has observed that the income was not generated to the extent of Modvat credit or unconsumed raw-material. Merely because the Modvat credit was irreversible credit offered to manufacturers upon purchase of duty paid raw-materials, that would not amount to income which was liable to be taxed under the Act. It is also held that whichever method of accounting is adopted, the net result would be the same.

6. *Considering the above, the amount of the un-utilized Cenvat credit could not have been directly added to the closing stock. The Tribunal has not committed any error.*

We find that the assessee is consistently following *exclusive method* to account for excise duty in the books of accounts. We also concur with the view that whatever method of accounting i.e. *exclusive method or inclusive method* is followed by the assessee, the same would be tax / revenue neutral in nature since the adjustment of stock in a particular period shall result into corresponding variation in the subsequent year and further, the credit balance lying as *Cenvat / Modvat Credit* was adjustable in subsequent year against excise duty liability arising in subsequent period. Therefore, respectfully following aforesaid binding judicial precedent, we delete the impugned additions. Accordingly, Ground No. 7 of assessee's cross objection stands allowed whereas Ground No. 7 of revenue's appeal becomes *infructuous*.

8. The last addition suffered by assessee u/s 40A(9) pertains to school expenses reimbursed by assessee to an educational society. The Ld. AR has drew our attention that the issue was recurring in nature and Ld. CIT(A) in AY 2005-06 & 2006-07 allowed the claim of the assessee which has been accepted by the revenue and therefore, the same was allowable in the



ITA No.6659/Mum/2014 & Co.No.96/Mum/2016
Mahindra Ugine Steel Co.Ltd
Assessment Year 2009-10

impugned AY also. Upon perusal of impugned order, we find that Ld. CIT(A) has rejected the claim of the assessee since the same did not fulfill the prescribed conditions of Section 40A(9). We also find that the nature of payment made by the assessee does not come within the purview of Section 40A(9) / (10). However, the Ld. AR has submitted that the same being incurred for the welfare of employee's children, which in turn, helps in smooth running of assessee's business, the same has been incurred for the business purposes of the assessee and hence, allowable u/s 37(1). Upon perusal, we find that there is not enough material on record to substantiate this fact. *Prima facie*, the school is situated at *Khopoli* where the manufacturing plant of the assessee is situated and therefore, we find some strength in the argument of Ld. AR. Hence, on factual matrix, we deem it fit to restore the matter back to the file of Ld. AO for considering the assessee's claim u/s 37(1) with a direction to the assessee to demonstrate that the said expenditure has mainly been incurred for the children of the assessee's employee and the same has resulted into smooth & efficient running of assessee's business and the conditions as envisaged by Section 37(1) are fulfilled. Ground No. 8 of assessee's cross objections stands allowed for statistical purposes.

Revenue's Appeal-ITA No. 6659/Mum/2014

9. In Ground Nos. 5 & 6, the revenue is aggrieved by certain directions given by Ld. CIT(A) *qua* disallowance u/s 14A with respect to diminution in value of investments. We find that the Ld. CIT(A) has not set aside the



ITA No.6659/Mum/2014 & Co.No.96/Mum/2016
Mahindra Ugine Steel Co.Ltd
Assessment Year 2009-10

issue altogether for reconsideration by Ld. AO rather the Ld. CIT(A), while confirming the stand of Ld. AO, directed him to carry out some more verifications *qua* diminution in the value of investments. Therefore, the revenue's grievances on this account are unwarranted for since the same, *in fact*, would result into enhancement of the disallowance, if found tenable. Therefore, the grounds of revenue stands dismissed. At the same time, upon perusal of "*Schedule 'F-Investments'*", we find that the provision for diminution in the value of investment remains unchanged during impugned AY at Rs.0.35 Crores and the Ld. AR also has made a statement that no fresh provision has been debited to the Profit & Loss Account in the impugned AY. Further, we had already dealt with disallowance u/s 14A on merits in the preceding paragraphs. Therefore, the directions of Ld. CIT(A) becomes *infructuous* and therefore, *expunged*.

10. Similarly, in Ground Numbers 1 to 4, the revenue is aggrieved by certain directions of Ld. CIT(A) *qua* disallowance u/s 36(1)(iii). Upon perusal of the directions of Ld. CIT(A) as extracted by us in *para-3* above, we find that Ld. AO has been directed to examine interest disallowance u/s 36(1)(iii) against capital work-in-progress, disallowance in terms of proviso to Section 36(1)(iii) and interest free loans and advances given by the assessee. Although Ld. AR has contended that the interest portion against Capital work-in-progress has already been capitalized, the factual matrix on record is not clear and require further examination. Therefore, the directions given by Ld. CIT(A) in this regard are sustained. The Ld. AO is directed to verify



ITA No.6659/Mum/2014 & Co.No.96/Mum/2016
Mahindra Ugin Steel Co.Ltd
Assessment Year 2009-10

the factual aspect and re-adjudicate the same after considering assessee's submission. The assessee is directed to substantiate the same. Resultantly, Ground Numbers 1 to 4 of revenue's appeal and Ground No. 2 of assessee's appeal stands dismissed.

Conclusion

11. The appeal as well cross objection stand partly allowed in terms of our above order.

Order pronounced in the open court on 11th April, 2018.

Sd/-

(Saktijit Dey)

न्यायिक सदस्य / Judicial Member

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 11.04.2018

Sr.PS:- Thirumalesh

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**