

आयकर अपीलीय अधिकरण, न्यायपीठ – “A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
(समक्ष) श्री ए. टी. वर्की, न्यायीक सदस्य एवं डॉ. अर्जुन लाल सैनी, लेखा सदस्य)
[Before Shri A. T. Varkey, JM & Dr. A. L. Saini, AM]

I.T.A. No. 1069/Kol/2013
Assessment Year: 2009-10
&
I.T.A. No. 1004/Kol/2014
Assessment Year: 2010-11

Essel Mining & Industries Ltd. (PAN: AAACE6607L)	Vs.	Deputy Commissioner of Income-tax, Circle-5, Kolkata.
Appellant		Respondent

&

I.T.A. No. 2064/Kol/2013
Assessment Year: 2009-10
&
I.T.A. No. 1294/Kol/2014
Assessment Year: 2010-11

Deputy Commissioner of Income-tax, Circle-5, Kolkata	Vs.	Essel Mining & Industries Ltd.
Appellant		Respondent

Date of Hearing	16.07.2018
Date of Pronouncement	21.08.2018
For the Assessee	Shri D. S. Damle, FCA
For the Revenue	Shri P. K. Srihari, CIT, DR

ORDER

Per Shri A.T.Varkey, JM

These are cross appeals preferred by the assessee and revenue against the order of Ld. CIT(A)-6, Kolkata dated 18.02.2013 (for AY 2009-10) and dated 21.03.2014 (for AY 2010-11).

2. First we take up assessee's appeal for AY 2009-10 in ITA No. 1069/Kol/2013. Ground nos. 1 to 3 are directed against the action of the Ld. CIT(A) confirming the disallowance aggregating to Rs.19,81,76,000/- u/s. 14A of the Income-tax Act, 1961 (hereinafter referred to as the "Act") read with Rule 8D of the Income-tax Rules, 1962 (hereinafter referred to as the "Rules").

3. Briefly stated facts of the case are that the assessee had derived dividend income of Rs.14,48,18,000/- during the relevant year which was claimed exempt u/s. 10(34) of the Act. In the return of income the assessee had suo moto computed and disallowed a sum of Rs.7,24,404/- u/s. 14A of the Act as expenses incurred in relation to earning of exempt income. The AO by applying Rule 8D of the Rules made disallowance of Rs.23,44,12,765/- in the following manner:

Rule 8D(2)(i)	Direct expenses	Nil
Rule 8D(2)(ii)	Interest	Rs.21,36,61,350/-
Rule 8D(2)(iii)	Administrative expenses	<u>Rs. 2,07,51,415/-</u>
		Rs.23,44,12,765/-

Aggrieved by the disallowance computed by the AO, the assessee preferred an appeal before the Ld. CIT(A), who in principle confirmed the addition made by the AO u/s. 14A of the Act to the total income but rectified the errors which had crept into the computation of disallowance in terms of Rule 8D of the Rules made by the AO and hence, confirmed the addition u/s. 14A of the Act to the extent of Rs.19,81,76,000/- which, inter-alia, included a sum of Rs.17,99,25,000/- under Rule 8D(2)(ii) and Rs.182.51 lacs under Rule 8D(2)(iii) of the Rules. Aggrieved against the order of Ld. CIT(A), assessee is before us.

4. We have heard rival submissions and gone through the facts and circumstances of the case. With regard to the disallowance of proportionate interest of Rs.17,99,25,000/- confirmed by the Ld. CIT(A) u/s. 14A read with Rule 8D(2)(ii) of the Rules the Ld. AR of the assessee contended that investments were made by the assessee company out of its own funds which was sufficient to cover the cost of investments and that no interest bearing funds were utilized to make investments which yielded the exempt income.

5. Our attention was drawn to the decision of this Tribunal in assessee's own case for AY 2008-09 in ITA No. 786/Kol/2013 dated 02.05.2018 wherein on similar facts and circumstances it was held as under:

"4. We have heard the rival submissions and perused the materials available on record. We find from the perusal of the balance sheet of the assessee that the assessee is having sufficient own funds at its disposal for the purpose of making investments and accordingly it could be held that no borrowed funds were utilized for making investments. We find that this factual issue had already been considered in assessee's own case by this tribunal in ITA No. 589/Kol/2011 dated 20.5.2016 for the Asst Year 2007-08 had categorically held that all the investments were made only out of own funds of the assessee and not out of borrowed funds. Hence there cannot be any disallowance of interest under second limb of Rule 8D(2) of the Rules. We find that during the year under appeal, the same old investments were brought forward from earlier years. Moreover, the profits of the assessee for the year also has increased during this year and investments had decreased during the year. We find that this issue is also covered by the decision of the Hon'ble Jurisdictional High Court in the case of Pr.CIT vs Rasoi Ltd in G.A.No. 633 of 2016 . The Jurisdictional High Court after considering the judgement of the co-ordinate bench in Dhanuka & Sons reported in 339 ITR 319 (Cal) had observed as under:-

"It appears for both the assessment years the Appellate Authority held that there was no finding of direct nexus between the borrowed fund and investment in shares. The assessee's own funds were far in excess of the average total investments. There could not be any presumption of utilization of borrowed funds. Hence disallowance under section 14A read with Rule 8D(2)(ii) was deleted while disallowance of indirect expenses of Rs 1,82,346/- by application of Rule 8D(2)(iii) upheld with the direction to allow relief of the sum already disallowed by the appellant itself.

On appeal preferred by the Revenue the Tribunal held as follows:-

'We have heard rival submissions and gone through facts and circumstances of the case. We find that now the revenue could not establish that the investments made in shares giving exempted income is out of borrowed funds on which interest is paid by assessee. There is no nexus whatsoever. On specific query Ld. Sr.DR could not controvert that the assessee has made investment in shares giving exempt income out of own funds which is at about 2429 lacs and investment is at Rs 365 lacs only. Once this fact has not been denied and CIT(A) has categorically observed that the assessee has made investment in shares out of its own funds no disallowance can be attributed qua the interest paid on borrowed funds for investing the same in interest free funds. In view of the above, we confirm the order of CIT(A) on the common issue.....'

We find that this case has yielded concurrent finding of facts regarding expenditure incurred by the assessee for the purpose of earning the exempt income, by the Appellate Authority and the Tribunal. As such there is no

scope for interference with such concurrent findings of facts. We, therefore, are not satisfied that the case involves any substantial question of law. The application and appeal are thus dismissed.”

We find that the own funds of the assessee for various asst years together with the value of investments are as under:-

ASSESSMENT YEARS

(Rupees in crores)

<i>Particulars</i>	<i>05-06</i>	<i>06-07</i>	<i>07-08</i>	<i>08-09</i>
<i>Share Capital</i>	<i>0.49</i>	<i>0.49</i>	<i>0.49</i>	<i>0.49</i>
<i>General Reserves</i>	<i>544.30</i>	<i>1105.14</i>	<i>1165.14</i>	<i>1249.15</i>
<i>Profit and Loss A/c</i>	<i>32.53</i>	<i>45.77</i>	<i>568.18</i>	<i>1319.55</i>
<i>Total Own Funds</i>	<i>577.32</i>	<i>1150.91</i>	<i>1733.81</i>	<i>2569.19</i>
<i>Investments</i>	<i>321.02</i>	<i>352.15</i>	<i>295.73</i>	<i>283.46</i>
<i>Profit for the year</i>	<i>572.24</i>	<i>771.52</i>	<i>896.54</i>	<i>1256.55</i>
<i>Increase / (Decrease) in Investments</i>	<i>-</i>	<i>31.13</i>	<i>(56.42)</i>	<i>(12.27)</i>

Hence the ratio laid down by the Hon'ble Jurisdictional High Court in Rasoi Ltd supra would squarely apply to the facts before us. Respectfully following the same, we hold that no disallowance towards Interest under second limb of Rule 8D(2) of the Rules is warranted in the facts of the instant case.

4.2. With regard to disallowance under Rule 8D(2)(iii) of the Rules, we hold that only investments yielding exempt income should be considered for the purpose of working out disallowance thereon, in consonance with the decision rendered by this tribunal in the case of REI Agro Ltd reported in 144 ITD 141. Accordingly we direct the ld AO to recompute the disallowance under the third limb of Rule 8D(2) of the Rules accordingly. While doing so, he should also reduce the disallowance already made by the assessee in the return of income.”

6. From the audited accounts we note that the position of the assessee's own funds vis-à-vis in its investment in shares and units considered for disallowance u/s. 14A of the Act by the Ld. CIT(A) were as under:-

<u>Particulars</u>	<u>31.03.2009 (Rs.in crores)</u>	<u>31.03.2008 (Rs. in crores)</u>
Share capital	299.69	0.49
Reserves	1349.15	1249.15
P&L A/c. balance	2176.16	1319.55
Total own funds	3825.00	2569.19
Investment in shares and securities	446.60	283.46

From the aforesaid chart we note that the assessee in fact had own funds to the tune of Rs.3825 cr. and investment in shares and securities were only Rs.446.60 cr. From these figures we find that the assessee had at its disposal sufficient funds to make the investment which yielded exempt income. Thus, it is noted that the facts of the case are analogous to the facts involved in the earlier AY 2008-09.

7. The Ld. DR appearing on behalf of the Revenue could not point out any change in law or facts concerning the issue regarding disallowance u/s. 14A of the Act. At the time of hearing, the Ld. DR, however, made an alternative argument that the assessee besides investing in shares and units, yielding dividend income, investment were made in debentures, bonds and granted interest free loans to subsidiaries which totalls far more than the assessee's own funds in the form of capital and reserves as reflected in the audited accounts. The Ld. DR, therefore, contended that it was a clear case that the assessee's borrowed funds were infact utilized for non-business purposes and, therefore, disallowance out of interest paid made by the AO and confirmed by the Ld. CIT(A) should be upheld.

8. We however, are not persuaded to agree with the Ld. DR's contention before us relating to disallowance u/s. 14A of the Act which can only be made if the expenditure is incurred in relation to earning of any tax free income. Admittedly, investments in bonds and debentures and advance to subsidiaries could not have produced tax free income and for that reason sec. 14A of the Act was not applicable to it. Furthermore, even the lower authorities have not made out any case that the borrowed funds were relatable to investment in bonds and debentures and advance to subsidiary and that the interest paid thereon was for non-business purposes and hence, disallowable u/s. 36(1)(iii) of the Act. We, therefore, do not deem it fit or appropriate to entertain this argument at this stage as it would tantamount to enhancing the scope of appeal whereas the issue before us concerns only disallowance u/s. 14A of the Act. In view of the above, respectfully following the order of the Tribunal (supra) for AY 2008-09, we direct the AO to delete the disallowance of proportionate interest made u/s. 14A of the Act read with Rule 8D(2)(ii) of the Rules.

9. Next coming to the disallowance of Rs.182.51 lacs made under Rule 8D(2)(iii) of the Rules. We find that this Tribunal in assessee's own case for AY 2008-09 following the

decision rendered by the Tribunal in the case of REI Agro Ltd. reported in 143 ITD 141 held that only dividend bearing investment in shares are to be considered for making disallowance u/s. 14A of the Act. Following the same, we remand this issue back to the file of the AO with a direction to consider only investment in shares and units held on the opening and closing date of the previous year which yielded dividend income for the purpose of computing the disallowance u/s. 14A of the Act read with Rule 8D(2)(iii) of the Rules. Needless to say, assessee should be given opportunity of hearing. Therefore, ground nos. 1 to 3 are partly allowed for.

10. Ground nos. 4 and 5 of the appeal are against the Ld. CIT(A)'s action in confirming the allocation of 7.39% of directors' remuneration and auditor's remuneration of Rs.19,55,66,000/- and Rs.29,62,000/- to be considered as deduction in arriving at the profits of the undertakings eligible for deduction u/s. 10B and 80IA of the Act.

11. Briefly stated facts are that during the relevant year the assessee had claimed deduction u/s. 80IA of the Act in respect of its Wind Power Division and u/s. 10B of the Act in respect of its 100% EOU at Khatra. In the assessment order, the AO after examining the audited accounts of the respective undertakings found that in arriving at the profit of the undertaking, the assessee had not allocated certain expenses which in his opinion related to these eligible undertakings as well. The items of the expenses considered for allocation were Directors' remuneration, Auditor's remuneration, travelling and conveyance and legal and professional. According to AO, these expenses were common and, therefore, these expenses should have been allocated on pro-rata basis between the eligible units and other units on the basis of their respective turnover. Thereafter, the AO worked out the pro-rata percentage of turnover of the eligible units to the company as a whole at 7.39% and accordingly, apportioned these expenses to respective eligible units. On appeal, the Ld. CIT(A) deleted the adjustment qua the expenditure on account of travelling & conveyance and legal & professional. The Ld. CIT(A), however, confirmed the adjustment qua the Director's remuneration and Auditor's fee. Aggrieved by the action of the Ld. CIT(A), the assessee is in appeal before us.

12. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the Director's remuneration of Rs.1955.66 lacs was paid to the Directors in accordance with sec. 198, 348 and 349 of the Companies Act, 1956 which, inter-alia, included Directors sitting fees and commission totaling to Rs.1459.74 lacs to non-executive directors of Rs.495.92 lacs as remuneration to the Managing Director. The Ld. AR submitted that the non-executive Directors were not involved in monitoring day to day business operation of the assessee company, but were responsible for deciding policy issues and to ensure corporate governance and statutory compliances. The Directors remuneration was paid in accordance with the formula prescribed in the Companies Act and their remuneration was not based on the time and efforts devoted to the day to day functioning of the company. The Ld. AR, therefore, claimed that since remuneration paid to the non-executive directors was based on statutory formula and had no direct relation with operations of the eligible undertakings, in arriving at the profits of the eligible undertakings such expenditure could not be taken into account. The Ld. AR relied on several judgments of the Hon'ble High Courts and the Tribunal to support his contention. On the other hand, the Ld. DR vehemently relied on the orders of the lower authorities and pleaded for no interference from our part.

13. After giving a thoughtful consideration to the facts of the case and the provisions of section 80IA/10B of the Act, we note that this incentive linked sections contained both substantive provisions which are required to be satisfied for claiming deductions/exemption and the computation of profit to arrive at the sum eligible for deduction/exemption. It is noted that for computation purpose this section refer to "profit derived from eligible business". The Hon'ble Courts while interpreting the computation of profits derived from eligible business have held that the word "derived" from is narrower in connotation as compared to the word "attributable to". The Hon'ble Supreme Court in the case of Liberty India Vs. CIT (2009) 317 ITR 218 (SC) held that the expression "derived from" intends to cover sources not beyond the first degree. Meaning thereby the expression "derived from" signifies that only income/expenditure directly and inextricably related to eligible undertaking should be considered in computing profits of the eligible undertakings. Indirect expenditure which has no direct nexus or connection to the profits of industrial

undertaking should not be considered in computing deduction u/s. 80IA/10B of the Act. We find that the foregoing proposition finds support in the following decisions:

- i) Graphite India Ltd. Vs. Addl. CIT, ITA No. 304 to 305/Kol/ 2018,
- ii) `DCIT Vs. Cativison products Ltd. 142 Taxman 104 (Del.ITAT)
- iii) RRB Consultants & Engg. Pvt. Ltd. 112 TTJ 794 (ITAT Del.)
- iv) National Fertilizers Ltd. in Re 142 Taxman 5 (AAR New Del.)

14. In view of the above, let us now examine whether the items of expenses in question viz. Directors remuneration and Auditor's remuneration have any first degree nexus or connection with the profits deriving from eligible undertakings. . On perusal of the separate audited accounts of the eligible undertakings, we note that no expenses have been debited in respect of the audit conducted on these segmental accounts and in that view of the matter, we hold that the auditor's remuneration debited in P&L Account, inter-alia, comprised of the fees paid to auditors for auditing the separate accounts of the eligible undertakings. In absence of the break-up of fees paid to auditors, we find no infirmity in the order of the lower authorities in allocating the auditor's remuneration to the eligible undertaking on pro-rata basis and hence, the order of the lower authorities to that extent is confirmed.

15. Now coming to the Director's remuneration, we find that the same can be bifurcated into remuneration and sitting fees of Rs.1459.74 lacs paid to non-executive Directors and a sum of Rs. 495.92 lacs paid to the Managing Director. We note that the non-executive Directors do not participate in the day-to-day work of the company nor are in-charge of the operations of the undertakings and hence the remuneration paid to them did not have first degree nexus with the profits of the eligible undertaking. We note that the non-executive directors attended the board meetings and were involved in policy decision making, matters of corporate governance etc. which had no first degree nexus with the operations of the eligible undertaking. The Ld. DR could not controvert this particular fact, therefore, the AO/Ld. CIT(A) erred on facts and in law in allocating sums out of the Director's remuneration to the extent of Rs.1459.74 lacs while arriving at the income eligible for

deduction u/s. 80IA/10B of the Act and, therefore, we delete the allocation made on this issue.

16. As far as remuneration of Rs.495.92 lacs paid to the Managing Director is concerned, we note that the Managing Director is involved in the day-to-day affairs of the company and is responsible for over-all operations of the company including the eligible undertaking. In the circumstances, the Managing Directors' remuneration indeed have nexus with the functioning of the eligible undertaking and, therefore, we uphold the allocation made out of the Managing Directors' remuneration to the profits of the eligible undertaking. Therefore, ground nos. 4 and 5 are partly allowed.

17. Now, revenue's appeal in ITA No. 2064/Kol/2013 for AY 2009-10. Ground nos. 1 to 3 of the appeal are against the action of the Ld. CIT(A) for allowing the deduction of prior period expenses of Rs.89,78,073/-.

18. Briefly stated facts are that in the schedule-16 of the audited financials as well as the tax audit report, prior period expenses have been disclosed at Rs.89,78,073/- which comprises of interest of Rs.79,81,509/- paid to Dy. Director of Mines, Joda for delayed payments of royalty and other items of Rs.9,96,564/-. According to AO, the assessee was unable to establish that this liability for expenses pertaining to earlier years had crystallised during the financial year and, therefore, disallowed the entire sum. On appeal, the Ld. CIT(A) deleted the addition by observing as under:

"6. I have considered the observations of the Assessing Officer in the assessment order and submissions of the appellant. The appellant has paid an amount of Rs.79,81,509/- for delayed payment of priority to the Deputy Director (Mines) and the demand for the same was raised during the period relevant to assessment year 2009-10 as per the letter NO.60428/Mines dated 29.08.2008 of the Office of Deputy Director (Mines) Joda to Dist: Keonjhar, Orissa. The matter was under dispute and the demand crystallised during this period. Since the demand has been crystallised during the year and it was under dispute that no interest payment is to be given but ultimately the payment has to pay the interest and claim the same in the year of payment. Therefore, it is held that the appellant is entitled for the claim of Rs.79,81,509/- being the statutory dues of the Govt. of India even otherwise as per the provision of section 438 of the Income-tax Act, 1961. The same is to be allowed as deduction in the year of payment

37. The appellant has filed the details of Rs.89,78,073/- as follows:

<u>Party</u>	<u>Invoice dated</u>	<u>Amount</u>	<u>Nature</u>	<u>Debited to Liability</u>	<u>Debited to Prior Period Expenses</u>
G4S Security Services (India) Pvt. Ltd.	31/03/2008	750,808.00	Security Charges	700,000.00	50,808.00
Gulf Oil Corporation Ltd.	24,26 & 29/03/08	304,035.00	Supply of Explosive	270,547.20	33,487.80
Ultratech Cement Limited	27/03/2008	591,000.00	Supply of cement	585,000.00	6,000.00
Hiralal Agencies (P) Limited	15/03/2008	42,300.00	Supply of Explosive	40,800.00	1,500.00
United Motors & Heavy Equipment Co. (L.L.C.)	6/3/2008	59,599.39	Spare Parts	33,381.00	26,218.39
Ultratech Cement Limited	05/05/2007, 14-16/03/2008	328,040.00	Supply of cement	323,700.00	4,340.00
G4S Security Services (India) Pvt. Ltd.	31/03/2008	52,327.00	Guarding Service	48,900.00	3,427.00
G4S Security Services (India) Pvt. Ltd.	31/03/2008	236,224.00	Guarding Service	200,000.00	36,224.00
Mesto Minerals	26/02/2008	5,384,579.15	Spare & Repairs	4,798,197.15	586,382.00
Kolkata port trust	13/02/2008	1,268,662.00	Electricity Charges	1,265,207.00	3,455.00
Lee & Murihead Pvt. Ltd.	24/04/2008	30,899.00	Service Charges	4,438.00	26,461.00
Vizag Port Trust/Bothra Shipping Services	15/11/2007, 31/03/2008, 19/03/2008	2,565,688.00	Plot Rent/ Mis Exp	2,473,418.00	92,270.00
Employees		118,017.00	Bonus Payment		118,017.00
Dy. Directors of Mines, Joda	08/29/2008	7,981,509.00	Interest on Royalty		7,981,509.00
Others		7,973.81	Miscellaneous		7,973.81
		19,721,661.35		10,743,588.35	8,978,073.00

38. The appellant has made the provision for the payment on estimation basis for the services rendered during the year but the actual bills were not received during the year although all the bills except one are dated prior to the end of the previous financial year i.e. 2007-08. The appellant has submitted that since the provision was made and the bills were received later on and only the differential amount has been debited. In the result, these grounds of appeal are allowed.

19. Aggrieved by the aforesaid decision of the Ld. CIT(A), the revenue is in appeal before us.

20. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the principal item of prior period expenses was Rs.79,81,509/- paid to Dy. Director of Mines, Joda for delayed payment of royalty. It is noted that the demand for the same was raised by the office of Dy. Director of Mines, Joda vide notice dated 29.08.2008 i.e. in the relevant FY 2008-09. In the aforesaid circumstances, since interest demand was raised by the payee only in the relevant year, the Ld. CIT(A) rightly held that the liability for such expenses arose and crystallised in this year only. As regards other items of expenses, the Ld. CIT(A) observed that the bills for certain expenses for the FY 2007-08 were received by the assessee only in the next year i.e. the relevant FY 2008-09. Although the assessee had provided for the expenses on estimate basis in the earlier year but there was certain difference between the provisions estimated and the actual billed amount and it was this differential amount which was charged to the P&L Account for the relevant year. The Ld. CIT(A) observed that since the bills were received after the end of the FY 2007-08 and in FY 2008-09, the differential amount had crystallised in the relevant year itself and, therefore, allowed the same. The Ld. CIT, DR appearing for the revenue was unable to point out any infirmity in the finding recorded by the Ld. CIT(A). We, therefore, do not find any reason to interfere with the order of the Ld. CIT(A). Therefore, ground nos. 1 to 3 of revenue's appeal are dismissed.

21. Coming to next ground no. 4 taken by the revenue is against the action of the Ld. CIT(A) in restricting the allocation of expenses on legal and professional and travelling and conveyance to the eligible undertaking u/s. 80IA and 10B of Rs.30,99,000/- and Rs.5,63,000/- as opposed to the total disallowance of Rs.115.82 lacs made by the AO.

22. Briefly stated facts as are already discussed in the foregoing portion of this order, the assessee had claimed deduction u/s. 80IA and 10B of the Act in respect of its Wind Power Division and 100% EOU unit respectively. In the assessment order the AO had identified certain expenses which in his opinion were 'common' and related to this eligible undertaking as well. The items of expenses, inter alia, included expenses on travelling and conveyance and legal and professional fees of Rs.692.27 lacs and Rs. 875 lacs respectively. The AO worked out the pro-rata percentage of turnover of the eligible undertaking to the company as a whole as 7.39% and accordingly, apportioned these expenses to respective

eligible units. On appeal, the Ld. CIT(A) found that in Form 10CCB, the auditors had already identified and allocated the amount of Rs.30,99,000/- and Rs.5,63,000/- out of legal and professional fee and travelling and conveyance pertained to the eligible undertakings. According to the Ld. CIT(A), when the details had already been authenticated by the auditors, no further allocation out of these items of expenses were required. Aggrieved by the action of the Ld. CIT(A), the revenue is before us.

23. We have heard the rival submissions and carefully perused the material available on record. In the paper book filed the assessee has enclosed separate audited P&L Account of the eligible undertakings. From perusal of the schedule of expenses forming part of the audited accounts, we find that legal and profession expenses as well as travelling and conveyance expenses incurred by these undertakings were debited to the stand alone account of these eligible undertakings and hence, no further allocation on account of these items of expenses to the eligible undertakings was warranted. The Ld. DR was unable to controvert this fact which is evident from the documents on record. We, accordingly, uphold the order of the Ld. CIT(A) on this score. Therefore, ground no. 4 of revenue's appeal is dismissed.

24. Coming to appeal of assessee appeal in ITA No. 1004/Kol/2014 and revenue's appeal in ITA No. 1294/Kol/2014 for AY 2010-11. Ground nos. 1 to 4 of assessee's appeal and ground no. 1 of revenue's appeal relate to the disallowance u/s. 14A of the Act read with Rule 8D of the Rules.

25. Briefly stated facts of the case are that during the year the assessee had derived dividend income of Rs.1130.86 lacs from investment in shares and securities which was claimed as exempt from tax against which a sum of Rs.5,33,586/- was offered as disallowance u/s. 14A of the Act. In the assessment order the AO invoked sec. 14A and made disallowance of Rs.19,10,00,218/- under Rule 8D(2)(ii) and Rs.2,69,42,445/- under Rule 8D(2)(iii). On appeal, the Ld. CIT(A) confirmed the disallowance u/s. 14A read with Rule 8D of the Rules but directed the AO to consider the net interest expenditure after deducting the interest income instead of gross interest expenses for the purpose of Rule

8D(2)(ii) of the Rules. Aggrieved by the order of Ld. CIT(A), both the assessee as well as revenue are in appeal before us.

26. After considering the rival submissions and perusing the material available on record, we note that the issue involved in this ground is similar to the one involved in ground nos. 1 to 4 in assessee's appeal for AY 2009-10 which we have decided in the foregoing portions in this order. Following our conclusion drawn in AY 2009-10, we find that in the relevant year as well the assessee had sufficient own surplus funds namely Rs.4334.36 lacs at its disposal to cover the cost of investment of Rs.631.10 lacs. We accordingly, hold that no disallowance out of interest was warranted u/s. 14A of the Act. The AO is accordingly directed to delete the disallowance made u/s. 8D(2)(ii). As regards the disallowance made by AO under Rule 8D(2)(iii) of the Rules, we deem it fit and proper to remand the issue back to the file of the AO with a direction to consider only the investments at the beginning and closing of the relevant previous year which yielded dividend to the assessee during the relevant year in computing permissible disallowance u/s. 14A of the Act read with Rule 8D(2)(iii) of the Rules. In view of our foregoing conclusion the grounds raised by the revenue becomes academic only.

27. Coming next to ground no. 5 of assessee's appeal and ground nos. 2 and 3 of revenue's appeal relate to the allocation of 'common expenses' comprising of Director's remuneration, Auditor's remuneration, conveyance and travelling expenses and legal and professional expenses in working out the profits of the eligible undertakings u/s. 80IA and 10B of the Act. After considering the rival submissions it is observed that the issue involved in these grounds are similar to the ground nos. 4 and 5 of assessee's appeal and ground no. 4 of revenue's appeal in AY 2009-10. Following the conclusion drawn in AY 2009-10, we hold that the Managing Director's remuneration and auditor's remuneration of Rs.5,12,23,000/- and Rs.4,23,000/- respectively had nexus with the functioning of the eligible undertakings and accordingly, confirm the orders of the lower authorities for making allocation out of these expenses against the income to be considered for the purpose of computing deduction u/s. 80IA and 10B of the Act. Similarly, we find that the auditor had identified and allocated the expenditure relatable to the eligible undertakings on account of travelling and conveyance and legal and professional expenses and in that view

of the matter we uphold the order of the Ld. CIT(A) that no further allocation on account of these two items of expenses was called for. Accordingly, the ground raised by the assessee as well as the revenue is dismissed.

11. In the result, the appeals of assessee are partly allowed and that of revenue are dismissed.

Order is pronounced in the open court on 21st August, 2018

Sd/-
(Dr. A. L. Saini)
Accountant Member

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated : 21st August, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – DCIT, Circle-5, Kolkata
2. Respondent – M/s. Essel Mining & Industries Ltd., 10, Camac Street, Kolkata-700 017.
3. CIT(A)-VI, Kolkata. (sent through e-mail)
4. CIT – , Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)

/True Copy,

By order,

Sr. Pvt. Secretary