

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH: KOLKATA

Before: **Shri M. Balaganesh, Accountant Member** and
Shri S.S. Viswanethra Ravi, Judicial Member

I.T.A No. 1531/Kol/2017

A.Y: 2014-15

**D.C.I.T, C.C 1(3),
Kolkata**
[Appellant]

Vs.

M/s. Rungta Mines Ltd
PAN: AABCR6463N
[Respondent]

For the Appellant
For the Respondent

: Shri A. K. Tiwari, CIT, Id. DR
: Shri Subash Agarwal, Advocate

Date of hearing : 12-09-2018
Date of pronouncement : 05-10-2018

ORDER

Shri S.S. Viswanethra Ravi, JM:

This appeal by the Revenue is directed against the order dt. 07-04-2017 of the Commissioner of Income Tax (Appeals), 20, Kolkata for the A.Y 2014-15.

2. Ground no. 1 is relating to deletion of addition/disallowance made by the AO on account of Railways Punitive charges of Rs.6,55,30,392/- in the facts and circumstances of the case.

3. The Id. DR relied on the order of the AO. On the other hand, the Id. AR submits that the issue in question is covered in favour of assessee on identical facts and issue by the order dt. 10-01-2018 of Co-ordinate Bench, ITAT, Bench-D in assessee's own case, ITA Nos. 1652 & 1653/Kol/2016 for the A.Y 2013-14, copy of the same is on record and referred to para 16 of the said order.

4. After hearing both the parties and on perusal of record including the order dt. 10-01-2018 as relied on by the Id. AR of assessee, we find that the facts and circumstances of the case for A.Y 2013-14 are similar and identical with the facts and circumstances of

the case in hand. We also find that the Co-ordinate Bench, ITAT, 'D' Bench, Kolkata in the case of supra discussed the issue thoroughly with various facts of various case laws. Relevant portion of said order dt. 10-01-2018 is reproduced herein below for the sake of clarity:-

"16. As far as the decision of the Hon'ble Delhi High Court in the case of Time Incorporated (supra) cited by the Id. DR before us is concerned that was the case of a suit for permanent injunction and damages, filed against the defendant for a passing off action and in the course of it's judgement the Hon'ble court made a reference regarding purpose of awarding punitive damages. The said decision is not of any application whatsoever be the present case. The decision of the Hon'ble Karnataka High Court in the case of Mamta Enterprises(supra) is again a case where the criminal offence was compounded and the compounding fees was claimed as deduction. In the present case there is no offence whatsoever and there is no compounding fee paid and claimed as deduction. As far as the decision of the Hon'ble Supreme Court in the case of Haji Aziz Brothers (supra) is concerned it was again the case of breach of penal provisions of Customs Act for which fine was paid. Under these circumstances, the expenses were not allowed as deduction. We are of the view that in the facts and circumstances of the present case the claim of the assessee for deduction was rightly allowed by CIT(A). We therefore uphold the order of CIT(A) and dismiss ground no. 1 raised by the revenue."

5. In view of above, we find that the CIT-A was correct in deleting the same. The CIT-A in the impugned order has relied on an order/decision of ITAT Mumbai in the case of Taurian Iron & Steel Co. Pvt. Ltd Vs. ACIT, ITA No. 847 & 1613/M/2010, which held punitive charges paid by the assessee to railways for overloading of wagon is compensatory in nature and the same cannot be disallowed by invoking the provisions of explanation to section 37(1) of the Act. Relevant portion of his order is reproduced herein below:-

" I have considered the finding of the AO on this issue in the assessment order and the submission made by the AR during the appellate proceedings. I find that my predecessor has given a detailed finding on this issue in assessee's group case for assessment year 2008-09 vide his order in appeal no.249/CC-1(3)/CIT(A)-20/13-14.dated 1 1-12-2014 which is reproduced as under: I find from the impugned order that the assessee had explained at the assessment stage that the railways punitive charges were not paid for any purpose which was an offence or which was prohibited by law but it was not in the terminology, of the railways that it was called punitive charges. It appears from the material placed on record that due ' to the absence of Weightment Bridge at the loading point, the goods are loaded in railway wagon on the basis of some estimate and the exact weight is measured enroute by the railways when the loaded wagon actually goes to the Weightment Bridge. In case the load is found in excess of the permissible carrying capacity, then the railways recover additional freight which in its terminology is called punitive charges. It appears from the Notification issued by the Ministry of Railways that the punitive charges for overloading are actually in the nature of additional freight permissible carrying capacity which cannot be categorised as punishment for any offence or infringement of law. In case there was absence of Weightment Bridge at the loading station and the goods were loaded by estimate, then overloading of wagons cannot possibly be avoided and such overloading being apparently common is actually permitted by the railways on overloading charges termed in its terminology as 'punitive charges. I therefore find merit in the contention of the Ld AR that the punitive charges are compensatory in nature for transporting goods beyond .permissible carrying capacity and such charges may in the terminology of the railways be called punitive charges but in commercial parlance it is not in the nature of penalty for infraction of law. The overloading charges paid to the railways may in its terminology be termed as punitive charges but such payments appear to be routine payments in the nature of additional freight charges for overloading of wagons and such payments are

made in accordance with law as provided in the Notification dated the 23rd December 2005 issued by the Ministry of Railways. It also appears from the Notification of the Ministry of Railways that there is no provision for criminal action or prosecution or confiscation of goods for overloading of wagons. I am of the considered view that the activities of the railways are commercial nature and freights are awed on commercial basis and merely because the railways is a government owned institution, the nature of over loading charges which are essentially of commercial nature cannot be characterized as penalty irrespective of the nomenclature given to such charges by the railways. It also appears that overloading of wagons is not a deliberate act on the part of the assessee but due to lack of infrastructure at the loading station. I also find that the issue is squarely covered by the various judicial decisions placed on record by the Ld AR in course of the appellate proceedings. The Hon'ble Supreme Court has in the case of Mahalaxmi Sugar Mills CO (1980) 123 ITR 429 laid down the basic principle for deciding as to whether a claim of damages or penalty was allowable u/s. 37(1) : whenever any statutory impost paid by an assessee by way of damages or penalty or interest is claimed as an allowable expenditure u/s. 37(1) of the Income Tax Act, the assessing authority is required to examine the scheme of the provisions of the relevant statute providing for payment of such impost notwithstanding the nomenclature of the impost as given by the statute, to find whether it is compensatory or penal in nature. The authority has to allow deduction u/s. 37(1) of the Income Tax Act whenever such examination reveals the concerned impost to be purely compensatory in nature. " The Hon'ble Supreme Court reiterated the same legal position in the case of Prakash Cotton Mills Pvt. Ltd (1993) 201 ITR 684. In the case of Hero Cycles Ltd 178 Taxman 484, the Hon'ble Punjab & Haryana High Court allowed the deduction of the amount paid to the Electricity Board as penalty for violation of power regulations, ie. Extra charges paid for drawing extra load in peak hours. In the case of Western Coalfields Ltd (2009) 124 TTJ (Nag) 659, the Hon'ble ITAT, Nagpur Bench under identical facts and circumstances held that the overloading charges were essentially commercial in nature and cannot be characterized as penalty irrespective of the nomenclature given to such charges by the Railways. The Hon'ble ITAT has held that " As regards overloading charges, we have to take into consideration the environment in which the companies are operating. Railway is the only mode of transportation if the person wishes to transport its product through railway. This fact is important because such activities of railways are of commercial in nature and freights are fixed on commercial basis. If we look the issue in its perspective, then, what emerges is that if there were private carriers also and if the assessee would have paid identical charges to them, the same would have been allowed as a normal business expenditure especially when there is no dispute that these expenses have been incurred in the course of business operations and, therefore, merely because the railways is a government owned Institution and works under an Act of Parliament, and nature of overloading charges which are essentially of commercial nature cannot be characterized as of penal nature irrespective of nomenclature given to such charges by the railways. Further, it is not in dispute that the quantity treated as overloading has been unloaded by the railways nor it has been a case of violation of safety rules/norms, hence, the overloading so incurred cannot be equated with travelling without ticket, hence, the said contentions of the Ld DR are rejected. It is also noted that such overloading is not correct due to a deliberate act on the part of the assessee but due to lack of infrastructure and nature of commodity, hence, the ratio of the decision of the Hon'ble Punjab & Haryana High Court in the case of Hero Cycles Ltd (supra) is squarely applicable. It is also a settled judicial principal that substance of the matter should be looked into and be given to the nomenclature given by the Railway to such charges. The object of Explanation 1 also supports the claim of the assessee as these expenses are not of the nature of any illegal/unlawful expenditure. In the case of M/s. Taurian Iron & Steel Co (P) Ltd (ITA No. 847 & 1613/M/2010), the Hon'ble ITAT 'D' Bench, Mumbai has held that the punitive charges paid to the railways for overloading of wagons is compensatory in nature and therefore the provisions contained in Explanation to section 37(1) are not attracted. The Hon'ble ITAT has held that " in the instant case as we have already held earlier that the punitive charges paid by the assessee to Railways for overloading of the wagons is compensatory in nature, therefore, the same cannot be disallowed by invoking the provisions of Explanation to section 37(1) of the Act". In view of the above, I am of the considered opinion that overloading charges irrespective of the nomenclature given by the railways are essentially of commercial nature which cannot be characterized as penalty and that such charges are compensatory in the nature of additional freight for overloading of wagons which is explicitly permitted by the railways and the payments are made in accordance with law as provided by the Notification of the Ministry of Railways. The punitive charges paid to the railways cannot be characterized as expenditure incurred for any purpose which is an offence or which is prohibited by law and therefore the Explanation to section 37(1) is not attracted. In view of the above, it is to be held that the disallowance of Rs.6,55,30,392/- as made by the AO in the impugned order is not sustainable in law therefore on the facts of the case the addition of Rs.6,55,30,392/- is deleted."

6. In view of above, we find no infirmity in the impugned order of the CIT-A and it is justified. Thus, ground no. 1 raised by the revenue is dismissed.

7. Ground no. 2 is relating to deletion of addition/disallowance made by the AO on account of belated interest deposit on TDS of Rs.77,176/- in the facts and circumstances of the case.

8. The Id. DR relied on the order of AO. On the other hand, the Id.AR submits that the issue in hand is covered in favour of assessee on identical facts and issue by the order dt. 06-04-2018 of this Co-ordinate Bench, ITAT, Bench-D in assessee's own case, ITA No. 1887/Kol/2016 for the A.Y 2011-12, copy of the same is on record and referred to paras 12 & 13 of the said order.

9. After hearing both the parties and on perusal of record including the order dt. 06-04-2018 as relied on by the Id. AR of assessee. We find that the facts and circumstances of the case as relied on by the Id.AR are similar and identical with the facts and circumstances of the case in hand. We also find that the Co-ordinate Bench, ITAT, 'D' Bench, Kolkata in the case of supra has discussed the issue thoroughly analyzing with facts of the case laws of the Hon'ble Supreme Court in the case of Bharat Commerce Industries Ltd reported in (1998) 230 ITR 733(SC) & Lachmandas Mathura reported in 254 ITR 799(SC), wherein it was held interest paid on late deposit of sales tax is an allowable deduction u/s. 37(1) of the Act. Relevant portion of tribunal order is reproduced herein below:-

"12. Heard both the parties and perused the record including the order dt. 30-08-2017 as relied on by the assessee before us. We find that the issue in hand is covered in favour of assessee by the said order dt. 30-08-2017 of this Tribunal in the case of supra, which held that interest paid on delayed deposit of TDS is an allowable deduction by placing reliance on the decisions of Hon'ble Supreme Court in the case of Bharat Commerce Industries Ltd Vs. CIT reported in (1998) 230 ITR 733 (SC). The Co-ordinate Bench also referred to the decision of Hon'ble Supreme Court in the case of Lachmandas Mathura Vs. CIT reported in 254 ITR 799 (SC), which held interest paid on late deposit of sales tax is an allowable deduction U/Sec. 37(1) of the Act. Relevant portion of order dt. 30-08-2017 is reproduced herein below for better understanding:-

The issue of delay in the payment of service tax is directly covered by the judgment of Hon'ble Apex Court in the case of Lachmandas Mathura Vs. CIT reported

in 254 ITR 799 in favour of assessee. The relevant extract of the judgment is reproduced below :

"The High Court has proceeded on the basis that the interest on arrears of sales tax is penal in nature and has rejected the contention of the assessee that it is compensatory in nature. In taking the said view the High Court has placed reliance on its Full Bench's decision in Saraya Sugar Mills (P.) Ltd. v. CIT [1979] 116 ITR 387 (All.) The learned counsel appearing for the appellant-assessee states that the said judgment of the Full Bench has been reversed by the larger Bench of the High Court in Triveni Engg. Works Ltd. v. CIT [1983] 144 ITR 732 (All.) (FB), wherein it has been held that interest on arrears of tax is compensatory in nature and not penal. This question has also been considered by this Court in Civil Appeal No. 830 of 1979 titled Saraya Sugar Mills (P.) Ltd. v. CIT decided on 29-2-1996. In that view of the matter, the appeal is allowed and question Nos. 1 and 2 are answered in favour of the assessee and against the revenue."

In view of the above judgment, there remains no doubt that the interest expense on the delayed payment of service tax is allowable deduction.

The above principles can be applied to the interest expenses levied on account of delayed payment of TDS as it relates to the expenses claimed by the assessee which are subject to the TDS provisions. The assessee claims the specified expenses of certain amount in its profit & loss account and thereafter the assessee from the payment to the party deducts certain percentage as specified under the Act as TDS and pays to the Government Exchequer. The amount of TDS represents the amount of income tax of the party on whose behalf the payment was deducted & paid to the Government Exchequer. Thus the TDS amount does not represent the tax of the assessee but it is the tax of the party which has been paid by the assessee. Thus any delay in the payment of TDS by the assessee cannot be linked to the income tax of the assessee and consequently the principles laid down by the Hon'ble Apex Court in the case of Bharat Commerce Industries Ltd. Vs. CIT (1998) reported in 230 ITR 733 cannot be applied to the case on hand.

Thus, in our considered view, the principle laid down by the Hon'ble Supreme Court in the case of Bharat Commerce Industries Ltd. (supra) is not applicable in the instant facts of the case. Thus, we hold that the Assessing Officer in the instant case has wrongly applied the principle laid down by the Hon'ble Supreme Court in the case of Bharat Commerce Industries Ltd.(supra). We also find that the Hon'ble Supreme Court in the case of Lachmandas Mathura (Supra) has allowed the deduction on account of interest on late deposit of sales tax u/s 37(1) of the Act. In view of the above, we conclude that the interest expenses claimed by the assessee on account of delayed deposit of service tax as well as TDS liability are allowable expenses u/s 37(1) of the Act. In this view of the matter, we find no reason to interfere in the order of Ld. CIT(A) and we uphold the same. Hence, this ground of Revenue is dismissed.

13. *In view of above, we are of the view that the CIT-A was not correct in confirming the impugned disallowance of Rs.1230/- made by the AO on account of interest on late deposit of TDS. The order of the CIT-A on this issue is set aside and the AO is directed to allow the same. Ground no. 2 raised by the assessee is allowed. "*

10. In view of above, we find no infirmity in the impugned order of the CIT-A and it is justified. Thus, ground no. 2 raised by the revenue is dismissed.

11. Ground nos. 3 & 4 are relating to deletion of disallowance made on account of undisclosed interest from CESC Ltd by accepting fresh submission/evidence without calling remand report from the AO in the facts and circumstances of the case.

12. The Id. DR submits that the AO found an amount of Rs.48,920/- was not accounted in its income, which was received from M/s. CESC

Ltd on account of interest. The assessee admitted this said fact and accordingly, the AO added the impugned amount. The CIT-A arbitrarily deleted the same by accepting fresh evidence violating the procedure under Rule 46A of the IT Rules 1962 and as such prayed to remand the matter to the file of AO.

13. On the other hand, the Id.AR submits that the assessee made security deposits in M/s. CESC Limited every year. The CESC Ltd paid interest thereon deducting the TDS. The said amount was paid to assessee in the month of March 2014 by M/s. CESC Limited. But, it was adjusted in the electricity bill for the month of April 2014. The CIT-A examined the copy of electricity bill and held no concealment of income. The Id.AR relied on the order of the CIT-A.

14. Heard both the parties and perused the record. It is noted that CESC Limited deducting TDS paid interest to assessee in the month of March 2014 relevant to A.Y 2014-15 i.e. under consideration. But, however, claim of adjustment of said interest was made in the next F.Y 2014-15 relevant to A.Y 2015-16. It shows that the assessee claimed TDS credit in the A.Y (2014-15) i.e. under consideration and again claimed the same for the next A.Y 2015-16. The assessee claimed the same for two A.Ys, which is not permissible as per law. Relevant finding of the CIT-A is reproduced herein below:-

" I have considered findings of the AO on this issue in the assessment order and the written submission filed by the AR. Facts of these issues are that the assessee has made some security deposit with the CESC on which every year CESC makes payment of interest in the form of adjustment in the electricity bill. In the assessment year 2014-15 the CESC paid interest of Rs.48,920/- in the month of March, 2013 and deducted TDS thereon which was reflected in 26AS. But the amount of Rs.48,920/- was adjusted in the electricity bill of the assessee the month of April, 2014. Therefore, the assessee has shown interest received and adjusted in FY 2014-15 while the CESC deducted TDS on this amount in March, 2014 and the same was reflected in 26AS for FY 2013-14. The assessee has also produced a copy of the electricity bill for April, 2014 which clearly shows the adjustment of Rs.48,920/- in it. Thus, it is clear that there is no concealment as such, rather it is just a matter of adjustment is interest paid by CESC in March, 2014 and its adjustment in the electricity bill of April, 2015. Accordingly, assessee's appeal on ground no. 3 is allowed."

15. In view of above, we set aside the impugned order of the CIT-A on this issue and restore the addition made by the AO. But, however, the matter is remanded to the file of AO to consider the issue afresh by taking into consideration the submissions/evidences of assessee. Ground nos. 3 & 4 are allowed for statistical purposes.

16. Ground no. 5 is relating to deletion of addition made on account of disallowance made u/s. 14A r.w. Rule 8D(2)(iii) of Rs. 63,31,460/-. Whether the CIT-A is justified in directing the AO to re-compute the expenses/disallowances U/R 8D(2)(iii) in terms of investment, which yielded exempt income in the facts and circumstances of the case.

17. After hearing both the parties and on perusal of record including the material as available before us, we find that the assessee has not offered any amount towards dividend income earned by the assessee and as such subsection(3) of section 14A r.w.r 8D(3) of the IT Rules, 1962 the AO made disallowance of Rs. 63,31,460/- and added the same to the total income of assessee. The assessee challenged the same before the CIT-A. The CIT-A by placing reliance on an order of Kolkata Bench (ITAT, Kolkata) in the case of REI Agro Ltd reported in (2013) 144 ITD 141 (Kolkata-Trib)/ITA No. 1331/Kol/2011 directed the AO to verify the details of investment and to compute the expenditure accordingly in terms of investment, which yielded exempt income.

18. Before us the Id.AR placed on record the order of Hon'ble High Court of Calcutta in the case of REI Agro Ltd and argued that the Hon'ble High Court of Calcutta dismissed the substantial question of law raised by the revenue and confirmed the finding of Tribunal in ITAT 220 of 2013 in GA No.3581 of 2013 and referred to para 8.1 of the said order. On the other hand, the Id.DR did not controvert the same.

19. We find that the issue in question is covered in favour of assessee by the judgment of the Hon'ble High Court of Calcutta in the case of REI Agro Ltd supra. Relevant portion of such order is reproduced herein below:-

"6. We have considered the rival submissions. A perusal of the provisions of section 14A, more specifically sub-section (2), shows that if the AO is not satisfied with the correctness of the claim of the assessee, then the AO shall determine the ITA No.1331 & 1423/Kol/2011 Assessment Year: 2008-09 amount of expenditure incurred in relation to such income, which does not form part of total income under the Act. For this the method is prescribed in rule 8D. The provision of section 14A, sub-section (3) specifies the provision of 14A(2) would also apply where the assessee makes a claim that there is no expenditure incurred. This is because if the assessee does not make a disallowance under section 14A in its computation of total income, when filing the return, then if sub-section (3) was not available, the AO might not be able to make a disallowance under section 14A. Thus, where the assessee makes a claim that only a particular amount is to be disallowed under section 14A or where the assessee does not make a disallowance under section 14A, if the AO proposes to invoke the section 14A, he is to record a satisfaction on that issue. This satisfaction cannot be a plain satisfaction or a simple note. It is to be done with regard to accounts of the assessee. In the present case, there is no satisfaction by the AO and consequently, in view of the decision of the Coordinate bench of this Tribunal in the case of Balarampur Chini Mills Ltd. referred to supra, no disallowance under section 14A can be made.

7. Now coming to the merits of the issue. A perusal of the provision of section 14A(1) clearly shows the wordings, "in relation to the income which does not form part of the total income under this Act". In the present case, this income, which does not form part of the total income under the Act, is the dividend income of Rs.1,32,638/-. Therefore, if any disallowance is to be made in respect of expenditure incurred, it should be in relation to this dividend income of Rs.1,32,638/-. If an assessee has invested in shares, which could get dividend or there is investment which generates dividend income or exempt income as also investment which does not generate exempt income, it is only such investments in respect of which the dividend income or exempted income has been earned which can be considered when computing the disallowance under section 14A read with ITA No.1331 & 1423/Kol/2011 Assessment Year: 2008-09 rule 8D. A perusal of the provisions of rule 8D also talks of satisfaction in sub-rule (1). Rule 8D(2) has three sub-parts. The first sub-part i.e. (i) deals with the amount of expenditure directly relating to the income which does not form part of the total income. That issue is not in dispute here and therefore, we do not go into it in this case. In second sub-part i.e.(ii), it is a computation provided in respect of expenditure incurred by the assessee by way of interest during the previous year which is not directly attributable to any particular income or receipt. This clearly means that if there is any interest expenditure, which is directly relatable to any particular income or receipt, such interest expenditure is not to be considered under rule 8D(2)(ii). In the assessee's case here the interest has been paid by the assessee on the loans taken from the banks for its business purpose. There is no allegation from the banks nor the AO that the loan funds have been diverted for making the investment in shares or for non-business purposes. Further rule 8D(2)(ii) clearly is worded in the negative with the words "not directly attributable". Thus for bringing any interest expenditure, claimed by the assessee, under the ambit of rule 8D(2)(ii) it will have to be shown by the AO that the said interest is not directly attributable to any particular income or receipt. Why we say here that it is to be shown by the AO is on account of the words in Rule 8D(1) being "where the Assessing Officer, is not satisfied with.

(a)

(b)

in relation to income....., he shall determine the amount of expenditure in relation to such income in accordance with the provisions of sub-rule (2).

In the assessee's case, admittedly, the assessee has substantial capital. The increase in the capital itself is to an extent of Rs.4 crores and in respect of reserves and surplus, the increase is Rs.112 crores. The loans taken during the year admittedly are for the letters of credit and the assessee is bound to provide the bank stock ITA No.1331 & 1423/Kol/2011 Assessment Year: 2008-09 statement and other details to show the utilization of the loans. No bank would permit the loan given for one purpose to be used for making any investment in shares. The ld. CIT(A), it is noticed that after considering these facts that the assessee had not used any of its borrowings for purchasing the shares, has deleted the disallowance. On this ground itself, the deletion as made by the ld. CIT(A) is liable to be confirmed and we do so.

7.1 In any case, the working of the disallowance under sub-part (ii) of sub-clause (2) of rule 8D as made by the AO also suffers from a substantial error in so far as in the said rule in regard to the numerator B, the words used are the average value of the investment, income from which does not form or shall not form part of the total income as appearing in the balance-sheet as on the first day and in the last day of the previous year. Here the AO has taken into consideration the investment of Rs.103 crores made this year, which has not earned any dividend or exempt income. It is only the average of the value of the investment from which the income has been earned which is not falling within the part of the total income that is to be considered. This is why the question of satisfaction is provided in section 14A and rule 8D(1), that relates to the accounts of the assessee. Thus, it is not the total investment at the beginning of the year and at the end of the year, which is to be considered but it is the average of the value of

investments which has given rise to the income which does not form part of the total income which is to be considered. A question may arise as to why the term "average of the value of investment" is then used. The term average of the value of investment would be to take care of cases where there is the issue of dividend stripping. In any case, as we have already held that the assessee has not incurred any expenditure by way of interest during the previous year, which is not directly attributable to any particular income, the findings of the Id. CIT(A) on the issue stand confirmed and consequently the appeal filed by the Revenue stands dismissed.

8. In respect of provisions of rule 8D(2)(iii), which is the subject-matter of the appeal in the assessee's hand, a perusal of the said provision shows that what is disallowable under rule 8D(2)(iii) is the amount equal to ½ percentage of the average value of investment the income from which does not or shall not form part of the total income. Thus, under sub-clause (iii), what is disallowed is ½ percentage of the numerator B in rule 8D(2)(ii). Again this is to be calculated in the same line as mentioned earlier in respect of Numerator B in rule 8D(2)(ii) of the Act.

8.1 Thus, not all investments become the subject-matter of consideration when computing disallowance under section 14A read with rule 8D. The disallowance under section 14A read with rule 8D is to be in relation to the income which does not form part of the total income and this can be done only by taking into consideration the investment which has given rise to this income which does not form part of the total income. Under the circumstances, the computation of the disallowance under section 14A read with rule 8D(2)(iii), which is issue in the assessee's appeal, is restored to the file of the AO for recomputation in line with the direction given above. No disallowance under section 14A read with rule 8D(2)(i) and (ii) can be made in this case."

20. Respectfully following the above, we find no infirmity in the order of CIT-A and it is justified. Ground no. 5 raised by the revenue is dismissed.

21. Ground no. 6 raised by the revenue is general in nature and requires no adjudication and as such it is dismissed.

22. In the result, the appeal of revenue is partly allowed for statistical purposes.

Order pronounced in the open court on 05-10-2018

Sd/-
M. Balaganesh
Accountant Member

Sd/-
S.S. Viswanethra Ravi
Judicial Member

Dated : 05-10-2018

PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant/Revenue : Deputy Commissioner of Income Tax,
C.C-1(3), Aaykar Bhawan Poorva, 3rd Fl., 110 Santipally, Kolkata-107.
 2. Respondent/Assessee : M/s. Rungta Mines Limited
8A, Express Tower, 42A, Shakespeare Sarani, Kolkata-17.
 3. The CIT(A), 20 Kolkata
 4. CIT , Kolkata
 5. DR, Kolkata Benches, Kolkata
- /True Copy, By order,

Senior Private Secretary
Head of Office, ITAT Kolkata