आयकर अपीलीय अधीकरण, न्यायपीठ – "A" कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA
(समक्ष)श्री पी. एम.जगताप, उपाध्यक्ष **एवं** श्री ए.टी. वर्की,न्यायिक सदस्य)
[Before Shri P.M. Jagtap, Vice President & Shri A. T. Varkey, JM]

I.T.A. Nos. 676/Kol/2014
Assessment Year: 2008-09

Deputy Commissioner of Income-tax, Circle-4, Kolkata.	Vs.	M/s. Andrew Yule & Co. Ltd. (PAN: AACCA4245Q)
Appellant		Respondent

&

ITA Nos. 1737, 1882 & 1883/Kol/2016
Assessment Years: 2009-10 to 2011-12

Assistant Commissioner of Income-tax, Circle-4(1), Kolkata.	Vs.	M/s. Andrew Yule & Co. Ltd. (PAN: AACCA4245Q)
Appellant		Respondent

Date of hearing **Date of Pronouncement**		**08/01/2019** **20/03/2019**
For the Appellant		**Shri C. J. singh, Addl. CIT, Sr. DR**
For the Respondent		**Shri A. K. Bandyopadhyay, FCA**

ORDER

Per Shri A.T.Varkey, JM

These are revenue's appeals against the separate orders of Ld. CIT(A), Kolkata for AYs 2008-09 to 2011-12.

2. Though we note that there are different grounds raised in these different assessment years, we note there are nine (9) grounds in all and some are common to different assessment years, so we are going to deal with common grounds raised in assessment years together.

3. For AYs. 2008-09 and 2009-10 the revenue appeals are against the action of Ld. CIT(A) in allowing the nursery expenses claimed by the assessee.

4. Brief facts for AY 2008-09 is taken into consideration. Brief facts of the case are that the assessee is a Public Sector Undertaking having its corporate and registered office at Kolkata. Business segment of the company includes engineering, electrical and tea. The company's plants are located at different places in West Bengal and also in Chennai. The company's tea gardens are located in West Bengal and Assam. The company follows mercantile system of accounting. Books of account are audited by statutory authority and also by CAG. The AO on perusal of the details vide Note on Accounts (para 7 of Schedule 20) noted that in the tea-division, the assessee company has incurred expenses of Rs.21.55 lacs for the unit at Telepara. On examination of the details, according to AO, it is seen that there is no income in respect of its unit. According to AO, the expenses incurred for nursery activity is purely agricultural in nature and, therefore, disallowed. On appeal, the Ld. CIT(A) allowed the claim of the assessee. Aggrieved, the revenue is before us.

5. We have heard rival submissions and gone through the facts and circumstances of the case. The AO's reason for disallowing the claim of the assessee is not repeated for the sake of brevity. During the first appellate proceedings, we note that the Ld. CIT(A) has taken note that the assessee used to carry out agro-based activities from its Telepara unit. It is noted that in this year, the assessee entered into an arrangement with its group company namely, M/s. Yule Agro Industries Ltd. (YAIL) to carry out the agro based project activities on its behalf in the Telepara unit of the assessee taking the assistance of the labour forces of the assessee and other infrastructural facilities which the assessee was already having in its Telepara Unit, so that the assessee can earn profit after recovering fixed cost incurred by the assessee in this unit and without incurring any variable cost on its own. The Ld. CIT(A) took note that the M/s. YAIL could not implement the said project during the year and as such the assessee could not recover the fixed cost incurred by the assessee in the said unit. The Ld. CIT(A) took note of the fact that the details of expenditure were never called upon by the AO and he only referred to the note contained in the annual accounts of the assessee and has made the disallowance. The Ld. CIT(A) noted that the annual accounts of the assessee clearly stated that the assessee had incurred expenditure under the head

'*salaries', 'wages'* and other '*administrative expenses'* in the Telepara Unit. Thus, from the details furnished by the assessee in respect to this claim of expenditure, the Ld. CIT(A) concluded that the payments made were in the nature of salaries and wages paid regularly to the employees of the assessee and some administrative expenses were incurred to maintain the infrastructure facility of the unit. The Ld. CIT(A) took note of the fact that the M/s. YAIL could not carry out any activity from the said unit and to keep the unit running, the expenditure was incurred by the assessee, which according to Ld. CIT(A), was administrative expenses and as such expenses are incidental to the assessee's business and, therefore, even though the assessee has not earned any income from unit, the incidental expenditure incurred by the assessee could not be disallowed and the Ld. CIT(A) was pleased to allow the claim of the assessee. Moreover, it was brought to our notice that output of the Telepara Unit was being transferred to other gardens within the same group/company. We note that the assessment is on the assessee as an entity in its entirety. From a perusal of the audited accounts (para 7 in schedule 20), we note that the expenses incurred by the assessee are for salaries and wages and certain other administrative expenses which in the facts and circumstances discussed above are revenue in nature. Further, it was brought to our notice that the young tea bushes of the Telepara Unit was utilized as a part of uprooting and replacement programme in the existing plantation area and hence, allowable under Rule 8(2) of the I. T. Rules, 1962 (hereinafter referred to as the 'Rules') and the expenses for maintaining nursery are allowable as per the Tribunal's order in ITA No. 2243/Kol/2010 dated 31.05.2011, therefore, we are of the opinion that the Ld. CIT(A)'s order does not require any interference from our part and, therefore, we confirm the order of Ld. CIT(A) and dismiss this ground of appeal of the revenue for AYs 2008-09 and 2009-10.

6. The next ground of appeal of the revenue is against the action of the Ld. CIT(A) in deleting the Notional Interest added by the AO for AYs 2008-09 and 2009-10. Brief facts of the case for AY 2008-09 is that AO noted that the assessee company had advanced loan of Rs.128.78 lacs to its sister concern M/s. Yule Agro. According to AO, for the AY 2005-06 interest @ 13% was charged, and when this fact was confronted with the assessee, the

assessee company stated that the assessee has not charged any interest from M/s. Yule Agro and, therefore, no interest has been shown in the accounts by the assessee. The AO did not accept the said contention of the assessee and observed that on one hand, the assessee is incurring huge loss and is depending on the Government for running its business, and it is lending interest free loan to sister concern without adequate consideration. So, notional interest @ 13% was computed, which comes to Rs.16.74 lacs, which was added back as notional interest. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to delete the same. Aggrieved, revenue is before us.

7. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the AO has added 13% of Rs.128.78 lacs as notional interest which according to him has been given as loan to sister concern M/s. Yule Agro without adequate consideration. Before the Ld. CIT(A), it was submitted by the assessee that the loan represents the expenditure of tea division of the company on account of Mushroom and Floriculture activities initiated and carried out by Tea Division from 1992-93 and subsequently transferred to the new company M/s. Yule Agro Industries Ltd. when it was later incorporated in the month of April, 1995. According to assessee, the Mushroom and Floriculture activity was initiated by the Tea Division of Andrew Yule & Co. Ltd. (assessee) and was transferred to the new company styled as M/s. Yule Agro Industries Ltd. and this was done based on commercial prudence and expediency.

8. The Ld. CIT(A) noted that assessee during the AY 1996-97 took a decision that the Mushroom and Floriculture projects which were being pursued by the assessee from the AY 1993-94 need to be transferred to M/s. Yule Agro industries Ltd. (hereinafter M/s. Yule Agro) so that the said company would be carrying out the aforesaid projects. Pursuant to the said decision taken by the assessee, all expenditure which were incurred by the assessee upto 31.03.1996 was transferred to M/s. Yule Agro and was shown in the books of the assessee under the head '*loans and advances'* in the assessment year under consideration. Correspondingly, therefore, M/s. Yule Ago reflected the said amount in its books of account under the head '*loan funds'*. The Ld. CIT(A) has taken note that this amount would not

bear any interest to be paid by the M/s. Yule Agro. The Ld. CIT(A) has gone through the relevant extracts of the annual accounts of the assessee and that of M/s. Yule Agro and after taking note of point no. 7 in schedule 20 of the annual accounts for the year ended 31.03.2008 has deleted the addition. We note that the loans represented the expenditure of Tea Division of the assessee on account of Mushroom and Floriculture activity from 1992-93 and subsequently, the said activity was transferred to M/s. Yule Agro Industries Ltd. in 1995-96. It was brought to our notice that an amount of Rs.128.78 lacs was incurred by the Tea Division on the date of transfer. Further, it was brought to our notice that the M/s. Yule Agro Industries ltd. has gradually started under repaying the advance which stand reduced to Rs.117.83 lacs as on 31.03.2009. We note that the assessee has not charged any interest in its books of account for the amount in question, so the notional interest charged by the AO cannot be accepted. Moreover, we note that the expenditure has been incurred by the assessee company way back in the year 1992-93 and because of restructuring of the company in the year 1995, the project of Mushroom and Floriculture activities was transferred to the new sister company called M/s. Yule Agro Industries Ltd. in the year 1995-96 so it cannot be called as loan/advance but in effect merely transfer of the assets and liabilities consequent upon restructuring. So, the entire value of the expenditure which has been incurred on the projects way back in the year 1992-93 was subsequently transferred to the M/s. Yule Agro sister company in the year 1995 due to the restructuring cannot be strictly termed as loan/advance and, therefore, question of notional interest as computed by the AO is unsustainable and has been rightly deleted by the Ld. CIT(A) which we confirm. This ground of revenue's appeals is dismissed.

9. Coming to the next issue i.e. the revenue has challenged the action of the Ld. CIT(A) in allowing the liquidated damages claimed by the assessee for AYs 2008-09 to 2011-12.

10. Facts of AY 2008-09 are taken into consideration. The AO noted that the assessee debited expenses of Rs.2,51,03,000/- in the P&L Account being incurred towards the liquidated damages and penalty. The AO noted from the details submitted pursuant to his notice that this amount reflects a portion of the contractual value of the goods which is

recoverable from contract. According to AO, the same has arisen due to the late delivery of goods even though the assessee pleaded before the AO that these expenses were incurred in ordinary course of business activity. According to AO, other than the evidence provided in the accounts and by pointing out certain provisions in the contract, no other material were placed on record wherefrom it can be substantiated that the same was paid by the assessee company. Accordingly, the AO disallowed the deduction claimed by the assessee and added back the amount of Rs.2,51,03,000/-. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to delete the same. Aggrieved, the revenue is before us.

11. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the AO disallowed the liquidated damages on the ground that the evidence to substantiate the claim of the assessee was not filed before him. The Ld. CIT(A) has noted that on this issue the AO has not given proper opportunity to the assessee to produce the details to substantiate the claim. The Ld. CIT(A), therefore, called for the details of the expenses incurred under the head 'liquidated damages' along with the copies of the contract entered into by the assessee. It was brought to the notice of the Ld. CIT(A) that the liquidated damages arose out of the contractual obligation towards the customers in relation to timely execution of the job work and terms and conditions of orders placed by the customers which include enforcement of the liquidated damages clause in the contract. It was brought to the notice of the Ld. CIT(A) that whenever there is a late delivery of goods, the customers suo-motu deduct certain amount at a percentage of consideration as per the terms and conditions of the order/contract agreed upon by both parties at the time of contract. Before the Ld. CIT(A), the list of the liquidated damages incurred by the assessee company was enclosed which is brought to our notice and placed in the paper book at page 5. It was brought to our notice that the late delivery of the goods was due to various reasons like the sudden transport strike, Hartal, natural calamities etc. and since there is a liquidated damages clause in the contract for timely delivery of goods between the parties and for delay caused the other party deduct the amount while making the payment to assessee. The

Ld. CIT(A) noted after perusal of the relevant contract entered into by the assessee that if there is a delay in delivery of the goods by the assessee, then a percentage of the consideration agreed upon by both the parties at the time of contract would be debited which is shown as liquidated damages. We note that the Ld. CIT(A) has gone through the details of the liquidated damages and noted that the amounts have been deducted from the bills and has taken note that due to the late delivery of goods, the customers have reduced the price. The Ld. CIT(A) has noted from the details submitted that the "liquidated damages" were deducted by the Tamilnadu Electricity Board and Damodar Valley Corporation. The Ld. CIT(A) also took note that the assessee was able to provide confirmation of this fact from Tamilnadu Electricity Board; and in respect of Damodar Valley Corporation the assessee was able to produce the copy of the voucher and the copy of the cheque received from the said party which depicted that the liquidated damages have been deducted. For giving relief to the assessee the Ld. CIT(A) has relied on the order of the Hon'ble Allahabad High Court in the case of Central Trading Agency Vs. CIT 56 ITR 561 (All) wherein the Hon'ble High Court allowed the expenses incurred for liquidated damages under the head commercial expediency and also the decision of the Hon'ble Madras High Court in the case of CIT Vs. Indane Bislers 91 ITR 427 (Mad). Our attention was drawn to the copies of the contract and other details and we agree with the Ld. CIT(A) that it was an inbuilt condition of the contract that in case of late delivery of goods, percentage of consideration as liquidated damages would be deducted by the customer while making payment. It is noted that the payment was made to the assessee by the parties while it was carrying on its business, and the deduction of payment made by the parties were as per the contractual terms and so, it is an allowable deduction and we confirm the order of the Ld. CIT(A) and dismiss this ground of appeal of the revenue.

12. Third ground of appeal of the revenue is against the action of the Ld. CIT(A) in allowing the expenses incurred by the assessee for maintenance of immature tea bushes (young tea bushes) for AYs 2008-09 to 2011-12.

13. Facts of AY 2008-09 are taken into consideration. Brief facts of the case are that the AO noted from the computation of income that the assessee has deducted Rs.31,24,547/- under West Bengal Garden and Rs.10,24,157/- under the Assam Garden towards management of new tea bushes. During the assessment proceeding, the assessee stated that the cost is related for plantation/nourishment of young tea plants and also allied cost like labour charge/manure etc. According to AO, Rule 8(2) allows the expenses for replanting only. According to AO, there is no provision for allowance of expenses in relation to new tea bushes for the purpose. Therefore, the entire amount was treated as capital expenditure and added back to the total income. Thus, an addition of Rs.41,48,704/- was made. On appeal, the Ld. CIT(A) allowed the expenditure. Aggrieved, revenue is before us.

14. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the AO has disallowed the expenditure on the ground that Rule 8(2) allows only for replanting and there is no provision for allowance of expenses in relation to young tea bushes, therefore, he has treated the entire expenditure as capital expenditure and added back the same with the total income. On appeal, it was brought to the notice of the Ld. CIT(A) that the entire expenditure relates to maintenance of young tea bushes for the purpose of re-plantation only in area already under plantation and it is clearly allowable expenses under Rule 8(2) of the Rules. It was brought to the notice of the Ld. CIT(A) that the company has been claiming the expenditure consistently and this issue cropped up in AY 1998-99 in the case of assessee's own case in ITA No. 2030/Kol/1996, the Tribunal by order dated 30.08.2004 has decided the case in favour of the assessee. The Ld. CIT(A) took note of the Tribunal's order in assessee's own case wherein the Tribunal has held that the expenses incurred for maintenance in respect of immature tea bushes in the existing garden is to be allowed as revenue expenditure and it was further held that since the expenses were incurred by the assessee company for maintenance and replacement of tea bushes in its existing garden, the same cannot be said to have created an enduring benefit which can be termed capital in nature and as accordingly, the expenses claimed by the assessee company was allowed as revenue expenditure. We note that the Ld. CIT(A) while giving relief to the

assessee has relied on the Hon'ble Calcutta High Court decision in the case of Tasati Tea Ltd. Vs. CIT (2003) 262 ITR 388 (Cal) wherein the Hon'ble High court has held as under:

> *"As we understand from the expression used in Rule 8(2), it applies only in respect of replacement of useless or dead plants in an area, which is already under cultivation and not abandoned earlier. It cannot be stretched to a stage prior to the replacement of the useless or dead bushes. The maintenance of Nursery for the purpose of raising bushes to be utilized for replantation of dead or useless bushes within the plantation area does not come under Rule 8(2). It is the replantation of dead or useless bushes within the plantation area that comes within the scope and ambit of rule 8(2). This cannot be extended to a stage prior to actual replacement or replantation."*

15. We note that this issue has been dealt with by the Tribunal in assessee's own case for AY 1990-91 in ITA No. 2030/Kol/1996 vide order dated 03.08.2004, wherein vide para 12 the Tribunal held as under:

> *"12. The learned counsel for the assessee stated that the expenses were incurred on maintenance in respect of immature tea bushes and since were incurred in the existing garden, is not that of capital nature. He stated that the other part of the expenses which were not spent on maintenance of immature tea bushes, were surrendered by the assessee company itself as that of capital nature. He argued that the issue is now well settled that the maintenance expenses on account of immature tea bushes in computing the tea business income of the assessee company are allowable expenses and placed reliance on the decisions in 120 Taxman 645 (Cal) and 48 ITR 83 (SC). The learned DR has relied on the orders of the AO and the CIT(Appeals). We have considered the rival submissions. We find that the expenses were incurred for maintenance in respect of immature tea bushes in the existing garden and, therefore, the expenses are of revenue nature. The cases cited by the learned Counsel for the assessee support the case of the assessee. Since the expenses were incurred by the assessee company for maintenance of and replacement of tea bushes in its existing garden only, the same cannot be said to be that of an enduring benefit of capital nature and accordingly we hold that the expenses claimed by the assessee company are allowable as revenue expenditure. Accordingly, the issue is decided in favour of the assessee and the ground of appeal no. 7 is allowed."*

Respectfully following the decision of the Tribunal of this issue, cited supra, and since there is no change in facts or law we confirm the order of the Ld. CIT(A) and hence, this ground of appeal of revenue is dismissed.

16. The next ground i.e. revenue's appeal is against the action of Ld. CIT(A) in deleting the addition made by the AO on the ground of unexplained sundry creditors for AY 2009-10. Brief facts of the issue are that during the course of assessment proceedings, the assessee was asked to file details of the sundry creditors and the AO was pleased to issue

notice u/s. 133(6)/131 of the Act to some creditors. According to AO, some creditors replied and some creditors did not respond. So, according to AO, on verification, he found that there is discrepancy of Rs.2,47,65,498/- and since the assessee could not explain the discrepancy, he added back the same to the total income as unexplained cash credit u/s. 68 of the Act. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to delete the same. Aggrieved, the revenue is before us.

17. We have heard rival submissions and gone through the facts and circumstances of the case. The reasons given by the AO to make the addition is not repeated for the sake of brevity. During the appellate stage, the Ld. CIT(A) has taken note that out of the nine sundry creditors eight of them have responded to the notice issued by the AO u/s. 133(6)/131 of the Act and only one party did not respond to the notice of the AO. We note that only the party named M/s. ABB Global Ind & Services ltd. has not responded and all other eight sundry creditors have responded. We note that the assessee is a Public Sector Undertaking of the Govt. of India and its accounts are audited by statutory auditor as well as by CAG. It was brought to the notice of the Ld. CIT(A) that AO did not take into account the amount of advance appearing in the books of account against some of the creditors which should have been squared up before ascertaining the closing balances against those parties. Before the Ld. CIT(A) the summarized position of sundry creditors as on 31.03.2009 of the Electrical Division was enclosed and our attention was drawn to pages 6 to 7 wherein the assessee had enclosed the summarized position for the suppliers as on 31.03.2009 from which it is revealed that the difference is only to the tune of Rs.21,24,765/- instead of Rs.2,47,65,498/- as held by the AO. According to the Ld. AR, the AO in his assessment order at para 3 has considered the credit balance of DEKEM of Brenfford and omitted to take into account the credit balance of the same party in switchgear unit. Similarly, in respect of Easum Rayrole Ltd. the AO ignored the advance payment of Rs.52,86,934/- paid to the supplier by the switchgear unit. The Ld. AR drew our attention to the supplier wise comparison of the differential amount as per page 3 of the assessment order with that of the summarized position of suppliers balance as on 31.03.2009. Facts

and figures reflected at pages 6 and 7 of the paper book goes on to show that AO did not take into account the overall facts and circumstances as taken note by the Ld. CIT(A). Further, it was brought to our notice that the amount added back includes the opening balance pertaining to earlier year against which no adverse view was taken by the AO in the earlier assessment years and thus it was pointed out that the opening balance of creditors as on 01.04.2008 has attained finality and ought not to have been disturbed.

18. There is another legal aspect to the addition made u/s. 68 of the Act. We note that the AO has made the addition on the difference found in respect to the sundry creditors u/s. 68 of the Act. It should be kept in mind that in the case of credit purchases, amount of the supplier is credited with the amount payable. In such a case, where the purchase made by the assessee is allowed as an expenditure, the AO ought not to have again called upon the assessee to prove the nature and source of the credit for the reason that the purchase itself was allowed as explained only on being satisfied that it was a genuine purchase on credit. Implicitly the nature and source of the amount credited has also to be taken as having been explained satisfactorily. Also it has to be taken that the amount credited is not a cash credit in the sense that some monies have been received by the assessee but the credit represents a mere liability payable by the assessee in future. Under accounting principles, a liability can only be brought into account by making a credit entry in the books of account in favour of the person to whom the money is payable. Thus, there is a marked difference between the credit representing a liability payable by the assessee and a credit representing monies received from another person. It is because of this distinction a liability for purchase which has been credited in the account of the supplier cannot be added u/s. 68 of the Act. More so, when the purchase has been accepted as genuine and a deduction, therefore, has been allowed, therefore, the action of the Ld. CIT(A) deleting the addition need not to be interfered for this additional reason also as stated above. The revenue's ground of appeal is, therefore, dismissed.

19. The next ground of appeal of revenue is against the action of Ld. CIT(A) in allowing the prior period expenses claimed by the assessee for AYs 2009-10, 2010-11 and 2011-12.

Brief facts of AY 2009-10 is that during the assessment proceedings, the AO from a perusal of the accounts noted that prior period expenses to the tune of Rs.91.84 lacs has been debited in the accounts by the assessee company. According to AO, from a perusal of the tax audit report of the non-tea division by Annexure – O, the amount of debit of prior period relating to Non tea division is Rs.44,45,091/- and Rs.16,95,838/- relating to West Bengal Garden and Rs.30,42,918/- relating to Assam Garden was reflected, therefore, the AO was of the opinion that these expenditures are not related expenses in the relevant AY 2009-10. So, the entire expenses under prior period expenses was disallowed and added back to the total income. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A), who was pleased to allow the same. Aggrieved, the revenue is before us.

20. We have heard rival submissions and gone through the facts and circumstances of the case. The AO has disallowed the expenses on the reason that since these expenses are not related to the relevant assessment year, he disallowed the same. On appeal, the Ld. CIT(A) has gone through the details of the expenses item-wise and has reproduced the details which is given in Form No. 3CD annexure – 9 which reveals that expenditure of Rs.10,42,572/- was on account of bonus, interest on late deposit of TDS Rs.11,40,201/-, interest on sales tax Rs.2,34,898/-, ESI Rs.7,65,351/-, service tax Rs.62,441/-, Gratuity Rs.12,88,395/-, food staff Rs.4,46,542/-, fee Rs.1,07,583/- etc. had accrued only in the AY 2009-10 and not of any earlier assessment year. Therefore, expenses of such nature which though relates to earlier period had crystalised in the year under consideration either due to change of law with retrospective effect like bonus or till finalization of sales tax case or settlement with trade union with retrospective effect in respect to fee, allowance etc. or receipt of final bill after the cut-off date of the assessment years. The Ld. CIT(A) has duly considered the magnitude and the scale of operations of the assessee company and observed that many of the expenses could not be correctly estimated and there could arise exigencies which require calibration/correction and, therefore, taking note of the fact that these expenses are crystallized in this assessment year under consideration, the Ld. CIT(A) has given relief which according to us, does not require any interference from our part and we

confirm the same. Therefore, this ground of appeal of the revenue for the assessment years under consideration is dismissed.

21. Next ground of appeal of the revenue is against the action of the Ld. CIT(A) in deleting the disallowance made by the AO u/s. 14A of the Act for AY 2010-11. Brief facts of the case are that the AO noted that assessee has earned dividend income which is exempt. However, when he verified the records it came to his notice that the non-tea division of the assessee did not make proper disallowance u/s. 14A of the Act, therefore, he disallowed u/s. 14A of the Act in respect to non-tea division read with Rule 8D(2)(ii) of the Rules of an amount of Rs.77,48,695/- and Rule 8D(2)(iii) of 0.5% of Rs.14,64,04,000/- i.e Rs.73,20,020/- thus, made total addition of Rs.84,80,715/-. Aggrieved, assessee preferred an appeal before the Ld. CIT(A) who was pleased to delete the same. Aggrieved, the revenue is before us.

22. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the AO taking note that the assessee has earned dividend income of Rs.73,92,000/-, and did not make proper disallowance u/s. 14A, therefore, applying Rule 8D made disallowance of Rs.84,80,715/-. We note that the assessee was in receipt of dividend income to the tune of Rs.73,91,655/-. The main plea of the assessee is that out of the aforesaid dividend income it received are from its group companies Rs.71,52,969/- for which no expenses were incurred by the assessee company. The main grievance of the assessee which was contended by them was that the AO completely misunderstood the intention behind the formula laid under Rule 8D(2)(ii) while considering the interest amount which includes the entire interest incurred by the company on account of generation of normal taxable income, therefore, according to assessee, the AO erred in blindly calculating the disallowance u/s. 14A read with Rule 8D of the Rules. We note that the Ld. CIT(A) has not adjudicated this issue at all. He has simply stated that he is following the order of the earlier assessment year 2009-10 but we do not find any adjudication by the Ld. CIT(A) for AY 2009-10. So, be that as it may, the Tribunal has delved upon the issue of disallowance u/s. 14A read with Rule 8D of the Rules in the case of REI Agro Ltd. Vs. DCIT 144 ITD

141 has made it clear that while computing disallowance u/s. 14A read with Rule 8D(2) (ii) and 8D(2)(iii) AO has to take into consideration only investment on the scrips which yielded exempt income and exclude those investment which have not yielded exempt income during the year. This order of the Tribunal has been upheld by the Hon'ble Calcutta High Court vide order dated 23.12.2013. The Tribunal in REI Agro Ltd. (supra) has held as under:

> *"(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."*

23. Since we have already taken note that the Ld. CIT(A) has not adjudicated this issue at all, in the interest of justice and fair play, we set aside the order of Ld. CIT(A) and remand this matter back to the file of the AO to recompute the disallowance u/s. 14A read with Rule 8D as per law laid by the Tribunal in REI Agro Ltd., supra, and in accordance to law. Therefore, this ground of appeal of revenue is allowed for statistical purposes.

24. Next ground of appeal of the revenue is against the action of the Ld. CIT(A) in deleting the disallowance made by the AO under bad debt written off in respect of AY 2010-11. Brief facts are that the AO noted that as per schedule 19 (P&L Account) other expenses included bad debt written off of Rs.1,13,05,600/- relating to non-tea division which the assessee claimed as an allowable expenditure. According to AO, from the details filed it could not be established whether the same was offered to tax in earlier years, therefore, he disallowed the entire amount and added back to the total income of the assessee. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A), who was pleased to delete the same. Aggrieved, the revenue is before us.

25. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the AO did not accept the claim of the assessee on the reason that the assessee company failed to establish that the amount written off was offered to tax in the earlier years. Before the Ld. CIT(A) the assessee brought to his notice that the said amount

of Rs.1,13,05,600/- was written off after due approval of the Board of directors of the company, and out of the said amount Rs.1,09,58,100/- represented debts of more than fifteen years old of ESG and Electronic Unit of the company which was duly offered to tax as income at that time but could not be collected subsequently despite the best effort by the company particularly when such units become inoperative subsequently and that too for quite a long time. It was also brought to the notice of the Ld. CIT(A) that the debt of Rs.3,47,500/- in respect of Engineering Division was written off represented billed amount of the current year to SAIL which has made specific deduction of 5% of basic price because of certain dispute in delivery of the ordered particular material. The Ld. CIT(A) took note of the fact that the entire debt written off was offered to tax in various earlier years as business income of that year being part of the sale/turnover. We note that the Hon'ble Supreme Court in TRF Ltd. Vs. CIT 323 ITR 397 has clarified the position that bad debt is allowable if the debts had been taken into account in computing the income of the assessee of the previous year or any earlier previous year and that the same has been written off as irrecoverable in the accounts of the assessee. We note that the Ld. CIT(A) after going through the aforesaid facts and the law on the subject has given relief to the assessee. We further note that the assessee has produced copy of the general ledger extracts showing year wise and bill wise details of some high value of debtors, namely Mining & Allied Machinery Ltd. Rs.20,04,507/-, National Hydel Power Corporation Ltd. Rs.15,19,912/- etc. are out of Rs.1,13,05,600/- an amount of Rs.1,09,58,100/- which was a debt lying in the books of the assessee for more than fifteen years pertaining to ESG and electronic Unit which has become non-existent and the balance amount of Rs.3,47,500/- deducted by SAIL due to dispute in delivery of goods as discussed above. Taking note of the fact that the bad debt written off by assessee had been offered by the assessee to tax in the earlier years as business income, we find no infirmity in the order of the Ld. CIT(A) and decline to interfere in the order of the Ld. CIT(A) and dismiss this ground of appeal of revenue.

26. Next ground of appeal of revenue is against the action of Ld. CIT(A) in deleting the addition made by the AO in respect of sundry receipt of tea division for AYs 2010-11 and

2011-12. Brief facts for AY 2010-11 are that the AO noted that the assessee company has offered as income a sum of Rs.75,70,746/- being sundry receipt on account of Tea Division and applied Rule 8 on the said income. According to AO, there is nothing on record to show that this income was earned for growing and manufacturing of tea. Therefore, AO was of the opinion that the entire 100% of the income is to be considered as central income, and, therefore, he added back 60% of Rs.75,70-,756/- which comes to Rs.45,42,448/- which was added to the income of the assessee. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A), who was pleased to delete the same. Aggrieved, the revenue is before us.

27. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the AO has not allowed the application of Rule 8 on the sundry receipt of Tea Division on the ground that there is nothing on record to show that this income was for growing and manufacturing of tea. During the appellate proceedings, the assessee brought to the notice of the Ld. CIT(A) that the sundry receipt represented the amount received on account of insurance claim and carriers' claim on tea manufactured and sold through auction and expert. It was brought to his notice that it also included amount received on sale of DEPB license, amount of export sale of tea, sale of logs out of shed tree etc. It was brought to the notice of the Ld. CIT(A) that at the time of assessment proceeding sufficient evidence were produced before the AO to substantiate that sundry receipt of Rs.75,70,746/- had nexus with growing and manufacturing of tea and Rule 8 is applicable on such income. Thus it was contended by the assessee that 100% of sundry receipt cannot be considered as central income. According to assessee, 60% of sundry receipt amounting to Rs.45,42,448/- is agricultural income cannot be added as business income. We note that the Ld. CIT(A) has given a cryptic order without going into the details as to the validity of the claim made by the assessee and since there is no application of mind by the Ld. CIT(A) it would be in the fitness of things that this issue is also referred back to the file of AO, therefore, we set aside the order of Ld. CIT(A) and remand this issue back to the file of AO with a direction to the assessee to produce all documents to substantiate the claim that the sundry receipt which it claimed as to be considered as income under Rule 8. And the AO is

directed to adjudicate this issue afresh in the line of the ratios laid in the judicial precedents on this issue and in accordance to law. This ground of appeal of revenue is allowed for statistical purposes.

28. In the result, the appeal of revenue for AY 2008-09 is dismissed and the appeals of revenue for AYs 2009-10, 2010-11 and 2011-12 are partly allowed for statistical purpose as directed above.

Order is pronounced in the open court on 20th March, 2019

Sd/- Sd/-

(P. M. Jagtap) (Aby. T. Varkey)
Vice President Judicial Member

Dated : 20th March, 2019

Jd. (Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – DCIT, Circle-4/ACIT, Circle-4(1), Kolkata.

2 Respondent – M/s. Andrew Yule & Co. Ltd., Yule House, 8, Dr. Rajendra Prasad Sarani, Kolkata-700 001.

3. CIT(A)-8 & IV, Kolkata (sent through e-mail)

4. CIT- , Kolkata.

5. DR, ITAT, Kolkata. (sent through e-mail)

/True Copy, By order,

Assistant Registrar