

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “ C ” BENCH: BANGALORE

**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA Nos.27 & 28/Bang/2019
(Assessment Years: 2008-09 & 2009-10)

M/s. Jindal Aluminum Limited,
Jindal Nagar, Tumkur Road,
Bangalore-560073
PAN AAACJ4324M

....Appellant

Vs.

Dy. Commissioner of Income Tax,
LTU, Bangalore.

.....Respondent.

Assessee By:	Smt. Sowmya, Advocate.
Revenue By:	Smt. R. Premi, JCIT (D.R)

Date of Hearing :	27.02.2020
Date of Pronouncement :	13.03.2020

ORDER

PER SHRI PAVAN KUMAR GADALE, JM :

The assessee has filed appeals for the Asst Year 2008-09 and 2009-10. against the common order of Commissioner of Income Tax (Appeals)-4, Bangalore passed under Section 143(3) order giving effect of ITAT order and U/sec 250 of the Income Tax Act, 1961(the Act). Since the issues are similar and identical, they

are clubbed and heard together and consolidated order is passed. For the sake of convenience, we shall take up the appeal in ITA No.27/Bang/2019 and the facts narrated therein.

2. The assessee has raised the following grounds of appeal :

1. The order of the learned CIT (A) is opposed to law and the facts and circumstances of the case.
2. On the facts and in the circumstances of the case, the learned CIT(A) erred in confirming the disallowance to the tune of Rs. 14,40,471/- under section 14A of the Income Tax Act, 1961 (hereinafter called as "the Act") read with Rule 8D(2)(iii) of the Income Tax Rules, 1962 (hereinafter called as "the Rules").
3. The learned CIT (A) erred in not considering the grounds of appeal, which is pertaining to the computation of average value of investment for computing the disallowance under section 14A of the Act read with Rule 8D(2)(iii) of the Rules. Assessing officer in its order dated 21st March, 2017, has considered total investment as a tax-free investment in computation of average value of investment.
4. The learned CIT(A) erred in not assigning any justification towards confirming the disallowance of Rs. 14,40,471/- under section 14A Act, 1961 read with Rule 8D(2)(iii) of the Rules, which was made by the assessing officer.
5. The appellant craves leave to add, to alter, to amend or to delete any of the grounds that may be urged at the time of hearing of the appeal.

3. The Brief facts of the case are, the assessee company is engaged in the business of manufacturing and sale of Aluminum extraction and sale of wind energy. The Return of Income was filed on 25.09.2008 with total income of Rs.64,34,09,295/- and the assessment was completed under Section 143(3) of the Act on 1.10.2010 with total income of Rs.69,30,00,031/- with disallowance under Section 14A of Rs.35,01,582/- and Restriction on claim of deduction u/sec80 IA of the act. On appeal, the CIT (Appeals) has directed the Assessing Officer to

allow deduction under Section 80IA of the Act relying on the decision of ITAT in assessee own case. Whereas, in respect of disallowance of Rs.35,01,582/- under Section 14A r.w. Rule 8D(2)(iii) of IT Rules, The CIT (Appeals) has directed the assessing officer to restrict disallowance to the extent of Rs.14,40,471/- being 5% of the average amount of tax exempt investments. Subsequently, appeal was filed with the tribunal in respect of disallowance under Section 14A of the Act .The Hon'ble Tribunal has upheld the order of CIT (Appeals) in respect of interest disallowance. But in respect of disallowance under sec14Aof I T Act, the co-ordinate bench of the tribunal has remitted the issue to the file of Assessing Officer for fresh consideration.As directed by the Tribunal, Ao issued notice to the assessee for furnishing break up of expenditure and substantiate that no expenditure was incurred for earning exempt income.The assessee has filed the explanations, whereas an amount of Rs.19,52,99,992/-was debited under employees welfare and remuneration expenses, but could not give break up of expenses with identification of employees involved in decision making of investment activities. The assessee has also debited other expenditure in respect of travel and miscellaneous expenses including telephone, internet, professional charges, travelling expenses, but could not identify the expenses from the total claim but made generalized submissions that no expenses were incurred towards investment activities. The Assessing Officer was not satisfied with the assessee

explanations that no expenditure has been incurred in relation to income which does not form part of income and there is no allocation of expenses incurred for decision making of tax free investments for earning exempt income. Hence the Assessing Officer relying on the judicial decisions, worked out disallowance of 0.5% of tax free investments being Rs.14,40,471/- and passed the order giving effect of itat order dt.21.03.2017. Aggrieved by the order, the assessee has filed an appeal with the CIT (Appeals). In respect of disallowance under Section 14A of the Act, the CIT (Appeals) has confirmed the disallowance and partly allowed the appeal. Aggrieved by the CIT (Appeals) order, the assessee has filed an appeal before the Tribunal.

4. At the time of hearing, the learned Authorized Representative submitted that the CIT (Appeals) has erred in confirming the disallowance under section14A r w rule 8D2(iii) of I T Rules, irrespective of the fact that the assessee has not incurred any expenditure for earning tax free income and substantiated the arguments with written submissions and details in the Paper Book. She referred to the information submitted in respect of expenditure incurred on investment activities and the observations of ITAT at page 44 of the Paper Book to examine the claim of the assessee and prayed for allowing the appeal. Contra, the learned Departmental Representative relied on the orders of CIT (Appeals).

5. We heard the rival submissions and perused the material on record. The only disputed issue envisaged by the learned Authorized Representative with respect to disallowance under Section 14A r.w. Rule 8D(2)(iii), where the CIT (Appeals) has granted partial relief in the first round and the order giving effect was passed. The assessing Officer as per the directions of Hon'ble tribunal called for the explanations in respect of each item of expenditure, to prove such expenditure was not incurred for earning tax free income. The assessee has filed information, but was no break up of expenditure was provided under employees remuneration and welfare of the employees involved in decision making of investment activities. The investments are to the tune of Rs.28.81 Crores, which require proper guidance and constructive decision making. Further other expenses are in the nature of professional charges, travelling expenses etc incurred for investment options. On perusal of the assessment order, we found there are no observations of the assessing officer with respect to filling of Breakup of expenses. The LdAr referred to the Paper Book at page 1, submissions before appellate authority on the disallowance under 14A r.w. Rule 8D(2)(iii) of I T Rules, and page 19 where the Assessing Officer in the course of hearing of order giving effect called for the details and at Page 16 details of total expenditure filed on 28-02-2017. The LdAr vehemently relied on the material filed and demonstrated the employees cost as per the profit and loss account schedule at page 101 Rs.210,520,182/-. The ldAr

explained, the details of employees welfare expenses incurred as per Schedule 18 in the financial statements, and the number of employees in different departments and their placement in Bangalore factory premises and other branches in different part of India. We on perusal of the facts, and evidences found that the Assessing Officer required specific details to be submitted as per the directions of ITAT, but for the various reasons the assessee company has not submitted in the proceedings. Considering the facts, circumstances, submissions, principles of natural justice and material evidences filed. we are of the opinion that the directions of the co-ordinate bench of tribunal has to be complied by the assessee, and the information was submitted by the LdAr explaining the allocation of expenses in respect of the employees placed in different branches in India. we are of substantive opinion that the Assessing Officer has to examine and verify the correctness of evidence before considering the disallowance under Section 14A r.w. Rule 8D(2)(iii) I T Rules. Accordingly, we set aside the order of CIT (Appeals) on this issue and for limited purpose restore the entire disputed issue and the statement of employees remuneration and welfare expenses as per Schedule 18 of the financial statements, disclosing employees placement in Bangalore factory and branches in India to the file of Assessing Officer to verify and examine the correctness and the assessee should provide adequate opportunity of hearing and should cooperate in submitting the details and allow the grounds of appeal of assessee for statistical purposes.

6. Similarly, the assessee has filed appeal in ITA No.28/Bang/2019 where the facts are identical and similar to the ITA No.27/Bang/2019 and the decision taken in this case is equally applicable. Accordingly, the order of the CIT (Appeals) is set aside and restore the disputed issues to the file of Assessing Officer with similar directions and allows the grounds of appeal of assessee for statistical purposes.

7. In the result, the appeals of assessee for A.Ys 2008-09 and 2009-10 are allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(A.K. GARODIA)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Dated: 13.03.2020.

*Reddy GP

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| 1. The Appellant | 2. The Respondent |
| 3. CIT (Appeals) | 4. Prin. CIT |
| 5. DR, ITAT | 6. Guard File. |

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore