आयकर अपीलीय अधीकरण, न्यायपीठ – "C" कोलकाता,

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

(समक्षश्री ए.टी. वर्की, न्यायिक सदस्य**एवं**डॉए.एल. सैनी,लेखासदस्य)

[Before Shri A. T. Varkey, JM & Dr. A.L. Saini, AM]

I.T.A. Nos. 114 to 116/Kol/2019
Assessment Years: 2012-13 to 2014-15

Deputy Commissioner of Income-tax, Circle-8(1), Kolkata	Vs.	M/s. Asian Hotels East Limited (PAN: AACCV4634N)
Appellant		Respondent

For the Appellant	Shri Supriyo Pal, JCIT, DR
For the Respondent	Shri D. S. Damle, FCA

Date of Hearing	06.02.2020
Date of Pronouncement	10.06.2020

ORDER

Per ShriA.T.Varkey, JM:

All these appeals have been preferred by the revenue relate to AYs 2012-13 to 2014-15 against the separate orders of Ld. CIT(A)-3, Kolkata all dated 01.11.2018. Since issues involved are found to be common, all the appeals were heard together. Both the parties also argued them together raising similar arguments on these issues. Accordingly, for the sake of brevity, we dispose of all the appeals by this consolidated order.

2. First we take up the appeal for AY 2012-13 in ITA No. 114/Kol/2019 arising out of the order of the Ld. CIT(A) dated 01.11.2018 passed out against the assessment order passed u/s. 143(3) of the Act dated 31.03.2015.

3. Ground no. 1 of the appeal for the revenue is against the action of the Ld. CIT(A) deleting the disallowance of Rs.2,26,32,327/- being amortization of de-merger expenses claimed by the assessee u/s. 35DD of the Income-tax Act, 1961 (hereinafter referred to as the "Act")

4. Briefly stated facts of the case are that a company named M/s Asian Hotels Limited (in short "AHL') operated three separate and independent undertakings. Pursuant to a scheme of demerger approved by the Hon'ble Delhi High Court, vide their order dated 13.01.2010, which became effective from 11.02.2010, one of the hotel undertakings situated at Kolkata [hereinafter referred to as 'Kolkata Undertaking'] stood transferred by

way of demerger to M/s Vardhaman Hotels Ltd [which was renamed as M/s Asian Hotels (East) Ltd. i.e. the assessee] from the appointed date 31.10.2009. The terms and conditions related to the transfer of the Kolkata undertaking to the assessee were set out in Para IV of the Scheme of Arrangement. The relevant excerpts from the Scheme are reproduced hereunder:

> *"4.1 Upon this Scheme becoming effective, the Kolkata Undertaking shall stand demerged from AHL and be vested in Transferee Company – II, without any further deed or act, together with all properties, assets, rights, benefits and interest therein, subject to existing charges or lispendens, if any thereon, in favour of banks and financial institutions with effect from the Appointed Date.*
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> *4.2 Without prejudice to the generality of the foregoing, upon the Scheme becoming effective with effect from the Appointed Date:*
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> *i. any and all assets relating to the Kolkata Undertaking, as are movable in nature or incorporeal property or are otherwise capable of transfer by manual delivery or by endorsement and delivery or by vesting and recordal pursuant to this Scheme shall stand transferred and vested by AHL to Transferee Company-II and shall become the property and an integral part of Transferee Company-II. The transfer and vesting pursuant to this sub-clause shall be deemed to have occurred by manual delivery and possession or negotiation and endorsement, as appropriate to the property being vested and title to the property shall be deemed to have been transferred and vested accordingly. No stamp duty shall be payable on the transfer of such movable properties (including shares and other investments, which are in dematerialised form) upon its transfer and vesting in Transferee Company-II*
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> *ii. any and all movable properties of AHL relating to the Kolkata Undertaking, other than those specified in sub-clause (i) above, including sundry debtors, outstanding loans and advances, if any, recoverable in cash or in kind or for value to be received, bank balances and deposits, if any, with Government, semi-Government, local and other authorities and bodies, customers and other persons, shall without any further act, instrument and deed, be transferred and vested as the property of Transferee Company-II;*
>
> *iii. any and all immovable properties(including land together with the buildings and structures standing thereon) of AHL relating to the Kolkata Undertaking, whether freehold or leasehold and any documents of title, rights and easements in relation thereto, shall stand transferred to and be vested in Transferee Company-II, without any act or deed done by AHL or Transferee Company-II. Schedule I sets out the immovable properties pertaining to the Kolkata Undertaking. With effect from the Effective Date, Transferee Company-II shall be entitled to exercise all rights and privileges and be liable to pay ground rent, municipal taxes and all obligations, in relation to or applicable to such immovable properties. The mutation of title to the immovable properties and transfer of the leasehold and other rights therein, as applicable, in the name of Transferee Company-II shall be made and duly recorded by the appropriate authorities pursuant to the sanction of this Scheme by the Hon'ble High Court and this scheme becoming effective with effect from the Appointed Date, in accordance with the*

terms hereof without any further act or deed on part of Transferee Company-II (save and expect for filling the sanction order relating to the Scheme with the Registrar of Companies, NCT of Delhi and Haryana);"

5. It is noted that clause 6.11 of the Scheme further set out a pre-condition that the said Scheme was conditional upon obtaining approval of the Government of West Bengal for vesting of the leasehold property belonging to the Kolkata Undertaking to the transferee company. the said Clause 6.11 read as follows:

"6.11 This Scheme is conditional upon and subject to:

i. The Scheme being agreed to by the respective requisite majorities of the members (either by way of a meeting or a letter of consent) and the creditors of AHL, and the members of Transferee Company-I and Transferee Company-II in accordance with Section 391-394 and other applicable provisions of the Act;
ii. The vesting of the leasehold property belonging to the Kolkata Undertaking shall be subject to the approval of the Government of West Bengal; and

iii. The Scheme being sanctioned by the Hon'ble High Court and certified copy of the orders of the High Court sanctioning this Scheme being filed with the Registrar of Companies, National Capital Territory of Delhi and Haryana by AHL, Transferee Company-I and Transferee Company-II, respectively."

6. It is noted that the Department of Urban Development Govt. of West Bengal granted permission for transfer of leasehold rights in respect of Plot No. I in Block JA, Sector-III, Saltlake on which the hotel is situated vide communication ref. no.402-UD/O/M/SL(AL/NR)6L-39/95(PT-II) dated 08.02.2010. The said permission was subject to payment of fees of Rs.10,89,84,900/- which was also deposited on 18.12.2009 and the fact duly acknowledged by the said State Department. Accordingly, the pre-condition set out in Clause 6.11(ii) to make the Scheme operational was satisfied.

7. It is further noted that Clause 6.12 contained the terms and conditions for giving effect to the Scheme of arrangement which reads as follows:

"6.12 This Scheme shall become effective on the date of filling Form 42 of the Companies (Court) Rules, 1959 of the High Court in relation to the Scheme (as amended by the present amendment) along with Form 21 with the Registrar of Companies, NCT of Delhi and Haryana. Such date shall be known as the "Effective Date"."

8. Acting in accordance with the above conditions, the assessee had filed the certified copy of the approved scheme along with the requisite statutory forms with the Registrar of Companies, New Delhi on 11.02.2010. Hence, in terms of the above Clause 6.12 of the

Scheme, the effective date of the Scheme became 11.02.2010 and it was operational from the appointed date i.e. 31.10.2009. Accordingly, by operation of the approved scheme, the Kolkata undertaking along with all its assets and liabilities stood vested with the assessee from 31.10.2009. Further, the profits and losses derived from the operation of' the Kolkata Undertaking also stood automatically vested with the assessee retrospectively from 31.10.2009. The transferee company i.e. the assessee, therefore, prepared the accounts for the period 31.10.2009 to 31.03.2010 and the operating results for the said period was accounted in the books of the resultant company. In connection with this demerger, the assessee had incurred the following expenses which was also debited in the P& L Account for the period 31.10.2009 to 31.03.2010.

Sl No.	Particulars	Amount
1	Permission Fees paid to UDD, Govt of WB for transfer of leasehold property	10,89,84,900
2	AZB & Partners – Legal Fees	1,8,88,450
3	Amarchand&Mangaldas& Suresh A Shroff & Co. - Legal Fees	10,92,509
4	Amarchand&Mangaldas& Suresh A Shroff & Co. - Legal Fees	8,07,207
5	Amarchand&Mangaldas& Suresh A Shroff & Co. - Legal Fees	3,88,118
	TOTAL	11,31,61,184

9. The above expenses having been incurred wholly and exclusively with the purpose of demerger and to make the scheme of arrangement effective and operational was claimed by way of deduction on pro-rata basis for five years term in terms of section 35DD of the Act with AY 2010-11 being the first year of claim. For AY 2010-11, the assessment of the assessee was completed u/s 143(3) on 10.10.2012 at total income of Rs.15,09,04,180/-. In arriving at the assessable income, l/5th of the demerged expenses i.e. Rs.2,26,32,327/- [11,31,61,184/5 years] was claimed by way of deduction u/s 35DD of the Act. The said claim was allowed by the AO while framing assessment u/s 143(3) of the Act for AY 2010-11. In AY 2011-12 as well, the AO in the assessment completed u/s 143(3) on 18.12.2013 allowed the deduction so claimed u/s 35DD of the Act.

10. For AY 2012-13, the assessee had filed a return of income showing total income of Rs. 25,61,87.230/-. The case of the assessee was selected for scrutiny through CASS. In the course or assessment u/s 143(3) of' the Act, the AO required the assessee to

substantiate the claim being made u/s 35DD of the Act. Referring to note no. 34 of the annual accounts wherein it was stated that, *"Pursuant to the Scheme of Arrangement & Demerger, the company had obtained approval of the Govt. of West Bengal for the vesting of the leasehold property upon which Hotel Hyatt Regency is situated. Liabilities for registration of the same will be determined as and when the registration is done.,"* the AO observed that the registration of leasehold property transferred through the Scheme of demerger remained incomplete. According to him the condition laid down in Clause 6.11 (ii) of the Scheme required that the leasehold property being vested with the transferee company i.e. the assessee, should be transferred as well as registered in the name of the assessee, which remained unfulfilled and as a consequence, the demerger also remained incomplete. According to the AO, the permission fees paid to the Government of West Bengal indicated that the approval was granted by the State Government but he was of the view the registration of the leasehold property in the name of the assessee was also a precondition in terms of the Scheme. Based on these observations, the AO thereafter concluded that the deduction u/s 35DD of the Act was not permissible since it is allowable only when the terms of the scheme were fully complied with. The AO accordingly disallowed the demerger expenses of Rs.2,26,32,237/- claimed in terms of Section 35DD of the Act. Aggrieved by the order of the AO, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to delete the same. Being aggrieved by the order of the Ld. CIT(A), the Revenue is now in appeal before us. At the time of hearing the Ld. DR appearing on behalf of the Revenue relied on the order of the AO and contended that the AO rightly disallowed the claim of the assessee made u/s. 35DD of the Act for non satisfaction of the precondition that the registration of the leasehold property should be in the name of the assessee. Therefore, he wants us to reverse the order of the Ld. CIT(A) and uphold the order of the AO. Per contra, the Ld. AR of the assessee supported the order of the Ld. CIT(A) and does not want us to interfere in the order of the Ld. CIT(A).

11. We have heard the rival submissions and gone through the facts and circumstances of the case. It is noted that M/s Asian Hotels Limited, inter alia, operated and managed a Hotel Undertaking at Kolkata which was demerged into M/s Vardhaman Hotels Limited, [renamed to M/s Asian Hotels (East) Ltd i.e. the assessee]. The appointed date as per the Scheme of Arrangement was **31.10.2009**. On perusal of the terms of the Scheme, it is noted that the 'Hotel Undertaking' at Kolkata was demerged as a going concern along with all its

assets and liabilities. It was, therefore, not a case of transfer of individual assets or liabilities but transfer of an undertaking as a whole. It is, however, the AO's case that the registration of leasehold property on which the hotel was situated yet has to be done in the name of the assessee and therefore in his view the transfer of such leasehold land remained incomplete and to that extent the Scheme of demerger remained incomplete. It is observed that this inference drawn by the AO emanated from clause 6.11(ii) of the Scheme. It is, therefore, imperative to extract the relevant clause of the Scheme ones again which reads as under:

> "*6.11 This Scheme is conditional upon and subject to :*
>
> *ii. The vesting of the leasehold property belonging to the Kolkata Undertaking shall be subject to the approval of the Government of West Bengal; and*

12. As rightly pointed out by the assessee, nowhere does the above clause makes the demerger conditional upon the *'registration*' of the leasehold property in the name of the assessee. It is observed that the AO has imported a condition into the Scheme of arrangement which was neither prescribed by the Parties to the Scheme or by the Hon'ble High Court. We note that the only condition for *'vesting*' of the leasehold property with the resulting company, was obtaining approval from Government of West Bengal. It is not in dispute that this approval was granted by the Government of West Bengal prior to the Scheme becoming effective from 11.02.2010. It is noted that even the requisite permission fees was paid prior to the date on which the scheme became effective. It is further observed that this Scheme of Arrangement was sanctioned by the Hon'ble Delhi High Court and it ordered the vesting of the Kolkata undertaking with the assessee company from the appointed date i.e. 31.10.2009. We therefore, agree with the Ld. AR of the assessee that the vesting of Kolkata undertaking with the assessee, as contemplated in terms of the Scheme, particularly Clause 6.11(ii) & 6.12, was indeed complete. For the reasons discussed in the foregoing, the very premise on which the AO denied the deduction claimed by the assessee u/s 35DD of the Act is found to be factually untenable.

13. We also find merit in the Ld. CIT(A)'s finding that when, for the purposes of assessing the income earned by the Kolkata Undertaking during the year, in the hands of the transferee company i.e. the assessee; the AO had considered the de-merger to be complete and effective, then he could not adopt a contrary stand in respect of

corresponding expenses and deny the deduction claimed u/s 35DD of the Act alleging the demerger to be incomplete. It is further noted that the initial year of claim of deduction u/s 35DD of the Act was AY 2010-11. On perusal of the assessment order passed u/s 143(3) of the Act dated 10.10.2012 by the Dy.CIT, Circle 2(1), New Delhi, we note that the AO had discussed in detail various aspects of the demerger order of the Hon'ble High Court and also the figures of the assets, liabilities and turnover of the resultant company. It is only upon being satisfied that the demerger was complete that the AO had assessed the income of the Kolkata undertaking for the period 01.11.2009 to 31.03.2010 in the hands of the assessee. We further observe that the deduction claimed by the assessee u/s 35DD of the Act was allowed by the AO in the assessment order passed for AY 2010-11. The relevant findings recorded by the AO in the assessment order for AY 2010-11 is as follows:

2. The assessee company was engaged in the business of running a Hotel and investment in shares and securities including those of subsidiary companies for furtherance of its hotel activities. During the previous year ended on 31-3-2010, relevant to the present Assessment Year, the Hon'ble High Court of Delhi has by its order dated 13th January 2010 – the scheme came effective from 16.02.2010 a copy of which is placed on record, sanctioned the demerger of Asian Hotels Ltd into the following three companies, on the terms and conditions elaborated in the Scheme of Arrangement and Demerger (hereafter referred to as Scheme for short) which forms a part of the Court's Order.

1) Asian Hotels Ltd.,
2) Chillwinds Hotels Ltd.,
3) Vardhaman Hotels Ltd.,

3. The order being voluminous, only the salient/relevant points are described hereunder:

a) The Appointed date, for the demerger to become effective is 31st October 2009.

b) ……

c) Vardhman Hotels Ltd., (the name of which has been approved to be changed on demerger to Asian Hotels (East) Ltd., by the High Court – referred as Transferee Company No.2 in the High Courts' order is to become the owner of the hotel undertaking at Kolkata namely Hyatt Regency Kolkata along with all its assets (including certain investments listed in the order), liabilities and employees working in the said undertaking

4. The Scheme of Arrangement and Demerger approved by the court also provides:

a) For issue of further preference shares etc in the existing company for the purposes of the Demerger

b) For issue of shares of the Transferee companies No.1 and No.2 to the existing shareholders of Asian Hotels Ltd., as on the Record date, in accordance to the ratios given in the Scheme

c) For allocation of the Reserves of Asian Hotels Ltd., among the three demerged companies

d) For treating the difference between the Book Value of assets and the liabilities of the transferred undertakings and the Share capital and Reserves to be credited to Reserves in case of Transferee Company No.1 and 2 and debiting it to Reserves in case of the Residual undertaking – namely Asian Hotels (North) Ltd.

e) The Book values of assets etc to be taken over by the Transferee Companies shall be determined by the Statutory Auditors of Asian Hotels Ltd.

f) There are a number of other general terms relating to the demerger.

6. Thus present assessment year 2010-11 consists of accounts for the previous year – namely the period from 01.04.2009 to 31.03.2010. the assessee company has submitted by way of Indemnity Bond dated 26.04.2012 that for the A.Y. 2010-11 relevant to previous year 2009-10 the income during the period from 1st April 2009 till 31st October, 2009 are to be taxed and assessed in the hands of Asian Hotels (North) Ltd. (erstwhile Asian Hotels Ltd.) and income during the period from 1st November, 2009 till 31st March, 2011 are to be taxed and assessed in the hands of assessee company.

6.1 The assessee company has also declared that the assets and liabilities etc have been transferred to the assessee company from the demerging entity is in accordance to the terms and conditions of the Scheme of Arrangement and Demerger approved by the High Court of Delhi by its order dated 13th January 2010.

6.2 Therefore no taxable capital gains/ loss arise on account of the transfer of undertakings to the two demerged companies in terms of clause (vib) of Sections 47 of the Income Tax Act, 1961.

6.3 The figures of transfer of assets have been test checked with the operative terms and have been found prima facia correct and satisfactory

6.4 The turnover of the assessee for the Assessment Year 2010-11 was Rs.41,21,54,895/- .”

14. It is further observed that the said deduction was also allowed in the order passed u/s. 143(3) of the Act for AY 2011-12. In view or the foregoing facts, we, therefore, agree with the Ld. CIT(A)'s observation that the deduction u/s 35DD of the Act is a continuing one and when the said deduction was allowed in the initial year of claim, then in absence of change in the factual matrix, the Revenue could not disturb the continuing claim in the subsequent years. In this regard, we may usefully refer to the decision of the Hon'ble Supreme Court in the case of M/s Shashun Chemical & Drugs Ltd reported in 388 ITR 1. In this case [M/s Shashun Chemical & Drugs Ltd], the assessee had raised fresh equity capital for expansion of its business. The share issue expenses were amortized and claimed

over a period of ten years in terms of Section 35D of the Act, starting from AY 1995-96 and onwards. The AO, after examining the materials produced, allowed the claim of the assessee in the initial assessment year being AY 1995-96. The AO disallowed the claim in the subsequent AY 1996-97. On appeal, the First Appellate Authority directed the AO to physically inspect the factory premises and verify whether there was actual expansion of business. Upon verification of the factory premises, the AO was satisfied that there was expansion of the facilities and accordingly allowed the deduction claimed u/s 35D of the Act in AY 1996-97. In AY 2001-02, the AO again denied the deduction claimed by the assessee u/s 35D of the Act. The assessee succeeded in appeal before the Ld. CIT(A), which was also affirmed by the Tribunal. The Hon'ble High Court, however, reversed the orders of the lower authorities and restored the order or the AO. On appeal, the Hon'ble Supreme Court held that once the claim u/s 35D of the Act was accepted in the initial year i.e. AY 1995-96, then the clock had started running in favour of the assessee which was to continue for the entire period of ten years and the benefit once granted in the initial year could not be denied in the subsequent years, The Hon'ble Apex Court accordingly allowed the claim of the assessee, The relevant findings of the Hon'ble Apex Court are as follows:

> *"13. In the Income Tax Return which was filed for the Assessment Year 1995-96 the assessee had claimed that it had incurred a sum of Rs.45,51,890/- towards the share issue expenses and had claimed 1/10th of the aforesaid share issue expenses under Section 35D of the Act from the Assessment Years 1995-96 to 2004-05. This claim of the assessee was found to be justified and allowable under the aforesaid provisions and on that basis 1/10th share issue expenses was allowed under Section 35D of the Act. When it was again claimed for the Assessment Year 1996-97, though it was disallowed and on directions of the Appellate Authority, the Assessing Officer made physical verification of the factory premises. He was satisfied that there was expansion of the facilities to the industrial undertaking of the assesseee. It is on this satisfaction that for the Assessment Year 1996-97 also the expenses were allowed. Once, this position is accepted and the clock had started running in favour of the assessee, it had to complete the entire period of 10 years and benefit granted in first two years could not have been denied in the subsequent years as the block period was 10 years starting from the Assessment Year 1995-96 to Assessment Year 2004-05. The High Court, however, disallowed the same following the judgment of this Court in the case of Brook Bond India Ltd (supra). In the said case it was held that the expenditure incurred on public issue for the purpose of expansion of the company is a capital expenditure. However, in spite of the argument raised to the effect that the aforesaid judgment was rendered when Section 35D was not on the statute book and this provision had altered the legal position, the High Court still chose to follow the said judgment. It is here where the High Court went wrong as the instant case is to be decided keeping in view the provisions of Section 35D of the Act. In any case, it warrants repetition that in the instant case under the very same provisions benefit is allowed for the first two Assessment Years and, therefore, it could not have*

been denied in the subsequent block period. We, thus, answer question No. 1 in favour of the assessee holding that the assessee was entitled to the benefit of Section 35D for the Assessments Years in question."

15. For the reasons discussed above, therefore, we do not see any reason to interfere with the order of the Ld. CIT(A). Therefore, ground no. 1 of the Revenue's appeal is dismissed.

16. Ground No. 2 relates to disallowance u/s. 14A of the Act read with Rule 8D of the Income-tax rules, 1962 (hereinafter referred to as the "Rules"). The AO found that the assessee had earned dividend income of Rs. Rs.9,47,93,946/- which was claimed as exempt u/s. 10(34)/10(35) of the Act. In relation to earning of this income, the assessee had suo-moto computed and disallowed expenditure of Rs.63,47.905/- u/s 14A of the Act. When enquired regarding the basis of disallowance by the AO, the assessee explained that the disallowance has been worked out in accordance with Rule 8D with reference to the investments which actually yielded dividend income. The AO, however was not agreeable to the computation of the assessee and computed disallowance u/s 14A read with Rule 8D with reference to all investments, which worked out to Rs.l,60,98,204/-. On appeal the Ld. CIT(A) found merit in the disallowance of Rs.63,47,905/- which was suo moto disallowed and offered by the assessee and directed the AO to verify the same and restrict the disallowance under Rule 8D(2)(iii) by considering only those investments which have yielded tax free income during the year. Aggrieved by this order of Ld. CIT(A), the Revenue is in appeal before us.

17. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the Ld. ClT(A) directed the AO to restrict the disallowance under Rule 8D(2)(iii) by considering only those investments which have yielded tax free income during the year. We find that this direction of the Ld. ClT(A) is in accordance with the decision rendered by this Tribunal in the case of REI Agro Ltd. Vs. DClT in ITAT No.1331/K01/2011, which has since been upheld by the Hon'ble Calcutta High Court. Since the Ld. CIT(A) adjudicated the issue, as stated above, by following the decision the Tribunal, Kolkata Benches following the dictum of law laid in REI Agro Ltd. (supra), we

do not see any reason to interfere with the order of the Ld. CIT(A) on this issue. Therefore, this ground of the Revenue is dismissed.

18. Ground No. 3 of the Revenue is against the action of Ld. CIT(A) in holding that employees' contribution deposited by employer beyond the prescribed due date is allowable as deduction u/s 43B of the Act. Briefly stated, facts are that in this case the AO disallowed a sum of Rs.13,57,305/- being delayed payment of Employees PF contributions which the assessee had paid beyond the statutory date as provided in the Provident Fund Act [PF Act], but within the due date of filing of Income Tax Return u/s. 139(1) of the Act. On appeal, the Ld. CIT(A) following the decision of the Hon'ble jurisdictional Calcutta High Court in the case of CIT Vs. M/s. Vijay Shree Ltd. in ITAT No. 245 of 2011 held that the disallowance of Rs.13,57,305/- made on account of payment of Employees PF contributions after due date as prescribed in the PF Act but before the filing return of' income satisfies the requirement of Section 43B of the Act and therefore the disallowance was unwarranted and ordered to delete the same. Aggrieved, the Revenue is in appeal before us.

19. We have heard rival submissions and gone through the facts and circumstances of the case. We note that this issue is no longer res integra. We note that the Hon'ble Calcutta High court has held that employees' contribution to PF and ESI paid on or before the due date of filing of return of income u/s. 139(1) of the Act should be allowed as deduction. In this regard we gainfully refer to the decisions of Hon'ble Calcutta High Court in the case or M/s. Akzo Nobel India Ltd. Vs. CIT in ITA No.110 of' 2011 dated 14.06.2016 and in the case of' CIT Vs. Vijayshree Ltd. (supra). In the order in the case of' Vijayshree Ltd. (supra) the Hon'ble Calcutta High Court held as follows:

> *"The only issue involved in this appeal is as to whether the deletion of the addition by the Assessing Officer on account of Employees 'Contribution to ESI and PF by invoking the provision of Section 36(1)(va) read with Section 2(24)(x) of the Act was correct or not. It appears that the Tribunal below, in View of the decision of the Supreme Court in the case of Commissioner of Income Tax vs. Alom Extrusion Ltd., reported in 2009 Vol.390 ITR 306, held that the deletion was Justified.*
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> *Being dissatisfied, the Revenue has come up with the present appeal.*
>
> *After hearing Mr. Sinha, learned advocate, appearing on behalf of the appellant and after going through the decision of the Supreme Court in the case of Commissioner of Income Tax vs. Alom Extrusion Ltd., we find that the Supreme Court in the aforesaid case has held that the*

amendment to the second proviso to the Sec. 43(B) of the Income Tax Act, as introduced by Finance Act, 2003, was curative in nature and is required to be applied retrospectively with effect from 1 st April, 1988.

Such being the position, the deletion of the amount paid by the Employees' Contribution beyond due date was deductible by invoking the aforesaid amended provisions of Section 43(B) of the Act.

We, therefore, find that no substantial question of law is involved in this appeal and consequently, we dismiss this appeal."

20. In view of the aforesaid decision of the Hon'ble Calcutta High Court, we are of the view that the Ld. CIT(A) has rightly allowed the deduction in respect of the employee's contribution to PF & ESI which admittedly remitted on or before the due date for filing the return of income u/s. 139(1) of the Act. We therefore do not find any infirmity in the order of the Ld. CIT(A) and, we confirm the same and dismiss this ground or appeal of revenue.

ITA No. 115/Ko/2019 [AY 2013-141

21. Ground no. 1 of the appeal relates to the Ld. CIT(A)'s action of deleting the disallowance on account of the amortization of demerger expenses of Rs.2,26,32,237/- claimed by the assessee u/s 35DD of the Act. After considering the rival submissions, it is observed that the issue involved in this ground is similar to the Ground no. 1 of Revenue's appeal in A.Y. 2012-13. Following our conclusion drawn in A.Y. 2012-13, we dismiss this ground of the Revenue.

22. Ground no. 2 of the Revenue is against the action of Ld. CIT(A) in restricting the disallowance u/s 14A read with Rule 8D(2)(iii) with reference to investments which actually yielded dividend income. After considering the rival submissions, it is observed that the issue involved in this ground is similar to the Ground No. 2 or Revenue's appeal in A.Y. 2012-13. Following our conclusion drawn in A.Y. 2012-13, we dismiss these grounds of the Revenue.

ITA No. 116/Kol/2019 [AY 2014-15]

22. Ground no.1 of the appeal relates to the Ld. CIT(A)'s action of deleting the disallowance on account of the amortization of demerger expenses of Rs.2,26,32,237/- claimed by the assessee u/s 35DD of the Act. After considering the rival submissions, it is observed that the issue involved in this ground is similar to the Ground No. 1 of Revenue's

appeal in A.Y. 2012-13. Following our conclusion drawn in A.Y. 2012-13, we dismiss this ground of the Revenue.

23. Ground no. 2 of the Revenue is against the action of Ld. CIT(A) in restricting the disallowance u/s 14A read with Rule 8D(2)(iii) with reference to investments which actually yielded dividend income. After considering the rival submissions, it is observed that the issue involved in this ground is similar to the Ground No. 2 or Revenue's appeal in A.Y. 2012-13. Following our conclusion drawn in A.Y. 2012-13, we dismiss these grounds of the Revenue.

24. Before parting, it is noted that the order is being pronounced after the ninety (90) days of hearing. However, taking note of the extraordinary situation in the light of the COVID-19 pandemic and lockdown, the period of lockdown days need to be excluded. For coming to such a conclusion, we rely upon the decision of the Co-ordinate Bench of the Mumbai Tribunal in the case of DCIT vs. JSW Limited in ITA No. 6264/Mum/2018 & 6103/Mum/2018, Assessment Year 2013-14, order dt. 14th May, 2020. In the light of the above discussion, all the appeal of revenue are dismissed.

25. In the result, all the appeals of the revenue are dismissed.

Order is pronounced in the open court on 10th June, 2020.

Sd/-	Sd/-
(A.L. Saini)	(A. T. Varkey)
Accountant Member	Judicial Member

Dated: 10th June, 2020

Jd. Sr. PS

Copy of the order forwarded to:

1. Appellant – DCIT, circle-8(1), Kolkata.
2. Respondent – M/s. Asian Hotels East Limited, JA-1, Hyatt Regency Kolkata Sector-III, Salt Lake City, Kolkata-700 098.
3. CIT(A)-3, Kolkata. (sent through e-mail)
4. CIT, Kolkata.
5. DR, Kolkata Benches, Kolkata. (sent through e-mail)

True Copy,

By order,

Assistant Registrar
ITAT, Kolkata Benches