

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH, MUMBAI**

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No. 4223/Mum/2012**

**(A.Y: 2008-09)**

**&**

**ITA No. 4955/Mum/2013**

**(A.Y: 2009-10)**

Bajaj Finserv Limited, 226,Bajaj Bhawan, 2 flr,Jamnalal Bajaj Marg Nariman Point, Mumbai - 400021	<b>बनाम/ Vs.</b>	The Deputy Commissioner of Income Tax – Large Taxpayer Unit, Mumbai
स्थायी लेखा सं. / जीआइआर सं. / PAN/GIR No. : AADCB2924N		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी ओर से / <b>Appellant by</b> :	Shri Percy j Pardiwalla, AR
प्रत्यर्थी की ओर से / <b>Respondent by</b> :	Shri Shishir Dhamija, CIT DR

सुनवाई की तारीख / <b>Date of Hearing</b>	09/04/2021
घोषणा की तारीख / <b>Date of Pronouncement</b>	24/06/2021

□ देश / ORDER

**PER PAVAN KUMAR GADALE JM :**

These are the appeals filed by the assessee against the separate orders of Commissioner of Income Tax (Appeals)-24 passed u/s143 (3) and 250 of the Income Tax Act for the A.Y.2008-09 & 2009-10.The issues in these appeals are similar and identical. Hence are clubbed, heard and consolidated order is passed.

We shall take up ITA No. 4223/Mum/2012 for the Assessment Year (A.Y.) 2008-09 as a lead case and facts narrated. The assessee has raised following grounds of appeal as under:

- (a) *“On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in upholding the action of the Assessing Officer in disallowing an amount of Rs. 2,81,70,670 under section 14A of the Income-tax Act, 1961 (the Act) in respect of expenses incurred for earning exempt income.*
- (b) *On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in upholding the action of the Assessing Officer in invoking the provisions of Rule 8D of the Income-tax Rules, 1962 for computing disallowance under section 14A.*
- (c) *On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in rejecting the working of disallowance under section 14A of the Act made by the appellant on a reasonable basis.*
- (d) *On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in rejecting the contention of the appellant that even if disallowance is to be*

*made per Rule 8D, the same ought to be computed only on those investments which have yielded exempt income during the relevant previous year.*

*(e) On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in ignoring the contention of the appellant that in case disallowance is computed as per Rule 8D of the Income-tax Rules, 1962, then the deduction under section 80-IA of the Act ought to be computed on the revised profits.*

*2. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in upholding the action of the Assessing Officer in holding that the unabsorbed depreciation and accumulated losses of the years prior to the first year in which the appellant opted to claim deduction under section 80-IA of the Act, being the "initial year", need to be adjusted while computing the amount of profit eligible for deduction under section 80-IA of the Income-tax Act, 1961.*

*3. (a) On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in granting interest under section 244A of the Income-tax Act, 1961 only to the extent of Rs. 36,97,696 instead of Rs. 41,59,908.*

*(b) On the facts and in the circumstances of the case and in law, the Commissioner of Income Tax (Appeals) erred in not*

appreciating the fact that the refund order was dated 7 September 2009 and accordingly interest under section 244A of the Act ought to be computed upto September 2009.

**The assessee has raised three additional grounds of appeal:**

**Taxability of Voluntary Emission Reduction credits received:**

1) On the facts and in the circumstances of the case and in law, the appellant prays that the sum of Rs. 7,70,32,928 received in connection with the Voluntary Emission Reduction (VER) credits, which is in the nature of a capital receipt, ought to be reduced from the total income

**Cost of acquisition for the purpose of computing Capital gains in respect of debentures of Bajaj Auto Finance Limited sold by the appellant during the year:**

2) On the facts and in the circumstances of the case and in law, the appellant prays that while computing the Capital gains in respect of sale of debentures of Bajaj Auto Finance Limited, the cost of acquisition ought to be considered at Rs. 500 per debenture instead of Rs. 452 per debenture, i.e. without reducing the value attributed to the component relating to the detachable warrants received along with the debentures.

3.) **Deduction in respect of education cess:**

*On the facts and in the circumstances of the case and in law, the appellant prays that the Assessing Officer be directed to allow deduction in respect of education cess on income tax paid during the year.”*

Considering the facts and submissions of the Ld.AR and Ld.DR, the three additional grounds of appeal are admitted .

2. The Brief facts of the case are that, the assessee company is engaged in the business of wind farm & strategic investments. The assessee has electronically filed the return of income for A.Y.2008-09 on 30.09.2008 with the total income of Rs.60,93,23,943/- and under MAT book profits u/s 115JB, Rs. 60,85,04,005/-. The return of income was processed u/sec143 (1) of the Act. Subsequently, the case was selected for scrutiny and notice u/s 143 (2) and 142 (1) of the Act along with questionnaire are issued. In compliance the Ld. AR of the assessee appeared from time to time and submitted the details and the case was discussed. It was also brought to the knowledge of the Assessing Officer that, the Hon'ble Bombay High Court vide order dt 18.12.2007 passed the order demerging M/s Bajaj Auto Ltd. (BAL) w.e.f. closing

hours of 31.03.2007. As per the scheme of demerger, the manufacturing undertaking was demerged into M/s Bajaj Holding & Investments Ltd. (Bajaj Auto Ltd.) and the strategic business undertaking (including financial services & wind mills) was demerged into M/s Bajaj Finserv Ltd (the assessee company).

3. The AO on perusal of the financial statements observed that the aggregate investments of the assessee company as on 31.03.2008 are Rs.13,825.2 millions. The assessee company has received dividend of Rs. 4,07,52,108/- from M/s Bajaj Auto Finance and claimed exemption u/s 10 (35) of the Act, whereas the assessee has made disallowance in respect of expenses incurred for earning exempt income Rs.5 lakhs as per note to clause 17 (I) of the Tax Audit report. The A.O. required the assessee to submit the computation of disallowance and show cause notice was issued for applying the disallowance under u/sec 14A r.w.r Rule 8D . The assessee has filed a detailed explanations vide letter dt 10.12.2010 referred at para 3.1 of the assessment order. The AO considering the facts, submissions and the explanations is of the view that, the assessee's submissions on suo moto disallowance of

expenses cannot be accepted. Hence the Assessing Officer has calculated disallowance u/sec 14A r.w.r Rule 8D(2)(i) & 8D(2)(iii) of Rs 2,76,70,670/-. The A.O. also observed that the disallowance calculated above should be added for computation of book profits under section 115JB of the Act. In respect of claim of deduction under 80IA of the Act, the A.O. observed that the generation of wind power commenced in F.Y 1999-2000 and the assessee has claimed deduction u/sec 80IA of the Act from F.Y.2004-05 hence unabsorbed depreciation and accumulated losses of earlier years should be adjusted first, even if the assessee starts claiming deduction in subsequent years. The assessee has filed the explanations by letter dated 3-12-2010 referred at para 5.1 of the order. The A.O. was not satisfied with the explanations and is of the opinion that even if the assessee has claimed the deduction u/sec 80IA of the Act in the sixth year, the unabsorbed depreciation and accumulated losses of earlier years are to be adjusted while computing profits eligible for deduction u/sec 80IA of the Act. Finally the A.O. has recalculated the deduction Rs Nil and determined the assessable income of Rs 90,52,16,685/- and passed the order u/s 143 (3) of the Act dated

31.12.2010. Aggrieved by the A.O. order, the assessee has filed the appeal with the CIT (A).

4. In the appellate proceedings, on the issue of disallowance U/sec14A r.w.r 8D(2) (i) &(iii) made by the Assessing Officer, the Ld. CIT (A) has observed at para 2.3.7 of the order as under:-

*“2.3.7 In view of the aforesaid reasons, I am of the opinion that the Assessing Officer was correct in working out the disallowance u/s 14A by the method prescribed in Rule 8D(2)(iii). However, the expenditure of Rs. 5 lakhs disallowed by the assessee itself cannot be considered as direct expenditure for the reason that direct nexus between this expenditure and the income which does not form part of the total income has not been established. The disallowance of this expenditure of Rs. 5 lakhs is, therefore, directed to be deleted. The contention of the assessee that even if disallowance is made as per Rule 8D, the same should be computed only on those investments which have yielded exempt income during the previous year relevant to the A.Y. 2008-09, i.e., shares of Bajaj Auto Finance Ltd. cannot be accepted since Rule 8D(2) provides that the average investment would include average value of investment, income from which does not or shall not form part of the total income as appearing in the Balance Sheet of the assessee, on the first day and the last day of the previous year. In view of the clear*

*position of law, the contention of the assessee that the disallowance as per Rule 8D should be computed only on those investments which have yielded exempt Income during the year relevant to the A.Y. 2008-09 Is not tenable and, therefore, cannot be accepted. Not only the investments which have yielded exempt income but all investments income from which shall not form part of the total income of the assessee are required to be included in working out the average value of investments.*

*To sum up, the disallowance made by the Assessing Officer u/s 14A r.w. Rule 8D to the extent of only Rs. 2,76,70,670/- Is upheld. The balance disallowance of Rs. 5 lakhs is directed to be deleted. This ground of appeal is disposed of as above.”*

In respect of claim of deduction u/sec 80IA of the Act, the Ld. CIT (A) considered the assessee's submissions at page 10 to 12 of the order. Whereas, the CIT(A) is of the opinion that the unabsorbed depreciation and accumulated losses of earlier years should be adjusted first, even if the assessee starts claiming deduction in subsequent years and relied on the judicial decisions and confirmed the action of the Assessing Officer and partly allowed the appeal of the assessee. Aggrieved by the order of the CIT (A), the assessee has filed the appeal before the Honble Tribunal.

5. At the time of hearing. The Ld. AR of the assessee submitted that the CIT (A) has erred in confirming the action of the Assessing Officer and explained that the assessee has received dividend income from the its sister concern and sou motto made disallowance of Rs.5 Lakhs. The Ld. AR demonstrated the value of investments as on 31-03-2018 being 17.02% of the total assets. Similarly dividend income and other income from shares and mutual funds being sale of investments worked out to Rs.11.75 crores credited to profit and loss account which constitute only 11.05% of total income. Whereas, the disallowance made by the Assessing Officer is Rs 2.76 crores which works out more than 23% of income from investments credited to profit and loss account. The Assessing Officer failed to explain the reasons and basis of disallowance except applying the formula under Rule 8D (2) of IT Rules. The Assessing Officer should have considered the total expenses incurred by the assessee and shall specifically identify the expenses directly linked for earning such exempted income and apportioned on the basis of income. The Ld. AR also emphasized that the provisions of Rule 8D(2) of IT Rules shall not apply for this assessment year and no disallowance is warranted. The Ld. AR relied

substantiated his arguments relying on the judicial decisions and factual paper book.

5(ii).On the second dispute issue, in the event of disallowance by the A.O. u/sec 14A r.w.r. 8D. The LD.AR submitted that the assessee company should be allowed to claim the deduction of Sec 14A disallowance in computing the revised profits in the calculation of deduction u/s 80IA of the Act.

5(iii).The third issue on the findings of the A.O. that, unabsorbed depreciation and accumulated losses of earlier years should be adjusted first, even if the assessee starts claiming deduction u/sec80IA of the Act in subsequent years. The Ld.AR contentions are that no such adjustment is required and submitted that decision of Honble Madras High court has attained the finality.

5(iv). The Ld. AR argued on the short granting of interest u/sec244A of the Act and submitted that the assessee is entitled for refund as per intimation processed u/s 143 (1) of the Act on 17-07-2009.The assessee is entitled for interest U/sec 244A of the Act till the date of issue of

refund order dated 07.09.2009 but the interest on refund is calculated till date of passing of intimation u/sec143(1) of the Act. The Ld. AR prayed for the directions for grant of interest to the date of actual refund order issued.

5(v). On the additional ground, the Ld. AR submitted that the assessee has received Voluntary Emission Reduction Credits( VFR credit).The amounts are in the nature of capital receipts and not taxable and should be reduced from the total income and supported the submissions with judicial decisions and prayed for allowing the claim.

5(vi). Similarly, on the second additional ground, the Ld.AR submitted that in respect of calculation of capital gains on sale of debentures M/s Bajaj Auto Finance Ltd. The assessee has considered cost of acquisition per debenture Rs.452/- instead of Rs 500/-. The contentions of the Ld.AR that the assessee has acquired the debentures of the M/s Bajaj Auto Finance Ltd along with detachable warrant as part of rights issue of Non Convertible Debentures(NCD). But due to lower market rate of share price of M/s Bajaj Auto Finance ltd , the assessee has not exercised the warrants and were lapsed. In the F.Y.2009-10, the assessee

has written off the proportionate cost attributable to the warrants. But the assessee has claimed cost of each debenture at Rs452/- as against the cost of Rs. 500/-and prayed to allow the differential cost.

5(vii). In the last additional ground, the Ld.AR submitted that the education cess paid on the income tax has to be allowed as deduction and relied on the judicial decisions.

6. Contra, the Ld.DR supported the order of the CIT (A). The Ld.DR submitted that the assessee has sou moto disallowed Rs. 5 lacs without considering the exempt income earned, and the expenses incurred for earning the dividend income and the substantial investments. The Assessing Officer has rightly applied the provisions of section 14A r.w.r. 8D(2) of IT Rules and computed the disallowance. In respect of claim of deduction u/sec 80IA of the Act, the Ld. DR supported the submissions relying on the judicial decisions referred in the CIT(A) order that unabsorbed depreciation and accumulated losses are required to be adjusted first, in computing profits eligible for deduction. Whereas, while granting interest on income tax refund u/sec section 244A of the Act reasonable time is

necessary for the revenue for preparation of refund order. On the three additional grounds of appeal, the Ld. DR submitted that these grounds of appeal are raised first time before the Hon'ble Tribunal and prayed for restoring to the file of the assessing officer for examination and verification of facts and supported the assessing officer order.

7. We heard the rival submissions and perused the material on record. The Ld AR submitted that the CIT(A) has erred in accepting the method of calculation in respect of disallowance u/s 14A r.w.r 8D(2)(iii) of the IT Rules. The assessee company has received the dividend income from the sister/group companies and has claimed exempted. The assessee made suo-motto disallowance of expenses of Rs.5lakhs. Whereas, the A.O. has applied the rule 8D(2)(iii) of the IT rules and made substantial higher amount of disallowance. We find the Ld.AR supported his arguments relying on voluminous information in the paper book and explained the pattern of the shareholdings and investments made in the concerns. The Ld. AR submitted that the assessee has not incurred any expenses for earning the exempted

income and referred to computation of total income at page 21 of the paper book, where the assessee has voluntarily disallowed u/sec14A of the Act Rs. 5 lakhs. The Ld.AR submitted that the details of disallowance of Rs.5 lakhs is referred at page 7 Para 2.3.4 of the CIT(A ) order. Further, the observations of the A.O at page 3 Para 3.2 of the assessment order that the income from dividend and the profit on sale of investments is worked out to Rs. 117.5 millions which constitute 11.5% of the total income credited to the profit and loss account is factually incorrect and no exemption was claimed for profit on sale of investments. The Ld.AR emphasized that only 3.83% of the total income constitute exempted income and similarly for the subsequent assessment year it is 1.83% of total income. Whereas the assessing officer has disallowed an expenses of Rs.2.76 crores. The A.O. has made disallowance under Rule 8D(2)(i) & 8D(2)(iii) I T Rules. The Ld.AR referred to the observations of the CIT(A) at Para 2.3 to 2.6 on the disputed issue. The contentions of the Ld AR that there is no satisfaction of the A.O. on the objective facts. The direct expenses of wind farm division were

excluded in working out of disallowances. Due to demerger, the expenses are incurred in the holding company accounts and not in demerged assessee company. The CIT(A) has deleted the first limb under rule 8D(2)(i) and confirmed the addition made by the A.O under Rule 8D(2)(iii) of the IT Rules and the revenue is not in appeal. Further the assessee company has earned dividend income of Rs.4.07 crores from M/s Bajaj Auto Finance Ltd. The Ld.AR relied on the decision of the Hon'ble High Court of Delhi Principal CIT Vs Nalwa Sons Investment Limited dated 26.03.2019 in respect of applicability of provisions of Sec. 14A r.w.r 8D of the IT Rules and the coordinate bench of Honorable Tribunal decisions. Finally the Ld.AR submit that no expenses are incurred for earning dividend income and the disallowance is not warranted. The Ld. AR without prejudice, submitted that the A.O. has to recalculate the average value of investments for computing the disallowance u/s 14A Rule 8D(2)(iii) of the Act based only on exempted dividend yielding investments. We found the submissions of the Ld. AR are duly supported with the evidences and judicial decisions.

We find that the A.O has not verified the investment pattern from the angle of exempted income yielding investments. Further, the total assets of the assessee company are more than the investments made in shares and mutual funds being 17.02% of total assets. We are of the opinion that, the submissions of the Ld.AR that no expenses are incurred for earning the exempted income cannot be accepted. The assessee has made substantial investments in the companies which need to be periodically checked and verified. Therefore, we are of the considered view that the A.O has applied the formula of disallowance without considering the facts of investment pattern, income and total expenses. The A.O. has to determine and calculate administrative over heads and compute the total income including exempt income. The A.O. has to calculate the percentage of allocating administrative overheads based on total income and exempted dividend income. Further if the disallowance u/sec14A of the Act is worked out, the A.O. has to apply the ratio of special bench decision in the case of ACIT Vs. M/s. Vireet Investments Pvt Ltd. New Delhi (165 ITD 27). Where the Coordinate Bench has made a

distinctive observations on the investments and only dividend yielding investments has to be considered for the purpose of Average value of investments for disallowance u/s 8D(2)(iii). Accordingly, we set aside the order of the CIT(A) on this disputed issue and for limited purpose remit the disputed issue to the file of the assessing officer to recomputed the disallowance under Rule 8D(2)(iii) of the IT Rules and compare with the allocation of expenses to exempted income earned and allow the claim which is beneficial to the assessee. The assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information. We allow the grounds of appeal of the assessee for statistical purposes.

Further, on the disallowance computed applying Sec 14A and Rule 8D(2) of the I T Rules, the assessee is eligible to make adjustment of disallowance amount while claiming deduction U/sec80IA of the Act in computing the revised profits.

8. On the Second disputed issue, the CIT(A) confirming the action of the Assessing officer that the

Unabsorbed depreciation and accumulated losses of the earlier years prior to initial year of claim u/sec80IA of the Act have to be adjusted while computing profit of eligible business . We Find the Honble High Court Of Madras in the case of *M/s Velayudhaswamy Spinning Mills (P) Ltd. Vs Acit ( 340 ITR 477)* has observed “The Loss in the year earlier to initial assessment year already absorbed against the profit of other business cannot be notionally brought forward and set off against the profits of the eligible business, as no such mandate is provided in section 80-IA(5)of the Act. Subsequently the Revenue has challenged the decision before the Hon’ble Supreme Court and the SLP was dismissed ( 2016) 244 Taxman 58 (SC) . Accordingly, We follow the ratio of the above judicial decisions and set aside the order of the CIT(A) on this issue and allow the ground of appeal in favour of the assessee.

9. The Assessing Officer has issued the Income tax refund order along with interest U/sec 244A of the Act. Whereas, the intimation U/sec143(1) of the Act was passed on 17/07/2009 and refund order was

made on 7-09-2009. The contention of the Ld.AR is that the interest was calculated only up to date of processing of intimation U/sec143(1) of the Act and not as on actual date of refund order issued on 7-09-2009. Therefore the assessee is entitled for further interest up to the date of preparation of refund order. The Ld.DR submitted that reasonable time is necessary through correspondence in the department to issue refund order with interest and is accepted practice. The Ld. AR relied on the Jurisdictional High Court decision of CIT Vs Pfizer Ltd (191 ITR 626) and the coordinate Bench of Honble tribunal decision in the case of M/s Jay Bros Investment & Trading Co. (P) Ltd. Vs DCIT [ 2002] 74 TTJ 748 (Mum).We consider the overall aspects and the ratio of decisions in respect of interest calculation. The assessee should not be deprived of its legitimate right for any further interest, due to the lapses on the part of the income tax department. Accordingly, we direct the assessing officer to grant the interest on refund to the date of refund order and allow this ground of appeal

10. On the first additional ground with respect to receipts in connection with the Voluntary Emission Reduction (VER) credits are in the nature of capital receipts. The Ld.AR submits that the receipts are arising out of sale of carbon credit and supported his arguments relying on the judicial decisions as under:-

*(i) the decision of the Bombay High Court in the case of PCIT vs. Dodson Lindblom Hydro Power Pvt Ltd (ITA No. 1820, 1821 and 1840 of 2016) (Bombay HC).*

*(ii) the decision of the Andhra Pradesh High Court in the case of CIT vs. My Home Power Ltd [2014] 46 taxmann.com 314 (AP).*

*(iii) the decision of the Karnataka High Court in the case of CIT vs. Subhash Kabini Power Corporation Ltd. [2016] 69 taxmann.com 394 (Karnataka)*

*(iv) the decision of the Allahabad High Court in the case of PCIT vs. L.H. Sugar Factory P. Ltd [2017] 88 taxmann.com 647 (Allahabad).*

We find the jurisdictional High Court, has also considered Honble High court decisions referred above and observed that no question of law arises in the revenue appeals and are dismissed. Accordingly, we follow the judicial precedence and allow the ground of appeal of the assessee.

11. The assessee in additional ground of appeal, claimed that in respect of sale of Non convertible debentures, the assessee has claimed the cost of acquisition of debenture at Rs. 452/- as against as cost of Rs.500/- while calculating the capital gains. The Ld. AR submitted that that the assessee has acquired the debentures of the M/s Bajaj Auto Finance Ltd along with detachable warrant as part of rights issue of Non Convertible Debentures. But due to lower market rate of share price of M/s Bajaj Auto Finance ltd , the assessee has not exercised the warrants and were lapsed. In the F.Y.2009-10 the assessee has written off the proportionate cost attributable to the warrants and relied on judicial decisions. Therefore considering these factual aspects that in the subsequent A.Y.2010-11, the assessee has written off in the financial statements, we are of opinion that this matter requires verification and examination of transactions as discussed above to be decided based on the final outcome of A.Y. 2010-11. Accordingly, we restore this disputed issue for verification and examination by the assessing officer and after satisfaction of facts, the assessing officer is

directed to allow the claim of the assessee. The assessee should be provided adequate opportunity of hearing and shall co-operate in submitting the information and we allow this ground of appeal for statistical purpose.

12. The last additional ground of appeal raised by the assessee to grant deduction of education cess on income tax paid during the year. The Ld.AR made elaborate submissions and relied on the jurisdictional High Court decision of M/s Sesa Goa Ltd Vs JCIT Panaji 423 ITR426(Bombay) where the Honble High court has observed that the Education cess and Higher Education cess are liable for deduction in computing income chargeable under head of profits and gains of business or profession. We considering the ratio of decision discussed above, direct the assessing officer to allow the deduction of cess and allow the ground of appeal of the assessee.

Accordingly, the assessee appeal is partly allowed for statistical purpose.

**ITA No 4955/Mum/2013.A.Y.2009-10.**

13.The Assessee has raised grounds of appeal 1 to 14 in respect of disallowance u/sec14A of the Act and the ground of appeal no 12 in respect of grant of deduction u/sec80IA of the Act. The assessee raised(i) additional ground with respect to receipts in connection with the Voluntary Emission Reduction (VER) credits are in the nature of capital receipts.(ii) The second additional ground of appeal raised by the assessee to allow deduction of education cess on income tax paid during the year. We have dealt on these identical and similar disputed issues in ITAno.4223/Mum/2012 A.Y.2008-09 in the above paragraphs. The decision on these disputed issues shall apply mutatis and mutandis to this appeal also. Therefore in respect of disputed issue of disallowance U/sec14A r.w.r 8D(2)(iii) the decision in Parano.7 above shall apply to the present case. Accordingly, we restore the disputed issue with similar directions to the file of the assessing officer and allow the grounds of appeal of the assessee for statistical purpose.

14. On the disputed issue of granting of deduction u/sec80IA of the act, we have dealt and decided in Para no. 8 above and shall equally applicable. Accordingly, we rely on the jurisdictional Hon'ble High Court decision and allow the ground of appeal of the assessee.

15. On the disputed issue of receipts in connection with the Voluntary Emission Reduction (VER) are to treated as capital receipt. We have dealt and decided in Para no. 10 above and shall equally applicable. Accordingly, we rely on the jurisdictional Honble High Court decision and allow the ground of appeal of the assessee.

16. The assessee has raised ground of appeal to grant deduction of education cess on income tax paid during the year. We have dealt and decided in Para no.12 above and shall equally applicable. Accordingly, we direct the assessing officer to grant the deduction of cess and allow this ground of appeal.

17. In the result, the assessee's appeal for AY.2008-09 and A.Y.2009-10 are partly allowed for statistical purposes.

Order pronounced in the open court on 24.06.2021

Sd/-  
(M. BALAGANESH)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE )  
**JUDICIAL MEMBER**

Mumbai, Dated 24.06.2021

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार ( Asst. Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Mumbai