

आयकर अपीलीय अधिकरण, कोलकाता पीठ "सी", कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH: KOLKATA
श्री प्रदीप कुमार चौबे, न्यायिक सदस्य एवं श्री संजय अवस्थी, लेखा सटस्य के समक्ष
[Before Shri Pradip Kumar Choubey, Judicial Member & Shri Sanjay Awasthi, Accountant Member]

I.T.A. Nos. 2456 to 2459/Kol/2024
Assessment Years: 2017-18, 2018-19, 2020-21, 2021-22

DCIT, Circle-11(1), Kolkata	Vs.	Phillips Carbon Black Ltd. (PAN: AABCP 5762 E)
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

I.T.A. No. 2034/Kol/2024
Assessment Year: 2020-21

Phillips Carbon Black Ltd. (PAN: AABCP 5762 E)	Vs.	ACIT, Circle- 11(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	14.05.2025
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	10.06.2025
For the assessee / निर्धारिती की ओर से	Shri Akkal Dudhwewala, FCA Vidhi Ladhia, A.R

For the revenue / राजस्व की ओर से	Shri Praveen Kishore, CIT DR
--------------------------------------	------------------------------

ORDER / आदेश

Per Pradip Kumar Choubey, JM:

The appeal bearing Nos. 2456 to 2459/ Kol/2024 have been filed by the revenue against the order passed by the Ld. CIT(A) dated 20.08.2024 for AY 2017-18, 2018-19, 2020-21 and 2021-22. And appeal bearing ITA No. 2034/Kol/2024 has been filed by the assessee against the order passed by the Ld. CIT(A) only on two issues i.e. disallowance u/s 14A of the Act and disallowance of weighted component of deduction u/s 35(2ab) of the Act.

Since issues involved in the appeal filed by the revenue bearing no. 2456 to 2459/Kol/2024 are mostly same so we take up all the revenue's appeal together by taking **ITA No. 2457/Kol/2024** as a lead case and appeal filed by the assessee shall be adjudicated by us separately.

2. It appears from the report of the registry that the appeal have been filed by the revenue after a delay of 32 days. At the time of hearing the counsel of the revenue explained the reason for delay in filing the appeal. The Ld. A.R did not raise any objection in condoning the delay. Keeping in view, the submission made by the D.R. and the judicial pronouncement that a case should be decided on merit not on technical issue, the delay is hereby condoned.

ITA No. 2457/Kol/2024 for AY 2018-19

3. Brief facts of the case of the assessee are that the assessee engaged in the manufacturing and sale of carbon black, sale of surplus of power generated from off-gases from carbon black manufacturing process having its factories at Durgapur, Kochi

and Mundra. The assessee filed return of income for AY 2018-19 on 30.11.2018 declaring total income of Rs. 2,67,89,81,290/-. Further, the assessee filed revised return on 30.03.2019 declaring total income of Rs. 2,65,88,45,310/-. It was processed on 13.11.2019 u/s 143(1) of the Act at total income of Rs. 2,68,05,34,260/-. Further the case of the assessee was selected for scrutiny under complete scrutiny category, a notice u/s 143(2) of the Act was issued. Further approval was obtained from PCIT-1, for referring the case to Transfer Pricing Officer, case was referred to the TPO, consequent to the reference, the TPO forwarded the order u/s 92CA(3) of the Act and downward adjustment to the income of the assessee with respect to 80IA units is computed at Rs. 28,34,57,200/-. The AO after considering the order passed by the TPO and reply submitted by the assessee has made following additions:

- i) Addition of Rs. 28,34,57,200/- u/s 80IA of the Act .
- ii) Addition of Rs. 68,57,615/- on account of ICDS adjustment.
- iii) Addition of Rs. 26,23,800/- disallowance u/s 14A of the Act.
- iv) Addition of Rs. 3,24,18,037/- u/s 35(2)(ab) of the Act.
- v) Addition of Rs. 1,10,55,000/- deduction u/s Chapter VIA i.e. 80G
- vi) Addition of Rs. 2,01,35,978/- by declining the claim of deduction of education cess secondary education and higher education cess.

Total income assessed at Rs. 3,03,70,84,890/-.

4. Aggrieved by the said order the assessee preferred an appeal before the Ld. CIT(A) wherein the appeal of the assessee has been allowed on the issue relates to the deduction u/s 80IA, addition made on ICDS and partly allowed the disallowance u/s 80G and delay deposit of employees contribution and dismissed the appeal of the assessee u/s 14A, 35(2)(ab), disallowance in relation to education u/s 37 or denial of

exclusion of provision for deferred taxes in computation of book profit u/s 115JB of the Act and according to the short granting of MAT credit.

Being aggrieved and dissatisfied the revenue preferred an appeal before us.

5. The Ld. D.R challenges the very impugned order thereby submitting that the Ld. CIT(A) has erred on facts in not appreciating that the TPO has applied external CUP as the most appropriate method which is one of the safe methods or determining ALP as laid down in the Act and the Ld. CIT(A) has not discussed in the body of the order as to why the same is not the MAM. The Ld. D.R has further submitted that the Ld. CIT(A) has erred in law upholding the method adopted by the assessee to bench mark transaction wherein the average annual land cost of electricity purchased consuming unit from SEB is taken as market value whereas as per explanation to section 80IA(8) of the Act market value in relation to any goods or services meant the prices that such goods or services to the ordinarily fetched in the open market or Arm's Length Price as defined in clause (4) of Section 92f of the Act, where the transfer of such goods or services is a specified domestic transaction referred to Section 92BA. The Ld. D.R has further submitted that the Ld. CIT(A) has further committed wrong in not appreciating the fact that the assessee is generating unit [CPP] account as such claim of any benefit u/s 80IA of the Act and further did wrong by not appreciating that the manufacturer cannot be compensated based on rate meant for distributor and thereby ignoring the clear provision of Rule 10B(2)(b) of the Rule, 1962 that specifies the function, assets and risks to be essential comparability factors for reference. The Ld. D. R has further submitted that the Ld. CIT(A) erred in fact and law by allowing CSR expenditure to the extent of Rs. 1,16,00,000/- to be allowable for claiming deduction u/s 80G of the Act. The Ld. D.R has further submitted that the Ld. CIT(A) has erred in law by allowing deduction u/s 80IA of the Act against the gross total income as against deduction restricted to profit and gains from specified business as per provision of Section 80IA of the Act. His further submission is that the Ld. CIT(A) did wrong in fact and law in deleting the addition u/s 14A read with Rule 8D of the Act. The Ld. D.R has further

argued that the Ld. CIT(A) erred in law for deleting the club expenses and club membership expenses without any verification and in absence of documentary evidences in respect of such expenses. The prayer of the Ld. D.R is to set aside the order passed by the Ld. CIT(A).

6. Contrary to that the Ld. A. R supports the impugned order of Ld. CIT(A) thereby submitting that the TPO has passed an order making his reliance on the decision of Hon'ble Calcutta High Court passed in the case of ITC Ltd. in 236 Taxman 612 ignoring the fact that the decision of the Hon'ble Calcutta high Court has been reversed by the Hon'ble Supreme Court in the case of CIT vs. Jindal Steel & Power Ltd. reported in 157 taxmann.com 207 (SC). The Ld. A.R submits that the decision passed by the Hon'ble Apex Court is binding upon the AO as well as TPO and the Ld. CIT(A) has rightly passed an order in favour of the assessee. The Ld. A.R has further submitted that the Hon'ble Calcutta High Court in the case of CIT vs. Star Paper Mills Ltd. has followed the decision of Hon'ble Apex Court on the same issue and decide the case in favour of the assessee The further submission of the assessee is that the Ld. CIT(A) has further made reliance on the decision rendered by the Hon'ble ITAT, Kolkata in the assessee's own case for AY 2013-14 passed in ITA No. 2628/Kol/2009. The Ld. A.R has further submitted that on the issue of partial disallowance u/s 80IA of the Act that the Ld. CIT(A) has placed his reliance on the decision of Hon'ble Supreme Court passed in the case of CIT vs. Reliance Energy Ltd. and also placed reliance on the decision of Hon'ble Bombay High Court. The further submission of the Ld. A.R is that the Ld. CIT(A) has passed an order in favour of the assessee in the issue by giving their complete reliance on the decision passed by the Hon'ble apex Court, High Court as well as decision passed by the ITAT in the assessee's own case, so there is no infirmity in the impugned order of the Ld. CIT(A).

7. Upon hearing the submission of the counsel of the respective parties, we have perused the impugned order and find that the sole grievance of the revenue in the several grounds raised in the appeal for AY 2018-19 relates to the action of the Ld. CIT(A)

deleting the disallowing the deduction of Rs. 28,34,57,200/- claimed u/s 80IA of the Act on account of downwards transfer pricing adjustment made by TPO in response to the transfer price of eligible CPPs at Durgapur in West Bengal, Kochi in Kerala and Mundra in Gujarat eligible for deduction u/s 80IA of the Act. There is no dispute that the assessee is engaged in the business of manufacture of carbon black having its factory at Durgapur, Kochi and Mundra. The following issues are for adjudication.

(i) Transfer Pricing Adjustment in relation to transfer value of power by CPPs to manufacturing unit and consequent disallowance of deduction claimed u/s 80-IA of the Act.

8. The facts of the case are that, the assessee is engaged in the business of manufacture of carbon blank having its factories at Durgapur, Kochi and Mundra. The assessee operates four (4) power plants whose profits are eligible for deduction u/s 80-IA of the Act. During the relevant year, these power plants had generated and distributed power which was entirely consumed by the manufacturing unit of the assessee. Having regard to the provision of Sec. 801A(8), the electricity transferred from the power plants to the carbon black manufacturing units was benchmarked at the rates of Rs.5.49/unit, Rs.5.50/unit & Rs.5.91/unit by applying the CUP Method viz., the landed price at which the manufacturing unit would have procured power from the respective SEBs at West Bengal, Kerala & Gujarat. After deducting the expenses incurred by these three power plants, the aggregate stand-alone profits of all the eligible units worked out to Rs. 102,48,62,650/- which was claimed as deduction u/s 80-IA of the Act. On perusal of the order of the Ld. TPO, it shall be noted that he had rejected the assessee's benchmarking methodology by relying on to the decision of Hon'ble Calcutta High Court in the case of ITC Limited (supra) and has followed the ratio laid down therein to justify his own benchmarking analysis The entire rationale and line of reasoning given by the Ld. TPO to negate the appellant's benchmarking analysis and propound his theory of taking the rate at which the power generating station/s was supplying power to the Grid as ALP rate was based on the observations and findings rendered by the

Hon'ble Calcutta High Court in the case of CIT Vs ITC Ltd (supra) wherein also the price at which power is sold by power generation stations to distribution companies was taken as comparable ALP price as opposed to the price at which SEB sells power electricity to the manufacturing units. It is important to mention here that the reliance placed by the Ld. TPO on the decision of the Hon'ble Calcutta High Court in the case of ITC Limited (supra) was misplaced since the decision of the Hon'ble Calcutta High Court has since been reversed by the Hon'ble Supreme Court in their lead order in the case of CIT Vs Jindal Steel & Power Ltd (157 taxmann.com 207). The Hon'ble Supreme Court has held that the assessee who are engaged in industrial activities and have set up captive power plants, then the market value of power supplied by assessee's CPP to its industrial units should be computed by considering the rate of transfer of power at which the State Electricity Board supplied power to consumers in the open market and not comparing it with the rate of transfer of power when sold by the assessee or power generation station to the State Electricity Board. The Hon'ble Apex Court noted that the price at which surplus power was supplied by the assessee to the State Electricity Board was determined entirely by State Electricity Board in terms of statutory regulations and contractual terms and that such a price could not be equated with market value as was understood for purpose of Section 80-IA(8) of the Income Tax Act, 1961. Instead, the Hon'ble Apex Court held that the rate at which the State Electricity Board supplied electricity to industrial consumers would have to be taken as market value for computing deduction u/s 80-IA. Thus, in totality, the Hon'ble Apex Court has concluded that the market value of the power supplied by CPP to an industrial unit should be computed by considering the rate at which the State Electricity Board supplied power to the industrial consumers in the open market and not by comparing it with the rate of power when sold by the Assessee to the State Electricity Board. The Hon'ble Supreme Court emphasized that the rate contended by the Revenue was not the rate at which an industrial consumer could have purchased power in the open market.

9. In this regard we have gone through a later judgment of the Hon'ble Calcutta High Court in the case of CIT Vs Star Paper Mills Ltd. (172 taxmann.com 391) filed by

the assessee [Page 1-19 of the Judicial PB]. In the decided case the assessee who was engaged in manufacture of paper had set up a captive power plant to supply power to its paper manufacturing units. The assessee had benchmarked the transfer of power from its power unit to its manufacturing unit at the price at which the paper manufacturing unit was procuring power from the State Electricity Board. In this decided case also, the TPO had benchmarked the transfer of power at which the power generating stations was supplying power to the State Electricity Board by following the earlier decision of Hon'ble Calcutta High Court in the case of ITC Ltd (supra). On appeal, the Hon'ble ITAT, Kolkata following their earlier decision rendered for AY 2016-17 in 134 taxmann.com 177 upheld the benchmarking methodology adopted by the assessee to value the transfer of power at the rate at which the manufacturing unit was procuring power from the Grid. On further appeal by the Revenue, the Hon'ble Calcutta High Court after taking note of the decision of CIT Vs Jindal Steel & Power Ltd (supra) wherein their earlier decision in the case of ITC Ltd (supra) was reversed, since upheld the decision of the Hon'ble ITAT vide its recent order dated 05.02.2025 passed in ITAT/214/2024. It is also material to mention that the Hon'ble ITAT, Kolkata in ITC Ltd's own case for subsequent AY 2009-10 in ITA Nos.685/Kol/2014 & 1267/Kol/2014 read with MA Nos. 17-18/Kol/2019 have also expressed a divergent view as expressed in their own case by Hon'ble Calcutta High Court in FY 2001-02 by holding that the said judgment has since been reversed by Hon'ble Supreme Court and following the ratio decidendi laid down therein, the assessee's benchmarking methodology viz., the price at which the manufacturing units procures power from SEB, was held to be appropriate ALP.

10. Going over the above discussion, we do not find anything to interfere in the order of Ld. CIT(A) on this issue.

(ii) Partial Disallowance of deduction u/s 80-IA of the Act by restricting the same to the extent of 'Business Income' instead of 'Gross Total Income'.

11. This ground raised by the Revenue relates to the Ld. CIT(A)'s action directing the AO to allow the deduction claimed by the assessee under Chapter VI ie. Section 80-IA and 80G of the Act against the 'Gross Total Income' instead of 'Business Income'. The facts relating to this issue are that, the assessee had reported Gross Total Income of Rs. 17,64,29,012/- against which deduction(s) under Chapter VI ie. Section 80-IA & 80G was claimed, which aggregated to Rs. 125,45,60,120/-. Accordingly, the deduction claimed under Chapter VI was restricted to the extent of Gross Total Income Le Rs. 17,64,29,012/-. The AO however in the impugned order while assessing the total income restricted the allowance of deduction under Chapter VI to the extent of 'Business Income' which was assessed at Rs. 14,63,72,782/- and therefore assessed the Total Income at Rs.2,92,64,030/- which comprised of Short-Term Capital Gain taxable at normal rates of Rs.2,92,64,030/-. In this context a question which was put up for consideration before the Hon'ble Apex Court, whether the quantum of deduction u/s 801A has to be restricted by treating 'eligible business' as the only source of income' or whether it can be allowed against any source even other than business income, and Hon'ble Supreme Court in the case of CIT vs Reliance Energy Limited (127 taxmann.com 69), answered the question in favour of the assessee by holding that the deduction u/s 801A has to be allowed with reference to the gross total income' and not the 'business income' alone.

Further Reliance in this regard is also placed on the decision of Bombay High Court in the case of V.M. Salgaocar & Brother (P.) Ltd Vs CIT (81 taxmann.com 357) involving similar facts as involved in the appellant's case. In the decided case, the eligible deduction u/s 80HHC was quantified at Rs. 19,78,94,900/-. The assessee had claimed such deduction from its gross total income to arrive at the taxable income. In the assessment order, the AO restricted the claim of deduction u/s 80HHC to the extent of Rs. 17,40,33,719/-being the profits and gains of the business as opposed to the gross total income of Rs. 19,78,94,900/-. On appeal, the High Court allowed the claim of the assessee and held that the deduction under Section 80HHC is required to be capped to the gross total income and not the profits & gains from the business.

12. Going over the above discussion, we do not find any infirmity in the order of Ld. CIT(A) on this issue.

(iii) Disallowance of deduction claimed in respect of CSR donations u/s 80G of the Act and Ground No. 11 of Revenue's appeal in ITA No.2457/Kol/2024 for AY 2018-19.

13. This ground is against the Ld. CIT(A)'s action of deleting the disallowance made by the AO in respect of CSR donations whose 50% of the sum i.e. Rs.58,00,000/- [1,16,00,000 X 50%] was claimed as deduction u/s 80G of the Act. The facts of the case are that, during the year the assessee had made CSR contributions of Rs. 1,60,96,048/-, out of which sum to the extent of Rs. 1,16,00,000/- was paid to charitable institution registered u/s 80G of the Act. The assessee had inter alia disallowed the entire CSR expenditure of Rs. 1,60,96,048/- in terms of Explanation 2 to Section 37(1) of the Act. However, since donation to the extent of Rs. 1,16,00,000/- qualified for specific deduction u/s 80G of the Act, it was separately claimed by way of deduction in the manner as prescribed therein i.e. 50% of Rs. 1,16,00,000/- being Rs.58,00,000/-. The AO however held that the CSR donations were a mandatory obligation u/s 135 of the Companies Act, 2013 and was not voluntary in nature and thus did not qualify for deduction u/s 80G of the Act. The AO accordingly disallowed the same. It is submitted that the reason given by the AO for disallowing the deduction claimed u/s 80G in respect of CSR donations to registered charitable trusts is unjustified as nowhere do the provisions of Section 80G provide that the sums paid to charitable trusts have to be 'voluntary' in nature so as to become eligible for deduction under the said provision. It is further submitted that, it was the assessee's sole prerogative to decide as to the manner in which it proposes to contribute towards CSR activities. It was not a case that the assessee has contributed to the registered charitable trust in question under any specific mandate or compulsion. Instead, the appellant has voluntarily decided to contribute to the registered charitable trust(s). Hence, the AO's action that the donation was not made at the assessee's own volition was untenable.

It is imperative to mention that the Legislature was well aware that the companies may spend on CSR activities by contributing to charitable trusts recognized under Section 80G of the Act and therefore wherever the Legislature intended that CSR contributions to any specific charitable trusts should be denied deduction, necessary provisions were incorporated in the specified sub-clauses. It shall be noted that Section 80G of the Act contains certain restrictions in respect of deduction to only two projects [sub-clauses (iiihk) and (iiih)]. The Parliament has clearly expressed its intention by debarring claim of deduction u/s 80G in respect of CSR expenditure spent by an assessee appellant to Swachh Bharat Kosh and Clean Ganga Fund. No such restriction has otherwise been set out for any other donations made by an assessee. Meaning thereby, if CSR expenses are incurred by way of donation given to any other eligible charitable trusts (except Swachh Bharat Kosh and Clean Ganga Fund), then the same shall be eligible for deduction u/s 80G of the Act. In the facts of the present case, the assessee has made donations to registered charitable trusts which have been approved u/s 80G(6)(vi) of the Act and unlike sub-clauses (iiihk) and (iiih), there is no restriction or prohibition set out in the said sub-clause denying deduction u/s 80G for CSR contributions.

Reliance in this regard is placed on the following decisions of the jurisdictional Hon'ble ITAT, Kolkata involving identical facts and circumstances as involved in the present case. In the decided case(s) also, the assessee(s) had made CSR donations to charitable trusts, which were disallowed in terms of Explanation 2 to section 37(1), but alternatively claimed u/s 80G of the Act. The AO disallowed the same stating that the CSR donations were not voluntary in nature and hence would not qualify for deduction u/s 80G of the Act. On appeal, the Hon'ble ITAT Kolkata has allowed the same.

- JMS Mining Pvt. Ltd. vs PCIT (ITA 146/Kol/2021) [Pg 99 to 114 of Legal PB]
- Britannia Industries Ltd vs DCIT (ITA No.461/Kol/2023) [Pg 115 to 122 of Legal PB]

- Acme Chem Ltd Vs DCIT (ITA No. 650/Kol/2022) [Pg 123 to 130 of Legal PB]
- L & T Finance Ltd Vs DCIT (167 taxmann.com 503) [Pg 131 to 148 of Legal PB]
- Phillips India Ltd Vs DCIT (172 taxmann.com 340) [Pg 149 to 152 of Legal PB]

14. It is also material to mention that identical disallowance was also made by the AO in the assessee's own case for AY 2020-21 wherein the CSR donations of Rs.10 crores claimed as deduction u/s 80G of the Act was disallowed. On appeal the Ld. CIT(A) in his appellate order in Appeal No. NFAC/2019-20/10303941 dated 20.08.2024 for AY 2020-21 [Ground No. 11 - Paras 5.6.1 to 5.6.3] had deleted the same by following the impugned appellate order for AY 2018-19. It is submitted that the Revenue has not preferred any appeal on this issue in AY 2020-21 and the same has attained finality. In that view of the matter, when the Revenue itself has accepted the decision of the Ld. CIT(A) on this same issue in the subsequent AY 2020-21, the impugned ground raised in AY 2018-18 has no legs to stand on.

15. Going over the above discussion, we do not find any infirmity in the order of Ld. CIT(A) on this issue.

(iv) Disallowance u/s 14A of the Act

Ground No. 11 of Revenue's appeal in ITA No. 11 for AY 2020-21

Ground No. 2 of Assessee's appeal in ITA No.2034/Kol/2024 for AY 2020-21

16. This ground relates to the disallowance made by the AO u/s 14A read with Rule 8D amounting to Rs.2,27,70,615/-. During the year, the appellant earned exempted dividend income of Rs.5,27,97,867/-. In the return of income for AY 2018-19, the assessee had suo moto computed and disallowed a sum of Rs. 11,54,387/- u/s 14A of the Act by way of expenditure incurred for earning of exempt income. Statement giving the computation of suo-moto disallowance of Rs. 11,54,387/- u/s 14A of the Act, which was placed on the NFAC's record is enclosed at Page 229 of the Paper Book. During

the course of assessment, the NFAC vide notice dated 16.08.2022 u/s 142(1) of the Act required the assessee to explain as to why the expenditure debited to the P&L account for earning exempt income was less in comparison to the investments made during the year to earn exempt income. In response, the appellant vide reply letter dated 10.09.2022 submitted the working of the disallowance made with reference to the books of accounts and also furnished submissions explaining as to why Rule 8D should not be invoked in the present case. The AO however was not agreeable to the explanations filed by the assessee and computed the disallowance u/s 14A at Rs.2,39,25,002/-, being 1% of the average fair value of all investments of Rs.227.70 crores, in accordance with Rule 8D(2)(ii) of the Act. It is pertinent to mention here that this issue has also been raised by the assessee in his appeal no. 2034/Kol/2024 as the Ld. CIT(A) has partly allowed this issue for statistical purposes by giving direction to the AO to recompute and restrict the disallowance u/s 14A read with Rule 8D(2)(ii) to 1% of the cost of investment. We shall discuss this issue in deciding the appeal filed by the assessee in ITA No. 2034/Kol/2024.

(V) Disallowance of club expenses

Ground No. 11 of Revenue's appeal in ITA No. 2459/Kol/2024 for AY 2021-22

17. This ground raised by the Revenue is against the action of Ld. CIT(A) deleting the disallowance of club expenses. The facts relating to this issue are that, the assessee had incurred club subscription and expenses of Rs. 35,25,056/-. The AO observed that the tax auditor had reported this amount at Sl. No 21(a) of the tax audit report, which read as Expenditure incurred at clubs being entrance fees & subscriptions as well as cost for club services and facilities used. According to the AO, this reporting amounted to qualification by the tax auditor and therefore he disallowed the same.

It is further submitted the club expenses were incurred for the purposes of business and therefore the same ought to have been allowed u/s 37(1) of the Act. The assessee is engaged in the business of manufacture of carbon black, having its presence at various locations in India. The company has customers located across India. The company had obtained corporate membership of clubs having affiliations across India for its Directors

and senior employees to interact with customers and other stakeholders Such clubs provide a perfect platform for interactions, exchange of information and to conduct business. The club facilities are used as a platform for holding business meetings of the directors and senior employees to interact with business partners and customers. The activities undertaken by the Directors and the senior employees in such clubs are in the nature of business meetings, networking, brand building, dealings and business gatherings between suppliers/customers and/or senior executives of the appellant company, which fosters the business interests of the appellant company. In the circumstances, the club membership and club service expenses borne by the company were incurred in the course and for the purposes of business.

The year-wise details of club expenses incurred by the company is as follows:

Particulars	2017-18	2018-19	2019-20	2020-21	2022-23
Club Expenses	24,16,517	43,09,612	48,62,302	40,95,593	38,03,221

18. In view of the above table, it would be noted that the club expenses have been consistently incurred by the assessee over the years and there has not been any major variation and/or change in the trend of expenses. It is pertinent to submit that, in none of the past or succeeding years, whose assessments were completed u/s 143(3) of the Act, has the Department disputed the allowability of the club expenses and full deduction in respect of the same has been allowed.

19. Going over the discussion made above, we do not find any infirmity in the impugned order passed by the Ld. CIT(A) on the issued involved except the issue relates to the disallowance u/s 14A of the Act that will discuss in deciding the appeal of the assessee. Accordingly, the appeal filed by the revenue is hereby dismissed to the extent of issue as discussed above.

20. Now we shall take other revenue's appeals and find that the issues are similar to one as decided by us in ITA No. 2457/Kol/2024 for AY 2018-19 .Since we have decided the similar issue in ITA No. 2457/Kol/2024 for AY 2018-19 in favour of the revenue, therefore our findings/decisions in the above ITA No. 2457/Kol/2024 for AY 2018-19

would, mutatis mutandis, apply to these appeals as well. Consequently all the appeals of the revenue are dismissed.

ITA NO. 2034/Kol/2024 for AY 2020-21

21. In this appeal the assessee preferred an appeal by submitting that the Ld. CIT(A) has erred in upholding the action of the AO in not allowing the weighted deduction claimed u/s 35(2)(ab) of the Act and added Rs. 4,19,55,525/- and further the Ld. CIT(A) has erred in upholding the action of AO in invoking Rule 8D before pointing out any infirmity in not accepting the suo-moto disallowance of Rs. 11,54,387/- made by the assessee u/s 14A of the Act thereby resulting in further addition of Rs. 44,96,573/-. The Ld. A.R submits that there was no objective satisfaction recorded by the AO before invocation of Rule 8D, therefore, disallowance made u/s 14A was bad in law. The submission of the assessee is that the assessee had explained that no part of any other item of expenditure was relatable to component of dividend income and in that view of the matter no further disallowance is called for in this regard. The Ld. A.R has also placed reliance on the decision passed by the Hon'ble Calcutta High Court in the case of Kesoram Industries Ltd. vs. PCIT and decision of Hon'ble supreme Court in the case of Maxopp Investment ltd. vs. CIT 402 ITR 640. The Ld. A.R has further submitted that the disallowance u/s 14A in terms of formula laid down in Rule 8D(2)(ii) should be computed only with reference to the cost of dividend yielding investment. The further submission of the Ld. AR with regard to the disallowance of weighted component of deduction u/s 35(2)(ab) of the Act is concerned that the Ld. CIT(A) confirmed the order of AO on this issue for want of form 3CL. The submission of AR is that the assessee is now in receipt in form 3CL issued from DSIR, hence, his prayer is to send back the same to the file of AO for reverification and by giving an opportunity to the assessee to submit form 3CL. We have perused the order and find that in the first issue raised by the assessee with respect to disallowance made u/s 14A that the Ld. CIT(A) has directed the AO to recompute the disallowance under rule 8D(2)(iii) with reference to the component closing value of this investment which actually yielded

dividend income during the year. It is important to mention here that the assessee has made suo-moto disallowance of Rs. 11,54,387/-. The assessee is a public asset company has followed the decision of Hon'ble ITAT, Kolkata in assessee's own case for AY 2009-10 and thereafter directed the AO to recompute the disallowance. Hence, we do not find any infirmity in the impugned order of Ld. CIT(A) on this issue, accordingly, this issue goes against the assessee and the order passed by the Ld. CIT(A) is upheld.

22. So far the issue with respect to deduction u/s 35(2)(ab) of the Act is concerned. We find substance in the argument of the assessee that the assessee has to give an opportunity to place form 3CL as the assessee received form 3CL issued by DSIR from 04.04.2024 as the order passed by the Ld. CIT(A) only on this ground that the assessee did not file form 3CL. Accordingly, we are restoring the appeal of the assessee to the file of AO on this issue to decide afresh. Accordingly the appeal filed by the assessee is partly allowed.

In the result, all the appeals of the revenue are dismissed and the appeal filed by the assessee is partly allowed for statistical purposes.

Order is pronounced in the open court on 10th June, 2025

Sd/-

Sd/-

(Sanjay Awasthi /संजय अवस्थी)
Accountant Member/लेखा सदस्य

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)
Judicial Member/न्यायिक सदस्य

Dated: 10th June, 2025

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- DCIT, Circle-11(1), Kolkata
ACIT, Circle-11(1), Kolkata
2. Respondent – Phillips Carbon Black Ltd., Duncan House, 31, Netaji Subhas
Road, GPO-Kolkata- 700001.
3. Ld. CIT(A)- Addl./JCIT(A)-8, Mumbai
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata