



IN THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, GOA



BEFORE HON'BLE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA Nos. 003/PAN/2023

Assessment Year : 2009-10

Prime Mineral Exports Pvt. Ltd.
(Now Amalgamated with Fomento Resources Pvt. Ltd.)
102, 1st Fl. Kamat Metropolis-1,
Behind Caculo Mall, St. Inez,
Panaji, Goa-403001.
PAN : AADCP1647E

.....Appellant

V/s

Jt. Commissioner of Income Tax,
Range-1, Panaji, Goa

..... Respondent

Appearances

Assessee by : Mr Nishant Thakkar ['Ld. AR']

Revenue by : Mr M. Satish ['Ld. DR']

Date of conclusive Hearing : 06/05/2025

Date of Pronouncement : 05/06/2025

ORDER

PER G. D. PADMAHSHALI;

By captioned appeal, the assessee impugns DIN & Order

No. 1047259736(1) dt. 14/11/2022 passed by

Commissioner of Income Tax, Appeals-2, Panaji, Goa

['Ld. CIT(A)' in abbr.] u/s 250 of the Income-tax Act, 1961

['the Act' in abbr.] anent to assessment year 2009-10

['AY' in abbr.]



2. Tersely stated facts of the case are that; the assessee filed its return of income on 29/09/2009 declaring total income of ₹178,27,09,920/-. The return in first place without variation was summarily processed u/s 143(1) of the Act. Thereafter by service of notice u/s 143(2) of the Act the return of the assessee was subjected to scrutiny and consequential assessment u/s 143(3) of the Act was passed wherein the Ld. AO made three additions towards/owning to viz; (1) disallowance u/s 14A of the Act r.w.r. 8D(2)(iii) Income Tax Rules, 1962 of ₹29,39,620/- (2) discrepancies in closing inventory of ₹1,10,11,120/- and (3) an amount of ₹12,05,828/- ceased to be payable u/s 41(1) of the Act. Aggrieved by aforestated additions and action of Ld. AO, the assessee challenged the same in an appeal before Ld. CIT(A) u/s 246A of the Act. Being unsuccessful before first appellate authority, the assessee came in second appeal u/s 253(1) of the Act alleging the actions of tax authorities below on following grounds;



1. The order of the Commissioner of Income Tax (Appeals)-2, Panaji-Goa, [hereinafter referred to as "CIT(A)"] is bad in law and contrary to the facts of the case.

2. (a) The CIT(A) erred in confirming the disallowance made by the Assessing Officer ("AO") under section 14A of the Income-tax Act, 1961 ("Act") read with Rule 8D(2)(iii) of the Income Tax Rules, 1962 amounting to Rs. 29,39,620/-. The whole of the addition be deleted in full.

(b) The CIT(A) erred in confirming the AO's recording of satisfaction by invoking the provisions of section 14A of the Act.

(c) Without prejudice, the CIT(A) erred in not allowing the alternative ground/plea of the appellant that the average value of investments which yielded exempted income alone are to be considered for calculating disallowance as per Rule 8D(2)(iii) and not on the basis of the average of total value of investments appearing in the audited balance sheet of the appellant.

3. (a) The CIT(A) erred in confirming the addition of Rs. 1,10,11,120/- made by the AO on account of alleged discrepancy in valuation of closing stock of iron ore by varying the percentage of loss sustained by the appellant company for ore located at Redi, Maharashtra, with that of percentage of loss sustained for ore located at Kakinada, Andhra Pradesh. The whole of the addition be deleted in full.



(b) The CIT(A) erred in observing that the appellant cannot be allowed to challenge the enhancement in the value of closing stock adopted by the AO as worked out by the appellant during the course of assessment proceedings without appreciating the fact that the value of re-worked closing stock at Redi Port provided by the appellant by considering the percentage of loss of ore sustained at Kakinada Port was done at the direction of the AO.

4. (a) The CIT(A) erred in confirming the addition made by the AO by invoking the provisions of section 41(1) of the Act. The whole of the addition amounting to Rs.12,05,828,- be deleted in full.

(b) The CIT(A) further erred in confirming the addition made by the AO under section 41(I) of the Act when no remission or cessation of the liability has been expressly granted by the concerned creditor and that the said liability duly appeared in the audited financials of the appellant company for the year ended 31.03.2009.

5. The Appellant craves leave to add, to alter or vary any of the Grounds of Appeal set out herein above.

3. In the course of hearing effective grounds argued by rival parties and thus requiring adjudication are only ground number 2, 3 and ground number 4.



4. We have heard rival party's submission and subject to rule 18 of ITAT-Rules, 1963 perused material placed on records by the date and considered relevant facts of the case in light of settled position of law which was also forewarned to respective parties for their rebuttal.

Let us now adjudicate grounds in chronological order;

5. Ground No 2 : Disallowance of expenditure u/s 14A of the Act r.w.r 8D(2)(iii) of IT Rules, 1963;

5.1 The appellant assessee is a company engaged in processing & trading of Iron ore etc. For business the appellant maintained its books of account as per the applicable provisions of Companies Act deploying mercantile system of accounting precisely accrual system of accounting. For the year under consideration, the appellant earned a dividend income of ₹1,29,24,655/- from its investment. The appellant returned/declared said dividend income in its return and claimed it as exempt from taxation u/s 10(34) of the Act.



5.2 The appellant claimed that in earning exempt dividend income from investments, it didn't incur any expenditure in relation to making, monitoring & managing such investment which for the year under consideration. In view of the appellant, in computing total income to be assessed under the Act, the disallowance in terms of section 14A r.w.r. 8D(2) (supra) wasn't warranted therefore no *suo-moto* disallowance made by it. The Ld. AO did not agree with appellant's former proposition and placing reliance on catena of juridical precedents, invoked provisions of section 14A of the Act and determined a disallowance u/r 8D(2)(iii) (supra) @ $\frac{1}{2}$ % (0.5%) of average total investment held by the appellant as attributable to an indirect expenditure in earning such exempt dividend income from its investment. When this disallowance escalated in first appeal, the Ld. CIT(A) solidified the applicability of provisions and countenanced the disallowance on equivalent rationale founded by Ld. AO.



5.3 As we note that, there is no disallowance towards direct expense u/c (i) and interest u/c (ii) of rule 8D(2). The only disallowance carried out by the tax authorities is against indirect expense u/c (iii) (supra). In relation to impugned disallowance, admittedly there is no dispute between the rival parties over amount & nature of dividend income earned by the appellant, nor there is any disagreement over applicability of provisions of section 14A r.w.r. 8D(2)(iii) (supra). The dispute is over procedure in invoking the provisions for making disallowance and compliance of condition necessitating determination & resultant disallowance. To unravel the impugned disallowance, the appellant made twofold averments; **(a)** that appellant incurred no expenditure in earning exempt dividend income, hence no amount was debited to profit & loss account. In the event there was much less sanction of law to invoke provisions of section 14A of the Act in first place and **(b)** in invoking provisions of section 14A r.w.r. 8D(supra), there was no satisfaction



recorded by the Ld. AO as to why 'nil' direct & indirect expenditure claimed to have been incurred by the appellant in earning exempt dividend income was not acceptable? In upshot the case of the appellant is that, the Revenue failed on two counts namely; **(a)** failed to comply with precondition for invocation of provisions of section 14A of the Act and **(b)** failed to comply with condition precedent in advancing to determine the impugned disallowance u/r 8D(2)(iii) (Supra). To drive home former twin contentions the Ld. AR placed reliance on '*UOI Vs Rajeev Bansal*' [2024, 469 ITR 46 (SC)], '*Eicher Motors Ltd. Vs CIT*' [86 Taxmann.com 49 (Del)], '*CIT Vs UP Electronics Corp. Ltd.*' [2017, 88 Taxmann.com 696 (All)], '*CIT Vs Sociedade De Fomento Industrial (P). Ltd*' [2021, 123 Taxmann.com 38 (Bom)], and also the decision of Ld. Co-ordinate benches in the case of '*DCIT Vs West Bengal Electronics Industry Development Corp. Ltd.*' [Manu/IK/0324/2018], and '*Infrastructure Logistics (P) Ltd. Vs JCIT*' [2022, 196 ITD 153].



5.4 Without prejudice to above, the appellant also made an alternate plea that, in view of the Ld. Special Bench decision in '**ACIT Vs Vireet Investment Pvt. Ltd.**' [2017, 82 taxmann.com 415 (Del)], the computation of expenditure to be disallowed u/r 80D(2)(iii) (supra) should have been restrictively based on average investment which yielded exempt dividend income as against total investment considered by the Ld. AO.

5.5 **Per contra**, in refuting appellant's claim the Revenue fervently contended that; any investment by assessee capable of earning any income which does not form part of total income would automatically trigger operation of provisions of section 14A of the Act. That is to say, in reality earning of exempt income is not at all a precondition for assuming jurisdiction for disallowance u/s 14A of the Act. And once jurisdiction is so stimulated by such investments, the prescribed rule 8D (supra) then acts as mechanism for determining quantum of



expenditure to be disallowed in relation to such exempt income earned.

5.6 In the present case, having regard to appellant's huge investments, at the very outset the Ld. AO clearly noted his dis-satisfaction as to why claim of assessee that no expenditure incurred by it was unacceptable. On the other hand, in not accepting correctness of claim for 'nil' indirect expenditure, the provisions of section 14A of the Act *prima-facie* nowhere stipulates a prescription for recording written satisfaction by assessing officer in particular manner. In view thereof, neither the invocation of section 14A of the Act nor the determination of disallowance u/r 8D(2)(iii) (supra) can be testified on the basis of recording of satisfaction.

5.7 To sum-up the Ld. DR M Satish stated that, in view of investment into shares/mutual funds by the assessee which were capable of earning exempt dividend income, it was *ispo-facto* inevitable for the Revenue to determine



& disallow the expenditure u/c (iii) of rule 8D(2) r.w.s. 14A of the Act towards indirect expenditure, which the tax authorities have rightly done. For the reasons the disallowance made in the assessment and sustained in first appeal remained flawless, therefore the same need to be sustained in the present appeal too.

5.8 In dismantling alternative plea of the appellant to consider only investments which yielded exempt income for the purpose of computing disallowance u/r 8D(2)(iii) (supra), the Ld. DR M Satish by placing reliance on the decision of co-ordinate bench in **‘DoubleDot Finance Ltd. Vs DCIT’** [2014, 49 taxmann.com 291 (Mum)] submitted that, dividend on investments by its nature neither accrues evenly nor perpetually, therefore it would be patently irrational to entertain a plea to consider only investment which earned exempt income for the purpose of rule 8D(supra). To bolster the denial to entertain the plea of the appellant, the Ld. DR strongly contended that,



the law or rule prescribes no such exception or gives any option to resort to such method of computation to cutback the disallowance. It was further submitted that, decision of the Co-ordinate bench in '*ACIT Vs Vireet Investment Pvt. Ltd.*' (Supra) was based merely on interpretation and lacks judicial precedents. The interpretation *vis-à-vis* adjudication is contrary to clear, unambiguous provisions of the statute. The former adjudication had an effect of travelling beyond the scope of clear provisions of the statute, therefore in view of decision of Hon'ble High court in '**GMDCL Vs ITAT**' [2009, 183 Taxman 317 (Guj)], former adjudication pressed into service by the appellant, respectfully not to be applied to the present case. The alternate plea of the appellant assessee therefore deserves to be rejected.

5.9 Let us look into section 14A and rule 8D (supra);

Expenditure incurred in relation to income not includible in total income



14A(1) For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act.

(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.

(3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act:

Method for determining amount of expenditure in relation to income not includible in total income.

8D. (1) Where the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with—

(a) the correctness of the claim of expenditure made by the assessee; or

(b) the claim made by the assessee that no expenditure has been incurred,

in relation to income which does not form part of the total income under the Act for such previous year, he shall determine the amount of expenditure in relation to such income in accordance with the provisions of sub-rule (2).

(2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely:—

(i) the amount of expenditure directly relating to income which does not form part of total income; and

(ii) an amount equal to one per cent of the annual average of the monthly averages of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income:

Provided that the amount referred to in clause (i) and clause (ii) shall not exceed the total expenditure claimed by the assessee.]



5.10 A careful reading of former provision of section 14 of the Act suggests that, s/s (1) permits disallowance of expenditure incurred in relation to income which does not form part of total income. More precisely, it acts as authorisation or sanction of law for disallowing expenditure incurred in earning the exempt income which is excluded from the total income. This authorisation to disallow casts an obligation on the part of the assessing officer in law to determine the quantum of disallowance. This obligation to determine the figure of expenditure to be disallowed in terms of s/s (1) is embedded in s/s (2) and s/s (3) of section 14A of the Act. These two sub-sections operates in two different scenarios or circumstances. In our considered view the mandatory obligation to determine quantum of expenditure to be disallowed under s/s (2) of section 14A of the Act is conditional and triggered only when the **correctness of expenditure disallowed by assessee** in view of assessing officer is **unsatisfactory**.



5.11 *Per contra*, the mandatory obligation to determine quantum of expenditure to be disallowed under s/s (3) operates when assessee claims that, no expenditure in relation of earning of exempt income was indeed incurred. As we note that, the Finance Act 2006 inserted the s/s (3) w.e.f 01/04/2007 for providing that the provisions of s/s (2) shall also apply where the assessee claims that no expenditure has been incurred in relation to income not forming part of total income under the Act. Though both s/s (2) and (3) derive their operability from s/s (1) of section 14A of the Act, but they are mutually exclusive and operate as such. Former operates strictly where any expenditure is *suo-moto* determined disallowed by assessee, which *in the view of the assessing officer is unsatisfactory having regard to various determinant factors*. Whereas the later mandatory obligation to determine & disallow the expenditure under s/s (3) operates ***where assessee claims that no expenditure is incurred.***



5.12 Before proceeding further we shall reiterate that, operationality of s/s (1) of section 14A is not depended upon the receipt of exempt income from investment but *de-facto* based upon the investments held for any part of previous year relevant to assessment year which are or were capable of earning any income which either in full or in part does not form part of taxable income for that assessment year. That to say, the existence of investment for any fraction of period within the assessment year would be decisive for jurisdiction to invoke provisions of section 14A of the Act.

5.13 The Revenue's vehement argument therefore evoke our full concurrence that, for the year under consideration the rule 8D (supra) envisaged three tire determination namely; clause (i) for direct expenditure, clause (ii) for interest expenditure and residuary clause (iii) was meant for indirect expenditure. In the present case the Ld. AO did not undertake to determine any



amount of expenditure to be disallowed under first two former clauses. The determination & disallowance in the present case was made only in residuary clause (iii) of s/r (2) of rule 8D (supra). This clause (iii) (supra) provides for presumptive disallowance on the basis of fixed percentage of average investment held which are capable of earning exempt income and irrespective of actual earning of exempt income. This determination of quantum of expenditure u/c (iii) to be disallowed u/s 14A of the Act *de-facto* is automatic, but subject to credit/reduction for *suo-moto* disallowance if any made by assessee u/c (iii) (supra) towards such indirect expenditure. Since in the present case the appellant made no *suo-moto* disallowance u/c (iii), therefore the amount determined by the Ld. AO u/c (iii) was fully disallowed as per law u/s 14A of the Act.

5.14 For the aforesaid reasons, we therefore are in agreement with the Ld. DR that, in reality earning of



exempt income from investment so held is not sacrosanct for assuming jurisdiction for disallowance u/s 14A of the Act. Once the jurisdiction is activated by holding of such investments, the prescribed rule 8D (supra) then comes into play to act as tool for determining quantum of expenditure to be disallowed in relation to such earning of exempt income.

5.15 We are therefore of considered view that, irrespective of (i) any expenditure incurred by assessee in relation to any income which does not form part of total income and (ii) any such expenditure or part of such expenditure is disallowed by assessee, the provisions of s/s (1) gives a blanket sanction for entering into determination of quantum of expenditure to be disallowed. Once the provision of s/s (1) of section 14A of the Act comes into play, it becomes obligatory on the part of assessing officer to determine the quantum of expenditure either under s/s (2) or s/s (3) of section 14A the Act.



5.16 It shall be apt to quote here that, any disallowance of expenditure *suo-moto* made by assessee passes the litmus test of s/s (1) and can be subjected to variation only if the correctness of such *suo-moto* disallowance turns out unsatisfactory to the assessing officer. The dissatisfaction over correctness of expenditure *suo-moto* disallowed by assessee requires to be spelt out in **black & white** before determining the quantum of disallowance under s/s (2) only. The said proposition has attained the finality in '**Maxopp Investment Ltd. Vs CIT**' [2018, 402 ITR 640 (SC)].

5.17 It shall be worthy to note here that, in former case where correctness of amount *suo-moto* determined & disallowed by the assessee, for any plausible rationale is unsatisfactory then the assessing officer shall before he advances to determine amount to be disallowed is required to spell out cause & reasons of such dissatisfaction.



5.18 The present case is neither relating to s/s (2) disallowance nor there is any *suo-moto* disallowance made by the appellant in relation of s/s (3) of section 14A of the Act. Therefore in our considered view the case *prima-facie* warrants recording no dissatisfaction by the Ld. AO while invoking the provisions of section 14A r.w.r. 8D (supra). The moot question then as to when recording of dissatisfaction by the assessing officer is a condition precedent for invoking 14A r.w.r 8D (supra) finds answer in ‘*Maxopp Investment Ltd. Vs CIT*’ (supra), wherein their Hon’ble lordships have categorically held that, ‘**41. Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that *before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a***



satisfaction, nature of loan taken by the assessee for purchasing the shares/making the investment in shares is to be examined by the AO’.

This inversely settles the law in to the effect that, recording of dissatisfaction is not a prerequisite for disallowance under s/s (3) of section 14A of the Act *vis-à-vis* determination of such amount of disallowance u/c (iii) of rule 8D(2) of IT Rules. In view thereof, we do find any merit in the contention of the appellant and flaw in the action of tax authorities in invoking the former provisions for disallowance of expenditure. As a result, the contentions of the appellant stands rejected. The sub-ground (a) & (b) of ground 2 therefore stands dismissed.

5.19 Nevertheless, the Ld. AO having regard to nature & quantum/size of investments, vide para 5.5 to para 5.7 (placed on pg 03/06 of assessment order) clearly spelt out as to why the claim of NIL expenditure incurred by the appellant is not acceptable. The said noting &



reasoning *per-se* in our considered view sufficiently satisfies the requirement of law for invoking & determining quantum of expenditure to be disallowed u/s 14A r.w.r. 8D(2)(iii) (*supra*). Having held so, we also note that, the claim of the appellant that no expenditure was incurred to earn the exempt dividend income and therefore no 14A disallowance is called for, was not only bald but without any cogent evidence. Admittedly, the appellant failed to prove its claim with substantive material that there was no cost incurred; (i) in investing huge funds, (ii) in monitoring such investment (iii) in evaluating such investment periodically to maximise returns or disinvestment etc. The appellant could neither during assessment proceedings, nor in appellate proceedings could prove its claim effectively that not even a single penny it has incurred during any of the phases of investment life cycle. The appellant failed to discharge onus to prove its claim that, investment of such magnitude requires no expenditure.



5.20 We note that, in similar case/issue came for consideration in '*ACIT Vs JOE Marcelinho Mathias*' [2013, 34 taxmann.com 129] wherein the Ld. Co-ordinate bench held that, the onus lays on assessee to establish or substantiate with necessary evidence that it indeed incurred no expenditure in earning exempt income. Upon failure to discharge such onus, the action of disallowance finds sanction in law. Therefore, in the absence of any substantiation, having regard to substantial investments of ($33\frac{1}{3}$ % sum of total assets of invested in earning exempt income), the action Ld. AO in disallowing the expenditure u/s 14A r.w.r. 8D (supra) finds support from the ruling of Hon'ble Madras High Court in the case of '*Polaris Consulting & Services Ltd. Vs PCIT*' [2020, 119 taxmann.com 387 (Mad)], In the light of former discussion and judicial precedents, we do not see in infirmity in the action of tax authorities in carrying out the disallowance, therefore found no merit in the contentions & relevant ground of the appeal.



5.21 Now coming to alternate plea of the appellant for considering only such investment which yielded exempt income for the purpose of computation of amount to be disallowed u/s 14A r.w.r. 8D(2)(iii) (supra), we note that, the appellant could hardly dislodge the Revenue's vehement stand that, interpretation laid in '*ACIT Vs Vireet Investment Pvt. Ltd.*' (Supra) not only lacks judicial support but is contrary to clear, unambiguous provisions of the statute, and since such adjudication had an effect of travelling beyond the scope of clear provision therefore in view of '*GMDCL Vs ITAT*' (supra), should not to form a judicial precedence for the present adjudication.

5.22 Without going into sanctity of interpretation of provisions of rule 8D(2)(iii)(supra) laid by the Ld. Special Bench (Supra), we requote that, judicial discipline binds & requires the bench to simply follow the adjudication of co-ordinate benches including special bench when the subject matter of dispute is alike on identical issue.



5.23 The present facts and circumstance may that be warranting interpretation of clause (iii) (supra) and such exercise albeit not to surprise may lead to diversion with what has been already interpreted in '*Vireet Investment Pvt. Ltd.*' (Supra) because such a meaning as interpreted therein, if ascribed to clause (iii) of rule 8D(2) (supra), then it would be plainly beyond what the language of rule 8D(2)(iii) can be understood to reasonably convey, however the bench is restrained from resorting to such audacity in view of guidelines laid down by Hon'ble Apex Court in '*Gammon India Ltd. Vs CoC*' [2011, 269 ELT 289], where their Hon'ble Lordship directed that two Tribunals should not take divergent views, which will create judicial uncertainty in declaring the law involved on identical issues. This is a fundamental principle which every judicial forum ought to know, for consistency in interpretation of law which alone can lead to public confidence in our judicial system. A Coordinate Bench of a Tribunal/Court cannot pronounce judgment



contrary to declaration of law made by another Bench.

All the most, it can only refer it to a larger Bench when necessary if it disagrees with the earlier pronouncement.

The present bench therefore, is duty bound to follow the interpretation laid in ‘*ACIT Vs Vireet Investment Pvt. Ltd.*’ (Supra) and by doing so allow the alternate plea of the appellant to consider only investments which yielded exempt dividend income (interim or final, both) while computing amount of disallowance u/c (iii) of rule 8D(2)(supra). Nevertheless, it is also not out our sight that, the said provision or mechanism has undergone a sea change by Finance Act, 2016 whereby the Hon’ble Finance Minister vide para 167 of his budget Speech proposed to rationalise the formula of rule 8D governing quantification of amount to be disallowed. The said proposition amended the rule to provide that disallowance will be limited to 1% of the average monthly value of investments yielding exempt income, but not exceeding the actual expenditure claimed.



5.24 In view of the former discussion, respectfully following the Ld. SB decision (supra), we set-aside the impugned computation of disallowance and direct the Ld. AO to re-compute the disallowance in accordance with former adjudication/direction. The sub-ground (c) of ground 2 of the appeal thus stands allowed. The ground 2 of the appeal in result stands partly allowed.

6. Ground No 3 : Addition on account of discrepancies in value of closing stock

6.1 The appellant acquires iron ores from the state of Karnataka and transports them for trading/export to two ports viz; (i) Kakinada Port [‘K-Port’ in abbr.] in Andhra Pradesh and (ii) Reddi Port [R-Port’ in abbr.] in Goa. During the course of assessment proceeding it was noted by the Ld. AO that percentage of transportation & handling loss claimed in transporting iron ore from Karnataka to R-port in Goa was substantially higher than percentage of transportation & handling loss claimed when transported to K-port in Andhra Pradesh.



6.2 The reasons behind such sizeable variation explained by the appellant did not inspire any confidence to the Ld. AO who then directed the appellant to re-compute transportation & handling loss applying a like ratio and rework consequential value of closing inventory. The reworking submitted by the appellant had an effect of enhancing value of closing stock by ₹1,10,11,120/-, which was added as excess closing stock held at R-port, Goa and brought to tax accordingly.

6.3 In first appeal, the appellant's attempt to untie the uniform percentage of transportation & handling loss remained futile. In the course of second appellate proceedings the appellant reiterated its submission as were made before the tax authorities below that, (i) the mode of transport, and stages involved in transporting iron ore to these two ports substantially varies. Therefore the percentage of transportation & handling loss never going to be the same. (ii) The original amount/percentage



of transport & handling loss was subjected to audit verification under Companies Act and under the Act by way of Tax Audit. Therefore, hypothetical application K-Port percentage of transport & handling loss to R-Port is arbitrary, based on surmises and lacks reasonable rationale.

6.4 For reversing the impugned addition, the Ld. AR contended that, while assessing income under the Act, the assessing officer is not vested with any power to make any guess work and to make any addition without reference to material placed on record. The addition if any to be made should invariably be based on material either brought on record by the assessee or by the department. Since impugned addition is unsupported by any material hence deserves to be deleted. To drum out the impugned addition, reliance was placed on the decision of the Hon'ble Apex Court in '*Dhakeshwari Cotton Mills Ltd. Vs CIT*' [1954, 26 ITR 775 (SC)].



6.5 *Per contra*, the Revenue contended that, in absence of statutory inventory records and certification of loss as was necessary to be obtained under applicable mining & other laws, the addition was made by adopting most suitable & reasonable method by applying comparable percentage of transport & handling loss. Even to add more, the impugned addition was based on appellant's own computation. Therefore the impugned addition has already passed the test of acceptability. In view therefore the impugned addition needs to be sustained.

6.6 In the course of hearing, though the appellant recapped reasons as to why transport & handling loss varied when iron ore transported to two different locations, however did provide no certification or report as may be required under mining laws. The specific query by the bench went unanswered 'as to why assessee did not prove its claim on record by adducing audited stock or inventory records along-with Goods-Receipt-



Note ['GRN'] or Material-Receipt-Note ['MRN'] and certified valuation report etc. The appellant expressed its inability to trace required inventory/stock records, certification etc., by citing 'time old records, hence not traceable at present'.

6.7 As we note that, transport and handling losses in bulk commodities like iron ore can occur due to spillage, dust generation, improper loading/unloading practices, and inefficiencies in handling equipment during loading-transportation-unloading or storage etc. All such losses are generally categorised into; **(i)** normal losses which are inevitable in the process of loading-transportation-unloading, or due to degradation etc., and **(ii)** abnormal losses which arise due to theft, pilferage, accident, natural calamities etc. These losses are treated separately in accordance with applicable cost accounting principles or standards and subjected to cost audit under the provisions of Companies Act, 1956.



6.8 Insofar as the record keeping is concerned, we are not oblivious of the fact that, In India, the Directorate of Mines and Geology [‘DMG’], particularly for each of the State, is responsible for certifying transportation and handling loss of iron ore. The DMG utilize rules and regulations established u/s 23C of the Mines and Minerals (Development and Regulation) Act, 1957 [MMDR Act] to prevent illegal mining, transportation, and storage. The Indian Bureau of Mines [IBM] also plays a role in monitoring and reporting mineral transactions, including iron ore etc. On the other hand the MMDR Act empowers State Governments to make rules for mineral transportation and storage, including mechanisms to prevent misreporting and ensure accurate accounting of mineral movement. Pursuant to which the certain statutory records are mandatorily required to be maintained for mining business. Which the appellant unfortunately failed to adduce in any of the proceedings until now.



6.9 To substantiate the claim of higher transportation & handling loss and in consequence to justify lower value of closing stock held as at the closure of financial year at the R-Port, the appellant has a dernier ressort submitted an affidavit [dt. 24/03/2025] of Mr Baljinder Singh Gill a former employee of the appellant who for limited period was the shipping & logistic manager. We have perused the contents of affidavit and found them in verbatim as narrated by the appellant in the course of hearing, which explains nothing else but simply the possibility unequal percentage of transportation & handling loss when resorted to varied mode of transports. The appellant by said affidavit of its ex-employee tried to supplement the statutory records which could hardly be of any evidential value in substantiating the claim for higher % of transportation & handling loss. In the absence of audited statutory inventory records, cost records, certified valuation report etc., we find the claim of the appellant unsupported, baseless and devoid of evidence & merits.



6.10 In these pressing circumstances, we see strong force in Revenue's counter argument that, the appellant blew hot & cold by choice for its advantage. The appellant has access to investment records in seeking re-computation of disallowance u/r 8D for buying the relief, but locked up the audited stock/inventory records, certification and valuation records etc., conveniently by displacing accessibility thereto. The appellant cannot for its advantage be allowed to be on fence in the matter of preserving statutory records as required under a law. In the absence of statutory records, the Ld. AO made the addition on the basis of revised valuation of inventory held at R-Port. The said consequential valuation was arisen upon application of like % of transportation & handling loss worked out by the appellant as the best comparable available in given pressing circumstances. In applying such % of loss and consequential computation of closing inventory held at R-Port, in our considered view there *prima-facie* is no pure guess work involved.



6.11 The computation being based on facts, figures and comparables hence the case law pressed into service could hardly be of any help. On the contrary the onus was on the appellant to prove the correct value of inventory by adducing statutory records, which the appellant failed. Therefore in view of the ratio laid in the decision of Hon'ble Apex Court in '*Kachwala Gems Vs JCIT*' [2007, 158 Taxman 71] the rejection of higher % of transportation & handling loss applied to R-Port and consequential determination of closing stock worked out upon application of like % of transportation & handling loss of K-Port, stands solidified. For the aforesaid reasons & discussion, we do not see any convincing reason to interfere with the impugned addition. The ground number 3 (a) 7 (b) thus stands dismissed.

Ground No 4: Addition u/s 41(1) of the Act

6.12 In the course of the assessment proceedings, upon a verification of outstanding/unpaid balances of sundry



creditor it was revealed to the Ld. AO that, the assessee on 31/03/2009 made certain flag end purchases from M/s Melataru Commodities Trading Pvt. Ltd. [‘MCTPL’ in abbr.] where it disputed **quality/quantity** of supplies made by to it and to whom an amount of ₹12,05,828/- was kept outstanding in the audited books. The Ld. AO called for confirmation from the MCTPL, and in the event of appellant’s failure to place confirmation, the Ld. AO treated it as cessation of liability and consequently brought it to tax u/s 41(1) of the Act. The Ld. CIT(A) confirmed the impugned addition in appeal when assessee remained indifferent in not proving that the purchases (quantity/quality) were indeed made & received by it and the balance was legally payable by it.

6.13 In the course of hearing, the appellant restated that, dispute between assessee & MCTPL ultimately ceased in the subsequent year and as a result aforestated outstanding liability was written back to P&L a/c as the



income of subsequent year. Since such action of writing the liability back has neutralised the tax effect, therefore impugned addition should be deleted. In support of this contention and for reversal of impugned disallowance appellant relied on the decision of '*PCIT Vs Pukhraj S Jain*' [2019, ITA 1288/2016 (Bom)], '*CIT Vs Speedways Tyre Ltd.*' [2014, 271 CTR 614 (P&H)], and the decision of co-ordinate bench in the case of '*Shamas Tabrez Gulam Madni Vs ITO*' [ITA No 1175/Mum/2016]. *Au contraire* the Revenue argued that, firstly, there are no documentary evidence to vouch the claim of written back of impugned addition in the subsequent year. Secondly, the assessee produced no documents to prove presence of any dispute and exact details of its cessation. And finally, the determination of income for taxation of one year is not dependent on subsequent year's treatment. In view therefore, the claim of the assessee for reversal of impugned addition is devoid of evidence without any merit and legal sanction.



6.14 We note that, admittedly the appellant failed to adduce both (i) balance confirmation from MCTPL and (ii) documentary evidence about dispute & its cessation. However we also note that, the Revenue neither disputed the transaction of purchase, nor it found the said purchases as bogus or sham. The appellant's failure to lay confirmation from MCTPL combined with insufficient documentary evidence to showcase the dispute over quality or quantity of purchases been primary reason behind disbelieving outstanding liability payable to MCTPL. The appellant's former failure continued even in the second appellate proceedings. The only plea of the appellant that, since the equivalent amount has been subsequently reversed & thus being tax natural, therefore impugned disallowance deserves to be vacated finds no merits.

6.15 At the outset we note that, under the Act, the unit of assessment is a 'year' and hence it is not open for



adjudicating or appellate authority to direct by an omnibus order that subsequent years are since connected hence taxability of income or allowability/disallowability expenditure of one be determined based upon treatment given in subsequent assessment years. This proposition finds strength in Hon'ble Apex Court's decision rendered in the case of '*DCIT Vs Divya Investment Pvt. Ltd.*' [2024, 313 ITR 363]. On the contrary based upon the treatment given in subsequent year if the plea of the appellant is allowed, then in our considered view it would not only distort the legal sanction of taxation but would set illegal precedent in approving the assessment of total income of one assessment year based on treatment given by the assessee in subsequent assessment year. The plea therefore stands rejected.

6.16 Now coming to impugned addition made u/s 41(1) of the Act; we note that, the section provides that, where an



allowance or deduction has been made in the **assessment for any year** in respect of loss, **expenditure or trading liability** incurred by the assessee and subsequently **during any previous year**, where the assessee obtains whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or **some benefit in respect of such trading liability by way of remission or cessation thereof**, the amount so obtained or the value of benefit so accrued shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, irrespective of whether the business or profession in respect of which such allowance or deduction has been made is in existence in that year or not.

6.17 In the context of cessation of trading liability, in our considered view the plain reading of the provision suggest that, the addition u/s 41(1) of the Act is



permissible in law subject to twofold conditions;(i) in any preceding assessment year there must have been certain allowance or deduction of trading liability like sum payable towards purchases of goods, service etc., **and** (ii) in subsequent year there must have arisen cessation or remission of such claimed / deducted trading liability which remained unpaid in the year of its claim/deduction. That is to say, section 41(1) of the Act *de-facto* does not come into play in the year of claim or deduction of trading liability.

6.18 The forgoing section *prima-facie* sanctions or assumes jurisdiction in subsequent or later assessment years in respect of any trading liability claimed as allowance/deduction in any earlier assessment year. Inversely, sans deduction or allowance of trading liability in any preceding year, could hardly fall within the purview of section 41(1) of the Act, consequently the jurisdiction of the assessing officer.



6.19 In the present case, since the trading liability to MCTPL was not out of trading transaction undertaken in any of the preceding years but in previous year relevant to assessment under consideration, therefore addition u/s 41(1) of the Act was impermissible. In view therefore the action tax authorities to tax the amount of unproven trading liability u/s 41(1) of the Act in the year under adjudication rendered not only irregular, but lacks approval. For the reason we deem it fit to vacate the impugned addition as *contra-legem* and impermissible in law. The ground number 4 thus stands allowed.

7. In result, the appeal stands partly allowed for statistical purpose in aforestated terms.

In terms of rule 34 of ITAT Rules, 1963 the order pronounced in the open court on date mentioned herein before.

-S/d-

**PAVAN KUMAR GADALE
JUDICIAL MEMBER**

-S/d-

**G. D. PADMAHSHALI
ACCOUNTANT MEMBER**

Panaji/Dt: 05th June, 2025.

Copy of the Order forwarded to :

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|-------------------|-----------------------------------|------------------------------|
| 1. The Appellant. | 2. The Respondent. | 3. The CIT(A)/NFAC Concerned |
| 4. PCIT Concerned | 5. DR, ITAT, Panaji Bench, Panaji | 6. Guard File |

By Order,
Sr. Private Secretary / AR ITAT, Panaji.