

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'C' BENCH, KOLKATA**

**Before**

**SHRI PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

**&**

**SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No.: 466/KOL/2018**

**Assessment Year: 2011-12**

M/s. Coal India Ltd. <i>(Appellant)</i>	Vs.	DCIT, Circle-5(1), Kolkata <i>(Respondent)</i>
<b>PAN: AABCC3929J</b>		

**ITA No.: 622/KOL/2018**

**Assessment Year: 2011-12**

DCIT, Circle-5(1), Kolkata <i>(Appellant)</i>	Vs.	M/s. Coal India Ltd. <i>(Respondent)</i>
<b>PAN: AABCC3929J</b>		

**ITA No.: 467/KOL/2018**

**Assessment Year: 2012-13**

M/s. Coal India Ltd. <i>(Appellant)</i>	Vs.	DCIT, Circle-5(1), Kolkata <i>(Respondent)</i>
<b>PAN: AABCC3929J</b>		

**ITA No.: 623/KOL/2018**

**Assessment Year: 2012-13**

DCIT, Circle-5(1), Kolkata <i>(Appellant)</i>	Vs.	M/s. Coal India Ltd. <i>(Respondent)</i>
<b>PAN: AABCC3929J</b>		

**ITA No.: 1406/KOL/2019**

**Assessment Year: 2013-14**

M/s. Coal India Ltd. <i>(Appellant)</i>	Vs.	DCIT, Circle-5(1), Kolkata <i>(Respondent)</i>
<b>PAN: AABCC3929J</b>		

**ITA No.: 1696/KOL/2019**

**Assessment Year: 2013-14**

DCIT, Circle-5(1), Kolkata <i>(Appellant)</i>	Vs.	M/s. Coal India Ltd. <i>(Respondent)</i>
<b>PAN: AABCC3929J</b>		



**ITA No.: 1407/KOL/2019**  
**Assessment Year: 2014-15**

M/s. Coal India Ltd. <b>(Appellant)</b>	Vs.	DCIT, Circle-5(1), Kolkata <b>(Respondent)</b>
<b>PAN: AABCC3929J</b>		

**ITA No.: 1697/KOL/2019**  
**Assessment Year: 2014-15**

DCIT, Circle-5(1), Kolkata <b>(Appellant)</b>	Vs.	M/s. Coal India Ltd. <b>(Respondent)</b>
<b>PAN: AABCC3929J</b>		

**Appearances:**

**Assessee represented by** : Soumyadip Roy Choudhury, CA,  
Rajiv Bhutani, AR,  
Ms. Sayantani Talukdar, AR.

**Department represented by** : Praveen Kishore, CIT (DR).

Date of concluding the hearing : 22-October-2025  
Date of pronouncing the order : 20-January-2026

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

These cross appeals filed by the assessee and the Revenue are against the separate orders of the Commissioner of Income Tax (Appeals)-13, Kolkata [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AYs 2011-12 to 2014-15.

1.1 The Registry has informed that the appeals in ITA Nos. 1696 & 1697/KOL/2019 are barred by limitation by 39 days. The Revenue has filed petitions for condonation of delay which are extracted as under:

1696/KOL/2019:

Dates	Events / Reasons
10.04.2019	Appeal order received
28.04.2019	Forwarded to TPO for comments.



10.06.2019	Waiting for communication for filing 2 <sup>nd</sup> appeal
01.07.2019	Receipt of Certificate for filing 2 <sup>nd</sup> appeal.
12.07.2019	Necessary documents/papers/details along with petition for condonation of delay required for filing 2 <sup>nd</sup> appeal before Hon'ble ITAT being collected and prepared.
15.07.2019	2 <sup>nd</sup> appeal filed

1697/KOL/2019:

Dates	Events / Reasons
10.04.2019	Appeal order received
28.04.2019	Forwarded to TPO for comments.
27.05.2019	TPO Comments received
10.06.2019	Waiting for communication for filing 2 <sup>nd</sup> appeal
01.07.2019	Receipt of Certificate for filing 2 <sup>nd</sup> appeal.
12.07.2019	Necessary documents/papers/details along with petition for condonation of delay required for filing 2 <sup>nd</sup> appeal before Hon'ble ITAT being collected and prepared.
15.07.2019	2 <sup>nd</sup> appeal filed

1.2 After perusing the same, we are satisfied that the Revenue had a reasonable and sufficient cause and was prevented from filing the instant appeal within the statutory time limit. We, therefore, condone the delay and admit the appeal for adjudication.

1.3 Since the issues are common, all the eight appeals were heard together and are being decided vide this common order for the sake of convenience and brevity.

2. The assessee has raised the following grounds of appeal in ITA No. 466/KOL/2018:

*"1) That on the facts and circumstances of the case, the learned CIT(Appeals) erred in confirming the action of the Assessing Officer in disallowing a sum of Rs. 48,72,00,000/- crores on account of provision for mark to market loss both under the normal provisions and while computing book profits under section 115JB of the Act.*

*2) That on the facts and circumstances of the case, the learned CIT(Appeals) erred in confirming the action of the Assessing Officer in disallowing period expenditure amounting to Rs. 19,25,000/- without appreciating that the expenditure crystallized during the year.*

*3) That on the facts and in the circumstances of the case, the learned CIT(Appeals) erred in confirming the action of the Assessing Officer in*

adding Rs. 1,92,32,107/- alleging the same as undisclosed income both under the normal provisions and while computing book profits under section 115JB of the Act.

4) That the appellant craves leave to add to and/or alter, amend, modify or rescind the grounds hereinabove before or at the hearing of this appeal.”

## 2.1 The Revenue has raised the following revised grounds of appeal in ITA No. 622/KOL/2018:

“1. Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Rs. 31.58 Crores made u/s 14A both in normal Computation of taxable income and adjusted book profit for the purpose of MAT u/s 115JB in contravention of the law laid down by Apex Court in Maxopp Investment Ltd that "dominant purpose for which investment in shares is made may not be relevant."

2. Whether in the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the addition made by the AO of Rs. 1.90 Crores, by disallowing the Provision created for Mine Closure since the provision is contingent in nature not being crystallised, both in normal computation of taxable income as well as calculation of adjusted book profit for the purpose of MAT u/s 115JB, disregarding the intrinsic purpose of AS 29.

3. Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 99.51 Crores on a/c of interest earned on shifting and rehabilitation fund created which the assessee company did not recognise in its P/L account as credit entry, from both normal computation and under 115JB, and accepting the contention of the assessee that it is only the custodian of the funds and has got no control in any manner whatsoever, over the funds collected by it and interest income thereon.”

## 2.2 The assessee has raised the following grounds of appeal in ITA No. 467/KOL/2018:

“1) That on the facts and circumstances of the case, the learned CIT(Appeals) erred in confirming the action of the Assessing Officer in adding a sum of Rs. 7,50,00,000/- on account of notional lease rent both under the normal provisions and while computing book profits under section 115JB of the Act.

2) That on the facts and circumstances of the case, the learned CIT(Appeals) erred in confirming the action of the Assessing Officer in adding a sum of

*Rs. 2,85,00,000/- on account of penalty charges both under the normal provisions and while computing book profits under section 115JB of the Act.*

*3) That on the facts and in the circumstances of the case, the learned CIT(Appeals) erred in confirming the action of the Assessing Officer in adding Rs. 1,44,423/- alleging the same as undisclosed income both under the normal provisions and while computing book profits under section 115JB of the Act.*

*4) That the appellant craves leave to add to and/or alter, amend, modify or rescind the grounds hereinabove before or at the hearing of this appeal.”*

**2.3 The Revenue has raised the following revised grounds of appeal in ITA No. 623/KOL/2018:**

*“1. Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Rs. 32.15 Crores made us 14A both in normal Computation of taxable income and adjusted book profit for the purpose of MAT u/s 115JB in contravention of the law laid down by Apex Court in Maxopp Investment Ltd that "dominant purpose for which investment in shares is made may not be relevant."*

*2. Whether in the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the addition made by the AO of Rs. 2.57 Crores, by disallowing the Provision created for Mine Closure since the provision is contingent in nature not being crystallised, both in normal computation of taxable income as well as calculation of adjusted book profit for the purpose of MAT u/s 115JB, disregarding the intrinsic purpose of AS 29.*

*3. Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 171.21 Crores on a/c of interest earned on shifting and rehabilitation fund created which the assessee company did not recognise in its P/L account as credit entry, from both normal computation and under 115JB, and accepting the contention of the assessee that it is only the custodian of the funds and has got no control in any manner whatsoever, over the funds collected by it and interest income thereon.”*

**2.4 The assessee has raised the following grounds of appeal in ITA No. 1406/KOL/2019:**

*“1(a) That on the facts and in the circumstances of the case, the learned CIT(Appeals) erred in upholding the action of the Assessing Officer in applying the provisions of section 14A to the appellant;*



1(b) That without prejudice to the ground taken above, the learned CIT(Appeals) erred in confirming the disallowance made by the Assessing Officer to the extent of expenditure allegedly incurred on investments from which dividend was earned during the relevant previous year;

1(c) That on the facts and in the circumstances of the case, the learned CIT(Appeals) and the Assessing Officer has erred in considering that Rule 8D of the Rules as automatic and the disallowance has to be made under section 14A of the Act in all the cases.

2(a) That on the facts and circumstances of the case, the learned CIT(Appeals) erred in confirming the action of the Assessing Officer in adding a sum of Rs. 7.5 crores on account of notional lease rent under the normal provisions of the Act.

2(b) That the action of the learned CIT(Appeals) amounts to upholding of the action of the Assessing Officer in bringing to tax “notional” income not permitted under the law.

3. That the appellant craves leave to add to and/or alter, amend, modify or rescind the grounds hereinabove before or at the hearing of this appeal.”

## 2.5 The Revenue has raised the following grounds of appeal in ITA No. 1696/KOL/2019:

“1. The Ld. CIT(A) has erred on the facts and in law by deleting the adjustment of Rs. 51,92,822/-u/s. 92CA(3) on account of alleged investment in unallotted shares treated as loan.

2. The Ld. CIT(A) has erred on the facts and in law by holding that mere permission for remitting funds for investment in shares is equivalent to allotment of shares which is not a fact in this case.

3. The Ld. CIT(A) has erred on the facts and in law by holding that the TPO has no statutory authority to re-classify or re-characterise the investment of unallotted shares as loan.

4. The Ld. CIT(A) has erred on the facts and in law by relying on the decision of Hon’ble Mumbai ITAT in the case of M/s. Sterling Oil Resources (P) Ltd. Which is not squarely applicable in assessee’s case as in the present case of the assessee, the assessee has not been allotted any shares against the share application money paid.

5. The Ld. CIT(A) has erred on the facts and in law by not deciding the issue on merits regarding the rate of interest charged as arm’s length price.

6. *Whether expenditure relatable to investment by way of inter-corporate deposits will attract disallowance under Section 14A of the Income Tax Act, 1961?*

7. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) justified by directing the AO not to include the investment in companies which have not paid any dividend to the assessee company for the purpose of computation of disallowance under Rule 8D (2)(iii) of the Income Tax Rules, 1962 without considering the CBDT Circular No. 5/2014 issued on 11.02.2014 which provides for disallowance of the expenditure u/s. 14A read with Rule 8D even where taxpayer in a particular year has not earned any exempt income?*

8. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) justified by directing that disallowance under section 14A read with Rule 8D is not required to be added to the Book Profit for the purpose of computation of income under section 115JB of the Act without appreciating that section 115JB clearly provides for including the disallowance made u/s. 14A read with Rule 8D for the purpose of computation of Book Profit u/s. 115JB of the Act?*

9. *“Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred to decipher the intrinsic purpose of accounting standard 29. The Ld. CIT(A) has erred to recognize the provisions which cannot be classified as expenditure based on mere forbearance to realized a claim.*

10. *“Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred to declare that the assessee is only the custodian of the funds and has got no control in any manner whatsoever, over the funds collected by it and interest income thereon.*

11. *That the appellant craves leave to add to and/or alter, amend, modify or rescind the grounds hereinabove before or hearing of this appeal.”*

2.6 The assessee has raised the following grounds of appeal in ITA No. 1407/KOL/2019:

*“1(a) That on the facts and in the circumstances of the case, the learned CIT(Appels) erred in upholding the action of the Assessing Officer in applying the provisions of section 14A to the appellant;*

*1(b) That without prejudice to the ground taken above, the learned CIT(Appels) erred in confirming the disallowance made by the Assessing*

*Officer to the extent of expenditure allegedly incurred on investments from which dividend was earned during the relevant previous year;*

*1(c) That on the facts and in the circumstances of the case, the learned CIT(Appels) and the Assessing Officer has erred in considering that Rule 8D of the Rules as automatic and the disallowance has to be made under section 14A of the Act in all the cases.*

*2(a) That on the facts and circumstances of the case, the learned CIT(Appels) erred in confirming the action of the Assessing Officer in adding a sum of Rs. 7.5 crores on account of notional lease rent under the normal provisions of the Act.*

*2(b) That the action of the learned CIT(Appels) amounts to upholding of the action of the Assessing Officer in bringing to tax “notional” income not permitted under the law.*

*3. That the appellant craves leave to add to and/or alter, amend, modify or rescind the grounds hereinabove before or at the hearing of this appeal.”*

**2.7 The Revenue has raised the following grounds of appeal in ITA No. 1697/KOL/2019:**

*“1. The Ld. CIT(A) has erred on the facts and in law by deleting the adjustment of Rs. 3,78,98,85 5/- u/s. 92CA(3) on account of alleged investment in unallotted shares treated as loan.*

*2. The Ld. CIT(A) has erred on the facts and in law by holding that mere permission for remitting funds for investment in shares is equivalent to allotment of shares which is not a fact in this case.*

*3. The Ld. CIT(A) has erred on the facts and in law by holding that the TPO has no statutory authority to re-classify or re-characterise the investment of unallotted shares as loan.*

*4. The Ld. CIT(A) has erred on the facts and in law by relying on the decision of Hon'ble Mumbai ITAT in the case of M/s. Sterling Oil Resources (P) Ltd. Which is not squarely applicable in assessee's case as in the present case of the assessee, the assessee has not been allotted any shares against the share application money paid.*

*5. The Ld. CIT(A) has erred on the facts and in law by not deciding the issue on merits regarding the rate of interest charged as arm's length price.*

6. *Whether expenditure relatable to investment by way of inter-corporate deposits will attract disallowance under Section 14A of the Income Tax Act, 1961?*

7. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) justified by directing the AO not to include the investment in companies which have not paid any dividend to the assessee company for the purpose of computation of disallowance under Rule 8D (2)(iii) of the Income Tax Rules, 1962 without considering the CBDT Circular No. 5/2014 issued on 11.02.2014 which provides for disallowance of the expenditure u/s. 14A read with Rule 8D even where taxpayer in a particular year has not earned any exempt income?*

8. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) justified by directing that disallowance under section 14A read with Rule 8D is not required to be added to the Book Profit for the purpose of computation of income under section 115JB of the Act without appreciating that section 115JB clearly provides for including the disallowance made u/s. 14A read with Rule 8D for the purpose of computation of Book Profit u/s. 115JB of the Act?*

9. *“Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred to decipher the intrinsic purpose of accounting standard 29. The Ld. CIT(A) has erred to recognize the provisions which cannot be classified as expenditure based on mere forbearance to realized a claim.*

10. *“Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred to declare that the assessee is only the custodian of the funds and has got no control in any manner whatsoever, over the funds collected by it and interest income thereon.*

11. *“Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred to delete the addition which is already contradiction in view' of assessee company.*

12. *“Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred to delete the addition on ground which is not a provision or contingent liability*

13. *That the appellant craves leave to add to and/or alter, amend, modify or rescind the grounds hereinabove before or hearing of this appeal.”*

## **A. Assessment Year 2011-12:**



**A.1** We shall first take up the assessee's appeal in **ITA No. 466/KOL/2018** for adjudication.

3. Brief facts of the case are that the assessee is a public sector enterprise engaged in the activities of mining and extraction of coal as also in managing the coal mining industry in the nationalized sector. The return of income was filed showing total income of ₹528,98,89,000/- under the normal provision and ₹541,82,94,000/- u/s 115JB of the Act on 24.09.2011. Statutory notices were issued and after considering the response of the assessee, the assessment was made at the total income at ₹712,83,74,510/- under the normal provision and book profit for the purpose of section 115JB of the Act was computed at ₹725,48,54,507/- vide order u/s 143(3) of the Act dated 29.03.2014. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who vide order dated 26.12.2017 had partly allowed the appeal of the assessee. Aggrieved with the order of the Ld. CIT(A), the assessee as well as the Revenue have filed the appeals before the Tribunal.

4. **Ground No. 1** relates to disallowance of ₹48.72 crores (Erroneously mentioned as ₹48,72,00,000/- crores) on account of provision for mark to market loss both under the normal provisions and while computing book profits u/s 115JB of the Act. In this respect, it is noted that during the previous year under consideration, the assessee had debited Rs 48.72 crores in the profit and loss account in respect of net loss on mark to market foreign exchange transactions. Such loss was computed by the assessee as per AS-11 and the same was claimed as a deduction by the assessee in the computation of taxable income under normal provisions of the Act as well as under section 115JB of



the Act. The Assessing Officer disallowed the marked-to-market loss on the ground that it is not allowable under section 43A or section 37 of the Act in view of the CBDT Instruction No. 3/2010 as per page 5 of the Assessment order which was confirmed by the Ld. CIT(A) during the appellate proceedings by his finding as under:

*"No.03 of the appeal relates to the issue of provisional loss of mark to market loss amounting to Rs.48,72,00,000/-. The AO has held that the provision for loss on derivative and hedging is not allowable u/s.43A or 37(1) of the Act. While disallowing the provisional losses the AO has held that the appellant has debited the provision for derivative factual loss (Market to Market) in the P & L Account and claimed as a deduction. The AO relied over the CBDT instruction No. 3/2010 dated 23 March 2010 regarding foreign exchange fluctuation loss whose contents are as under:-*

*"Mark to Market' loss may be given different accounting treatment by different assessee. Some may reflect such loss as a balance sheet item without making any corresponding adjustment in the profit and loss account. Other may book the loss in the profit and loss account which may result in reduction in the book profit. In case where no sale or settlement has actually taken place and the loss on mark to market basis has resulted in reduction of book profits such a notional loss would be contingent in nature and cannot be allowed to be set off against the taxable income. The same should be added back for computing the taxable income of an assessee.*

*The assessee has relied upon the judgment of the Hon'ble Supreme court in the case CIT vs. Woodward Governor India (P) Ltd. This judgment of Hon'ble Supreme Court was delivered for AY 1989-99 and section 43A has been amended by Finance Act, 2002 with effect from 01.04.2003. Moreover, perusal of Para no 34 of the said judgment suggest that 43A does not apply on prepayment but on actual payment after the amendment. The assessee has undergone hedging and loss for the entire future period for which the payment is still to be made has been debited as provision and the same is held to be not allowable relying Instruction No.3/2010 (supra). Hence, Rs.48,72,00,000/-, being provision for future loss on derivate due to foreign exchange fluctuation is not allowed as deduction and added back to the total income of the assessee company.*

*In the computation of MAT, the assessee has not added back the entire provision on foreign exchange fluctuation amounting to Rs.48,72,00,000/-,*



*which is disallowed as per provision of section 115JB of the Income Tax Act and added back to the book profit for computation of book profit u/s.115JB."*

*In this regard the appellant has submitted that "The Assessing Officer merely relied on Instruction No. 3/2010 issued by Central Board of Direct Taxes (CBDT) and proceeded to disallow the mark to market provision.*

*It is submitted that in order to protect itself against any adverse foreign exchange fluctuation, the appellant has entered into contracts for foreign currency with Bank. The appellant has not entered into such contracts for trading or speculative purposes and all the contracts were entered to mitigate or offset the risks that arise in normal business activities (revenue in nature). In other words, all such contracts are hedging transactions entered by the appellant for its foreign currency related exposure.*

*The above amount stands allowable in view of the decision of Supreme Court in case of CIT-vs-Woodward Governor India (P) Ltd [312 ITR 254 (SC)]. Further, the appellant company also finds support in the decision of the Mumbai Tribunal in the case of Reliance Industries Limited vs. CIT 147 ITD 323 wherein it was held that such mark to market losses are allowable.*

*Further the same stands allowable in view of the decision of Mumbai Special Bench in case of DCIT-vs-Bank of Bahrain & Kuwait [6 taxman.com 110]."*

*I have perused the fact of the case and submission made by the appellant I agree with the view of the AO that perusal of Para No.34 of the judgement relied by the appellant in case of CIT-vs-Woodward Governor India (P) Ltd [312 ITR 254 (SC) goes to suggest that section 43A does not apply but on actual payment after the amendment the appellant has gone under hedging and loss for entire future period for which the payment is still to be made. Once the payment is not made the same should not have been debited. Therefore, the AO has disallowed expenses pertaining to foreign exchange fluctuation in view of CBDT instruction No.3/2010 and has disallowed Rs.48.72 crores which were debited in P&L A/c of the assessee. The Id. AR has relied upon the decision of the Hon'ble Supreme Court in the case of CIT vs Woodward Governor India (P)Ltd 312 ITR 254 (SC) and submitted that market to market loss is an expenditure incurred by the assessee and thus allowable as deduction. In this regard it is pertinent to mention here that the similar issue arose in case of ITA No. 1032/Kol/2012 Coal India Ltd. Kolkata Vs Department of Income Tax where the Honourable ITAT have gone through the same argument of the appellant and while deciding the case the reliance was placed on the decision of CIT vs Woodward Governor India (P)Ltd 312 ITR 254 (SC) wherein the Hon'ble Apex Court in the aforesaid case has held*

as under (relevant portion reproduced):-

*"In conclusion, we may state that in order to find out if an expenditure is deductible the following have to be taken into account (i) whether the system of accounting followed by the assessee is mercantile system, which brings into debit the expenditure amount for which a legal liability has been incurred before it is actually disbursed and brings into credit what is due, immediately it becomes due and before it is actually received (ii) whether the same system is followed by the assessee from the very beginning and if there was a change in the system, whether the change was bona fide; (iii) whether the assessee has given the same treatment to losses claimed to have accrued and to the gains that may accrue to it; (iv) whether the assessee has been consistent and definite in making entries in the account books in respect of losses and gains; (v) whether the method adopted by the assessee for making entries in the books both in respect of losses and gains is as per nationally accepted accounting standards; (vi) whether the system adopted by the assessee is fair and reasonable or is adopted only with a view to reducing the incidence of taxation."*

*Perusal of appellant submission submitted shows that the appellant has debited the future liability in the current year. In this regard it is to point out that no legal liability occurred due to change of value unless the transaction is squared up. Nothing is proved to be due for third party. Nothing has been produced or shown or furnished or evident on record which may infer that any subsequent gain was made by the appellant in subsequent years. Therefore, the instruction No. 3/2010 issued by Central Board of Direct Taxes (CBDT) is clearly applicable. I agree with the view that the appellant has not added but entire provision and foreign exchange fluctuation amount which was merely a provision. In view of the above the action of the AO is hereby upheld and the ground of appeal is dismissed."*

4.1 The Ld. AR submitted that similar issue arose in AY 2008-09 and the Tribunal vide order in ITA No. 1032/KOL/2012 had restored the issue to the file of the Ld. AO to examine as per the following directions:

*"In view of the submissions made by the ld. AR the issue is restored back to the file of AO to examine as to whether the assessee has in fact booked profit on account of foreign exchange fluctuation. If that be so, the same shall be dealt with in accordance with aforesaid judgement in the case of Woodward Governor India (P.) Ltd. (Supra). We, accordingly allow ground nos. 4 & 5 for statistical purposes only."*

4.2 It is submitted that based on the above judgment, it may be inferred that if equal treatment is accorded to the foreign exchange gains (i.e. offered to tax), then based on the consistent treatment followed, the foreign exchange loss should be allowed. In this regard, it is submitted that the assessee has offered net gain on marked-to-market forex loss in AY 2009-10. It is also stated that Marked-to-market foreign exchange loss is an 'expenditure' allowable as deduction under section 37 of the Act and Marked-to-market loss is not notional or contingent in nature, but 'crystallized loss' allowable as deduction under section 37 of the Act in view of the decision in CIT v. Woodward Governor India (P) Ltd [312 ITR 254 (SC)] and Sutlej Cotton Mills Limited [116 ITR 1 (SC)]. It is stated that CBDT Instruction No 3/2010 is neither binding on the assessee nor appellate authorities in view of the decisions in the following cases:

(a) Customs Calcutta vs Indian Oil Corporation Ltd [(2004) 165 ELT 257 (SC)]

(b) Vikrant Tyres vs First ITO [(1993) 202 ITR 454 (Kar)]

(c) CIT vs Hero Cycles (P) Ltd [(1997) 228 ITR 463 (SC)]

4.3 With regard to the addition under book profits, it is submitted by the Ld. AR that section 115JB is a self-contained code. Explanation to section 115JB of the Act provides certain adjustment to be made in the computation of book-profit. Apart from the adjustments mentioned in the said Explanation, no other adjustment can be made in the computation of book-profits under section 115JB of the Act. Reliance in this regard is placed on the decision of Hon'ble Supreme Court in the case of **Apollo Tyres Ltd. vs. Commissioner of Income-tax [2002] 122 Taxman 562 (SC)/[2002] 255 ITR 273 (SC)/[2002] 174 CTR 521**



**(SC)**[02-05-2002]. It is further stated that Section 115JB of the Act does not warrant any such upward adjustment in respect of provision for marked-to-market loss and hence, the addition in this regard is without any basis and liable to be quashed.

4.4 We have considered the facts of the case, the submissions made and the documents filed. It is noted by the Ld. CIT(A) that the assessee had debited the future liability in the current year and no legal liability had occurred due to change of value unless the transaction is squared up. Since the contracts were entered to mitigate or offset the risk that arises in normal business activities, and the contracts were not entered for trading or speculative purposes, such contracts have been treated as hedging transactions for its foreign currency related exposure. **It has been correctly noted in the order of the Ld. CIT(A) that reliance upon the decision of CIT v. Woodward Governor India (P) Ltd (supra) for AY 1989-90 is no longer applicable on account of substitution of section 43A of the Act with effect from 01.04.2002.** In fact, u/s 43A, even on fluctuation of liability on account of foreign exchange for the payments mentioned therein, only the cost of acquisition of the asset/WDV is varied for the purpose of computation of depreciation and other capital expenditure mentioned is varied when such liability crystallises in the year of payment. Hence, the mark-to-market loss being only a notional loss for the purpose of the books of account of the assessee and no crystallization of such loss having been occurred during the year, such loss has rightly been disallowed by the Ld. AO which has been confirmed by the Ld. CIT(A) and there is no reason to interfere with the finding of the Ld. CIT(A). In case, the assessee has booked profit on account of foreign exchange fluctuation on such

transactions, the Ld. AO is directed to reduce the same from the income on matching principle in view of the provisions of section 43A as only trading receipts can be considered as part of the income and the assessee is not a dealer of foreign exchange.

4.5 Further, as regards the provisions of section 115JB of the Act, the decision in **Apollo Tyres Ltd.** (supra) is also of no help to the assessee. It has been held in the case of **Apollo Tyres Ltd.** (supra) as under:

*“The object of introducing section 115J can be deduced from the Budget Speech of Finance Minister made in Parliament while introducing the said section.*

*The Speech shows that the income-tax authorities were unable to bring certain companies within the net of income-tax because these companies were adjusting their accounts in such a manner as to attract no tax or very little tax. It is with a view to bring such of these companies within the tax net that section 115J was introduced in the Income-tax Act with a deeming provision which makes the company liable to pay tax on at least 30 per cent of its book profits as shown in its own accounts. For the said purpose, section 115J makes the income reflected in the companies' books of account as deemed income for the purpose of assessing the tax. If one examines the said provision in the above background, one notices that the use of the words 'in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act' is made for the limited purpose of empowering the assessing authority to rely upon the authentic statement of accounts of the company. While so looking into the accounts of the company, an Assessing Officer under the Income-tax Act has to accept the authenticity of the accounts with reference to the provisions of the Companies Act which obligates the company to maintain its account in a manner provided by the Companies Act and the same to be scrutinised and certified by statutory auditors and will have to be approved by the company in its General Meeting and thereafter to be filed before the Registrar of Companies who has a statutory obligation also to examine and satisfy that the accounts of the company are maintained in accordance with the requirements of the Companies Act. In spite of all these procedures contemplated under the provisions of the Companies Act, it is difficult to accept the argument of the revenue that it is still open to the Assessing Officer to rescrutinise the accounts and satisfy himself that these accounts have been maintained in*

*accordance with the provisions of the Companies Act. Reliance placed by the revenue on sub-section (1A) of section 115J in support of the above contention was misplaced. Sub-section (1A) of section 115J does not empower the Assessing Officer to embark upon a fresh inquiry in regard to the entries made in the books of account of the company. The said sub-section, as a matter of fact, mandates the company to maintain its account in accordance with the requirements of the Companies Act which mandate is bodily lifted from the Companies Act into the Income-tax Act for the limited purpose of making the said accounts so maintained as a basis for computing the company's income for levy of income-tax. Beyond that, the said sub-section does not empower the authority under the Income-tax Act to probe into the accounts accepted by the authorities under the Companies Act. If the statute mandates that income prepared in accordance with the Companies Act shall be deemed income for the purpose of section 115J, then it should be that income which is acceptable to the authorities under the Companies Act. There cannot be two incomes one for the purpose of Companies Act and another for the purpose of Income-tax Act. If the Legislature intended the Assessing Officer to reassess the company's income, then it would have stated in section 115J that 'income of the company as accepted by the Assessing Officer'. In the absence of the same and on the language of section 115J, the view taken by the Tribunal was correct and the High Court had erred in reversing the said view of Tribunal.*

*Therefore, the Assessing Officer while computing the income under section 115J has only the power of examining whether the books of account are certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act. The Assessing Officer thereafter has limited power of making additions and reductions as provided for in the Explanation to the said section. To put it differently, the Assessing Officer does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in the Explanation to section 115J.”*

4.6 As the disallowance is covered under clause (c) of Explanation (1) to section 115JB of the Act, the same is liable to be added to the book profit for the purpose of section 115JB of the Act. Hence, the finding of the Ld. CIT(A) is confirmed and **Ground No. 1 of the appeal is dismissed.**



5. **Ground No. 2** relates to disallowance of prior period expenses. The Ld. AO disallowed the claim as he noted on a perusal of the Profit & Loss Account as well as TAR, schedule 22(b), Annexure-G, that the assessee had incurred expenses of ₹19,25,000/- relating to earlier years which were contractual expenses and so already determined in the year of accrual under the concerned contracts. He relied upon the decision of the Mumbai Bench of the Tribunal in the case of **M/s. Tipco Industries Ltd. Vs. The ACIT (ITA No.5708/Mum/2009)** wherein it is held that prior period expenses are not allowable and also that deductions can be permitted in respect of only those expenses which are incurred in the relevant accounting year for the purpose of computing the profits and gains. He has further stated in the assessment order that for the purpose of computing yearly profit and gains for assessment of income, each year is a separate and self-contained period of time and losses and expenses incurred before its commencement or after its expiry cannot be subject of any allowances and deduction can therefore be permitted only in respect of expenses, which are found to have been incurred in the relevant accounting year. After discussing the provisions of section 37(1) of the Act, he disallowed a sum of ₹19,25,000/- and added the same to the total income of the assessee. The Ld. CIT(A) decided the issue against the assessee as the assessee could not establish that the liability had crystallised during the year and thus was allowable as a deduction and his finding in this regard is as under:

*“Perusal of fact shows that the appellant has not brought any material on record before the AO which can show that the liability was crystallised during the year. As it is crystal clear from the order of the AO that the contractual expense relating to contract is made prior to the present assessment and the activity and liability are crystallised. The appellant is*

*following Mercantile system of accounting, and the aforesaid has not been controverted and the prior period claimed by the appellant are based on assumption that these were got crystallised during the year itself whereas factually the appellant has failed to prove the same therefore the decision of the AO is upheld and the ground of appeal is dismissed.”*

5.1 In this regard the Ld. AR submitted that although the liabilities were relating to earlier years, but were crystallized during AY 2011-12 and hence the expenses are allowable. Reliance in this regard was placed on the following judicial pronouncements:

- a. Saurashtra Cement and Chemical industries vs CIT (Guj) 213 ITR 523 (Page 327-333 of Paperbook)
- b. Kumar Aerosoles vs ACIT (Del) 55 TTJ 385
- c. Bharat Carbon & Ribbon Mfg. Co. (P.) Ltd. vs CIT 239 ITR 505 (SC)

5.2 It was further submitted that in the notification No. S.O. 69(E) dated 25-01-1996 [218 ITR (st) 1], the CBDT has clarified that the term ‘prior period items’ means material changes or credits which arise in the previous years as results of errors or omissions in the preparation of the financial statements of one or more previous years. It has been further clarified that the charge or credit, arising on the outcome of a contingency, which at the time of occurrence could not be estimated accurately shall not constitute correction of an error but a change in an estimate and such an item shall not be treated as a prior period item.

5.3 We have considered the facts of the case, the submissions made and the documents filed. Neither before the Ld. AO nor before the Ld. CIT(A) the assessee could establish that the expenses which related to prior period had crystallized during the year and were, therefore,



allowable as a deduction. Even before us no evidence has been filed in support of the claim that the liabilities had crystallized during the year although it was claimed during the course of the appeal vide paper book 2 filed on 05.05.2022 that the work was of Lead Transportation, as per work Order No. NEC/GM/08/09/111 & 112 and letter from Rungta Projects stating payment not done until 02.09.2011 was claimed to be filed. Further, in respect of Tikak Colliery, the payment was not finalized due to litigation filed by Rungta Projects in the concerned year. In P & L account, the expenses are debited under Contractual Expenses in the nature of Transportation Expenses. Since the addition was made on the basis of the Tax Audit Report and the findings of the Ld. CIT(A) have not been rebutted by filing any evidence, the same is liable to be sustained. However, as the Ld. AR emphatically claimed before us that the same pertained to Rungta Projects but were not finalized due to litigation filed by the Rungta Projects and were in the nature of transportation expenses which had crystallized during the year; hence, in the interest of justice and fair play, the findings of the Ld. CIT(A) on this issue are set aside and the issue is remanded to the Ld. AO to grant an opportunity to the assessee for furnishing the required evidence in support of the claim that the prior period expenditure had crystallized during the year, was not claimed as a deduction in the earlier years and thereafter allow the same as a deduction as per law as the expenditure is allowable in the year in which the liability has crystallized. We may emphasize that in the absence of the requisite evidence to establish that the liability had crystallized during the year, the addition shall stand confirmed. Therefore, **Ground No. 2 of the appeal of the assessee is partly allowed for statistical purposes.**



6. **Ground No. 3** relates to addition of ₹1,92,32,107/- alleging the same as undisclosed income both under the normal provisions as well as u/s 115JB of the Act. The Ld. AO noted on comparison of ITS details as per Form No. 26AS that certain interest and rental income had not been credited by the assessee in the profit and loss account though the same were reflected in Form No. 26AS and the credit of TDS had been given to the assessee. The transaction related to interest from Bank of India amounting to ₹1,92,32,107/- on which TDS of ₹19,27,740/- was made. The addition was made subject to modification on receipt of clarification from the bank as the assessee had denied that the transactions related to it and the Ld. AO had sought confirmation from the bank. The Ld. CIT(A) has noted that the assessee had not been able to substantiate as to how the income did not belong to it although the credit for TDS had been availed, the heads of income being interest and rent and the assessee having not made any attempt to controvert the finding of the Ld. AO, the addition was confirmed by him.

6.1 The Ld. AR submitted before us that the income of ₹1,92,32,107/- does not represent the income of the assessee nor the TDS credit has been availed by the assessee. It is also stated that the addition was made solely on the basis of Form No. 26AS of the assessee over which the assessee has no control as it is likely that the TDS has been wrongly deducted against the PAN of the assessee. Even the confirmation sought from the bank had not been received by the Ld. AO. Further, section 115JB of the Act is a self-contained code and it does not warrant any such upward adjustment in respect of income not credited to the accounts on the basis of Form No. 26AS and the addition is requested

to be quashed. Reliance has been placed on the decision of **Apollo Tyres Ltd.** (supra).

6.2 We have considered the facts of the case, the submissions made and the documents filed. The Ld. AO made the addition only on account of the amount appearing in Form No. 26AS which the assessee has disowned. Further, the Ld. AO was of the view that since TDS credit was availed, therefore, the income in the form of rent and interest was liable to be included in the total income. Before the Ld. CIT(A) as well, the addition was confirmed since the finding of the Ld. AO could not be rebutted. However, the Ld. AO himself has mentioned in the assessment order that he had sought confirmation from the bank and the addition was made subject to modification, if any. Since the assessee has emphatically denied that the income belonged to it nor the credit for TDS was availed and the confirmation from the bank must have been received by now, therefore, in the interest of justice and fair play, the findings of the Ld. CIT(A) are hereby set aside and the issue is remanded to the Ld. AO to obtain the requisite evidence from the assessee and/or verify from record whether any credit for TDS was availed and based upon the confirmation from the bank, which was pending at the time of assessment and which must have been received by now, and after granting an opportunity of being heard to the assessee and after considering its submission, re-adjudicate this issue on the basis of facts and as per law. The assessee claims that in view of the decision in **Apollo Tyres Ltd.** (supra) the amount cannot be added to the book profit u/s 115JB of the Act. The decision of the Hon'ble Supreme Court relates to the issue that the Ld. AO while computing the income under section 115J has only the power of examining whether the books of

account are certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act. The Assessing Officer thereafter has limited power of making additions and reductions as provided for in the Explanation to the said section. To put it differently, the Assessing Officer does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in the Explanation to section 115J of the Act. Although the decision is rendered in the context of section 115J of the Act but the ratio is applicable to the provisions of section 115JB of the Act as well since the provisions are similarly worded. Hence, in view of the finding of the Hon'ble Supreme Court, the undisclosed income, if any, is not liable to be included while computing book profit for the purpose of section 115JB of the Act. Hence, **Ground No. 3 of the appeal of the assessee is partly allowed for statistical purposes.**

6.3 **Ground No. 4** being general in nature does not need any separate adjudication.

6.4 In the result, the assessee's appeal in **ITA No. 466/KOL/2018 is partly allowed for statistical purposes.**

**A.2** Now we shall take up the Revenue's appeal in **ITA No. 622/KOL/2018** for adjudication.

7. **Ground No. 1** relates to the deletion of disallowance of ₹ 31.58 crores u/s 14A of the Act both in normal computation as well as u/s 115JB of the Act.

7.1 The Ld. AO made the addition by observing as under:

*“It has been found from the computation of total income furnished along with the return of income that the assessee company has earned Rs. 32,65,000/- as dividend which has been claimed to be exempt as income u/s. 10(34) of the Income Tax Act. The assessee has not offered any disallowance u/s. 14A in respect of earning of exempt income.*

*During the assessment proceedings, the assessee company was asked why disallowance u/s. 14A would not be made on expenditures incurred in respect of earning of exempted income. The assessee has not submitted that no expenses has been incurred for earning exempt income.*

*The term 'expense' has many forms, namely accrued expense current expense, administrative expense, deferred expense, prepaid expense, travel expense etc. The term 'expenditure' occurring in section 14A would thus take in its sweep not only direct expenditure but also indirect expenditure regardless whether they are fixed, variable, direct, indirect, administrative managerial or financial. The phraseology used in section 14A prohibiting the deduction in respect of expenditure incurred by the assessee in relation to exempt income is thus wide enough to cover all forms of expenses provided they have some connection with the exempt income.*

*It may be stated that expenditure disallowance may not be co-related to the dividend since there is no direct relation between the expenditure claimed from other companies received by it. In some years, it may be less as enough dividends may not be paid by share issuing companies due to lesser profit.*

*There are large numbers of expenditures which are being incurred by the assessee to run its business. The investments are part of the said establishment and part of various activities of the assessee is revolved around investments also. There are "numerous indirect expenses and no assessee can make so huge investment without a proper, effective help of employees, professionals and supervision of management at various levels. The expenses cannot be bifurcated because of intricacies of the operations involved in day-to-day business activity including investments and the legislature in its intent to make it reasonable, proper and fair has given the formula in clause iii of subrule 2 of Rule 8D of I.T. Rules, 1962. It has provided a formula to determine the expenses excluding interest @ 0.5% of investments. There is no discretion with the Assessing Officer to use more or less percentage for determining these expenses. There is no scope for altering the said expenditure in any circumstances. It is a formula which has to be applied by Assessing Officer and the assessee to determine the expenditure relating to exempted income.*



*The inherent proposition behind the contents of Section 14A is disallowance of expenditure in relation to income which does not form part of the total income is that expenditure incurred is not allowable for the purpose whether the assessee claims that no expenditure has been incurred during the previous year. Section 14A(3) of the Income Tax Act states that:*

*"The provisions of sub-section (2) shall also apply in relation to a case where as 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".*

*In view of the above, disallowance u/s. 14A is required to be made in respect of earning of exempt income u/s. 10(34) of the Income Tax Act and accordingly is not satisfactory in accordance with the provision of 14A of the Income Tax Act.*

*The Jurisdictional Calcutta High Court in the case of Dhanuka & Sons Vs CIT (339 1TR 319), disallowance under section 14A can indeed be made. In Dhanuka's case (supra), Their Lordships have, inter alia, observed as follows: "In the case before us, there is no dispute that part of the income of the assessee from its business is from dividend which is exempt from tax whereas the assessee was unable to produce any material before the authorities below showing the source from which such shares were acquired....."*

*In our opinion, the mere fact that those shares were old ones and not acquired recently is immaterial. It is for the assessee to show the source of acquisition of those shares by production of materials that those were acquired from the funds available in the hands of the assessee at the relevant point of time without taking benefit of any loan. If those shares were purchased from the amount taken in loan, even for instance, five or ten years ago, it is for the assessee to show by the production of documentary evidence that such loaned amount had already been paid back and for the relevant Assessment Year, no interest is payable by the assessee for acquiring those old shares. In the absence of any such materials placed by the assessee, in our opinion, the authorities below rightly held that proportionate amount should be disallowed having regard to the total income and the income from the exempt source. In the absence of any material disclosing the source of acquisition of shares which is within the special knowledge of the assessee, the assessing authority took a most reasonable approach in assessment."*

7.2 The Ld. AO also relied upon the decision of **Cheminvest Ltd. vs. ITO 124 TTJ 577 (Del)(SB)** and **ITO vs. Daga Capital Management (P) Ltd. 117 ITD 169 (SB)** and also the CBDT Circular No. 5/2014 dated 11.02.2014 and made the disallowance under clause (iii) of Rule 8D of the IT Rules read with section 14A of the Act at ₹31,58,93,400/-.

7.3 The Ld. CIT(A) deleted the addition by observing as under:

*“6.1.3 Against the aforesaid decision the appellant filed Miscellaneous petition. The Honourable ITAT has decided the case on 05-04-2017 the content of which are as under:-*

*This appeal was originally disposed of by the Tribunal in ITA No.1032/Kol/2012 and ITA No.1238/Kol/2012 vide order dated 13-05-2015. In the said order with regard to the issue of disallowances U/S.14A of the Act r.w. rule 8D of the Act, the assessee had preferred a miscellaneous petition before this Tribunal stating that the case law of this Tribunal relied upon by the assessee during the original proceedings together with the submissions made by the assessee were not considered and appreciated by this Tribunal which constituted, mistake apparent on record within the meaning of section 254(2) of the Act. Accordingly this Tribunal had disposed of that miscellaneous application in MA No.26/Kol/2016 arising out of ITA NO.1032/Kol/2012 on 27-07-2016 and recalled the order of the tribunal with regard to the issue of 14A of the Act alone. Hence it has become necessary for us to adjudicate the issue of disallowance U/S.14A of the Act afresh in this proceeding.*

*We have heard the rival submission and perused the materials available on record. At the outset, from the perusal of the pages 86-90 of the paper book containing the letter addressed by the Govt of India, Ministry of Energy, Department of Coal India Ltd. dated 27-09-1975, addressed to Coal Mines Authorities Ltd. informing the setting up of coal India ltd as holding company for the coal industry in the Central Public Sector and the other existing divisions of Coal Mines Authorities Ltd would be converted as subsidiaries of Coal India Ltd. this government letter clearly proves the purpose of creation of subsidiary companies by the assessee with the blessings of central govt. For which a separate order is passed by the Govt. of India. Admittedly these subsidiaries are formed only for the better management and control of the coal mines by the government. Hence it goes to prove beyond doubt that the investments made in subsidiary companies by the*

*assessee with the blessings of the government were made only to obtain controlling interest in the said subsidiary companies and hence it could be safely concluded that the same would fall under the ambit of strategic investments. The law now is well settled that for the purpose of computing disallowance U/S.14A r.w. rule 8D of the rules, strategic investments should not be reckoned thereon. Reliance in this regard by the AR is placed on the decisions of the Honourable Delhi High Court is very well founded. We also find that in the recent decision of this Tribunal in the case of Electro steel Castings Ltd Vs DCIT this tribunal after considering various decisions of Tribunal and Honourable Delhi High Court had held that while computing the disallowance u/s.14A the AO while adopting the average value of investment has to exclude the investments which are strategic investments. Hence respectfully following the said decisions we find no disallowances U/S.14A is warranted in the facts and circumstances of the case as admittedly the assessee had derived the exempt income out of investment made in subsidiaries only. We also find that the assessee had derived taxable income out of investment made in subsidiaries by way of recovery of office apex charges in the sum of Rs. 164.60 Crore which is much more than the disallowance contemplated U/S.14A of the Act. Hence it could be safely concluded that the assessee had also derived taxable income out of investments in subsidiaries. Hence it cannot be said that the investments had yielded only exempt income to the assessee. With this observation, we allow the grounds raised by the assessee with regard to the issue of disallowances U/S.14A of the Act both in normal provisions of the Act as well as u/s.115JB of the Act.*

*Considering the aforesaid decision of Honourable ITAT delivered on 05-04-2017 in case of appellant himself against the disallowances under rule 14A read with rule 8D. The honourable ITAT has allowed the ground of the appeal and deleted the disallowances made by the AO on the ground narrated above in the present case also the considering the fact of the appellant that the appellant has derived taxable income out of the investment made in subsidiaries by way of recovery of office expenses in the sum of Rs. 185.20 crore whereas disallowance u/s. Rule 8D is lesser than that. Keeping in view of the Honourable ITAT decision in case of the appellant himself on similar facts the AO's disallowances made on account of section 14A read with rule 8D is deleted and the ground of appeal is allowed.”*

7.4 The Ld. DR, vide written submission filed in this regard, has submitted as under:

2. *“Disallowance u/s 14A - Under normal provisions and under 115BJ (Department's Ground, AY 2011-12, 2012-13, 2013-14 and 2014-15)*

2.1 *This ground of appeal related to disallowances u/s.14A is presenting all the assessment years starting from AY 2011-12 till 2014-15. In this regard the Hon'ble Bench may kindly note that the same issue in the case of assessee itself before the ITAT, Kolkata Bench for AY 2008-09 was decided against the assessee vide ITAT order dated 13/05/2015 in ITA No. 1032/Kol/2012 and 1238/Kol/2012. However, subsequently this decision was reversed by the ITAT, Kolkata vide decision dated 27/07/2016, in response to the M.A. Application No. 26/Kol/2016 filed by the assessee. Nevertheless, the Hon'ble ITAT, Kolkata Bench order dated 13/05/2015 that has gone into details and merits of various issues and arguments, are relevant here. These arguments are discussed in detail in Para-5 (from Para 5 to 5.9) of the ITAT order dated 13/5/2015.*

2.2 *The M.A. Application order by Hon'ble Bench dated 27/07/2016 which reversed the earlier decision of the ITAT and thus ruled in favor of the assessee appellant was based on two grounds. The first being the ground that all the investments made by the assessee company were in the nature of strategic investment in its subsidiary companies. The second ground being that the assessee had recovered apex office charges from its various subsidiaries for managing its own subsidiaries and hence, it was argued that, no separate disallowance u/s.14A of the Act was required.*

2.3 *The department would like to bring to the notice that Hon'ble Supreme Court of India in the case of Maxopp Investment Ltd. vs. Commissioner of Income Tax, New Delhi, [2018] 91 taxmann.com 154 (SC), has examined the issue of strategic investments and has held that even if an investment is of strategic nature, it does not grant any immunity to the assessee from the applicability of provisions of section 14A. The Apex Court thus held that expenditure incurred on earning of dividend income has to be disallowed.*

2.4 *The argument that since the assessee is recovering Apex charges from its subsidiary companies on account of various management, supervisory and controlling activities that has been offered to tax does not in any way impinged upon the applicability of section 14A. The earning through Apex charges is a purely business income which has rightly been offered to tax by the assessee and it has absolutely no bearing and relation with the provisions of section 14A.*

2.5 *Therefore, it is prayed that the CIT-Appeal has erred in deleting the disallowance u/s.14A for various years under appeal, and the same needs to be reversed.*

2.6 The Hon'ble Kolkata Bench order for AY 2008-09 dated 13/5/2015 in the appellant case, as referred supra, is in itself very detailed and nuanced, covering all the facets and arguments of the issue. And therefore, it would be instructive to quote from that order itself to bring out the facts and silent feature of the matter to the notice of this Bench. The full order of the Hon'ble Bench is also attached with this submission along with the revision order passed by the Bench on 27/7/2016. The relevant paras of the order dated 13/5/2015 is quoted as below.

5. We have heard the rival contentions and perused the facts of the case. The Id. AR has strongly argued that no satisfaction as to the correctness of the claim made u/s 14A read with 8D(iii) has been recorded by the AO as well as the Id. CIT(A). The aforesaid contention of the assessee is not acceptable for the reasons hereinafter. The order passed by the AO goes to show that AO has complied with the requirement of section 14A of the Act by observing that as to why he is not satisfied with the correctness of claim of the assessee that no expenditure was incurred. The AO has recorded the findings that earning of dividend was not an automatic process and the assessee was required to keep regular control over the investments made.

5.1. The contention put forth by the Id. AR that it had earned dividend income of Rs.262907.86 lakhs without incurring any expenses does not convince us at all. The term 'expenditure' as per section 14A would include the expenditures that are related to investments made i.e. expenditures on administration, capital expenses, travelling expenses, operating expenses etc. It is difficult to accept that the assessee company was making investments decisions to the tune of Rs.6,31,637 lakhs of public money without incurring a single penny out of its pocket. Such decisions are highly strategic in nature and are required to be made by highly qualified and experienced professionals. The same would also require market research and analysis. The assessee company by acquiring controlling interest in the subsidiary companies would also be required to attend board meetings and make policy decisions with regard to the aforesaid huge amount of investments made. By no stretch of imagination, it can be assumed that such activities were done without incurring any expenditure. It is pertinent to mention here that even the assessee did not rebut the findings of AO that the assessee was required to supervise and administer all the investments made.

5.2. It is pertinent to refer to the observations made by the Hon'ble Supreme court in the case of CIT vs Walfort Share & Stock Brokers (P) Ltd. (2010) 326 ITR 1 (SC) defining the scope of section 14A of the

Act incorporated retrospectively from 1<sup>st</sup> April, 1962. Relevant portion is reproduced herein below:

5.3. It is further apposite to refer to the decision of the ITAT Mumbai Bench in the case of *ACIT vs Citicorp Finance (India) Ltd. (2007) 108ITD 457* dated 21<sup>st</sup> November, 2006 wherein on similar facts, the contention of the assessee that it had incurred no expenditure for earning high dividends was negated. The relevant portion of the decision is reproduced herein below

We find that the aforesaid judgement is squarely applicable to the present case of the assessee.

5.4. The findings recorded by us as regards the expenditure required to be incurred by the assessee company for carrying out the investments and earning dividends income also finds force from the decision rendered by ITAT, Chennai Bench in the case of *Southern Petro Chemical Industries vs DCIT (2005) 3 SOT 157* dated 20<sup>th</sup> October, 2004 relevant part of which is reproduced as under

5.5. Since the assessee had claimed that no expenditure was incurred, the assessing authorities were correct to estimate the incurring of such expenditure u/s 14A read with Rule 8D. It is pertinent to refer to the observations made by ITAT Chennai Bench in the case of *Lakshmi Ring Travellers vs ACIT* in ITA No.2083/Mads/2011 dated 2<sup>nd</sup> March, 2012 wherein it was held as under (relevant portion reproduced)

5.6. The decisions relied upon by the assessee to support the aforesaid grounds of appeal are distinguishable on facts and law and does not help the cause of assessee. The assessee relied upon the decision of various courts of law listed as under:

- (i) *Maxopp Investments Ltd. Vs CIT347ITR 272 (Del)*
- (ii) *Godrej & Boyce Mfg.Co.Ltd. vs DCIT 328 ITR 81 (Bom)*
- (iii) *Relaxo Footwears Ltd. Vs Addl.CIT (2012) 50 SOT 102*
- (iv) *REI Agro Ltd. Kolkata vs D CIT ITA No.1331/Kol/2011*
- (v) *DCIT vs Ashish Jhunjunwala*

In all of the aforesaid judgements, the ratio was that the AO failed to record any satisfaction u/s 14A read with rule 8D whereas in the present case proper satisfaction was recorded by the AO u/s 14A of the Act. Reliance was placed on the judgments rendered in the case

of REI Ltd., Kolkata (*supra*) In the aforesaid decision, the issue with respect to the disallowance made under section 14A read with Rule 8D(2)(iii) was restored to the file of AO and no judgment was rendered on merits of the contentions of assessee. The assessee has submitted that for disallowing the expenditure incurred for earning the exempt income there must be a nexus between the two. To substantiate the same, the assessee has relied upon the decisions of various courts listed as under:

- (i) *Bal ram Chinni Mills Ltd. Vs DCIT in ITA NO.504/Kol/2011*
- (ii) *CIT vs Hero Cycles Ltd. 323 ITR 518 (Pun&Har)*
- (iii) *Saurabh Agrotech (P) No.786/JP/2011 Ltd VS DCIT in ITA NO.786/JP/2011*
- (iv) *Hindusthan paper Corporation No.47/Kol/2012. Ltd. in ITA NO.47/KOL/2012*

The aforesaid judgements will not support the case of the assessee as the same are rendered in the different facts altogether. In the aforesaid decisions, the ratio was that only those expenditures which has nexus to the exempt income are to be disallowed. However in the present case the nexus between the expenditure incurred and the dividend income was established by the revenue authorities.

5.7. The Ld. AR submitted that in subsequent years i.e. A. Yrs. 2009-10 and 2010-11, the aforesaid issue has been decided in favour of the assessee. The aforesaid orders of the ld. CIT(A) will not help the assessee as the same has no bearing on the present case.

5.8. The Ld. AR submitted without prejudice to the aforesaid grounds that there is a computational error in calculation under rule 8D(iii) and the AO has included the investments of the subsidiaries, which have not paid dividends to the assessee. In view of submission made, the said issue is remanded to the file of AO to make a correct computation without including the investments of companies which have not paid any dividend to the assessee company. The aforesaid grounds are, therefore, held to be against the assessee on merits and on the issue of computation under rule 8D(iii), the matter is remanded back to the file of AO. Accordingly Grounds 1(a), 1(b), 1(c), 2(b) and 2(c) of the assessee are dismissed.

5.9. As regards the issue in relation to section 115JB, the ld. Counsel for the assessee in support of the aforesaid grounds of appeal submitted that disallowance computed as per Rule 8D of the Rules

cannot be applied u/s 115JB of the Act and the provisions of section 14A are restricted to computation of income under normal, provisions of the Act which cannot be extended to the computation of income u/s 115JB of the Act. The ld. AR relied upon the decisions of ITAT Delhi Bench in the case of Goetze (India) Ltd vs CIT (2009) 32 SOT 101 and ITAT Ahmedabad Bench in the case of Cadila Healthcare Ltd. Vs ACIT in ITA No.354/Ahd/2012. The issue is squarely covered in the favour of the assessee. Accordingly, we partly allow ground no.2(a) of the assessee as regards the addition to book profit made u/s 115JB of the Act.

2.7 In light of very clear findings of the Hon'ble ITAT in the case of the appellant itself while deciding the appeal for AY 2008-09, as quoted supra, it is prayed that the disallowance made by the AO under section 14A may be upheld. It is pertinent to mention again that subsequent to the Hon'ble Supreme Court decision in the case of Maxopp Investment Ltd, the argument that investment of strategic nature is not to be included for applicability of 14A, does not hold ground. Further, the contention of the assessee that it has charged Apex charges from its subsidiaries which is offered to tax and therefore, it is not required to make any disallowance under 14A does not hold any ground, because these are two separate issues, and have no bearing on each other. The 14A disallowance is governed as per the provisions detailed in section 14A of the Income Tax Act and in Rule 8D of the Income Tax Rules. The charging of Capex charges for management services and offering it to tax is correct, but has no relation with the provision enumerated in section 14A.”

7.5 The Ld. AR in this regard has submitted as under:

“It is respectfully submitted that the application of Rule 8D of the Income-tax Rules, 1962 is not automatic and is subject to strict preconditions. In this connection, we refer to the decision of Hon'ble Calcutta High Court Kesoram Industries Limited vs. PCIT (ITA1148/2018).

“We also take note of the decision of this Court in the case of Commissioner of Income Tax, Central I, Calcutta Versus Ashish Jhunjunwala reported in 2015(12) TMI 905, Calcutta and the decision in Principal Commissioner of Income Tax, Kolkata - 3, Kolkata Versus Britannia Industries Limited, ITAT/45/2017 dated 19th July, 2018. It was pointed out that the assessee has to make a claim (including a claim that no expenditure was incurred) with regard to the expenditure incurred for earning income which is not chargeable to tax. Such a claim has to be examined by the assessing officer and only if on an objective satisfaction is arrived at by the assessing officer



*that the claim made by the assessee cannot be accepted, the assessing officer can then proceed to apply computation mode as provided in rule 8D (2) of the Rules. We also take into consideration the decision of the Hon'ble Supreme Court in Godrej and Boyce 9 Manufacturing Company Limited Vs. Deputy Commissioner of Income Tax, Mumbai; 2017(7) SCC 421, wherein it was held that the law postulates the recording of satisfaction as the requirement to be complied with by the assessing officer"*

*On basis of the above your Honor, we would appreciate that the following action is required both by the appellant and the Ld.AO before resorting to apply Rule 8D of Income Tax Rules, 1962;-*

- A) The appellant has to make a claim (including a claim that no expenditure has been incurred by the appellant).*
- B) The Ld. AO has to examine the claim and only on objective satisfaction computation made as provided in Rule 8D can be made applicable. In addition, the Hon'ble High Court also took cognizant of the decision of Hon'ble Supreme Court in the case of Godrej and Boyce 9 Manufacturing Company Limited (Supra) and held that the law postulates the recording of satisfaction as the requirement to be compiled by the assessing officer.*

*Considering the above, let us analyze whether the above-mentioned steps have been followed by the Appellant and the Ld. AO.*

*A. Claim by the Appellant*

*The Appellant, vide its submission, categorically submitted before the Ld. AO that no expenditure was incurred to earn the dividend income from its subsidiary companies. A copy of the submission is enclosed. Thus, the first step, as mandated by law, has been duly complied with by the Appellant.*

*However, it is pertinent to note that the Assessing Officer has stated that the assessee has not submitted that no expenses has been incurred for earning the exempt income (last line of page 1 of the Assessment order for AY 2011 -12) which is contradictory statement basis the facts of the present case and it would be appreciated that such a statement was only made to fortify the application of Rule 8D in an arbitrary and irrational manner.*

*B. Satisfaction by the Ld. AO*

*The Ld. AO, however, proceeded to invoke Rule 8D without recording any objective satisfaction based on the Appellant's accounts. Instead, the*

Assessment Order merely contains generic observations, such as:

*"No assessee can make such a huge investment without proper, effective help of employees, professionals, and supervision of management at various levels." " There are large numbers of expenditures which are being incurred by the assessee to run its business. The investments are part of the said establishment and part of various activities of the assessee is revolved around investments also. There are numerous indirect expenses and no assessee can make so huge investment without a proper, effective help of employees, professionals and supervision of management at various levels. The expenses cannot be bifurcated because of intricacies of the operations Involved in day-to-day business activity including investments and the legislature in its intent to make it reasonable, proper and fair has given the formula in clause Hi of sub- rule 2 of Rule 8D of I.T. Rules, 1962."*

*This line of reasoning is general and presumptive in nature. It does not refer to any specific entry in the Appellant's accounts or identify any actual expenditure incurred. As such, it fails to meet the statutory requirement of forming an objective satisfaction on the basis of accounts, as required under Section 14A(2) and 14A(3) of the Act and upheld by the Hon'ble Supreme Court in *Godrej and Boyce (supra)*.*

The Black's Law Dictionary defines "objective" as:

*"Existing outside the mind as something real; not just as an idea."*

*In the instant case, the Ld. AO's assumption is rooted in subjective perception, rather than factual analysis of the Appellant's accounts. There is no identification of any actual expense debited to the P&L account which can be attributed to earning the exempt income. This lack of objective foundation renders the invocation of Rule 8D untenable in law.*

*The Ld. AO's generalised statement is especially misplaced in the case of Coal India Ltd., a Public Sector Undertaking. Investment decisions of the Appellant are made at the behest and direction of the Central Government of India. Once such investments are made, there is no ongoing employee involvement or professional management required for monitoring those investments. Furthermore, any supervision or support extended by Coal India to its subsidiaries is compensated through "Apex Charges", which are duly offered to tax.*

Conclusion

*In light of the above:*

- *The Appellant's claim of no expenditure was duly made.*
- *The Ld. AO has not recorded any objective satisfaction based on examination of the Appellant's books of accounts which is against the principles following from the decision of Hon'ble Calcutta High Court and Hon'ble Supreme Court.*
- *The invocation of Rule 8D is therefore premature, arbitrary, and contrary to law.*

*It is thus humbly submitted that the application of Rule 8D in the present case deserves to be set aside for non-compliance with the mandatory conditions prescribed under Section 14A(2) and 14A(3) read with Rule 8D, and as interpreted by the Hon'ble Courts in the aforementioned decisions."*

7.6 It is also submitted that the provisions of section 14A of the Act is not automatic and mechanical and, in this regard, reliance has been placed upon the following decisions:

- CIT vs. REI Agro Ltd [2013] 144 ITD 141 (Kolkata -Trib.)**
- DCIT v. Ashish Jhunjunwala (I.T.A No. 1809/Kol/2012)**
- Balarampur Chini Mills Ltd vs. DCIT [2012] 20 taxmann.com 117 (Kolkata)**
- Relaxo Footwear Ltd. v. ACIT [(2012) 50 SOT 102 (Del ITAT)**
- West Bengal Infrastructure Development Finance Corporation Ltd [2023] 149 taxmann.com 181 (Calcutta)**
- Maruti Udyog Ltd. v. DCIT (2005) 92 ITD 119 (Del) (A. Y. 1999-2000)**
- Jindal Saw Pipes Ltd. [2008] 118 TTJ 228 (Delhi)**
- ACIT v. Eicher Ltd. [(2006) 101 TTJ 369 (Del)]**
- Impulse (India) (P) Ltd v. ACIT[(2008) 22 SOT 368 (Del)]**



7.7 It is also submitted that no disallowance u/s 14A of the Act can be made as the Apex Charges from its subsidiary companies due to various management, supervisory, control, consultancy, services provided by CIL to its subsidiaries, which have been duly offered to tax and a sum of ₹185.21 crore is stated to be offered for AY 2011-12. It is stated that the Revenue's appeal for AY 2008-09 to AY 2010-11 was dismissed as the Tribunal had taken cognizance of the fact that the Apex Charges offered to tax by CIL were more than the disallowance computed by the Ld. AO u/s 14A of the Act.

7.8 It is further submitted that only dividend income which is exempt needs to be considered while computing the disallowance u/s 14A of the Act and reliance has been placed upon the decision of the Tribunal in **REI Agro Ltd.** (supra) which has been confirmed by the Hon'ble Jurisdictional High Court in the case of **PCIT vs. REI Agro Ltd. [2022] 140 taxmann.com 71 (Calcutta)** and **IL & FS Energy Development Company Ltd.** (supra). It is further stated that in view of the decision of Hon'ble Supreme Court in the case of **Apollo Tyres** (supra) the disallowance u/s 14A of the Act cannot be considered for the purpose of section 115JB of the Act.

7.9 We have considered the facts of the case, the submissions made and the documents filed. The issue arose in the case of **Maxopp Investment Ltd. vs. Commissioner of Income Tax, New Delhi [2018] 91 taxmann.com 154 (SC)/[2018] 254 Taxman 325 (SC)/[2018] 402 ITR 640 (SC)/[2018] 301 CTR 489 (SC)[12-02-2018]** in which the facts were that the assessee was engaged, in the business of finance, investment and dealing in shares and securities. It held shares/securities in two portfolios: (a) as investment on capital account;



and, (b) as trading assets for the purpose of acquiring and retaining control over investee group companies, particularly Max India Ltd., a widely held quoted public limited company. The profit/ loss arising on sale of shares/ securities held as 'investment' was returned as income under the head 'capital gains', whereas any profit/ loss arising on sale of shares/ securities held as 'trading assets' (i.e. held with the intention of acquiring, exercising and retaining control over the investee group companies) had been regularly offered and assessed to tax as business income under the head 'profits and gains of business or profession'. The assessee filed return of income for the relevant assessment year 2002-03, declaring income of Rs. 78.90 lakhs. The assessee being consistent with the treatment regularly followed, did not disallow the interest expenditure to the extent relatable to investment in shares of Max India Limited, yielding tax free dividend income. According to the assessee, the dominant purpose/ intention of investment in shares of Max India Ltd was to acquire/exercise and retain control and not earn dividend income. The dividend income earned on shares of Max India Ltd was only incidental to the holding of such shares. The Assessing Officer worked out disallowance under section 14A by apportioning the total interest expenditure in the ratio of investment in shares of Max India Ltd. (on which dividend was received) to the total amount of unsecured loan. The Assessing Officer, however, restricted disallowance under section 14A to the amount of dividend received and claimed exempt income. On appeal, the Commissioner (Appeals) upheld the order of the Assessing Officer. On second appeal to the Tribunal, in view of conflicting decisions of various Benches by the Tribunal, with respect to interpretation of section 14A, a Special Bench was constituted in the

case of ITO v. Daga Capital Management (P) Ltd. [2009] 117 ITD 169 (Mum.). The appeal of the assessee was also tagged and heard by the aforesaid Special Bench. The Special Bench held that the investment in shares representing controlling interest did not amount to carrying on of business and, therefore, interest expenditure incurred for acquiring shares in group companies was hit by the provisions of section 14A. On further appeal against the aforesaid order of the Special Bench, the High Court also held that the expression 'in relation to' appearing in section 14A is synonymous with 'in connection with' or 'pertaining to', and, that the provisions of section 14A apply regardless of the intention/ motive behind making the investment. Thus, the Court maintained a proportionate disallowance of the expenditure incurred by the assessee. On appeal to the Hon'ble Supreme Court, it was held as under:

*“■ In the first instance, it needs to be recognised that as per section 14A(1), deduction of that expenditure is not to be allowed which has been incurred by the assessee in relation to income which does not form part of the total income under this Act. Axiomatically, it is that expenditure alone which has been incurred in relation to the income which is includible in total income that has to be disallowed. If an expenditure incurred has no causal connection with the exempted income, then such an expenditure would obviously be treated as not related to the income that is exempted from tax, and such expenditure would be allowed as business expenditure. To put it differently, such expenditure would then be considered as incurred in respect of other income which is to be treated as part of the total income. [Para 32]*

*■ There is no quarrel in assigning this meaning to section 14A. In fact, all the High Courts, whether it is the Delhi High Court on the one hand or the Punjab and Haryana High Court on the other hand, have agreed in providing this interpretation to section 14A. The entire dispute is as to what interpretation is to be given to the words 'in relation to' in the given scenario, viz. where the dividend income on the shares is earned, though the dominant purpose for subscribing in those shares of the investee company was not to earn dividend. There are two scenarios in these sets of appeals. In one group of cases the main purpose for investing in shares was to gain*

control over the investee company. Other cases are those where the shares of investee company were held by the assesseees as stock-in-trade (i.e. as a business activity) and not as investment to earn dividends. In this context, it is to be examined as to whether the expenditure was incurred, in respective scenarios, in relation to the dividend income or not. [Para 33]

■ Having clarified the aforesaid position, the first and foremost issue that falls for consideration is as to whether the dominant purpose test, which is pressed into service by the assesseees would apply while interpreting section 14A or we have to go by the theory of apportionment. The dominant purpose for which the investment into shares is made by an assessee may not be relevant. No doubt, the assessee like Maxopp Investment Limited may have made the investment in order to gain control of the investee company. However, that does not appear to be a relevant factor in determining the issue at hand. Fact remains that such dividend income is non-taxable. In this scenario, if expenditure is incurred on earning the dividend income, that much of the expenditure which is attributable to the dividend income has to be disallowed and cannot be treated as business expenditure. Keeping this objective behind section 14A in mind, the said provision has to be interpreted, particularly, the word 'in relation to the income' that does not form part of total income. Considered in this hue, the principle of apportionment of expenses comes into play as that is the principle which is engrained in section 14A. [Para 34]

■ The Delhi High Court, therefore, correctly observed that prior to introduction of section 14A, the law was that when an assessee had a composite and indivisible business which had elements of both taxable and non-taxable income, the entire expenditure in respect of said business was deductible and, in such a case, the principle of apportionment of the expenditure relating to the non-taxable income did not apply. The principle of apportionment was made available only where the business was divisible. It is to find a cure to the aforesaid problem that the Legislature has not only inserted section 14A by the Finance (Amendment) Act, 2001 but also made it retrospective, i.e., 1962 when the Income Tax Act itself came into force. The aforesaid intent was expressed loudly and clearly in the Memorandum explaining the provisions of the Finance Bill, 2001. Thus, the view taken by the Delhi High Court is agreeable, and the opinion of Punjab and Haryana High Court which went by dominant purpose theory is not acceptable. The aforesaid reasoning would be applicable in cases where shares are held as investment in the investee company, may be for the purpose of having controlling interest therein. On that reasoning, appeals of Maxopp Investment Limited as well as similar cases where shares were



*purchased by the assesseees to have controlling interest in the investee companies have to fail and are, therefore, dismissed. [Para 35]*

■ *Yet another aspect which still needs to be looked into is as to what happens when the shares are held as 'stock-in-trade' and not as 'investment', particularly, by the banks? On this specific aspect, CBDT has issued circular No. 18/2015, dated 2-11-2015. [Para 36]*

■ *These Circular takes note of the judgment of this Court in CIT v. Nawanshahar Central Cooperative Bank Ltd. [2007] 160 Taxman 48/289 ITR 6 (SC), wherein it is held that investments made by a banking concern are part of the business or banking. Therefore, the income arising from such investments is attributable to business of banking falling under the head 'profits and gains of business and profession'. On that basis, the circular contains the decision of the Board that no appeal would be filed on this ground by the officers of the department and if the appeals are already filed, they should be withdrawn. A reading of this circular would make it clear that the issue was as to whether income by way of interest on securities shall be chargeable to income tax under the head 'income from other sources' or it is to fall under the head 'profits and gains of business and profession'. The Board, going by the decision of this Court in Nawanshahar case (supra), clarified that it has to be treated as income falling under the head 'profits and gains of business and profession'. The Board also went to the extent of saying that this would not be limited only to co-operative societies/Banks claiming deduction under section 80P(2)(a)(i) but would also be applicable to all banks/commercial banks, to which Banking Regulation Act, 1949 applies.[Para 37]*

■ *From this, Punjab and Haryana High Court pointed out that this circular carves out a distinction between 'stock-in-trade' and 'investment' and provides that if the motive behind purchase and sale of shares is to earn profit, then the same would be treated as trading profit and if the object is to derive income by way of dividend then the profit would be said to have accrued from investment. To this extent, the High Court may be correct. At the same time, the test of dominant intention applied by the Punjab and Haryana High Court is not agreeable, which has already been discarded. In that event, the question is as to on what basis those cases are to be decided where the shares of other companies are purchased by the assesseees as 'stock-in-trade' and not as 'investment'. [Para 38]*

■ *In those cases, where shares are held as stock-in-trade, the main purpose is to trade in those shares and earn profits therefrom. However, those profits which would naturally be treated as 'income' under the head 'profits and*

gains from business and profession' are not of concern. What happens is that, in the process, when the shares are held as 'stock-in-trade', certain dividend is also earned, though incidentally, which is also an income. However, by virtue of section 10(34), this dividend income is not to be included in the total income and is exempt from tax. This triggers the applicability of section 14A which is based on the theory of apportionment of expenditure between taxable and non-taxable income. Therefore, to that extent, depending upon the facts of each case, the expenditure incurred in acquiring those shares will have to be apportioned.[Para 39]

■ It is noted from the facts in the Pr. CIT. v State Bank of Patiala [2017] 78 taxmann.com 3/245 Taxman 273/391 ITR 218 (Punj. & Har.) case that the Assessing Officer, while passing the assessment order, had already restricted the disallowance to the amount which was claimed as exempt income by applying the formula contained in rule 8D of the Rules and holding that section 14A would be applicable. In spite of this exercise of apportionment of expenditure carried out by the Assessing Officer, Commissioner (Appeals) disallowed the entire deduction of expenditure. That view of the Commissioner (Appeals) was clearly untenable and rightly set aside by the Tribunal. Therefore, on facts, the Punjab and Haryana High Court has arrived at a correct conclusion by affirming the view of the Tribunal, though the theory of dominant intention applied by the High Court is not being subscribed to. It is to be kept in mind that in those cases where shares are held as 'stock-in-trade'; it becomes a business activity of the assessee to deal in those shares as a business proposition. Whether dividend is earned or not becomes immaterial. In fact, it would be a quirk of fate that when the investee company declared dividend, those shares are held by the assessee, though the assessee has to ultimately trade those shares by selling them to earn profits. **The situation here is, therefore, different from the case like Maxopp Investment Ltd. where the assessee would continue to hold those shares as it wants to retain control over the investee company. In that case, whenever dividend is declared by the investee company that would necessarily be earned by the assessee and the assessee alone. Therefore, even at the time of investing into those shares, the assessee knows that it may generate dividend income as well and as and when such dividend income is generated that would be earned by the assessee.** In contrast, where the shares are held as stock-in-trade, this may not be necessarily a situation. The main purpose is to liquidate those shares whenever the share price goes up in order to earn profits. In the result, the appeals filed by the revenue challenging the judgment of the Punjab and Haryana High Court in State Bank of Patiala also fail, though law in this

*respect has been clarified hereinabove.[Para 40] {emphasis supplied}*

■ *Having regard to the language of section 14A(2), read with rule 8D of the Rules, it is also made clear that before applying the theory of apportionment, the Assessing Officer needs to record satisfaction that having regard to the kind of the assessee, suo motu disallowance under section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the Assessing Officer 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 Assessing Officer.[Para 41]*”

7.10 Thus, the issue is no longer *res integra* and the order of the Ld. CIT(A) which was based upon the finding of the Tribunal in the case of the assessee for AY 2008-09 and which was based upon the primary consideration that the investment was strategic in nature and, therefore, no disallowance u/s 14A of the Act was warranted is hereby set aside on this issue and the addition made by the Ld. AO is hereby confirmed in view of the finding of the Hon'ble Supreme Court in the case of **Maxopp** (supra) in which it is held that the dominant purpose of making the investment is not applicable and disallowance u/s 14A of the Act is to be made even in the case of strategic investment and also the decision of the Hon'ble jurisdictional High Court in the case of **Dhanuka & Sons** (supra) relied upon by the Ld. AO. As regards the argument that the assessee had recovered Apex Charges and, therefore, income was taxable and did not call for any disallowance u/s 14A of the Act, the fact remains that the dividend received was assessable under 'income from other sources', while the Apex Charges from the subsidiaries for management and control of the subsidiaries were assessable under the head 'income from business' and therefore, they were to be considered under the head 'income from business' and the



disallowance u/s 14A of the Act on account of dividend received could not be offset on account of receipt of Apex Charges. Further, there is merit in the argument that only the income from dividend yielding investment is to be considered. However, Hon'ble Supreme Court have given a different finding in respect of strategic investment in which case it has been held that even in respect of investment from which no dividend was earned, could be considered for the purpose of disallowance in respect of such investment. The assessee had not disallowed any expenditure u/s 14A and the Ld. AO has recorded satisfaction as to why the disallowance was warranted. Hence, the decision of the Ld. CIT(A) deleting the disallowance u/s 14A is set aside and the view of the Ld. AO is upheld.

7.11 However, the deletion of the disallowance u/s 14A of the Act for the purpose of computation of MAT is upheld as Hon'ble Supreme Court have held in the case of **Apollo Tyres** (supra) that section 115JB of the Act is a self-contained code and only the disallowances mentioned in the explanation could have been made. Further, clause (f) of Explanation 1 to section 115JB of the Act refers to the amount or amounts of expenditure relatable to any income to which section 10 applies. The Ld. AO has not made any disallowance of expenditure debited in the profit and loss account as prepared under the Companies Act as neither any direct expenses nor any interest has been disallowed under Rule 8D of the IT Rules and the disallowance has been made only under clause (iii) of Rule 8D as per the formulae mentioned therein and the same is not to be considered for the purpose of MAT and the addition, if any, made to the book profit on account of disallowance u/s



14A of the Act is directed to be deleted. Hence, **Ground No. 1 of the Revenue's appeal is partly allowed.**

8. **Ground No. 2** of the Revenue's appeal relates to the disallowance of provision for Mine Closure Expenses. The Ld. AO held that the said provision was contingent in nature and was dependent on future occurrence of events. Further, the amount to be incurred also included sums on account of fine or penalty imposed by the Forest Department, hence was disallowable u/s 37(1) of the Act. The Ld. CIT(Appeals) deleted the said disallowance on the ground that the aforesaid amount was determined as per the aforementioned guidelines. The Ld. AO made the disallowance of a sum of ₹1,90,46,000/- as it was only a provision being contingent in nature and the liability raised also included fine or penalty imposed by the forest department, therefore, relying upon the decision of the Hon'ble Supreme Court in the case of **Commissioner of Income-tax vs. Nainital Bank Ltd. [1966] 62 ITR 638 (SC)**[15-09-1966] he disallowed a sum of ₹1,90,46,000/- claimed as a deduction u/s 37(1) of the Act and also added the amount to the book profit for the purpose of computation of MAT u/s 115JB of the Act.

8.1 Before the Ld. CIT(A), the assessee submitted that the Government of India-Ministry of Coal had issued guidelines (attached as Annexure 4) vide Circular No. 55011-01-2009-CPAM for preparation of Mine Closure Plan, which is mandatorily applicable for all the coal mine owners, including the assessee. As per the Guidelines, the coal mine owners who are operating a coal mine or seek to operate a coal mine, are required to prepare and obtain the approval of Mine Closure Plan. The Mine Closure Plan prepared by the owners shall have two components— i) Progressive or Concurrent Mine Closure Plan - this

would include various land activities to be done continuously and sequentially during the entire period of mining operation; and ii) Final Mine Closure Plan - this would start towards the end of mine life. The guidelines of Ministry of Coal also provide that the total cost involved for the Final Closure Plan is required to be estimated on a reasonable basis at the time of making Project Report / Mining Plan itself. The money is levied per hectare of mining lease and it is required to be deposited every year after commencement of any activity on the land for the mine after opening an Escrow Account. The funds accumulated are to be utilized for the sole purpose of closure of mine and as a security to cover the cost of closure **in case the mine owner fails to complete the relevant closure activities**. Moreover, it was submitted that the Coal Controller Organization is the sole beneficiary of the fund and the assessee is not the owner of the fund. Reliance was placed upon the decision of Hon'ble ITAT Nagpur in the case of **ACIT vs. Manganese Ore (I) Ltd. [2013-(ID1)-GJX-0650-TNAG (ITAT Nagpur)]**. The Ld. CIT(A) after considering the facts of the case and disallowance made by the Ld. AO decided as under:

*"In this case the perusal of fact shows that the liability expenses contingent of mine closure was based on as per the guidelines. The coal mine owner who are operating coal mines is required to prepare and obtain the approval of Mine closure plan. The mine closure plan prepared by the owners shall have two components (a) Progressive or Concurrent Mine Closure Plan and (b) Final Mine Closure Plan the fund accumulated are to be utilized for the sole purpose of closure of mine and as a security to cover the cost of closure in case the mine owners fail to complete the relevant closure activities. The appellant has relied over the decision of Honourable ITAT Nagpur in the case of ACIT vs. Manganese Ore (I) Ltd[2013-(ID1)-GJX-0650- TNAG (ITAT Nagpur)] which are discussed above. The fact of the aforesaid case shows that in the said case, the assessee had claimed the deduction for provision for mine closure in the computation of taxable income. However, the same was denied by the AO on the basis that the assessee had created the*

*liability for the future planning, that same was unascertained, not accrued and incurred, that merely the provision of the same was made for the future expenditure, that quantum of work undecided, that actual activity for reclamation work i.e., closures of mine had not started during the relevant year, that simple provision for unascertained liability for future expenditure could not be allowed, that in spite of repeated disputes assessee was following same method of accounting, that expenditure could not be considered accrued/determined and incurred for the business purpose during the year under consideration. Keeping in view of the decision of honourable ITAT it is seen that perusal of Mineral Revision and Development Rules (a copy of which was filed) shows that mining company is required to submit progressive mine closure plan and final mine closure plan to the IBM for its approval. An approval from the Regional Controller of Mines is to be obtained in this regard and only there after the liability shall be treated as having arisen to the assessee, merely that the quantum of the liability is not certain that will not postpone the accrual of the liability. The basis of calculation of provisions made by the assessee has not been disputed by the AO. Therefore, the claim of the appellant is allowed and the disallowance made by the AO is deleted.”*

8.2 The Ld. DR relied upon the order of the Ld. AO who has held as under:

*“During the assessment year, a contingent liability of Rs. 190.46 Lakhs has been raised in the books of the assessee company as provision for mine closure in the books and debited to the P/L Account. During the assessment proceeding, the assessee was asked why the said liability will not be treated as contingent liability which crystallizes on closure of mines. In reply, the assessee has stated that the liability for expense has been booked as per government guidelines for running the mine business for future expenses accrues on closure of mines. The expense is allowable as deduction since the liability accrues in this year according to the Government guidelines.*

*From the explanation offered by the assessee, it is clear that the liability of expenses contingent to incidence of mine closure is provided year-wise according to the guideline of the Government. According to the guideline, the quantum of provision is determined by some expertise keeping in mind about the nature of business and contingency arises on closure of mines. The provision may be treated as business liability since for running the business the same provision is necessary. But for accounting purpose and income tax computation the provision being contingent in nature dependent*

*on future occurrence required to be added back in the computation total income though debited in the P/L Account.*

*As per Accounts Standard 29, a "contingent liability" is:*

*(1) a possible obligation that arises from past events and the existence of which will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the person; or*

*(11) a present obligation that arises from past events but is not recognised because: (A) it is not reasonably certain that an outflow of resources embodying economic benefits will be required to settle the obligation; or*

*(12) a reliable estimate of the amount of the obligation cannot be made.*

*In this case, the assessee company has followed the characteristics of (ii) above, from which it is certain that a reliable estimate of the obligation could not be made at the time of preparing accounts by the assessee itself but the same is made according to the guideline of Government in this behalf.*

*According to the Accounts Standard-29, a provision shall be recognised when:*

*(a) a person has a present obligation as a result of a past event;*

*(b) it is reasonably certain that an outflow of resources embodying economic benefits will be required to settle the obligation; and*

*(c) a reliable estimate can be made of the amount of the obligation.*

*If these conditions are not met, no provision shall be recognised.*

*In the instant case, all the above conditions are not fulfilled; A provision shall be used only for expenditures for which the provision was originally recognised. Hence, the provision is not allowable as business expenditure as per section 37(1) of the Income Tax Act, though claimed by the assessee company in the return of income. Further, the liability has been raised out of fine or penalty imposed by the forest department, and the provision out of the liability is also not allowable u/s. 37(1) of the Income Tax Act. In the present case, the assessee has claimed the provision and liability raised out of that as expenditure, which is not recognised as expenditure as per provisions of section 37 of the Income Tax Act. Reference is made to the judgement by Hon'ble Supreme Court in the case of CIT v. Nainital Bank Ltd. [1966] 62 ITR 638, where it has been decided that 'Expenditure' need not involve actual parting with money or property - A mere liability to satisfy an obligation by an assessee is undoubtedly not 'expenditure'; it is only when he satisfies the obligation by delivery of cash or property or by settlement of accounts that there is expenditure. But expenditure does not necessarily*

*involve actual delivery of or parting with money or property. A mere forbearance to realise a claim is not expenditure.*

*From the above, it is clear that the expenditure claimed as deduction is not allowable as deduction u/s. 37(1) of the Income Tax Act in the year of raising liability in the books, i.e., in the relevant A.Y. whether it has been added back in the future assessment year as cessation of liability u/s. 41(1) or not.*

*In view of the above, Rs. 1,90,46,000/- is disallowed as expenditure deduction u/s. 37(1) and added to the total income.*

*In the computation of MAT, the assessee has not added back the entire provision for mine closure amounting to Rs. 1,90,46,000/-, which is disallowed as per provision of section 115JB of the Income Tax Act and added back to the book profit for computation of book profit u/s. 115JB.”*

### 8.3 Regarding this issue, the Ld. AR has submitted as under:

*“1) As per Circular No. 55011-01-2009-CAPM issued by the Ministry of Coal (Page 276 of Paperbook(AY 2011-12)), all mining companies are required to submit a progressive mine closure plan as well as a final mine closure plan. An approval from the Regional Controller of Mines is obtained in this regard and only then is such liability booked. Hence, the provision created is based on a scientific basis and is not contingent in nature.*

*2) The amount of provision created is a reliable estimate which is based on Government Guidelines.*

*3) The amount deposited in an Escrow Account is not utilized by the appellant and the Coal Controller Organization is the sole beneficiary of the fund.*

*4) Further, the allegation of the Ld. AO that the liability incurred on account of fine or penalty imposed by the forest department is based on surmise and conjecture. As per 37(1) of the Act, any expense in the nature of any offence which is prohibited by law is to be disallowed. In the given case, mine closure is part of the mining activity and is not any offence prohibited by law.*

*5) Moreover, as per Accounting Standard 1, prescribed by Notification No. S.O. 69(E), provisions should be made for all known liabilities and losses even though the amount cannot be determined with certainty and represents only a best estimate in the light of available information.*

*Hence, the aforesaid disallowance inflicted by the Ld. AO should be deleted. Reliance in this regard is drawn from the below mentioned case laws:*



*Similar adhoc disallowance matter has been deleted by the Hon'ble Nagpur Tribunal in the case of Manganese Ore (I) Ltd. [ITA No. 01/Nagpur/2010] (Page 277-280 of Paperbook (AY 2011-12)) —*

*Further, the Hon'ble Hyderabad Tribunal has also decided the issue in favour of the assessee in the case of NMDC Ltd. vs JCIT [(2017) 86 taxmann.com 55] (Page 281-303 of Paperbook (AY 2011-12))*

*Notification No. S.O. 69(E) (Page 304-307 of Paperbook(AY 2011-12))*

*Further, it is re-iterated that Section 115JB of the Act, is a self-contained code and it does not warrant any such upward adjustment in respect of income not credited to the accounts on the basis of Form 26AS. Hence, the addition in this regard is without any basis and liable to be quashed.'*

*Reliance in this regard can be placed on the decision of Hon'ble Supreme Court in the case of Apollo Tyres [255 ITR 273 (SC)]."*

8.4 We have considered the submissions made. The expenses relate to closure of mines and shifting of mines and the Ld. AO has not disputed the working of the assessee and as per the guidelines for preparation of mine closure plan dated 27.08.2009 issued by the Government of India – Ministry of Coal, all coal mine owners are required to adopt a mine closure plan for each of their mines comprising progressive closure plan and final closure plan and all coal mine owners who are operating coal mines without the approval of any mine closure plan are required to obtain a mine closure plan approved as per the guidelines (vide circular No. 55011-01-2009-CPAM) within a period of one or two years in advance of mine closure, whichever is earlier, from the day the guidelines come into effect and as per para 6 thereof implementation of the approved mine closure plan shall be the sole responsibility of the mine owner. It is estimated that major expenditure for final mine closure plan will be incurred during last five years of the project life. Up to 20% of the deposited amount from the Escrow account can be released every year starting from fourth year before the proposed



mine closure date and the balance amount will remain as security. The Coal Controllers' Organisation shall release the fund from the Escrow account based on the progress made in the closure of activities for the mine. The assessee contends that these are mandatory requirements and the provision has been created as a reliable estimate based on the Government guideline and therefore is allowable.

8.5 We have considered the submissions made. Since it is mandated by the Government to prepare a closure plan for the mines which has to be incorporated with the project report/mining plan for a new mine as per para 1 of the guidelines dated 27.08.2009, the assessee was under an obligation to incur these expenses. However, the fact remains that the mine closure plan has to be incorporated in the project report/mining plan for a **new mine** and, therefore, the expenditure relating to the closure of the mines, *inter alia* forms part of the expenditure for opening a new mine. It is however to be seen whether the expenditure for opening a mine can be treated as a revenue expenditure so as to allow the expenditure for closure of mine also as a revenue expenditure. Further, the Ld. AO has also mentioned that some of these expenses relate to fine or penalty imposed by the forest department which are not allowable as per the proviso to Explanation 1 to sub-section (1) of section 37 of the Act. However, it is to be examined as to whether the fine or penalty imposed was for any purpose which is an offence or which is prohibited by law or the same was incurred for continuation of the business of the assessee. In the case of **R.B. Seth Moolchand Suganchand vs. CIT [1972] 86 ITR 647 (SC)** it has been held by the Hon'ble Supreme Court that *in the case of expenditure in respect of mining leases, an empirical test is that where minerals have to*

*be won, extracted and brought to surface by mining operations, the expenditure incurred for acquiring such a right would be of a capital nature. But, where the mineral has already been gotten and is on the surface, then the expenditure incurred for obtaining the right to acquire the raw material, that is, the mineral, would be a revenue expenditure laid out for the acquisition of stock-in-trade. Hence, the decision of the Ld. CIT(A) on this issue is set aside and* the issue is remanded to the Ld. AO for reconsideration of the claim as per law. The assessee is directed to furnish the details which quantify such penal expenses, which shall be excluded from the deduction claimed and thereafter the balance may be allowed to the assessee in case the mine closure expenses are held to be revenue in nature on examination of the details and in view of the decision of the Hon'ble Supreme Court in the case of **R.B. Seth Moolchand Suganchand** (supra), else the same need to be capitalized and added as part of the cost of the new mines since this is a mandatory requirement for opening new mines. Further, it is a liability of the mine owners, which are the subsidiaries and not the assessee and therefore, the mine closure expenses in respect of the mines owned by the assessee only are required to be considered for examining the allowability and in respect of the mines owned by the subsidiaries, there is no justification for allowing the same as a deduction to the assessee unless the mine owner fails to incur the expenses. Accordingly, **Ground No. 2 of the Revenue's appeal is partly allowed for statistical purposes.**

9. **Ground No. 3** relates to the disallowance of the addition of ₹99.51 Crores on account of interest earned on Shifting and Rehabilitation Fund.

9.1 The facts in this regard are that during the year under consideration, the assessee had received contribution from its subsidiaries for the purpose of shifting and rehabilitation, dealing with fire and stabilization of the areas under ECL and BCCL, being two subsidiaries of Coal India Ltd. In this regard it is submitted by the Ld. AR that the contribution is collected pursuant to a decision taken by the Ministry of Coal, Government of India in accordance with the action plan suggested by Ministry of Coal. It was submitted that the contributions by subsidiaries (along with interest earned in such fund) do not belong to the assessee. Coal India Ltd. is merely a custodian of the Fund; hence the contribution received towards the Fund and the interest arising on the same is not accounted as an income of Coal India Ltd. The Ld. AO held that as per accounting policy, any income received by a company is required to be credited in the books, if it is paid to the company irrespective of the purpose of utilization. Since there are no specific provisions to exempt such receipt, the amount is to be taxed in the hands of the assessee. The Ld. CIT(Appeals) has discussed the matter and decided the issue in favour of the assessee by holding as under:

*“Next ground No.06 relates to the addition of interest of Rs.99,51,89,000/- on the ground that the interest accrued on FD of shifting and rehabilitation fund custodian amounting to Rs.99,51,89,000/- which was added in the hands of the appellant. In this regard the appellant has submitted as under:-*

*"During the relevant previous year, the Board of Directors of CIL pursuant to a decision taken by the Ministry of Coal, Government of India has set up a rehabilitation fund for the purpose of shifting and rehabilitation, dealing with fire and stabilization of the areas under ECL and BCCL, being two subsidiaries of CIL. According to the said decision, the Board of directors of CIL has directed its subsidiaries (except ECL and BCCL) to contribute to the fund an amount*



*equivalent to Rs. 6/- per tonne of coal realized by each of the said subsidiaries. The said fund is to be maintained by CIL under the account head "Rehabilitation Fund" and is to be made available for rehabilitation of ECL and BCCL in accordance with the action plan suggested by Ministry of Coal as stated above. (Copy of the said proposal given by the Ministry of Coal is enclosed as Annexure 5)*

*"The AO in the year under consideration has treated interest earned on such fund as taxable income in the hands of appellant. Such addition has no leg and the addition has been inflicted without understanding the purpose of creation of fund/legal ownership of money lying with the fund*

*"Your kindself would note that in respect to 'shifting & rehabilitation' fund, contribution by subsidiaries (along with interest earned in such fund) does not belong to company. In fact, the company is merely a custodian of such fund. The Appellant has no authority or control over the money or interest accrued over it and therefore it cannot be treated as the Appellant's income.*

*"It is well settled law that to treat any amount as an income the person should have legal right to receive the money and also will have all the authority to expend the money as per his wishes. In the instant case, the appellant company had no legal right to receive the money from its subsidiary company & the money received by the appellant had no control to use the money. The appellant is merely acting as a custodian of such money and is required to release the money as per the direction of concerned Ministries and the appellant had no control to use the money and is required to release the money as per the direction of concerned ministries. Further, the assets generated from such money cannot be treated as assets of the appellant company. Pending utilization of the fund, the money was kept in the Bank account and has resulted into interest income. Needless to mention, such interest income also does not belong to the appellant.*

*"In the instant case, the appellant company had no legal right to receive the money from its subsidiary company and the money received by the appellant company will be used as per the direction of concerned ministries accordingly such money cannot be treated as income of the company.*

*'Interest Accrued Does not form part of Income'*

*"In this regard it is submitted that, the interest received on such fund is not different from contributions received from other subsidiaries of Coal India Limited. For Coal India Limited, the interest received from the Bank is a part of the accumulated fund which shall be used for specified purposes in public interest. Furthermore, Coal India Limited has a legal obligation to act as custodian of the funds. Coal India Limited does not derive any benefit and in fact could not have used the interest thereon for the purpose of its own business.*

*"Coal India Limited had no control over the funds and they are to be utilised for the sole purpose of shifting and rehabilitation dealing with fire and stabilization of unstable area of ECL and BCCL in public interest. Thus, in effect the role of Coal India Limited is limited to the extent of receiving contributions on behalf of the fund and utilizing the same in strict compliance to the scheme of formulated by the Government in this regard. Furthermore, Coal India Limited has clearly demarcated its own funds from the funds received from the other subsidiary companies.*

*"As stated above, Coal India Limited has a legal obligation to act as the custodian of the accumulated funds. The Bank has paid interest on such accumulated funds and the same is credited to the said fund. The interest accrued on the said funds is also required to be utilized for the purpose of revival and rehabilitation of unstable area of ECL and BCCL in public interest and cannot be used by Coal India for its own business.*

*"The status granted to Coal India Limited is similar to a 'pass through' status wherein as a consequence of legal obligation, the funds are received by Coal India Limited which is in entirety used for the shifting and rehabilitation, dealing with fire and stabilization of unstable area of ECL and BCCL for the public interest. Coal India Limited only acts as an intermediary for pooling the funds from different subsidiaries in a common account under the direction of the Government and subsequently the funds are utilized for the aforesaid purpose. Also, the interest income partake the character of contribution received from other subsidiary companies of Coal India. Since the contribution itself is not taxable in the hands of Coal India Limited (the issue has already been decided in the favour of Coal India Limited), the interest accrued on such funds is also not taxable.*

*"It is submitted that, the Ld. AO has made a gross error in treating that such receipt of fund was for the purpose of business of the*

*appellant company. It failed to take cognizance of the letter of Ministry of Coal, Government of Indian and the instructions therein that such amount was to be utilized by the appellant in the capacity of a custodian only for the purpose of rehabilitation of the areas under ECL and BCCL. Therefore, it is submitted that such fund and the interest accrued over it cannot be treated as income of the company utilized by it for the purpose of its business.*

*"It has been decided by the Government of India that the funds accumulated by the group companies are required to be used solely in accordance with the scheme approved by the Government for the purpose mentioned above. Neither Coal India Limited nor any of the subsidiaries contributing towards the fund have any control over the accumulated funds. However, in order to manage the contributions received in the fund, Coal India Limited, being the parent company, was acting as custodian of the funds.*

*"It is submitted that the interest accrued over the 'Shifting & Rehabilitation Fund' cannot be considered as the income of the assessee because such interest forms part of the same fund and does not belong to the assessee company, moreover, the assessee has explicitly undertaken to deposit the TDS amount to the fund, once the TDS amount is actually received by the company from the tax authorities; thus it is not the 'real income' of the appellant company and cannot be taxed.*

9.2 Before the Ld. CIT(A), the assessee relied upon the following case laws in support of the claim that only real income could be taxed.

*i) State Bank of Travancore v. CIT [1986] 158 ITR 102 (SC) & CIT v. Shiv Prakash Janak Raj & Co. (P.) Ltd. [1996] 88 Taxman 536/222 ITR 183 (SC)*

*ii) Rajkot District Gopalak Co-op. Milk Producers' Union Ltd. v. CIT [1993] 204 UR 590 (Guj.)*

*"Keeping in view of the ruling of the above case, it is submitted before your goodself for appreciation that, for the interest to be treated as 'income' of the assessee, the assessee must have a title over such receipt and where the receipt has been diverted by an overriding title under an obligation, such receipt cannot be considered as the real income of the appellant company. The mandate of Ministry of Coal letter is clear that Coal India Limited cannot utilize the money for its*

*own business purpose and true and ultimate beneficiary of the fund are its subsidiary companies ECL and BCCL. The appellant has been clearly instructed to distinguish between its own funds and the shifting and rehabilitation fund. We further would like to highlight that only for the purpose of deducting TDS the appellant company has been treated owner of the fund by the Bank. For making up for the short credit of interest (net of TDS), the appellant company has undertaken to claim the credit of it and subsequently contribute equivalent amount to the fund.*

*"If the interest is considered as the income of the appellants on which TDS has already been deduced, it would be highly unjustified & burdensome on the assessee because the 'alleged income' is later being transferred to the Shifting & Rehabilitation fund' because in reality of the fact the assessee is never the owner of such fund but a mere administrator. Therefore, it is submitted that in light of the reality of the circumstances, to treat the receipt of interest as the income of the assessee company would be grossly unjustified and arbitrary. The interest amount on the 'shifting & rehabilitation fund' is forming the part of the fund itself and the assessee as a mere custodian, does not have any title over it and cannot be said to be the real income.*

*Nature & effect of the Order of Ministry of Coal, Government of India.*

*"The Ld. AO in the impugned order has observed that "...the Ministry of Coal Government of India, New Delhi has instructed to create the funds not in its sovereign capacity but only as a controlling and guiding authority as is usually done by the apex body of the companies."*

*"The funds have been collected not as per any specific law of Act of the Government of India or a State Government approved by the Legislature or any subordinate authority thereto but only as per the decision of the Board of Directors of the Appellant."*

*"It is submitted the Ld. AO has grossly erred in law and in fact by equating the Ministry of Coal as a governing body of companies and by wrongly interpreting the Ministry of Coal's letter no. 22020/2/97-CRC dated 25th June 2003.*

*"In this regard we would like to submit that the true nature of the order of Ministry of Coal, Government of India has been appreciated*

*by the Ld. CIT (A) in assessee's matter in the appellate order for AY 2004-05 on 4 June 2008 wherein, the CIT (A) had concluded that if the appellant is just a custodian of the fund then such amount cannot be credited in the P&L account. We would like to reproduce the relevant para of the order:*

*"I have considered the submission made by the appellant. It is seen that during the year Ministry of Coal vide letter no. 22020/2/97-CRC dated 25th June 2003 has directed the appellant to maintain Rs.395 crore generated by taking various steps mentioned in the letter for the purpose of shifting & rehabilitation for dealing with fire & stabilization of the areas in ECL and BCCL. The operative part of the letter is reproduced below-*

*"The above mentioned steps are expected to generate an amount of Rs. 395 crores as per year which will be used as corpus for the implementation of the action plan.*

*It has further been decided that the said amount of Rs. 395 crore per year would be maintained by CIL under the separate head account & CIL will ensure that this amount is used strictly for the implementation of the action plan."*

*Pursuant to the above direction from the Ministry of Coal, the appellant had collected Rs. 12724.86 lacs from various subsidiaries. As mentioned in the above letter, such corpus needs to be utilized for the specific purpose i.e. shifting & rehabilitation for dealing with fire & stabilization of the areas in ECL and BCCL and the appellant has been given the duty to monitor the implementation of the above action plan. In this circumstance I am unable to concur with the view of the AO that such amount should be credited to the profit and loss account. If the appellant is just the custodian of the corpus I fail to understand how such amount can be credited to the P&L account. In my view the action of the AO is in contrast to the facts of the present case and the addition made on this account is hereby deleted. The ground is allowed."*

*"It is thus submitted that the Ld. AO has erred in holding that the letter of Ministry of Finance is not in sovereign capacity and not made by way of law of act of the parliament or State Legislature by ignoring the earlier order of CIT(A).The amount of interest of Rs.99, 51, 89, 000 cannot be credited to the Profit & Loss a/c given the peculiar facts of the case.*

*The collected fund cannot be called 'Income'*

*"It is submitted before your goodself that as per the Income Tax Act, 1961 only such a receipt which is 'income', is classified under the 'Heads of income' specified under section 14 of the Act for purpose of charging and computation. The wordings of section 14 are as follows:*

*'Section 14. Heads of income Save as otherwise provided by this Act, all income shall, for the purposes of charge of income-tax and computation of total income, be classified under the following heads of income:-*

*(A). - Salaries., (B).- [\*\*\*], (C).-Income from house property, (D).-Profits and gains of business or profession, (E).-Capital gains, (F).-Income from other sources.'*

*As per section 56 of the Act, 'Income' would be 'Income from other sources' as per the provision of Section 56, which reads as follows.*

*'Section 56. Income from other sources*

*'Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head 'Income from other sources', if it is not chargeable to income-tax under any of the heads specified in section 14 items A to E.'*

*"Reliance is placed by the assessee, in the case of H.M Kashiparekh & Co. Ltd v. CIT [39 ITR 706 (Bom)] wherein it was held that, it is the real income of the assessee company for the accounting year which is liable to tax and that the real income could not be arrived at without taking into account the amount forgone by the assessee.*

*"Thus, in sum it is our submission, that, the real income of the assessee must not include the TDS amount on interest which the assessee actually receives, because the same is transferred by the assessee to the fund and thus, such money representing the TDS on interest and the interest as well is not the revenue of the assessee and does not form a part of the real income.*

*"Further, the Ld. AO in the impugned order has made some unsubstantiated observations which are totally based on mere conjectures and fancies having no evidential basis. These observations have been highlighted for your appreciation."*

### 9.3 The Ld. CIT(A) accordingly held as under:

*“Perusal of fact and argument of the AO shows that the appellant is claiming as a custodian of the fund received from two subsidiaries i.e. ECL & BCCL. The appellant has further relying over the decision of CIT(A) for the AY 2004-05 on 04-06-2008 wherein it has held that the appellant is just a custodian of the fund then the interest income is not taxable in the hands of Custodian. It is seen that the fund is claimed to be utilised for specific purpose, that is shifting and rehabilitation for dealing with fire and stabilizing of the error in ECL & BCCL and the appellant has been assigned duty to monitor the implementation of the above action plan. Therefore, the action of the AO for creating the interest in its P & L Account has been treated as unjustified, submission of the appellant shows that the appellant has been clearly instructed to distinguish between its own fund and shifting and rehabilitation fund. The appellant has further claimed that TDS deducted by bank treating it as owner of the fund has been considered by the appellant and the appellant company has under taken to claim the credits of it and subsequently contributing equal amount to the fund. From the perusal of aforesaid fact and as per earlier judgement of CIT(A) it is seen that the appellant is custodian of the said fund and was thus acting for custodian such welfare fund on behalf of its two subsidiaries company namely ECL & BCCL. The said fund was also allowable to hand over to said subsidiaries company and no benefit was derived by the appellant. Perusal of fact shows that such fund was created to be utilised for rehabilitation and shifting it was not for the business of the appellant himself but it was for the purpose of said two subsidiary as such the interest income arose from the instant FD was to be utilised for carrying out running activity and thus the same interest income was also revenue in nature which is to be taxed in the hands of the real owners each i.e. his two subsidiaries namely ECL and BCCL. The AO is hereby directed to further verify from the jurisdictional AO of the ECL & BCCL, the subsidiaries company, whether they have included the said interest income of Rs.99,51,89,000/- in proportion to their share of fund maintained by them with the appellants in their receipts and deserve it for taxation. The revenue is to be treated in the hand of the real owners and the AO is directed to ensure that the aforesaid interest has been taxed in the hands of ECL & BCCL. The appellant being a custodian was not the rightful owner of the fund. Therefore, the appellant cannot be taxed. Therefore the addition made on this account by the AO is hereby deleted from the hands of the appellant and directed to be taxed in the hands of ECL & BCCL and the ground of appeal is allowed.”*

### 9.4 The Ld. DR relied upon the order of the Ld. AO and requested that

the findings of the Ld. CIT(A) may be reversed on this issue.

9.5 The Ld. AR argued that this issue is covered by the order of the Tribunal in the assessee's own case for AY 2009-10 and AY 2010-11. The assessee in this regard has submitted as under:

*“At the outset, it is humbly submitted that the aforesaid issue is covered in favour of the appellant by the order of the Hon'ble Tribunal in the assessee's own case for AYs 2009-10 and 2010 11 wherein it has been held that the entire fund, including interest is utilized, by the assessee as a custodian, in the manner directed by the concerned Ministries of the Government of India and hence not taxable as income in the hands of the appellant (Page 265-270 of Paperbook). The appellant is merely a custodian of the fund and it has no control over it.*

*Further, the Committee of Disputes vide letter F.No. CIT(Judicial)/COD 2009-10/1561 dated 21-01-2010 has declined permission to CBDT to pursue the said issue in further appeal before the Tribunal in earlier assessment years.*

*Further, reliance can also be placed on the decision of the Hon'ble Jurisdictional Kolkata ITAT in the case of DCIT vs. West Bengal State Electricity Transmission Co. Ltd. [ITA No.1822/Kol /2012 (Kol ITAT), Order dated 30 October 2014].*

*The position that contribution to rehabilitation fund is not taxable as income of the appellant has also been accepted by the Ld. AO in previous as well as subsequent years.*

*It is therefore prayed that the Revenue's appeal be dismissed.*

*Further, it is re-iterated that Section 115JB of the Act, is a self-contained code and it does not warrant any such upward adjustment in respect of income not credited to the accounts on the basis of Form 26AS. Hence, the addition in this regard is without any basis and liable to be quashed.*

*Reliance in this regard can be placed on the decision of Hon'ble Supreme Court in the case of Apollo Tyres [255 ITR 273 (SC)].”*



9.6 We have considered the submissions made by the assessee and the Ld. AR. The fund was raised for the purpose of shifting and rehabilitation for dealing with fire and stabilization of the areas under ECL and BCCL, the two subsidiaries of the assessee and it was expected that an amount of ₹395 Crore would be generated on the basis of the charges levied on the other subsidiaries on the basis of quantity of coal extracted by them. The Ld. CIT(A) has deleted the addition and directed the same be taxed in the hands of ECL and BCCL and the Ld. AO was directed further to verify from the jurisdictional assessing officers of ECL and BCCL, the subsidiary companies, whether they have included the said interest income of ₹99,51,89,000/- in proportion to the share of fund maintained with the assessee and their receipt and offered it for tax.

9.7 We have considered the submissions made, gone through the facts of the case and perused the record and the order of the Ld. CIT(A). It is not disputed that the funds were being collected from the other subsidiaries of the assessee on the basis of the guidelines issued vide Ministry of Coal's letter No. 22020/2/97-CRC dated 25<sup>th</sup> June 2003, a copy of which was filed before us. The said amount of ₹395 Crore per year was to be maintained by Coal India Ltd. under a separate head of account and Coal India Ltd. is to ensure that this amount is used strictly for the implementation of the action plan. Thus, as per the office memorandum and on the basis of the steps mentioned therein, an amount of ₹395 Crore per year was to be used as a corpus for the implementation of the action plan. The Revenue has not treated contributions as income of the assessee and rightly so as the periodic contributions were made for a specific purpose and there is diversion



by overriding title as the fund had been required to be raised for a specific purpose. The assessee is having four subsidiaries under it and the fund is to be used for shifting and rehabilitation, dealing with fire and stabilization of the areas under 2 of the subsidiaries only i.e. ECL and BCCL and other subsidiaries except ECL and BCCL are required to contribute to the fund an amount equivalent to ₹6/- per tonne of coal realized by each of the them. On facts as they emerge, the fund appears to be of the AOP comprising of the subsidiaries and the assessee, who have contributed to the funds or are the beneficiaries and in fact the income accrued ought to have been assessed in the hands of the AOP but that is not the issue before us. Once the fund is under the control and management of Coal India Ltd. who has been mandated to disburse the amount by the Ministry of Coal, and it is Coal India Ltd. who will ensure that this amount is used strictly for the implementation of the action plan. Coal India Ltd. is not merely the custodian of the fund but also the controller of the fund. The interest accrued thereon is under the control and management of Coal India Ltd. While the OM dated 25<sup>th</sup> June, 2003 mentions contribution to the fund and the amount of ₹395 Crore per year is to be used as corpus for the implementation of the action plan and Coal India Ltd. has collected a sum of ₹127.24 Crore which has been kept with the bank in the form of FDs on which interest of ₹99.51 Crore has accrued and there is no restriction in the memorandum/letter addressed to the Chairman cum Manager, Coal India Ltd., Kolkata dated 25<sup>th</sup> June, 2003 which bars or prohibits Coal India Ltd. to utilise the income earned on the corpus of the fund and the fund is also not under the control and management of the two subsidiaries being ECL and BCCL for whose benefit the fund has been

created; therefore, the direction of the Ld. CIT(A) to assess the income arising on account of interest in the hands of the subsidiaries is not justified and the fund being under the control of the assessee and there being no prohibition for the utilisation of the income earned prior to the incurring of the expenditure on account of shifting and rehabilitation in the letter dated 25<sup>th</sup> June, 2003, the same is liable to be included as the income of the assessee under the head 'income from other sources'. Hence the decision of the Ld. CIT(A) on this issue is reversed and **Ground No. 3 of the Revenue's appeal is allowed.**

9.8 In the result, the Revenue's appeal in **ITA No. 622/KOL/2018** is partly allowed for statistical purposes.

#### **B. Assessment Year 2012-13:**

**B.1** Now, we shall take up the assessee's appeal in **ITA No. 467/KOL/2018** for adjudication.

10. **Ground No. 1** relates to addition of ₹7,50,00,000/- on account of notional lease rent both under the normal provisions and while computing book profits u/s 115JB of the Act.

10.1 The brief facts of the issue are that Dankuni Coal Complex ('DCC') was leased out by the Coal India Limited to its subsidiary, South-Eastern Coalfields Limited, since April 1995, against a consideration of ₹18 crore which was subsequently reduced to ₹7.5 crores from the year 2006-07 onwards, in consideration of the devaluation of the plant and the nature of the leased property. The subsidiary sent a letter dated 3<sup>rd</sup> September 2010 to CIL highlighting the operation constraints of the leased property. Therefore, the lease rent was reduced to ₹1/- pursuant to a Board Resolution passed by the company on 1<sup>st</sup> February, 2011.

There were other regulatory constraints as well such as notice issued from West Bengal Pollution Control Board wherein it was stated that unless the pollution level of the DCC plant is reduced, the same should be shut down). In this regard, the Ld. AO made an addition of notional rent of ₹7.5 crores based on the following contentions:

- a) If plant was given on lease to any other organization, it would fetch rent at market rates.
- b) The cancellable operating lease agreement with SECL was nothing but a colourable device to shift its taxable income to its subsidiaries.
- c) The old and obsolescence of the plant given by the assessee on lease must not be a reason for reduction in lease rent.
- d) A notional rent value based on the market rental value is adoptable as taxable income from the property even if it is kept under lock and key.

10.2 The aforesaid disallowance was confirmed by the Ld. CIT(A) during the appellate proceedings by holding as under:

*"I have perused the submission of the appellant and the order of the AO. It is undoubtedly clear that the annual lettable value of the property though claimed as business income was of Rs. 18 Crore since 1995. The AO has clearly observed in his findings that the rental value was reduced in 2006-07 from 18 Crore to 7.5 Cr and since then it was offered by the appellant as income but AO found that the appellant has reduced the rental value of its subsidiaries under the guise of incurring of losses. The AO observed that "DCC was a unit of the assessee company started commercial production since 1991-92 and transferred to its subsidiary company M/s. SECL. from April 1995. The entire plant was given under lease to its subsidiary company for operating the same for commercial production. The appellant*

tried before the AO to establish that the loss from the unit suffered by its subsidiary is a constraint for the assessee to collect lease rent according to its market rate. The AO concluded that the loss suffered by the subsidiary on the same plant and business has no apparent relation to the accounts of the assessee. The internal arrangement with the subsidiary definitely caused operational loss of the assessee since, if the asset was given on lease to any other organisation, it would fetch rent at market price. This so called cancellable operating lease agreement with SECL was nothing but a colourable device to shift its taxable income to its subsidiary". The appellant has taken the ground that it was for the purpose of business and which was for the commercial expediency. Further the appellant has cited some case laws which are factually different. Then the AO held that the appellant has reduced the rental value at their convenience. In this regard various decisions have been given by the honourable courts i.e. wherein it is observed that annual value of the property is charged u/s.22 irrespective of the fact whether or not any income was actually accrued or received as per decisions of cases:-

*Ram Prasad & Sons Vs CIT (Del) 81 Taxman 332* it is further held that let out property, fair rental value can be determined u/s.23(1)(a) by ITO if tenant sublet it at a higher rent, the same can be adopted as fair rental value. In case of *CIT Vs G Ramesan (Ker) 241 TTR 426* and *N Nataraj Vs DOT (Mad) 266 ITR 277*, it has been also held that if the rent received or receivable is higher than the sum for which the property might reasonably be expected to let, the amount received or receivable shall be annual value of property, in case of *CIT Vs Johny Joseph (Ker) 24 ITR 423*. As it is held that property let out for less than standard rent Annual Letting value is standard rent. In case of *CIT Vs Parasmal Chodia (Mad) 233 ITR 147* and *Visveswaraya Ind Res Dev Centre Vs DOT (ITAT, Mum) 59 ITD 156*. The fact shows that the appellant has not altered the rental income due to mutual convenience.

Keeping in view of the aforesaid decision it is held that rent was not charged at market price and the fair rental value which has been accepted by the AO from 2006-07 till last preceding year i.e. Rs.7.5 crore is tented as ALV of the property and accordingly the action taken by the AO is upheld and the ground of appeal is dismissed.

As regards adding aforesaid amount for computation of book profit is concerned it is seen that the aforesaid income was part of business receipt of the appellant which was already part of income for computing the book profit. The aforesaid was established income of the appellant since so many years and reducing rent at Rs.1/- was due to mutual convenience of the

*lesser and less. Therefore the action of the AO for making part of income for computation of book profit is also confirmed. The ground No.07 & 08 of the appellant is hereby dismissed.”*

### 10.3 Before us, it is submitted by the Ld. AR as under:

*“1) The determination of lease rental is taken on the basis of assessment of market conditions, nature of competition prevailing in the market, and the capability of the asset to generate such income. The same is therefore an independent decision of the appellant, in view of its commercial needs and expediency. Since, the DCC plant was not capable of yielding rental income to the appellant, the lease rental was reduced.*

*2) The argument of the Ld. AO that the operating lease agreement with SECL was nothing but a colourable device to shift its taxable income to its subsidiaries is baseless. The Board of Directors of the appellant comprises of the Additional Secretary, Ministry of Coal, Joint Secretary and Financial Adviser, Ministry of Coal and other notable members (Page 7 of the Paperbook for AY 2012-13). Hence, the question of shifting profits does not even arise.*

*3) Further, even the Ld. AO has made the impugned addition under the head business income, hence, without prejudice to above, even if it is assumed that there is a concept of deemed rent under house property, the provisions of the same would not be technically applicable to the facts of the case. (Page 11 of the Assessment order for AY 2012-13)*

*4) There are no specific provisions in the Act to tax notional income in the hands of the appellant (since the income from lease rental is offered to tax under the head business income and not house property by the appellant). If income does not result at all, there is neither accrual nor receipt of income. Reliance in this regard is placed on the judgment of Hon’ble Supreme Court in the case of CIT v. Shoorji Vallabhdas & Co. [1962] 46 ITR 144 (SC) (Page 322-324 of the Paperbook for AY 2012-13).*

*5) Reliance is also placed on the decision of Hon’ble Apex Court in the case of S.A. Builders Ltd v. CIT [(2007) 288 ITR 1 (SC) wherein the interest free loan given to the subsidiary company was allowed.*

*6) Further, without prejudice, if the notional income is taxed in the hands of the company, the corresponding deduction of the same should be allowed to the subsidiary. Hence, there is no revenue loss to the Income Tax Department.*

*With regard to the disallowance inflicted under the MAT provisions, it is submitted that section 115JB is a self-contained code. Explanation to section 115JB of the Act provides certain adjustment to be made in the computation of book-profit. Apart from the adjustments mentioned in the said Explanation, no other adjustment can be made in the computation of book-profits under section 115JB of the Act. Hence, the disallowance cannot be sustained.*

*Reliance in this regard can be placed on the decision of Hon'ble Supreme Court in the case of Apollo Tyres [255 ITR 273 (SC)].*

*Your kindness would appreciate that Section 115JB of the Act does not warrant any such upward adjustment in respect of notional income and hence, the addition in this regard is without any basis and liable to be quashed.”*

#### 10.4 The Ld. DR has submitted in this regard as under:

3.1 *“The AO made the addition on leased premises given to the appellant's subsidiary. The leased rent of Rs. 7.5 crores from the year 2006-07 onwards was reduced to a notional Rs. 1/- wef 1/2/2011. Accordingly, the AO made the addition on account of notional rent as, if the plant would have been given on lease to any other organization, it would have fetched that amount of rent, at least. He also held that the cancellable lease rent was nothing but a colourable device. The CIT-Appeal concurred with the findings and views of the AO. He held that since the rent was not charged at market price, the fair market value which was accepted by the AO from 2006-07 till last preceding year, that is Rs. 7.5 crores per annum, is taken as ALV of the property.*

3.2 *CIT-Appeal also observed that the aforesaid income was part of the business receipt which was already part of the income for computing book profits. The aforesaid was established income of the appellant since so many years and reducing it to Rs. 1 was due to mutual convenience of the lesser and lessee. Therefore, the action of the AO for making it part of the income for computation of book profit was also confirmed by the CIT-Appeal. The CIT-Appeal, for AY 2012-13, in final analysis on this issue, observed as under (pg 87-88 of the order):*

*I have perused the submission of the appellant and the order of the AO. It is undoubtedly clear that the annual lettable value of the property though claimed as business income was of Rs.18 Crore since 1995. The AO has clearly observed in his findings that the rental value was*

reduced in 2006-07 from 18 Crore to 7.5 Cr and since then it was offered by the appellant as income but AO found that the appellant has reduced the rental value of its subsidiaries under the guise of incurring of losses. The AO observed that "DCC was a unit of the assessee company started commercial production since 1991-92 and transferred to its subsidiary company M/s. SECL. from April 1995. The entire plant was given under lease to its subsidiary company for operating the same for commercial production. The appellant tried before the AO to establish that the loss from the unit suffered by its subsidiary is a constraint for the assessee to collect lease rent according to its market rate. The AO concluded that the loss suffered by the subsidiary on the same plant and business has no apparent relation to the accounts of the assessee. The internal arrangement with the subsidiary definitely caused operational loss of the assessee since, if the asset was given on lease to any other organisation, it would fetch rent at market price. This so called cancellable operating lease agreement with SECL was nothing but a colourable device to shift its taxable income to its subsidiary". The appellant has taken the ground that it was for the purpose of business and which was for the commercial expediency. Further the appellant has cited some case laws which are factually different. Then the AO held that the appellant has reduced the rental value at their convenience. In this regard various decisions have been given by the honourable courts i.e. wherein it is observed that annual value of the property is charged u/s.22 irrespective of the fact whether or not any income was actually accrued or received as per decisions of cases:-

*Ram Prasad & Sons Vs CIT (Del) 81 Taxman 332* it is further held that let out property, fair rental value can be determined u/s.23(1)(a) by ITO if tenant sublet it at a higher rent, the same can be adopted as fair rental value. In case of *CIT VS G Ramesan (Ker) 241 ITR 426* and *N Nataraj Vs DCIT (Mad) 266 ITR 277*, it has been also held that if the rent received or receivable is higher than the sum for which the property might reasonably be expected to let, the amount received or receivable shall be annual value of property, in case of *CIT Vs Johny Joseph (ker) 24 ITR 423*. As it is held that property let out for less than standard rent Annual Letting value is standard rent. In case of *CIT Vs Parasmal Chodia (Mad) 233 ITR 147* and *Visveswaraya Ind Res Dev Centre Vs DCIT (ITAT, Mum) 59 ITD 156*. The fact shows that the appellant has not altered the rental income due to mutual convenience.

Keeping in view of the aforesaid decision it is held that rent was not charged at market price and the fair rental value which has been

*accepted by the AO from 2006-07 till last preceding year i.e. Rs. 7.5 crore is tented as ALB of the property and accordingly the action taken by the AO is upheld and the ground of appeal is dismissed.*

*As regards adding aforesaid amount for computation of book profit is concerned it is seen that the aforesaid income was part of business receipt of the appellant which was already part of income for computing the book profit. The aforesaid was established income of the appellant since so many years and reducing rent at Rs.1/- was due to mutual convenience of the lesser and less. Therefore, the action of the AO for making part of income for computation of book profit is also confirmed. The ground No.07 & 08 of the appellant is hereby dismissed.*

*5.3 Subsequently, for the next two AYs, the CIT-Appeals, followed this precedent and upheld the addition made on account of notional rent.”*

10.5 We have considered the submissions made. We find that the assessee was earning and accounting for lease rent of the premises which were under the control of the assessee since 1965-66 and had initially reduced the lease rent to 7.5 Crore from ₹10 Crore. It was stated that the lease rent was reduced as per the Board's resolution; however, when required to file the approval/Minutes of the Board meeting, the same were not available with the Ld. AR. Thus, the basis of reduction in lease rent, is not established. However, the assessee has rightly contended that the concept of ALV is related to income from House Property and is not related to income from Business or Profession as the assessee had shown the income from letting out the property as business income. The concept of notional income has no relevance to the business income unless provided so by the statute. The reduction in lease rent was necessitated on account of commercial expediency and liability of the subsidiary. Although as per mercantile system of accounting, the lease rent should have been accounted for on accrual basis, but the accrued rent had been decided to be reduced by the



assessee. Hence, the finding of the Ld. CIT(A) on the issue is set aside and the issue is remanded to the Ld. AO. The assessee is directed to furnish a copy of the Board's resolution/Minutes of the Board's meeting which authorised the reduction of the lease rent from ₹7.5 Crore to ₹1/- per annum and thereafter the addition is directed to be deleted as the Ld. AO cannot sit in the shoes of the businessman and the assessee had reduced the lease rent of the subsidiaries on account of commercial expediency and business consideration. In the event of non-furnishing the copy of the Board's resolution in this regard, the additions should stand confirmed. Therefore, **Ground No. 1 of the assessee's appeal is allowed for statistical purposes.**

11. **Ground No. 2** relates to the addition of ₹2,85,00,000/- on account of penalty charges both under the normal provisions and while computing the book profits u/s 115JB of the Act.

11.1 The facts of the issue are that the North Eastern Coalfields ('NEC') is a coal producing unit of the assessee company. During the previous year relevant to the assessment year under consideration, Coal India Ltd. had entered into an agreement with the third parties in order to lift the coal from the location of NEC. The agreement has a performance clause that upon the short lifting of the coal, the third parties are required to pay penalties. During the relevant previous year, nine parties had done a short lifting of the coal. Thus, Coal India Ltd. imposed penalties on the same amounting to INR 2.85 crores. Following the Accounting Standard 9, the company has not recognized the same in the profit and loss account as the realization of the same was not certain. It is submitted by the Ld. AR that the Ld. AO however, without appreciating the facts of the case, added the penalty charges on the

ground that the same has been accrued as per the agreement and there was no uncertainty in recognizing the same.

11.2 The Ld. CIT(A) confirmed the addition made by the Ld. AO by holding as under:

*“Perusal of aforesaid facts shows that the penalty was accrued as per the policy of the company before filing of return. There was no debate over the penalty charges during the year and it was as per policy of the company and the penalty was receivable. The appellant is showing subsequent decisions which happened in the later years to justify its action for not accounting the same for income. The subsequent action will not be justify the earlier action of the appellant once the penalty charge were accrued then on mercantile system of accounting, it should have been shown as an income in his books of account. Keeping in view of the aforesaid facts the action of the AO is hereby upheld and the ground of appeal is dismissed.*

*The appellant has argued that aforesaid income should not have been considered for computation of book profit u/s.115 JB. The argument of the appellant is not correct because the appellant was following Mercantile system of account and aforesaid was already accrued hence it should have been part of his income. Therefore the AO was justified to consider the same for the book profit u/s.115 JB. The action of the AO on this account is confirmed and the appeal of the appellant on this ground is also dismissed. The case laws cited by the appellant are factually different.”*

11.3 Before us, it is submitted by the Ld. AR as under:

*“In this regard it is submitted that as stated above, out of the nine parties, six parties were such from whom the amount had been received/security deposit forfeited in subsequent years and the same was accordingly offered to tax in the corresponding assessment years. Hence, an amount of Rs. 1.12 crores should not be added back to the computation of Income as it would lead to double taxation in the hands of the appellant.*

*With regard to the balance amount of Rs 1.73 crores, the remaining three parties have not agreed to pay such sum even though the same has accrued as per the agreement. The third parties have filed an appeal against Coal India. Limited and the High Court of Meghalaya has allowed the petition against the appellant, thus, making the sum un-realizable (Page 325-331 of Paperbook for AY 2012-13).*

*It may further be noted that as per Accounting standard 9 - Para 9.2 (Page 337 of Paperbook for AY 2012-13) of the said standard, it is stated that revenue is not to be recognized where the ability to assess the ultimate collection with reasonable certainty is lacking at the time of raising any claim. Hence, it is appropriate to recognize revenue only when it is reasonably certain that the ultimate collection will be made. Reliance in this regard is placed on the following judgments:*

- *CIT v Balarampur Commercial Enterprise [262 ITR 439 (Cal)],*
- *H.M.Kashiparekh & Co. Ltd. v CIT [39 ITR 706 (Bom)], - UCO Bank v CIT [(1999) 237 ITR 889 (SC)].*

*Further, with regard to the disallowance inflicted under the MAT provisions, it is submitted that section 115JB is a self-contained code. Explanation to section 115JB of the Act provides certain adjustment to be made in the computation of book-profit. Apart from the adjustments mentioned in the said Explanation, no other adjustment can be made in the computation of book-profits under section 115JB of the Act. Hence, the disallowance cannot be sustained.*

*Reliance in this regard can be placed on the decision of Hon'ble Supreme Court in the case of Apollo Tyres [255 ITR 273 (SC)].”*

11.4 The Ld. DR has relied upon the order of the Ld. CIT(A).

11.5 We have considered the submissions made, gone through the facts of the case and perused the record and the order of the Ld. CIT(A). It is stated that one of the parties had filed an appeal against Coal India Ltd. and the High Court of Meghalaya had allowed the petition against the assessee, thus, making the sum un-realizable. However, we do not agree with the contention that in the year under consideration the same was not realizable as the agreement mandated payment of such penal charges on account of short lifting of coal. Since the assessee was following mercantile system of accounting, the penal charges leviable on the short lifting of coal had crystallized during the financial year and therefore, were liable to be included as the income of the assessee on

the basis of the mercantile system of accounting and the agreement in force. Out of the entities who are liable to pay the penal charges, only Cement Manufacturing Company Ltd. had filed a petition before the Hon'ble High Court and the order of the Hon'ble High Court in WP(C) No. 47 of 2013 dated 26.11.2013 was received in the financial year relevant for AY 2014-15 in which year the same was to be allowed as a bad debt to be written off. It has been held in the case of **State Bank of Travancore v. Commissioner of Income-tax [1986] 24 Taxman 337 (SC)** per majority view as under:

*“The question of how far the concept of real income entered into the question of taxability in the facts and circumstances of this case and how far and to what extent the concept of real income should intermingle with the accrual of income will have to be judged in the light of the provisions of the Act, the principles of accountancy recognised and followed the feasibility. The earlier circulars, being executive in character, could not alter the provisions of the Act. An acceptable formula of correlating the notion of real income in conjunction with the method of accounting for the purpose of computation of income for the purpose of taxation is difficult to evolve. Besides, any strait-jacket formula is bound to create problems in its application to every situation. It must depend on the facts and circumstances of each case when and how income accrues and what consequently follow from the accrual of income. Whether an accrual has taken place or not must, in appropriate cases, be judged on the principles of real income theory. After accrual, non-charging of tax on the same because of certain conduct based on the ipse dixit of a particular assessee cannot be accepted. In determining the question whether it is hypothetical income or whether real income has materialised or not, various factors will have to be taken into account. It would be difficult and improper to extend the concept of real income to all cases depending upon the ipse dixit of the assessee which would then become a value judgment only. What has really accrued to the assessee has to be found out, and what has accrued must be considered from the point of view of real income, taking the probability or improbability of realisation in a realistic manner and dovetailing these factors together, but once the accrual takes place, on the conduct of the parties subsequent to the year of closing, an income which has accrued cannot be made 'no income'. In this connection the following proposition emerge:*

*(1) It is the income which has really accrued or arisen to the assessee that is taxable. Whether the income has really accrued or arisen to the assessee must be judged in the light of the reality of the situation. (2) The concept of real income would apply where there has been a surrender of income which in theory may have accrued but in the reality of the situation no income had resulted because the income did not really accrue. (3) Where a debt has become bad, deduction in compliance with the provisions of the Act should be claimed and allowed. (4) Where the Act applies, the concept of real income should not be so read as to defeat the provisions of the Act. (5) If there is any diversion of income at source under any statute or by overriding title, then there is no income to the assessee. (6) The conduct of the parties in treating the income in a particular manner is material evidence of the fact whether income has accrued or not. (7) Mere improbability of recovery, where the conduct of the assessee is unequivocal, cannot be treated as evidence of the fact that income has not resulted or accrued to the assessee. After debiting the debtor's account and not reversing that entry, but taking the interest merely in suspense account, cannot be such evidence to show that no real income has accrued to the assessee or has been treated as such by the assessee. (8) The concept of real income is certainly applicable in judging whether there has been income or not, but in every case it must be applied with care and within well-recognised limits, and must not be called in aid to defeat the fundamental principles of law of income-tax as developed.*

*Keeping in view the legal position set out above, the impugned interest on sticky advances in the instant case was taxable as the assessee's income of the years in question."*

11.6 It has also been held in the case of **James Finlay & Co. v. Commissioner of Income-tax [1981] 6 Taxman 222 (Cal.)** where the assessee, following mercantile system of accounting, credited interest receivable from two parties to suspense account as it was doubtful of recovery and the assessee eventually waived its right to receive interest in respect of one party in 1972 following a compromise decree; on the question whether impugned interest could be added to assessee's income for assessment year 1970-71 on the ground that assessee's right to claim the same existed in said A.Y. it was answered in the affirmative by the Hon'ble High Court. Thus, in respect of the other entities, as there was no dispute before any Court of law, therefore, same was liable



to be included in the income of the assessee in the year of default of short lifting i.e. the impugned assessment year. On one hand, the assessee is claiming that the contingent liability which is ascertained is an allowable expenditure but on the other hand, the receipts accrued as per the agreement are not being shown in the return of income, therefore, in the absence of the required evidence justifying the non-inclusion of the amount as per the agreement for short lifting of coal which was the business income of the assessee and includable in the income of the assessee as per the mercantile system followed by the assessee has been rightly held to be included and the addition confirmed by the Ld. CIT(A) in this regard is upheld. The assessee has stated that the amount forfeited has been included in the subsequent year and in the concerned cases, the same shall amount to double addition. This view is not correct as the mercantile system of accounting mandated that the same should be included in the year under consideration. The assessee has other avenues under the Act to request the Ld. AO to exclude the amount in the subsequent year when the same have been included as the same is liable to be included in AY 2013-14. Hence, the findings of the Ld. CIT(A) are confirmed and **Ground No. 2 of the assessee's appeal is dismissed.**

12. **Ground No. 3** relates to the addition of ₹1,44,423/- as undisclosed income both under the normal provisions and while computing the book profits u/s 115JB of the Act. In view of the finding for AY 2011-12 in preceding para no. 6.2, **Ground No. 3 of the assessee's appeal is partly allowed for statistical purposes.**

13. **Ground No. 4** being general in nature does not require any separate adjudication.



13.1 In the result, the assessee's appeal in ITA No. 467/KOL/2018 is partly allowed for statistical purposes.

**B.2** Now, we shall take up the Revenue's appeal in **ITA No. 623/KOL/2018** for adjudication.

14. **Ground No. 1** relates to the Ld. CIT(A) erring in deleting the disallowance of ₹32.15 Crores made u/s 14A of the Act both in normal computation of taxable income and adjusted book profit for the purpose of MAT u/s 115JB of the Act. In view of the finding for AY 2011-12 in preceding para no. 7.11, **Ground No. 1 of the Revenue's appeal is partly allowed.**

15. **Ground No. 2** relates to the Ld. CIT(A) erring in deleting the addition made by the Ld. AO of ₹2.57 Crores, by disallowing the Provision created for Mine Closure since the provision is contingent in nature not being crystallised, and in view of the finding for AY 2011-12 in preceding para no. 8.5, **Ground No. 2 of the Revenue's appeal is partly allowed for statistical purposes.**

16. **Ground No. 3** relates to the Ld. CIT(A) erring in deleting the addition of ₹171.21 Crores on account of interest earned on shifting and rehabilitation fund created and in view of the finding for AY 2011-12 in preceding para no. 9.7, **Ground No. 3 of the Revenue's appeal is allowed.**

16.1 In the result, the Revenue's appeal in **ITA No. 623/KOL/2018 is partly allowed for statistical purposes.**

**C. Assessment Year 2013-14:**

**C.1** Now, we shall take up the assessee's appeal in **ITA No. 1406/KOL/2019** for adjudication.

17. **Ground Nos. 1(a), 1(b) and 1(c)** relate to the Ld. CIT(A) erring in upholding the action of the Ld. AO in applying the provisions of section 14A of the Act and confirming the disallowance made by the Ld. AO to the extent of the expenditure allegedly incurred on investments from which dividend was earned during the relevant previous year and also the Ld. CIT(A) as well as the Ld. AO erring in considering that Rule 8D of the IT Rules as automatic and the disallowance has to be made u/s 14A of the Act in all the cases. In view of the finding for AY 2011-12 in preceding para no. 4.6, **Ground No. 1 of the assessee's appeal is dismissed.**

18. **Ground Nos. 2(a) and 2(b)** relate to the Ld. CIT(A) erring in confirming the action of the Ld. AO in adding a sum of ₹7.5 crores on account of notional lease rent under the normal provisions of the Act. In view of the finding for AY 2012-13 in preceding para no. 10.5, **Ground No. 2 of the assessee's appeal is allowed for statistical purposes.**

19. **Ground No. 3** being general in nature does not require any separate adjudication.

19.1 In the result, the assessee's appeal in **ITA No. 1406/KOL/2019 is partly allowed for statistical purposes.**

**C.2** Now, we shall take up the Revenue's appeal in **ITA No. 1696/KOL/2019** for adjudication.

20. **Ground Nos. 1, 2, 3 and 4** relate to the Ld. CIT(A) erring in deleting the adjustment of ₹51,92,822/- u/s 92CA(3) of the Act on

account of alleged investment in unallotted shares treated as loan and **Ground No. 5** relates to the Ld. CIT(A) not deciding the issue on merits regarding the rate of interest charged as arm's length price.

20.1 The Ld. DR in this regard has submitted as under:

**4. "Transfer Pricing Adjustment by Levy of Interest on Equity Contribution (Department's Ground, AY 2013-14 and 2014-15)**

4.1 *The assessee had made a share application contribution towards its African subsidiaries and the same amount was disallowed by the AO/TPO arguing that it was not an investment but a deemed loan. In this regard it may kindly be noted that the action of the TPO/AO was necessitated by the fact that the shares were not allocated by the subsidiary company to the assessee company.*

4.2 *As a matter of fact, during the course of hearing of the current matter before the Hon'ble 'C' Bench on 19/06/2025, the Ld. AR of the assessee accepted that even till date, the shares have not been allotted, perhaps due to certain operational or strategic reasons. In light of this, it makes sense that the AO/TPO, on finding that the share application money after being transferred, has not yet been used for allotment of shares of the subsidiary company to the assessee company, considered the share application money as a loan and then proceeded to determine the arm's length pricing as per the provisions of the Income Tax Act.*

4.3 *It may kindly be appreciated that the AO decision to treat the share application money as loan is not an arbitrary re-characterization of investment from 'capital' to 'loan', as stated by Ld CIT-Appeals in his order for AY 2013-14 (pg 27), but a natural and commonsensical conclusion drawn on the basis of the facts. The mere fact that funds were remitted to the foreign subsidiary after obtaining necessary regulatory approvals from RBI as share application money does not automatically change the character of the fund so remitted as 'share capital'. For this to happen, the crucial and necessary activity of allotment of share has to take place. Without that allotment, the share application money is only an application money, and therefore, has not passed the necessary test to be declared as 'capital'. In such circumstances, the AO/TPO was quite reasonable to consider the share application money as loan and then proceeded to determine the arm's length pricing.*

4.4 *The manner, methodology and calculation, and thus the merit of the transfer pricing adjustment was not analyzed and decided by the CIT-Appeals, as he rejected the very treatment of the share application money as loan by the AO/TPO, and declare that treatment legally unsustainable.*

*In light of above, and especially in light of the fact that the share application money has not yet been converted to share allotment even after a lapse of more than 13 years, it is prayed that the treatment of the share application money so remitted to the assessee's subsidiary as loan by the AO/ITO is justified and reasonable, and should be affirmed and confirmed. Accordingly, it is humbly prayed that the CIT- Appeals decision deleting this addition may kindly be quashed.”*

## 20.2 The assessee has submitted as under:

*“Since the money has been advanced to the subsidiaries and it has been held in several cases that LIBOR + 2% is the rate of interest which can be charged on such transactions. The same is directed to applied on the amount outstanding as share application money which is being treated as loan. The assessee had taken share application money for investment in Coal India Africa Ltd. which was a 100% subsidiary but the shares were not allotted. The money was advanced at US\$ 1000 and the subsidiary was created for the exploration of coal mine, neither shares were allotted nor the money has been returned and the money is still lying with the company. It was stated that there is no operational business of the assessee. The Ld. AR raised the argument that it was not an international transaction. The equity contribution cannot be re-characterised as loan and delayed allotment of shares was on the wholly-owned subsidiary. It was also argued that the Prime Lending Rate of LIBOR + 7.5% was applied which was working out to more than 14%.”*

## 20.3 It has further been submitted by the Ld. AR as under:

### **“Argument 1 - Equity contribution is not an international transaction**

*The transaction of advancement of share application money was not in the nature of international transaction (as defined in section 92B of the Act) and hence was outside the purview and scope of chapter X of the Act. The Ld. TPO/AO failed to appreciate that the funds remitted to the AE is in the nature of shareholder activity. Reliance is also placed on the decision of Hon’ble Hyderabad Tribunal in the case of **M/S Hill Country Properties***

**Ltd [TS-234-ITAT-2015-(Hyd)-TP]**, wherein the Hon'ble Hyderabad Tribunal held that "amount representing investment made by the Assessee company in share capital of its subsidiary company outside India was not in the nature of international transaction, as per section 92B of the act and therefore, Transfer Pricing provisions were not applicable to such transactions. "

Reliance is also placed on the below mentioned rulings wherein similar ratio was applied and transaction of investment in the share capital of the subsidiary being share application money was held to be outside the scope of the TP provisions of Chapter X of the Act:

o **Kiri Dyes & Chemicals Ltd. [2021] 128 taxmann.com 449 (Ahmedabad - Trib.)**

o **Aries Agro Ltd. [2020] 116 taxmann.com 447 (Mumbai - Trib.)**

**Argument 2 - Equity contribution is not in the nature of interest free loan**

The Assessee remitted the funds in foreign exchange for acquiring shares in its foreign subsidiary after obtaining requisite permission by the Reserve Bank of India ('RBI'). This being a foreign currency transaction was liable to be governed by the provisions of Foreign Exchange Management Act ('FEMA') and subject to rules and approvals formulated by RBI.

It is humbly submitted that once the Assessee had obtained permission for remitting the funds for acquiring shares in foreign AE and the monies paid towards subscription of shares remained pending for allotment as on the last day of the subject AYs, the Ld. TPO could not unilaterally change the character of the investment from 'capital' to 'loan'. There is no statutory authority or power entrusted to the Ld. TPO to re-classify or re-characterize the instrument in which the investment is made.

Reliance is placed on the on the judgement of the Hon'ble Income Tax Appellate Tribunal ('ITAT') in the case of M/s Sterling Oil Resources Pvt. Ltd. [TS-72-ITAT-2016-(Mum)-TP], wherein the Hon'ble ITAT "A delay in allotment of shares by the subsidiary company as long as the subsidiary is wholly owned subsidiary, does not prejudice the interests of the assessee. It is, therefore, wrong to even allege that an Assessee does not behave in a commercially rationale manner, as expected in arm's length situation, when the Assessee does not ask for payment of interest for the period of delay in allotment of shares. "

*Reliance is also placed on the below mentioned rulings:*

- o Strides Pharma Science Ltd. [2022] 141 taxmann.com 430 (Mumbai - Trib.)*
- o Wockhardt Ltd. - [2022] 141 taxmann.com 189 (Pune - Trib.)*
- o M/s Parle Biscuits Pvt. Ltd [TS-127-ITAT-2014(Mum)-TP]*
- o M/s Allcargo Global Logistics Ltd [TS-176-ITAT-2014(Mum)-TP]*
- o M/s Bharti Airtel Ltd [TS-76-ITAT-2014(Del)-TP]*

*Argument 3- Without prejudice, computation of interest rate by the Ld. TPO is not appropriate*

*Without prejudice to the above contentions, the Assessee submits that the interest rate computation as done by the Ld. TPO was without any cogent basis (13.88% (LIBOR+7.15%+6%) for AY 2013-14 and 13.78% (LIBOR+7.34%+6%) for AY 2014-15).*

*The TPO has considered the Indian PLR as the cost of funds i.e., 14.45% for AY 2013-14 and 14.55% for AY 2014-15 in the hands of the Assessee. Since the transaction was in USD, the Ld. TPO converted the cost of funds into LIBOR based rate using Bloomberg swap price and the converted rate came to LIBOR plus 7.15% per annum for AY 2013-14 and 7.34% for AY 2014-15. Further, the Ld. TPO added one-year average LIBOR of 0.73% for AY 2013-14 and 0.44% for FY 2014-15 to the above-mentioned cost and considered the rate of 7.88% as LIBOR plus for AY 2013-14 and 7.78% for AY 2013-14.*

*Thereafter, the Ld. TPO considered the credit rating of the subsidiary as 'CCC' as per the S&P credit rating system and considered a credit spread of 600 basis points to be included in the addition to the cost of funds as determined above. The Ld. TPO then computed the arm's length interest rate as 13.88% (LIBOR+7.15%+6%) for AY 2013-14 and 13.78% (LIBOR+7.34%+6%) for AY 2014-15.*

*In this connection we would like to submit that taking Indian/ domestic PLR as the very basis for a transaction in USD is inappropriate.*

*In this regard, reliance is placed on the decision of Hon'ble Delhi High Court in the case of **M/S Cotton Naturals Pvt. Ltd vs Commissioner of Income Tax [TS-117-HC-2015-(DEL)-TP]**, wherein the Hon'ble High Court held that "the loan in question was given in foreign currency i.e. US\$ and was also to be repaid in the same currency, interest rate applicable to loans granted and*

*to be returned in Indian rupee would not be the relevant comparable. Even in India, interest on FCNR accounts maintained in foreign currency are different and dependent upon on the currency in question. They are not dependent upon the PLR rate, which is applicable to loans in Indian rupee. The PLR rate, therefore, would not be applicable and should not be applied for determining the interest rate in the extant case. PLR rates are not applicable to loans to be repaid in foreign currency. The interest rates vary and are thus dependent on the foreign currency in which the repayment is to be made. The same principle should apply. ”*

*Reliance is also placed on the below mentioned rulings:*

- o **Strides Pharma Science Ltd. [2022] 141 taxmann.com 430 (Mumbai - Trib.)**
- o **Wockhardt Ltd. - [2022] 141 taxmann.com 189 (Pune - Trib.)**
- o **The Great Eastern Shipping Company Limited [TS-534-HC-2017(Bom)-TP]**
- o **M/s EIH Limited [TS-13-ITAT-2018(Kol)-TP]**
- o **Cotton Naturals (I) Pvt Ltd - ITA No. 5855/Del/2012, TS-33-ITAT-2013(DEL)-TP, 22 ITR(Trib) 438**
- o **Manaska Limited [TS-1101-ITAT-2018(Kol)-TP]**
- o **Britania Industries Ltd [TS-1279-ITAT-2108(Kol)-TP]**
- o **Rohit Ferro Tech Ltd [TS-1399-ITAT-2018(Kol)-TP]**
- o **Four Soft Limited (2011) 62 DTR (Hyd)(Trib) 308, ITA No. 1495/Hyd/2010, 2011-TII-92-ITAT-Hyd- TP**
- o **DCIT vs Tech Mahindra Limited [TS-299-ITAT-2011(Mum)]**

*Without prejudice to the Assessee’s submission that the underlying transaction of equity contribution is outside the scope of TP provisions and the recharacterization/ reclassification of the same to a loan transaction is bad at law, the Assessee places reliance on the above various judicial precedents wherein LIBOR plus 2% interest rate has been upheld as an appropriate interest rate for benchmarking a loan transaction.”*

20.4 We have considered the submissions made, gone through the facts of the case and perused the record and the order of the Ld. CIT(A). The money was advanced for the purchase of shares of a subsidiary in Africa. On a query from the Bench as to whether the shares have been allotted, it was informed by the Ld. AR that till date no shares have been allotted. Hence, the decisions relied upon by the assessee are not applicable as in those cases shares were allotted while in the case of the assessee no such allotment of shares has taken place even after more than 13 years. Hence, the share application money is liable to be returned to the assessee and in view of the **Explanation to section 92B** of the Act, the same is **any other debt arising during the course of business and is included as an international transaction**. Hence, we do not find any justification for deviating from the finding of the Ld. CIT(A) to treat it as an international transaction as the amount could be treated as advance for share capital only if the shares have been allotted while it is a matter of fact that neither the money has been returned nor the shares have been allotted so the treatment to the amount treating the same as loan is justified. However, there is merit in the argument of the assessee that the rate of interest treated as ALP is excessive and the same is held to be charged at the rate of LIBOR + 2% as alternatively argued by the assessee and the transfer pricing adjustment made on this account is partly allowed. Hence, **Ground Nos. 1, 2, 3, 4 are allowed and Ground No. 5 of the Revenue's appeal is partly allowed.**

21. **Ground Nos. 6, 7 and 8** relate to the disallowance u/s 14A of the Act and the Ld. CIT(A) erring in directing the Ld. AO not to include the investment in companies which have not paid any dividend to the

assessee company for the purpose of computation of disallowance under Rule 8D(2)(iii) of the IT Rules without considering the CBDT Circular No. 5/2014 issued on 11.02.2014 which provides for disallowance of the expenditure u/s 14A of the Act read with Rule 8D of the IT Rules even where taxpayer in a particular year has not earned any exempt income and also whether the Ld. CIT(A) justified by directing that disallowance U/s 14A of the Act read with Rule 8D of the IT Rules is not required to be added to the Book Profit for the purpose of computation of income u/s 115JB of the Act without appreciating that section 115JB of the Act clearly provides for including the disallowance made u/s 14A of the Act read with Rule 8D of the IT Rules for the purpose of computation of Book Profit u/s 115JB of the Act. In view of the finding for AY 2011-12 in preceding para no. 7.11, **Ground Nos. 6, 7 and 8 of the Revenue's appeal are partly allowed.**

22. **Ground No. 9** relates to the Ld. CIT(A) erring in deciphering the intrinsic purpose of accounting standard 29 and also erring in recognizing the provisions which cannot be classified as expenditure based on mere forbearance to realize a claim. In view of the finding for AY 2011-12 in preceding para no. 8.5, **Ground No. 9 of the Revenue's appeal is partly allowed for statistical purposes.**

23. **Ground No. 10** relates to the Ld. CIT(A) erring in declaring that the assessee is only the custodian of the funds and has got no control in any manner whatsoever, over the funds collected by it and interest income thereon. In view of the finding for AY 2011-12 in preceding para no. 9.7, **Ground No. 10 of the Revenue's appeal is allowed.**



24. **Ground No. 11** being general in nature does not require any separate adjudication.

24.1 In the result, the Revenue's appeal in **ITA No. 1696/KOL/2019 is partly allowed for statistical purposes.**

**D. Assessment Year 2014-15:**

**D.1** Now, we shall take up the assessee's appeal in **ITA No. 1407/KOL/2019** for adjudication.

25. **Ground Nos. 1(a), 1(b) and 1(c)** relate to the Ld. CIT(A) erring in upholding the action of the Ld. AO in applying the provisions of section 14A of the Act and confirming the disallowance made by the Ld. AO to the extent of the expenditure allegedly incurred on investments from which dividend was earned during the relevant previous year and also the Ld. CIT(A) as well as the Ld. AO erring in considering that Rule 8D of the IT Rules as automatic and the disallowance has to be made u/s 14A of the Act in all the cases. In view of the finding for AY 2011-12 in preceding para no. 4.6, **Ground No. 1 of the assessee's appeal is dismissed.**

26. **Ground Nos. 2(a) and 2(b)** relate to the Ld. CIT(A) erring in confirming the action of the Ld. AO in adding a sum of ₹7.5 crores on account of notional lease rent under the normal provisions of the Act. In view of the finding for AY 2012-13 in preceding para no. 10.5, **Ground No. 2 of the assessee's appeal is allowed for statistical purposes.**

27. **Ground No. 3** being general in nature does not require any separate adjudication.



27.1 In the result, the assessee's appeal in **ITA No. 1407/KOL/2019 is partly allowed for statistical purposes.**

**D.2** Now, we shall take up the Revenue's appeal in **ITA No. 1697/KOL/2019** for adjudication.

28. **Ground Nos. 1, 2, 3 and 4** relate to the Ld. CIT(A) erring in deleting the adjustment of ₹3,78,98,855/- u/s 92CA(3) of the Act on account of alleged investment in unallotted shares treated as loan and Ground No. 5 relates to the Ld. CIT(A) not deciding the issue on merits regarding the rate of interest charged as arm's length price. In view of the finding for AY 2013-14 in preceding para no. 20.4, **Ground Nos. 1, 2, 3, 4 are allowed and Ground No. 5 of the Revenue's appeal is partly allowed.**

29. **Ground Nos. 6, 7 and 8** relate to the disallowance u/s 14A of the Act and the Ld. CIT(A) erring in directing the Ld. AO not to include the investment in companies which have not paid any dividend to the assessee company for the purpose of computation of disallowance under Rule 8D(2)(iii) of the IT Rules without considering the CBDT Circular No. 5/2014 issued on 11.02.2014 which provides for disallowance of the expenditure u/s 14A of the Act read with Rule 8D of the IT Rules even where taxpayer in a particular year has not earned any exempt income and also whether the Ld. CIT(A) justified by directing that disallowance U/s 14A of the Act read with Rule 8D of the IT Rules is not required to be added to the Book Profit for the purpose of computation of income u/s 115JB of the Act without appreciating that section 115JB of the Act clearly provides for including the disallowance made u/s 14A of the Act read with Rule 8D of the IT Rules for the

purpose of computation of Book Profit u/s 115JB of the Act. In view of the finding for AY 2011-12 in preceding para no. 7.11, **Ground Nos. 6, 7 and 8 of the Revenue's appeal are partly allowed.**

30. **Ground No. 9** relates to the Ld. CIT(A) erring in deciphering the intrinsic purpose of accounting standard 29 and also erring in recognizing the provisions which cannot be classified as expenditure based on mere forbearance to realize a claim. In view of the decision in the preceding para no. 8.5, **Ground No. 9 of the Revenue's appeal is partly allowed for statistical purposes.**

31. **Ground No. 10** relates to the Ld. CIT(A) erring in declaring that the assessee is only the custodian of the funds and has got no control in any manner whatsoever, over the funds collected by it and interest income thereon. In view of the finding for AY 2011-12 in preceding para no. 9.7, **Ground No. 10 of the Revenue's appeal is allowed.**

32. **Ground No. 11** relates to the Ld. CIT(A) erring in deleting the addition which is already contradiction in view of assessee company relating to CSR activities.

32.1 The Ld. DR, regarding this issue, has submitted as under:

**5. "Disallowance of CSR Expenses of Rs. 41.7 crores**

***(Department's Ground, AY 2014-15)***

5.1 *During the year, the assessee made expenditure under the head corporate social responsibility amounting to Rs. 141.70 crores. Out of this, Rs. 100 crore was made towards Chief Minister's relief fund and this amount, therefore, was suo-moto disallowed by the assessee in its account and claimed deduction under section 80G. However, the the rest of the amount, the assessee claimed that since the explanation 2 to section 37(1) of the Act relating to disallowance of CSR expenses that has been incurred pursuant to section 135 of the Companies Act 2013, was applicable from AY*

2015-16, the current year (2014-14) expenses of Rs. 41 crores were allowable.

5.2 The CIT-Appeals, in its order (page 90-97), has allowed this expenditure. He has observed (para 3, pg 93):

"I also find that the Id. AO has misconstrued the suomoto disallowance made by the appellant company of an amount of Rs. 100 crores which had been paid to the Chief Minister's Relief Fund. Such amount, being in the nature of donation, was disallowed from business expenditure, and claimed separately u/s 80G by the appellant. The Ld. AO has not even examined the claim of the appellant that the balance amount of Rs. 40.7 crores was incurred for other purposes, being relating to the business of the company, and therefore would be an allowable expenditure u/s 37 of the Income Tax Act. After examining the matter, I find myself in agreement with the contention of the appellant company that prior to implementation of Companies Act 2013, corporate social responsibility expenditure was not mandatory and companies used to incur such expenditure on the basis of their policies for social obligation."

5.3 Thus, CIT-Appeals, basing his conclusion on the premise that the expenditure on corporate social responsibility was an allowable item, has deleted the addition of Rs. 40.7 crores made by the AO. However, CIT-Appels in this process has erred in appreciating the fundamental basis for allowing any expenditure under section 37, being that such expenditure must have been incurred in the course of business and must have been necessary for regular conduct of business. The corporate social responsibility expense incurred by the assessee is mostly a voluntary expenditure, and has not been incurred in the normal course of business. The conduct and performance of assessee's business would not have been affected in any manner, had it not incurred the CSR expenditure. This being so, the CSR expenditure of Rs. 40.7 cores would fail the primary test of being an eligible head/item of expenditure which can be claimed as a deductible expenditure u/s 37.

5.4 A preliminary examination of the paper book submitted by the assessee containing the details and breakup of this CSR expenditure of Rs. 40.7 crores shows that the expenditure incurred have no connection with the conduct of business, are not required for regular carry out of assessee's normal business and are purely voluntary in nature. This expenditure has been incurred for social and economic welfare of the community and society broadly, like donation to some NGO or school or some other organization etc. This expenditure, by no stretch of imagination, can be thought of as

*something which is required for running the business of the assessee, and therefore do not qualify as a deductible expenditure under section 37 of the Income Tax Act.*

5.5 *In light of above, it is prayed that this allowance granted by the CIT-Appeals, being erroneous, be reversed and the action of the AO of disallowing CSR expenditure of Rs. 40.7 crores be restored. Alternatively, this specific issue may kindly be restored to the file of the AO to conduct a detailed examination and analysis of all the specific items/activities of expenditure incurred under CSR head totaling to 40.7 crores to check and verify if this expenditure has indeed been incurred actually in the course of the business of the assess company. Any item of expenditure should be allowed as deduction u/s 37 only if it has been incurred for the purpose of business, and is not a voluntary expenditure incurred for general and social welfare and wellbeing.”*

32.2 The assessee has relied upon the decision of the Hon'ble Delhi High Court in the case of **Principal Commissioner of Income-tax vs. Steel Authority of India Ltd. [2023] 148 taxmann.com 132 (Delhi)/[2023] 455 ITR 139 (Delhi)[06-01-2023]** in which it has been held that the Explanation (2) appended to section 37(1) of the Act by the Finance Act, 2014 with effect from 01.04.2015 is applicable prospectively for the AY 2015-16; therefore, corporate social responsibility expenditure incurred by the assessee company on or before 31.03.2014 was to be allowed as a deduction u/s 37(1) of the Act in view of the decision of the Hon'ble Delhi High Court in the case of **Steel Authority of India Ltd.** (supra). However, the assessee has furnished a list of the expenditure incurred. The Ld. DR submitted that it has to be examined as to whether the same is for the purpose of business or not.

32.3 We have considered the submissions made, gone through the facts of the case and perused the record and the order of the Ld. CIT(A). Out of the expenditure of ₹14169.76 Lakh incurred a sum of ₹10,000/-

paid to the Chief Minister Relief Fund was *suo moto* disallowed by the Ld. Assessing Officer. The other expenses are in the nature of development of roads at different places of Kanpur, renovation of parks, rehabilitation centres for children, Behala, Helpage India etc. which may be otherwise allowable u/s 80G of the Act. The finding of the Ld. CIT(A) is hereby set aside as it has not been examined as to whether expenditure was incurred for the purpose of business and was allowable u/s 37(1) of the Act. The assessee shall furnish the details before the Ld. AO who is directed to allow the same if the same have been incurred for the purpose of business and are not capital expenditure in nature and are allowable u/s 37(1) of the Act. Hence, the finding of the Ld. CIT(A) is set aside and **Ground No. 11 of the Revenue's appeal is partly allowed for statistical purposes.**

33. **Ground No. 12** relates to the Ld. CIT(A) erring in deleting the addition on the ground which is not a provision or contingent liability and relates to medical expenses for retired employees.

33.1 The Ld. CIT(A) deleted the addition as the same was allowable u/s 37(1) of the Act having been actually incurred by the assessee towards its retired employees as per finding in sub-para 3 of para 21 of the appeal order.

33.2 The Ld. AR has submitted as under in this regard:

*“During the year under consideration, the Assessee has provided for medical expenses for retired employees amounting to 19.56 crores. The same was disallowed by the Ld. AO during the assessment proceedings stating that the same is not incurred in relation to the business of the Assessee (Page 10 of the Assessment order (AY 2014-15)).*

*The Ld. CIT(Appeals) has discussed the matter and decided the issue in*

*favour of the company (Page 100-103 of the CIT(Appeals) order (AY 2014-15)).*

*In this regard, it is humbly submitted-*

- i) *The provision for post-retirement benefits of the employees are incurred for improving the morale of the employees and encouraging them who worked under hazardous areas of the coalfields. Therefore, such expenses are incurred in relation to the business of the assessee and hence allowable.*
- ii) *Further both retirement and claim of medical expenses post-retirement are determined fact and liability on account of this is also definite. The liability on account of post-retirement benefit is also ascertainable and the amount charged to P/L account is based on actuarial valuation.*

*Similar views have been upheld by the jurisdictional Calcutta High Court in the case of **Eveready Industries (India) Ltd. [(2018) 98 taxmann.com 90 (Calcutta)]** and ITAT Mumbai in the case of **Mahindar & Mahindra [(2020)117 taxmann.com 518]**.*

*It is therefore prayed that the Revenue's appeal be dismissed."*

33.3 We have considered the facts of the case, the submissions made and the documents filed. In view of the decision of the Hon'ble Jurisdictional High Court in the case of **Eveready Industries (India) Ltd.** (supra), the expenditure on the retired employees is rightly held to be for the purpose of the business as the employees had risked their life in the hazardous area of coal mining and the serving employees are reassured that their post-retirement health issues will be taken care of and therefore, the expenditure is held to be for the purpose of the business as the trust and faith of the employees is being taken care of which will add to the productivity of the employees. Hence, **Ground No. 12 of the Revenue' appeal is dismissed.**

33.4. **Ground No. 13** being general in nature does not need separate



adjudication.

33.5 In the result, the Revenue's appeal in **ITA No. 1697/KOL/2019 is partly allowed for statistical purposes.**

36. In the result, the appeals filed by the assessee in **ITA Nos. 466, 467/KOL/2018 and 1406, 1407/KOL/2019 are partly allowed for statistical purposes** and the appeals filed by the Revenue in **ITA Nos. 622, 623/KOL/2018 and 1696, 1697/KOL/2019 are partly allowed for statistical purposes.**

**Order pronounced in the open Court on 20<sup>th</sup> January, 2026.**

*Sd/-*

**[Pradip Kumar Choubey]**

Judicial Member

*Sd/-*

**[Rakesh Mishra]**

Accountant Member

Dated: 20.01.2026

*Bidhan (Sr. P.S.)*



*Copy of the order forwarded to:*

- 1. M/s. Coal India Ltd., Coal Bhawan, Premise No-4, Mar, Plot - AF-III, New Town Rajarhat, Kolkata, West Bengal, 700156.**
- 2. DCIT, Circle-5(1), Kolkata.**
3. CIT(A)-13, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

*// True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata