

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

**Before Shri P.M. Jagtap, Accountant Member  
and Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. No. 1536 /KOL/ 2013  
Assessment Year: 2009-2010**

**MSTC Limited,.....Appellant**  
**225C, A.J.C. Bose Road, 2<sup>nd</sup> Floor,**  
**Kolkata-700 020**  
**[PAN : AACCM 0021 E]**

**-Vs.-**

**Joint Commissioner of Income Tax (OSD),  
Commissioner of Income Tax-I, Kolkata,.....Respondent**

**Appearances by:**

*Shri J.L. Raha, CA, for the assessee*

*Md. Ghayas Uddin, JCIT, Sr. D.R., for the Department*

Date of concluding the hearing : May 04, 2016

Date of pronouncing the order : June 08, 2016

**O R D E R**

**Per Shri P.M. Jagtap :-**

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-XXIV, Kolkata dated 08.03.2013.

2. The issue raised in Ground No. 1 relates to the addition of Rs.1,47,00,000/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) to the total income of the assessee towards gains on Foreign Exchange Rate Fluctuation in terms of Accounting Standard-11.

3. The assessee in the present case is a Public Sector Undertaking. It carries on the business through its two Division, one Division which looks after the procurement of industrial raw material in bulk from its customers and the second division which provides a suitable market place for domestic sellers to do business in metal scrap both ferrous and

non-ferrous. The return of income for the year under consideration was filed by it on 22.09.2009 declaring total income of Rs.138,99,55,334/-. In the audit report filed along with the said return, it was pointed out by the auditors that the gains/losses on foreign exchange fluctuations on exports are not accounted by the assessee as per the Accounting Standard. It was also noted that such foreign exchange gain would have been Rs.97.95 crores on exports as per the Accounting Standard-11. The fact that such gain was to be passed to the associates by the assessee as per the agreement with them was taken note of by the auditors and accordingly it was reported that the purchases/creditors would have increased by Rs.96.48 crores. It was pointed out that the net profit of the assessee as a result of not following Accounting Standard-11 thus was understated by Rs.1.47 crores. Keeping in view these comments made by the auditors in the report, the assessee during the course of assessment proceedings was called upon by the Assessing Officer to offer its explanation. In reply, it was submitted by the assessee that the Accounting Standard-11 laid down by ICAI has no relevance with the Income Tax Act and, therefore, the observations of the tax auditors have got no bearing in computing taxable income. This explanation of the assessee was not found acceptable by the Assessing Officer. According to him, the computation of income admits the standard accounting procedures followed or to be followed in respect of income recognition unless otherwise specifically provided in the Income Tax Act, 1961. In this regard, he noted that there was no specific norm for accounting of foreign exchange fluctuation gains or losses laid down in the Income Tax Act and, therefore, the Accounting Standards laid down by the ICAI providing the benchmark were applicable on the issue, to the extent that they did not transgress any specific provision of the Act. Accordingly the net amount of Rs. 1.47 crores on account of foreign exchange fluctuation gains on exports was added by the Assessing Officer to the total income of the assessee as per Accounting Standard-11.

4. The addition made by the Assessing Officer of Rs.1.47 crores on account of foreign exchange fluctuation gain disputed by the assessee in the appeal filed before the Id. CIT(Appeals). During the course of appellate proceedings, the following submission was made by the assessee in support of its case on the issue:-

*"In this context the Hon'ble Apex Court in the case of CIT-vs. -Woodward Governor India (P) Ltd. (312 ITR 254) has held that - profit or loss arises to an assessee on account of appreciation or depreciation into another currency would ordinarily be a trading profit or loss provided the foreign currency is held by the assessee on revenue account or as a trading asset or as part of circulating capital embedded in the business. It is further opined that gains or loss are taxable or allowable on actual crystallization on payment/receipt reflecting in the books of accounts.*

*Now considering the fact stated by the auditor and the recent judgement of the Apex Court it may be concluded, that your appellant (i) has no recognizable realized foreign exchange gain (ii) If at all realized that is meant for associate parties as MSTC is only cannel-sing agent for import on behalf of associates (iii) If your appellant would follow AS-11 the purchase cost would have been increased by Rs. 96.48 crores, resulting in reduction in profit to that extent. Hence addition of Rs.1.47 crores on account of foreign exchange fluctuation is bad in law and fact, therefore, should be deleted".*

5. The above submission made by the assessee did not find favour with the Id. CIT(Appeals), who proceeded to confirm the addition of Rs.1.47 crores made by the Assessing Officer on account of gains on foreign exchange fluctuation for the following reasons given in paragraph no. 3.3 of his impugned order:-

*"3.3. I have carefully considered the observation of the Assessing Officer in the assessment order and also the submission of the Ld. A/R. In the case of CIT Vs. Woodward Governor India (Pvt.) Ltd. reported in 312 ITR 254, the Hon'ble Supreme Court has held as under :-*

*"At this stage, we are concerned only with para 9 which deals with revenue items. Para 9 of AS-11 recognizes exchange differences as income or expense. In cases where, e.g., the rate of dollar rises vis-a-vis the Indian rupee, there is an*

*expense during that period. The important point to be noted is that AS-11 stipulates effect of changes in exchange rate vis-a-vis monetary items denominated in a foreign currency to be taken into account for giving accounting treatment on the balance sheet date. Therefore, an enterprise has to report the outstanding liability relating to import of raw materials using closing rate of exchange. Any difference, loss or gain, arising on conversion of the said liability at the closing rate, should be recognized in the P&L account for the following period”.*

6. The ld. counsel for the assessee invited our attention to the relevant observations/comments of the auditors as appearing at page no. 58, 68 and 71 of his paper book and submitted that gain or loss as a result of foreign exchange fluctuations in respect of relevant export transactions was to be passed on by the assessee to the concerned associates and this factual position was taken note of even by the auditors in their report. He also contended that such gain or loss was to be adjusted finally on settlement or to be passed on to the associates and there was thus no question of any income arising to the assessee in general and in the year under consideration in particular.

7. The ld. D.R., on the other hand, strongly supported the impugned order of the ld. CIT(Appeals) on this issue and submitted that this issue is squarely covered in favour of the revenue by the decision of the Hon'ble Supreme Court in the case of Woodward Governor India (P) Limited (supra) relied upon by the ld. CIT(Appeals). He contended that the Accounting Standard-11 is mandatory and as a result of not following the same, the net gain as a result of foreign exchange fluctuation in respect of relevant export transactions was not included by the assessee in its total income as pointed out by the auditors in their report. He contended that the fact that such gain was to be passed over by the assessee-company to its associates was duly taken note of by the auditors and only after taking the same into account, the net gain as per the Accounting Standard-11 was worked out by the auditors at Rs.1.47 crores.

8. We have considered the rival submissions on this issue and also perused the relevant material available on record. The addition of Rs.1.47 crores in question has been made by the Assessing Officer to the total income of the assessee on account of net gain as a result of fluctuation in foreign exchange rate in respect of relevant export on the basis of observations/comments made by the auditors of the assessee-company in their reports. The said observations/comments of the auditors along with relevant paras no. 19.1.13 and 19.27 of Notes on Accounts are reproduced hereunder:-

*(iii) Gain/Loss on Foreign Exchange Fluctuation on exports is not accounted as per AS-11. Had the company complied with AS-11 exchange gain would have been increased by Rs.97.95 crores. As the gain/loss is passed to associates as per agreement with them, the purchases would have also increased by Rs.96.48 Cr. In the result net profit of the current year is understated by Rs.1.47 Cr. Consequently debtors are understated by Rs.97.95 Cr. And creditors are understated by Rs.96.48 cr. Reference is invited to para no. 19.1.13 and 19.27 of Notes on Accounts.*

*"19.1.13 FOREIGN CURRENCY TRANSLATION*

*Transaction in foreign currency are recorded either on forward booking rate or on spot rate and where such remittance are outstanding at the close of the year, on the basis of contracted forward exchange rates or spot exchange rates prevailing on the last date of the financial year, as the case may be. In case of export, transaction in foreign currency are recorded either on forward booking rate or on spot rate on shipment date as per custom clearance, document and where such remittance are outstanding at the close of the year, it is adjusted in the subsequent year on actual realization of export proceeds.*

*"19.27. During the year, unrealized export debtor is USD 139,335,660.59 (equivalent to Rs.607,92,54,827.00). Considering exchange rate prevailing on last day of financial year, there would have been notional gain of Rs.97,94,89,728.50 which has not been accounted for since this will offset against actual realization and will be passed on to the associates".*

9. As is evident from para 19.1.13 of the Notes on Accounts, the transactions in foreign currency in case of export were recorded by the assessee either on forward booking rate or on spot rate on shipment date as per customs clearance document but where such remittances were outstanding at the close of the year, it was adjusted in the subsequent year on actual realisation of export proceeds. The relevant debtors on account of export outstanding at the close of the year thus were not reported by the assessee on the basis of exchange rates prevailing on the last date of the financial year as required by the Accounting Standard-11. This non-compliance of the Accounting Standard-11 was reported by the auditors in the form of qualifying remark and the understatement of profit as a result of this non-compliance was also quantified by the auditors at Rs.1.47 crores. At the time of hearing before us, the Id. counsel for the assessee has contended that the Accounting Standard-11 has no relevance for the purpose of computing the total income of the assessee under the Income Tax Act, 1961 and the gain or loss as a result of fluctuation in foreign exchange rate having been adjusted finally on settlement in the subsequent year, there is no question of any income arising to the assessee on this count for the year under consideration.

10. We are unable to accept this contention of the Id. counsel for the assessee as the same runs contrary to the following observations recorded by the Hon'ble Supreme Court in the case of Woodward Governor India (Pvt.) Limited while dealing with the similar issue:-

“17. Having come to the conclusion that valuation is a part of the accounting system and having come to the conclusion that business losses are deductible under [Section 37\(1\)](#) on the basis of ordinary principles of commercial accounting and having come to the conclusion that the Central Government has made Accounting Standard-11 mandatory, we are now required to examine the said Accounting Standard ("AS").

18. AS-11 deals with giving of accounting treatment for the effects of changes in foreign exchange rates. AS-11 deals with effects of Exchange Differences. Under para 2, reporting currency is defined to mean the currency used in presenting the financial statements. Similarly, the words "monetary items" are defined to mean money held and assets and liabilities to be received or paid in fixed amounts, e.g., cash, receivables and payables. The word "paid" is defined under [Section 43\(2\)](#). This has been discussed earlier. Similarly, it is important to note that foreign currency notes, balance in bank accounts denominated in a foreign currency, and receivables/payables and loans denominated in a foreign currency as well as sundry creditors are all monetary items which have to be valued at the closing rate under AS-11. Under para 5, a transaction in a foreign currency has to be recorded in the reporting currency by applying to the foreign currency amount the exchange rate between the reporting currency and the foreign currency at the date of the transaction. This is known as recording of transaction on Initial Recognition. Para 7 of AS-11 deals with reporting of the effects of changes in exchange rates subsequent to initial recognition. Para 7(a) inter alia states that on each balance sheet date monetary items, enumerated above, denominated in a foreign currency should be reported using the closing rate. In case of revenue items falling under [Section 37\(1\)](#), para 9 of AS-11 which deals with recognition of exchange differences, needs to be considered. Under that para, exchange differences arising on foreign currency transactions have to be recognized as income or as expense in the period in which they arise, except as stated in para 10 and para 11 which deals with exchange differences arising on repayment of liabilities incurred for the purpose of acquiring fixed assets, which topic falls under [Section 43A](#) of the 1961 Act. At this stage, we are concerned only with para 9 which deals with revenue items. Para 9 of AS-11 recognises exchange differences as income or expense. In cases where, e.g., the rate of dollar rises vis-`-vis the Indian rupee, there is an expense during that period. The important point to be noted is that AS-11 stipulates effect of changes in

exchange rate vis-a-vis monetary items denominated in a foreign currency to be taken into account for giving accounting treatment on the balance sheet date. Therefore, an enterprise has to report the outstanding liability relating to import of raw materials using closing rate of exchange. Any difference, loss or gain, arising on conversion of the said liability at the closing rate, should be recognized in the P&L account for the reporting period”.

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”.

In our opinion, the ratio of the decision of the Hon'ble Supreme Court in the case of Woodward Governor India (Pvt.) Limited (supra) is rightly applied by the Id. CIT(Appeals) to confirm the addition of Rs.1.47 crores made by the Assessing Officer on account of gains on foreign exchange fluctuations, which had not been accounted for by the assessee as per the Accounting Standard-11.

11. At the time of hearing before us, the ld. counsel for the assessee has also contended that any gain or loss as a result of fluctuation in foreign exchange rate in respect of export transactions was to be passed on to the concerned associates by the assessee-company and, therefore, there is no question of any income arising to the assessee in respect of such gain. However, as rightly submitted by the ld. D.R., this aspect was duly taken into consideration by the auditors and the net gain of Rs.1.47 crores was quantified by them after adjusting the amount of gain to be passed on to associates as per the agreement as worked out to Rs.96.48 crores against the total exchange gain of Rs.97.95 crores as would have been earned by the assessee had it complied with Accounting Standard-11. The net exchange gain of Rs.1.47 crores thus was worked out by the auditors after taking into account the amount of gain to be passed on by the assessee to its associates as per the agreement and it, therefore, cannot be said that the addition of such net gain in the hands of the assessee has resulted in double addition. We, therefore, find no merit in the arguments raised by the ld. counsel for the assessee on this issue and rejecting the same, we uphold the impugned order of the ld. CIT(Appeals) confirming the addition of Rs.1.47 crores made by the Assessing Officer on account of gain on foreign exchange fluctuation. Ground No. 1 of the assessee's appeal is accordingly dismissed.

12. The issue raised in Ground No. 2 relates to the addition of Rs.1,20,16,922/- made by the Assessing Officer and confirmed by the ld. CIT(Appeals) on account of disallowance made under section 14A of the Income Tax Act.

13. During the year under consideration, the assessee-company had received dividend income of Rs.40,00,000/- on the investment made in the shares of its subsidiary companies (book value Rs.15,81,00,000/-) and the same was claimed to be exempt on tax. No disallowance on account of expenditure incurred in relation to the earning of the said exempt income, however, was offered by the assessee as required by the

provision of section 14A. It was noted by the Assessing Officer that the assessee-company had claimed deduction on account of interest paid amounting to Rs.130.77 crores. According to him, part of the interest bearing funds was apparently used by the assessee for making investment in shares. He was also of the view that the acquisition, maintenance and disposal of the investments entailed at least some indirect expenses in the form of paperwork, logistics, conveyances, apportionable salary, etc. He, therefore, recorded his dissatisfaction with the correctness of the assessee's claim of having not incurred any expenditure in relation to the earning of exempt dividend income and proceeded to make a disallowance under section 14A as worked out by applying Rule 8D at Rs.1,20,16,922/-.

14. The disallowance made by the Assessing Officer under section 14A read with Rule 8D was challenged by the assessee in the appeal filed before the Id. CIT(Appeals) by making the following submissions:-

*".....as desired by your honour, a copy of the annual report of the company for FY 2002-03 (the year of investment of Rs.14.85 crores) and the certified true copy of the relevant Board Note have already been submitted for your perusal. As already explained, the first investment of Rs.1.20 crores was made in 1979 out of fund provided by Govt. of India. Since, the issue relates about 33 years back gathering relevant record is time consuming.*

*The second investment of sRs.14.85 crores was made from own reserves as is evident from the Balance Sheet & Cash Flow Statement of the company for FY 2002-03. The Balance Sheet shows a Reserve & Surplus of Rs.66.52 crores (with addition of Rs. 6. 99 crores in the cited year). The cash Flow Statement attached with the Annual Report shows a net increase in Cash & Cash Equivalent of Rs.227,30 crores which is well above the figure of investment of Rs.14.85 crores and based on this surplus fund the Board of Directors had decided to invest the said sum out of General Reserves. Hence, from both the angle, i.e. available balance in general reserves and available cash surplus it is clear that investment is made out of own surplus fund.*

*With this fact your appellant once again confirms that no direct allocable expenses are involved in the investment. Therefore, the presumptive addition of Rs.1,20,16,922 by the Ld. AO is misnomer of fact and guess work having no dominance and immediate connection between the interest expenditure and tax free income and liable to be deleted. The same view was taken by the ITAT (Mumbai) in the case of DCIT vs. India Advantage Securities Ltd. (copy submitted on 11.02.13). It was decided that no notional expenditure can be apportioned for the purpose of earning exempt income unless there is an actual expenditure in relation to earning the tax free income.*

*As a Public Sector Undertaking, under direct control of the Ministry of Steel, Govt. of India, we once again confirm that no borrowed fund was attached with the investment from which your appellant earned tax free dividend income.*

*Under the above facts and circumstances and the relevant ITAT judgements (submitted earlier), the addition of Rs.1,20,16,922/- made on his count by the Ld. AO is out of law and should be deleted”.*

15. The above submission made by the assessee was not found acceptable by the Id. CIT(Appeals) and he proceeded to confirm the disallowance made by the Assessing Officer under section 14A read with Rule 8D for the following reasons given in paragraph no. 4.3 of his impugned order:-

*“4.3. I have considered the above submission of the Ld. A/R and also gone through the assessment order. In the case of CIT Vs Dhanalakshmy Bank Ltd. (supra), the Hon'ble Kerala High Court has held that if separate accounts are not maintained for taxable and non-taxable items of income, then disallowances as per Rule 8D are to be made. The onus is on the assessee to prove that the investments for earning exempt income has been made out of own funds. In the case of Dhanuka & Sons (supra), the Hon'ble Calcutta High Court has held that the onus is on the assessee to prove that own fund has been utilized for earning exempt income. In the case of Champion Commercial Co. Ltd. (supra), the Hon'ble ITAT, Kolkata has clarified that there is no dispute regarding the working of rule 8D(2)(i) and (iii). The Hon'ble ITAT has laid down the method as to how the disallowance of interest expenses in relation to exempt income has*

*to be computed. The Rule 8D(ii) relates to allocation of common interest expenses to taxable income and exempt income. The Hon'ble ITAT, Kolkata has also clarified that the formula prescribed under Rule 8D(2)(ii) is to be applied in accordance with the decision of the Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. (supra). During the course of the appellate proceedings, the Ld. A/R has explained that the first investment of Rs.1.20 crores was made in 1979 out of the fund provided by the Govt. of India. However, he could not furnish any documentary evidence in support of this claim. The Ld. A/R has explained that the second investment of Rs.14.85 crores was made from own reserves. However, the audited accounts of the appellant company reveal that the appellant had paid interest of Rs.16,28,12,000/- during F.Y. 2002-03. In the present case, the appellant company has not maintained any separate fund for making investments. All the investments in shares have been made out of the common fund of the appellant company. The decision of the Hon'ble Calcutta High Court in the case of Dhanuka & Sons (supra) and also the decision of the Hon'ble ITAT, Kolkata in the case of Champion Commercial Co. Ltd. are squarely applicable to the facts of the present case. In view of the above, the order of the A.a. computing disallowance of Rs.1,20,16,922/- u/s. 14A read with Rule 8D is upheld. This ground of appeal is dismissed".*

16. The ld. counsel for the assessee submitted that out of the total investment of Rs.15.81 crores made in the shares of subsidiary companies, the major amount of Rs.14.85 crores was invested by the assessee in F.Y. 2002-03 while the balance amount was invested earlier in F.Y. 1979-80. He submitted that the investment of Rs.14.85 lakhs made in F.Y. 2002-03 was out of General Reserve as available then at Rs.57.79 lakhs and not out of any interest bearing funds. He submitted that similarly the initial investment made by the assessee-company in the shares of subsidiary companies in F.Y. 1979-80 was out of funds provided by SAIL and there was no utilization of any interest bearing borrowed funds to make the said investment. He contended that this position was never disputed by the Department in the earlier year, which is evident

from the fact that no disallowance under section 14A was made in the case of the assessee in the earlier years. He also invited our attention to the balance-sheet of the assessee-company as on 31.03.2009 (copy placed at page no. 62 of the paper book) to point out that sufficient own funds in the form of capital and reserves to the extent of Rs.342.23 crores were available with the assessee-company. He also pointed out that the interest bearing borrowed funds, on the other hand, were earmarked for specific purposes showing that they were utilized for the purpose of the assessee's business and not for making any investment in shares.

17. The Id. D.R., on the other hand, strongly relied on the impugned order of the Id. CIT(Appeals) in support of the Revenue's case on the issue and submitted that all the contentions now raised by the Id. counsel for the assessee before the Tribunal have already been considered and rejected by the Id. CIT(Appeals) while computing the disallowance made by the Assessing Officer under section 14A. He also relied on the decision of the Hon'ble Calcutta High Court in the case of Dhanuka & Sons reported in 339 ITR 296 in support of the Revenue's case on this issue.

18. We have considered the rival submissions and also perused the relevant material available on record. It is observed that the disallowance made by the Assessing Officer under section 14A has been confirmed by the Id. CIT(Appeals) by his impugned order by relying, inter alia, on the decision of the Hon'ble Calcutta High Court in the case of Dhanuka & Sons (supra), wherein it was held that the onus is on the assessee to prove that own funds have been utilized for earning exempt income. In this regard, it was explained by the assessee before the Id. CIT(Appeals), inter alia, that the major amount of investment in shares to the extent of Rs.14.85 crores was made out of its own reserves in F.Y. 2002-03. However, this explanation of the assessee was brushed aside by the Id. CIT(Appeals) merely on the ground that interest of Rs.16.28 crores was paid by the assessee during the F.Y. 2002-03. We are unable to approve this approach adopted by the Id. CIT(Appeals). The assessee in the present case is a

Public Sector Undertaking and as demonstrated by the ld. counsel for the assessee, the decision to make investment of Rs.14.85 crores in the shares of subsidiary companies out of general reserve available with them at the relevant time was taken by the Board of Directors in the meeting held on 24<sup>th</sup> September 2002. The claim of the assessee of having made the said investment out of own funds in the form of general reserve thus was duly supported by the documentary evidence and the ld. CIT(Appeals), in our opinion, was not correct to reject the same merely because the assessee had paid interest of Rs.16.28 crores in F.Y. 2002-03. As pointed out by the ld. counsel for the assessee in this regard, the funds borrowed are always earmarked by the assessee being a Public Sector Undertaking for specific purposes and this contention of the ld. counsel for the assessee is fully supported by the balance-sheet of the assessee as on 31.03.2009. As submitted by the ld. counsel for the assessee, no disallowance under section 14A was made in the case of the assessee for the earlier years, which again supports the case of the assessee that the investment in shares was made by it out of own funds and not borrowed funds. Having regard to all these facts of the case, we are of the view that the onus that lays on the assessee to prove that own funds had been utilized for earning exempt income was satisfactorily discharged and there is no case to make a disallowance on account of interest under section 14A by applying Rule 8D. In that view of the matter, we delete the disallowance made by the Assessing Officer and confirmed by the ld. CIT(Appeals) under section 14A to the extent of interest amounting to Rs.1,12,26,422/- and partly allow Ground No. 2 of the assessee's appeal.

19. As regards the issue involved in Ground No. 3 of the assessee's appeal relating to the addition of Rs.1,01,13,410/- made by the Assessing Officer and confirmed by the ld. CIT(Appeals) on account of disallowance of provision for undisbursed leave salary under section 40B(f), it is observed that the similar issue has been restored by the Tribunal to the file of the Assessing Officer in ITA No. 1434/KOL/2012 dated 16.01.2015 in the case of BLA Industries Pvt. Limited for deciding the same afresh in

the light of the decision of the Hon'ble Supreme Court in the case of Exide Industries Limited. Following the said order, we uphold the impugned order of the Id. CIT(Appeals) on this issue and restore the matter to the file of the Assessing Officer for deciding the same afresh as per the same direction as given by the Tribunal in the case of BLA Industries Pvt. Ltd. (supra). Ground No. 3 is accordingly treated as allowed for statistical purposes.

20. In the result, the appeal of the assessee is partly allowed.  
Order pronounced in the open Court on June 8, 2016.

**Sd/-**  
**(S.S. Viswanethra Ravi)**  
**Judicial Member**

**Sd/-**  
**(P.M. Jagtap)**  
**Accountant Member**

***Kolkata, the 8<sup>th</sup> day of June, 2016***

- Copies to :*
- (1) ***M/s. MSTC Limited,***  
***225C, A.J.C. Bose Road, 2<sup>nd</sup> Floor,***  
***Kolkata-700 020***
  - (2) ***Joint Commissioner of Income Tax (OSD),***  
***Commissioner of Income Tax-I, Kolkata***
  - (3) ***Commissioner of Income Tax (Appeals)-XXIV, Kolkata,***
  - (4) ***Commissioner of Income Tax, Kolkata***
  - (5) ***The Departmental Representative***
  - (6) ***Guard File***

*By order*

***Assistant Registrar,***  
***Income Tax Appellate Tribunal,***  
***Kolkata Benches, Kolkata***

***Laha/Sr. P.S.***