आयकर अपीलीय अधीकरण, न्यायपीठ – "C" कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH: KOLKATA
(समक्ष)Before श्री जे. सुधाकर रेड्डी, लेखा सदस्य एवं/and श्री ऐ. टी. वर्की, न्यायीक सदस्य)
[Before Shri J. Sudhakar Reddy, AM & Shri A. T. Varkey, JM]

**I.T.A. No. 606/Kol/2018**
**Assessment Year: 2010-11**

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| Assistant Commissioner of Income-tax, Circle-13(2), Kolkata. | Vs. | M/s. Padma Logistics & Khanij Pvt. Ltd. (PAN: AAECP2189C) |
| Appellant | | Respondent |

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| Date of Hearing | 15.01.2020 |
| Date of Pronouncement | 22.05.2020 |
| For the Appellant | Shri Imokaba Jamir, CIT, DR |
| For the Respondent | Shri S. K. Tulsiyan, Advocate |

**ORDER**

**Per Shri A.T.Varkey, JM**

This is an appeal filed by the revenue against the order of Ld. CIT(A)-14, Kolkata dated 30.01.2017 for AY 2010-11 on the following grounds:-

*"1. Whether on the basis of facts & circumstances of the case and in law the Ld. CIT(A) erred in coming to the conclusion that the assessee is entitled to set off/ adjustment and carry forward of accumulated losses amounting to Rs.1,21,58,014/- and unabsorbed depreciation amounting to Rs. 20,61,04,026/- of the demerged company.*

*2. Whether on the basis of facts & circumstances of the case and in law the Ld. CIT(A) erred in coming to the conclusion that the assessee is entitled to set off/ adjustment and carry forward of accumulated losses in this assessment year although the same has been claimed by the demerged company in its return of income for this assessment year.*

*3) Whether on the basis of facts & circumstances of the case and in law the Ld. CIT(A) erred in restricting the addition u/s 14A upto Rs. 77,678/- as against Rs.18,32,751/- without appreciating the observation of the A.O.*

*4) Whether on the basis of facts & circumstances of the case and in law the Ld. CIT(A) erred in restricting the addition on account of disallowance of rent upto Rs.2,16,000/- as against Rs. 11,82,000/- without appreciating the observation of the A.O.*

*5) That the appellant craves leave to add modify or alter any of the grounds of appeal and/ or adduce additional evidence at the time of hearing of the case."*

2. Ground Nos. 1 and 2 are in respect of set off/adjustment and carry forward of accumulated losses amounting to Rs.1,21,58,014/- and unabsorbed depreciation amounting to Rs.20,61,04,026/- of the demerged company.

3. Facts of the case are that the assessee company filed the original return of income on 28-09-2010 showing total income of Rs.8,67,51,460/-. On l3-09-2010 and 06-10-2010, the assessee company and M/s. Star Ya Kalakaar.com Limited (hereinafter referred to "M/s. SYK Ltd."), a company having its registered Office in Bombay filed a Joint Petition before the Hon'ble High Court of Calcutta and Hon'ble High Court of Bombay for demerger of 'Vortal' division of M/s. SYK Ltd. under sections 391(2) and 394 of the Companies Act, 1956 with the assessee company. The said scheme of demerger was duly approved by the respective Hon'ble High Court at Calcutta and Hon'ble High Court of Bombay on 08-03-2011 and 21-04-2011 respectively. The appointed date of the scheme was 01-03-2010, being the effective date of demerger, which falls within the relevant assessment year 2010-11. Pursuant to the scheme of merger approved by the Hon'ble High Courts, the assessee filed a revised return of income on 09-06-2011 showing income of Rs. Nil after getting approval of AGM of assessee company. Subsequently, the case was selected for scrutiny assessment under CASS. Notices u/s. 143(2) and 142(l) of the Income-tax Act, 1961 (hereinafter referred to as the "Act") on 29.08.2011 was issued and served on the assessee and thereafter again a notice u/s. 142(1) of the Act dated 16.10.2012.

4. In response to the notices, the assessee appeared from time to time and submitted the required documents. During the course of assessment, it was brought to the notice of AO that pursuant to the scheme of demerger between the assessee and M/s. SYK Ltd. com Limited duly approved by the High Court of Calcutta and Hon'ble High Court of Bombay, the assessee company had acquired the "Vortal' division from M/s. SYK Ltd. w.e.f 01.03.2010 and copy of the Hon'ble High Court orders was also submitted to him a copy of which is found enclosed at pages 69-155 of the paper book. All the necessary formalities in connection with the said scheme of demerger were

completed as per law and the scheme was also found to be compatible in terms of Section 2(19AA) of the Income Tax Act, 1961. It was also brought to the notice of AO that when the original Return of Income (ROI) was filed on 28.09.2010, since the Hon'ble High courts did not clear the demerger (supra), the impact of demerger and merger of 'Vortal' division to assessee company by way of revised return could not be filed within the due date allowed by statute, yet the revised return taking into consideration the impact of demerger and assessee acquiring 'Vortal' division was filed at the earliest on 09.06.2011 declaring 'NIL' income after adjustment of brought forward losses and unabsorbed depreciation relating to the 'Vortal' division of M/s. SYK Limited merged with the assessee company. Thus, as per the revised Return of Income the total income was revised at Nil an adjustment of brought forward loss and u/s. 115JB tax payable was at Rs.1,09,17,085/-. However, the Assessing Officer did not appreciate the submissions of the assessee and refused to take cognizance of the said revised return of income filed on 09-06-2011 wherein the assessee company has claimed the set off of brought forward losses and unabsorbed depreciation of 'Vortal' division merged into the assessee company w.e.f. 01- 03-2010 on the following grounds:

i. There was no mention of the scheme of demerger pending before the Hon'ble High Court of Calcutta in the audited accounts of the company.

ii. The assessee has not filed the return of loss in time as prescribed u/s 139(3) of the Act.

iii. The assessee company has filed a revised return after receipt of intimation under section 143(1) and hence do not fulfill the conditions as laid down in Section 139(5) which required the filing of revised return prior to completion of the assessment.

iv. Both the demerging company and the resultant company have claimed the same loss resulting in double claim of set off and carry forward of losses pertaining to the demerged undertaking.

5. Aggrieved, the assessee preferred an appeal before the learned CIT(A) who allowed the appeal of the assessee. Aggrieved, the revenue is in appeal before us.

6. The Ld. DR assailing the decision of the Ld. CIT(A) pointed out that there was no mention of the scheme of demerger being pending before the Hon'ble High court in the corresponding audited accounts of the company as passed through the AGM of the company, in any manner, may it be as an Auditor's Note, Director's Report etc., so that total income could be revised lawfully. He drew our attention to paragraph 23.2 page 10 of the assessment order to the contentions of the AO and submitted that the action of AO is correct. Thereafter, the Ld. DR further submitted that the assessee has not filed the return of loss in time as prescribed u/s. 139(3) of the Act, hence the return filed on 09.06.2011 was not accepted by the AO and referred to paragraph 23.1 page 11 of the assessment order and submitted that AO could not have accepted the revised return which was a correct action. The Ld. DR further submitted that the assessee company has filed a revised return after intimation u/s. 143(1) dated 14.04.2011 was passed against the assessee and hence the revised return u/s. 139(5) of the Act was not filed on time and referred our attention to paragraphs 23.4 page 12 of the assessment order and submitted that the AO could not have accepted the revised return which was belatedly filed. The Ld. CIT, DR also pointed out to us that both the demerging company and the resultant company have claimed the same loss resulting in double claim of set off of losses and carry forward of losses pertaining to the demerged undertaking and drew our attention to paragraph 22 page 10 of the assessment order. And thus, he contended that the impugned order of Ld. CIT(A) needs to be reversed and AO's order to be sustained.

7. Per contra, the Ld. AR supporting the decision of the Ld. CIT(A) and filed a detailed written submission and took pains in controverting the issues pointed out by the ld. CIT, DR which we would discuss infra and also drew our attention to various case laws to controvert the submission of the Ld. CIT, DR and he does not want us to interfere with the order of Ld. CIT(A).

8. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the assessee company filed return u/s. 139(1) of the Act for

the relevant assessment year on 28.09.2010 showing income of Rs.8,67,51,460/-. Thereafter, the department gave intimation to assessee u/s. 143(1) dated 14.04.2011 accepting the returned income. We note that *before filing of return*, the assessee (which is a company registered at Kolkata) filed an application on 13.09.2010 jointly with M/s. Star ya Kalakaar.com Limited (Bombay) before the Hon'ble High Court of Calcutta and Hon'ble High Court of Bombay *for demerger of 'Vortal' division of M/s. Staryakalakar.com Ltd* (henceforth referred to M/s. SYK Limited) under sections 391(2) and 394 of the Companies Act, 1956. Since the application for demerger was filed before the return of income (hereinafter "ROI") originally on 28/09/2010 and mean while there was no order from the Hon'ble High Courts [before the date of filing of ROI], this plan of action by the *assessee company was duly reported in the audited accounts filed along with the return on 28.09.2010* which fact is discernible on perusal of schedule 18, Note 5 of the Notes of the accounts, which is placed at page 73 of the paper book. The relevant para is seen which is duly reproduced below:

> *"An application has been filed with the Hon'ble High Court at Kolkata in respect of merger of 'Vortal Undertaking' of M/s. Star Ya Kalakar. com Ltd with the company. As per the proposed scheme, the date of merger is effective March 1, 2010. In view of the above application being pending, no adjustments have been made for incorporation of the financial statements of the aforesaid 'Vortal Undertaking' in the books of the company and shall be done on receipt of requisite approval as per statute."*

9. It is noted that the scheme of demerger was duly approved by the Hon'ble High Court of Calcutta and Hon'ble High Court of Bombay on 08-03-2011 and 21-04-2011 respectively. The appointed date of the scheme was fixed on 01-03-2010, being the effective date of demerger, and falls within the relevant assessment year (AY 2010-11). Since the order of the *Hon'ble High courts were passed only on 08.03.2011 and 21.04.2011, the assessee filed a revised return of income on 09.06.2011* showing income of Rs. Nil after getting the approval of AGM of assessee company. Subsequent to the filing of revised returns by assessee, the case of the assessee was selected for scrutiny assessment under CASS. During the course of assessment, it was explained to the AO that pursuant to the scheme of demerger between the assessee and M/s. Star Ya Kalakaar.com Limited duly approved by the Hon'ble High court of Calcutta and

Hon'ble High Court of Bombay, the assessee company had acquired the "Vortal" division from M/s. Star Ya Kalakaar.com Limited w.e.f. 01.03.2010 and since the orders of the Hon'ble High Court were passed only in March/April, 2011, the assessee company after receipt of the order, immediately started preparing revised accounts taking into consideration the impact of Demerger (revised audited account dated 08.06.2011) and filed the revised returns prescribed u/s. 139(5) of the Act declaring 'Nil' income on 09.06.2011 after adjustment of brought forward losses relating to the demerged undertaking (Vortal division of M/s. Star Ya Klakaar.com Ltd.). Thereafter, on 29.08.2011, the assessee's case was selected for scrutiny and AO issued the statutory notice u/s. 143(2) and 142(1) of the Act and assessee participated in the assessment proceedings. However, the AO refused to accept the revised return for the following reasons:

i) Since there was no mention of the scheme of demerger pending before the Hon'ble High Court of Calcutta in the audited accounts of the assessee company.

ii) The revised return was filed by the assessee after its original return was processed u/s. 143(1) of the Act.

iii) Since the revised return was not filed within the time prescribed u/s. 139(5).

iv) Since M/s. SYK in its return of income has taken the benefit of loss of its demerged Vortal division, and assessee claiming the same loss through the revised return amounted to double deduction. Therefore, the AO did not allow the set off/adjustment and carry forward of accumulated losses and unabsorbed depreciation of the demerged company. On appeal the Ld. CIT(A) accepted the contention put-forth by the assessee and allowed the claim of the assessee. Revenue has assailed the action of Ld. CIT(A). We will now deal with the AO's reason for refusal of considering the revised return of income filed on 09.06.2011.

a) First of all, the AO did not accept the revised return for the reason that there was no mention in the audited accounts of the company of the scheme of demerger pending before the Hon'ble High Court of Calcutta. According to us, the AO was factually wrong in making this assertion. In this respect, we note that along with ROI filed u/s. 139(1) of the Act dated 28.09.2010, the assessee filed the audited financials and a

perusal of schedule 18, Note 5 to accounts placed at page 73 of the paper book reveals that the demerger application was pending before the Hon'ble High Court which fact was duly reported by the assessee company which is reproduced as under:

> *"An application has been filed with the Hon'ble High Court at Kolkata in respect of merger of 'Vortal Undertaking' of M/s. Star Ya Kalakar. com Ltd with the company. As per the proposed scheme, the date of merger is effective March 1, 2010. In view of the above application being pending, no adjustments have been made for incorporation of the financial statements of the aforesaid 'Vortal Undertaking' in the books of the company and shall be done on receipt of requisite approval as per statute."*

So, we find that this reason of the AO is factually incorrect and so it fails.

b) Coming to the next reason of AO for not accepting the revised return was that since the assessee has not filed the return of loss within time as prescribed u/s. 139(3) of the Act, he did not accept the revised return. We note that section 139(3) of the Act reads as under:

> *"If any person who has sustained a loss in any previous year under he head "Profits and gains of business or profession" or under the head "Capital gains" and claims that the loss or any part thereof should be carried forward under sub-section (1) of section 72, or section (2) of section 73, or sub-section (2) of section 73A or section (1) or sub-section (3) of section 74, or sub-section (3) of section 74A, he may furnish, within the time allowed under sub-section (1), a return of loss in the prescribed form and verified in the prescribed manner and containing such other particulars as may be prescribed, and all the provisions of this Act shall apply as if it were a return under sub-section (1)."*

10. Thus, from a reading of the above provision it is clear that section 139(3) of the Act stipulates that loss of previous year under the head "Income from Business/profession" and under the head "Capital Gains" cannot be carried forward unless the return of loss is submitted before the due date of filing the return u/s 139(1) of the Act. So, losses of earlier years for which return of loss need to be filed within the prescribed due date then only it can be carried forwarded to subsequent years.

11. However, it has to be kept in mind that this sub-section (3) of section 139 of the Act applies to the assessee who wants to avail it while filing the ROI within the stipulated time prescribed u/s. 139(1) of the Act. In the present case, the ROI was filed

by assessee on 28.09.2010. At that time the assessee was not having any loss of the previous year to be carried forward. Only after the demerger order of Vortel division of M/s. SYK Ltd. stood vested with the assessee company by virtue of Hon'ble High court order in March/April, 2011, the assessee filed revised ROI on 09.06.2011 and said losses does not pertain to the losses incurred by the assessee during the relevant previous year under the heads of income- (a) Income from Business/Profession, (b) Capital Gains.

12. We note that in this case the assessee has claimed the benefit of set off of losses and carry forward of losses of the demerged undertaking by virtue of section 72A( 4) of the Act and not u/s 72(1), section 73(2) section 73A(2) or sub-section (1) or sub-section (3) of section 74, or sub-section (3) of section 74A, being the sections mentioned in section 139(3) of the Act.

Section 72A(4) of the Income-tax Act, 1961 reads as under:

*"Notwithstanding anything contained in any other provisions of this Act, in the case of a demerger, the accumulated loss and the allowance for unabsorbed depreciation of the demerged company shall –*

*a) where such loss or unabsorbed depreciation is directly relatable to the undertakings transferred to the resulting company, be allowed to be carried forward and set off the hands of the resulting company ;*

*b) where such loss or unabsorbed depreciation is not directly relatable to the undertakings transferred to the resulting company, be apportioned between the demerged company and the resulting company in the same proportion in which the assets of the undertakings have been retained by the demerged company and transferred to the resulting company, and be allowed to be carried forward and set off in the hands of the demerged company or the resulting company, as the case may be. "*

Sub-section (4) of Section 72A provides that the eligible losses and unabsorbed depreciation of the demerged company shall be allowed to be carried forward and set off in the hands of the resulting company.

13. We have taken note of the order of the Hon'ble High Court which is found enclosed at page 69-155 of the paper book. Here we note at page 113 of the order wherein the Hon'ble High Court at Calcutta has clearly stated that the losses of the

demerged undertaking will be available to the resulting unit, being the assessee company in the present case. The relevant extract of the order is reproduced below:

> *"The Vortal Division of Star Ya Kalakaar.com Limited, the demerged company, has unabsorbed business losses and unabsorbed depreciation as per the Income Tax Act, 1961 eligible to be carried forward and set-off under section 72A(4) of the Income Tax Act, 1961 in the hands of resulting company, i.e. Padma Logistic and Khanij Private Limited as per follows"*

Hence, we are of the opinion that section 139(3) of the Act is not applicable to the facts of the case as contended by the AO and therefore this ground raised by the AO in rejecting the revised return filed by the assessee is baseless.

14. Another angle to it is that when the assessee filed the original ROI on 28.09.2010, the application for demerger was only filed before the Hon'ble High Court and it was only in the pipe line and the Hon'ble High court sanctioned the demerger scheme only in March/April, 2011, so the assessee filed revised ROI on 09.06.2011. So, when the assessee filed the original ROI on 28.09.2010, it cannot predict the outcome of its application for demerger filed before the Hon'ble High Court and it is quite impossible for the assessee to file any return as contemplated u/s. 139(3) of the Act. So, section 139(3) of the Act would not come in the way in the facts and circumstances of this case.

15. Moreover, it was brought to our notice by Ld. AR that in the instant case, the assessee had filed a 'nil' revised Return of income and not a loss return of income as misunderstood by the AO. In the revised return of income filed by the assessee on 09-06-2011, the assessee has claimed the benefit of set off of business losses and unabsorbed depreciation losses brought forward from earlier years by SYK Ltd in respect of its 'Vortal Undertaking" and carried forward the balance unabsorbed losses pertaining to the said demerged undertaking to subsequent years. A copy of acknowledgment of the return is found enclosed at page 202 of the paper book. This fact is also evident from reading the assessment order itself, at para 18, page 5 of the assessment order. We note that at page 5, para 18, the AO has reproduced the

computation of income contained in the revised return of income filed on 09-06-2011. In the said para, the AO has himself accepted that the assessee has computed revised total income as Nil after making adjustments on account of set off and carry forward of losses of the demerged undertaking pursuant to the scheme of demerger. We also note that the assessee had carried forward the balance unabsorbed depreciation to subsequent years. On such facts, we find that the AO erred in his understanding on this issue and erred in rejecting the revised return for this reason.

16. The other reason given by the AO to reject the revised return was that the assessee company has filed the revised return after receipt of intimation u/s. 143(1) of the Act and hence do not fulfill the conditions as laid down in sec. 139(5) of the Act which provision required the filing of revised return prior to completion of assessment. We note that in the instant case the assessee filed ROI on 28.09.2010 and intimation u/s. 143(1) was issued on 14.04.2011 and the revised ROI was filed on 09.06.2011, after the Hon'ble High Court's order of demerger was passed on (08.03.2011 and 21.04.2011) with effect from the appointed date 01.03.2010. So from the dates of events given above, it is clear that assessee could not have filed the revised return claiming set off u/s. 72A(4) of the Act of the demerged company without the Hon'ble High Court's sanctioned the demerger scheme on 08.03.2011 and 21.04.2011. The intimation was issued by the department u/s. 143(1) of the Act on 14.04.2011. So, the AO by raising this objection is asking the assessee to do an impossible thing. Be that as it may be intimation u/s. 143(1) of the Act is not strictly assessment, when the AO has passed in the relevant year scrutiny assessment u/s. 143(3) of the Act.

17. According to us, the right to file a revised return of income does not lapse with the issuance of intimation under section 143(1) of the Act. Intimation u/s 143(1) of the Act cannot be said to be a 'completion of assessment' and more so, when assessment has subsequently been completed under section 143(3) of the Act. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case CIT v Rajesh Jhaveri Stock Brokers Pvt. Ltd. (2007) 291 ITR 500 (SC) wherein it was held that,

*"The expressions 'intimation' and 'assessment order' have been used at different places. The contextual difference between the two expressions has to be understood in the context the expressions are used. The assessment is used as meaning sometimes 'the computation of income', sometimes 'the determination of the amount of tax payable' and sometimes 'the whole procedure laid down in the Act for imposing liability upon the tax payer'. In the scheme of things, as noted above, the intimation under section 143(1)(a) cannot be treated to be an order of assessment.*

18. The Hon'ble Calcutta High Court in Coates of India Ltd. v. Deputy CIT [1995] 214 ITR 498 (Cal) held that where the order under section 143(1)(a) is followed by a regular assessment under section 143(3), the order under section 143(1)(a), in so far as it is contrary to the regular assessment under section 143(3) ceases to be executable and becomes ineffective. Further, in Himgiri Foods Ltd v. CIT /2010} 231 CTR 470 (Gujarat) it was held by the Hon'ble High court of Gujarat that the provision mandates that if after the issuance of intimation, a revised return is furnished by an assessee under sub-section (5) of section 139 it is incumbent upon the Assessing Officer to process the revised return and amend the intimation issued under section 143(1)(a) of the Act on the basis of the revised return. At this stage there is no question of going into the validity of the return filed under section 139(5) of the Act if the revised return is filed within the prescribed period of limitation. An intimation under section 143(1)(a) of the Act cannot be equated with an assessment framed under section 143(3) of the Act and the Assessing Officer cannot refuse to process the revised return and modify the intimation in accordance with section 143(1B) of the Act.

19. Further reliance is also placed on the judgment of the Hon'ble Supreme Court in the case of Dalmia Power Ltd vs ACIT pronounced on 18-12-2019 wherein on identical facts it was held that,

*"It is incumbent upon Department to assess total income of successor in respect of previous assessment year after date of succession. Thus, where predecessor companies/transferor companies had been succeeded by appellants/transferee companies who had taken over their business along with all assets, liabilities, profits and losses etc.,*

*in view of provisions of section 170(1), Department was required to assess income of appellants after taking into account revised Returns filed after amalgamation of companies"*

20. In view of the above judgment, the AO was bound to accept the revised return filed by the assessee pursuant to the scheme of demerger sanctioned by the Hon'ble High Courts. Section 139(5) of the Act reads as under:

*"if any person, having furnished a return under sub-section (1) or in pursuance of a notice issued under sub-section (1) of section 142 discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier".*

21. Moreover, Section 139(5) of the Act states that an assessee can file a revised return of income before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier. In the instant case the assessee had furnished the revised return of income u/s. 139(5) of the Act on 09-06-2011. The last date of filing the revised return of income was 31-03-2012, being one year from the end of the relevant assessment year. And the assessment order u/s. 143(3) of the Act was passed on 28-03-2013. As such, the return of income was filed on time by the assessee. However, the AO has opined that since the intimation u/s. 143(1) of the Act was passed on 14-04-2011, the assessee lost its right to file a revised return thereafter, is on wrong understanding of law and so the reason of AO fails.

22. So in the light of the case laws discussed (supra), we are of the opinion that the intimation issued u/s 143(1) of the Act does not preclude the assessee from filing a revised return of income. More so, when assessment order u/s 143(3) of the Act was also passed in the present case of the assessee, thus the intimation u/s 143(1) of the Act loses its importance. And we find in this case the assessee has rightly filed the revised return of income u/s 139(5) of the Act within the stipulated time frame as per statute. And as such, this contention of the AO is incorrect in law.

23. The other reason given by the AO to reject the revised ROI was that both the demerging company and the resultant company have claimed the same loss resulting in double claim of set off and carry forward of losses pertaining to the demerged undertaking. On this allegation of the AO, we note from the submission of Ld. AR that in the present case, the AO has erred in his understanding that both the assessee and SYK Limited has claimed the business loss and unabsorbed depreciation of the demerged 'Vortal Undertaking' in the current year. The Ld. AR submitted that the AO noted that the assessee has filed a revised return of income claiming the benefit of set off and carry forward of losses pertaining to the demerged undertaking and also noted that M/s SYK Ltd had also claimed the same benefit of set off and carry forward of losses pertaining to the demerged undertaking in the original return filed by the said company. Hence, he opined that benefit of set off and carry forward of losses pertaining to the demerged undertaking was taken twice, both by the resulting company (assessee) and the demerged company (M/s SYK Ltd.). Accordingly, the revised return filed by the assessee was rejected by the AO.

24. Against this objection of AO the Ld. AR submitted that M/s. Star Ya Kalakaar.com Limited (SYK) has not taken the benefit of unabsorbed business loss or unabsorbed depreciation relating to the 'Vortal Undertaking' as alleged by the AO. The entire losses of the demerged undertaking were transferred to the resulting company on 01-03-2010 by virtue of the Hon'ble High Court orders. In this regard, Ld. AR pointed out to our attention a copy of the letter written by M/s SYK Ltd to its Assessing Officer namely Circle -9(3), Mumbai, which is found placed at page 61-68 of paper book wherein it has been clearly written that pursuant to the scheme of demerger being approved by the Hon'ble High Courts, the brought forward losses of the demerged undertaking gets transferred to the resulting company (here the assessee company) and thus to that extent, the company (M/s. SYK) shall not be entitled to take the benefit of brought forward losses relating to the demerged undertaking. Along with the letter, the company (M/s. SYK Ltd.) also submitted the revised computation of income for AY 2010-11 wherein the business losses and unabsorbed depreciation relating to the

demerged 'Vortal undertaking' was not carried forward to the subsequent years. M/s. SYK Ltd. also submitted the computation for the immediately succeeding year AY 2011-12 wherein again the business losses and unabsorbed depreciation relating to the demerged 'Vortal undertaking' was not taken into account. The relevant extract of the letter of M/s. SYK ltd submitted to its AO is reproduced below:

> *"Our company had brought forward losses as stated in Annexure "A" of the vortal division which, pursuant to section 72A(4) of the Income Tax Act, 1961 were retransferred to the resultant company M/s. Ppadma Logistic & Khanij Pvt. Ltd. during assessment year 2010-11 since the demerger scheme took effect from the date of merger i..e 01.03.2010.*
>
> *We had filed our original return for the assessment year 2010-11 on 04-10-2010. By this time the final order of the Hon'ble High Courts as stated above had not been received and hence the effect of the scheme of demerger could not be incorporated in the return of income. A suitable letter has been submitted to our Assessing Officer informing him about the scheme and its effects on carry forward losses.*
>
> *We hereby confirm that with effect from assessment year 2010-11 we are not entitled to any benefit of bought forward losses of the vortal undertaking since the same is statutorily and compulsorily transferred to M/s. Padma Logistic & Khanij Pvt. Ltd. With a view to explain the aforesaid issues, we are deputing our authorized representative Mr. Ravindra Khandelwal to appear before your goodself and explain the scheme and its impact along with all relevant documents to remove any ambiguity in the matter and the compatibility of the scheme with the Income Tax Act, 1961. "*

25. Further, we note that in response to the summon issued by the Assessing Officer of the assessee to M/s SYK Ltd, Shri Ravindra Khandelwal, FCA and A/R of M/s SYK Ltd also personally appeared before the AO and confirmed that the M/s SYK Limited has not claimed set off or carry forward of brought forward losses or unabsorbed depreciation attributable to the demerged undertaking. This fact is evident from the abstract of the order sheet enclosed at page 57-58 of the paper book. Moreover, vide submissions dated 14-03-2011 (refer page 17-21 of the paper book), the assessee has also submitted a letter received from M/s SYK Ltd addressed to the assessee's AO encompassing the facts of demerger and confirming that the brought forward losses of the demerged unit is retransferred to M/s. Padma Logistics and Khanij Pvt Ltd during AY 2010-11 since the demerger scheme took place w.e.f 01-03-2010. In the said letter it was also confirmed that w.e.f AY 2010-11, M/s SYK Ltd is not entitled to any benefit of brought forward losses of the demerged unit, (refer pages 18-21 of the paper

book.). Further, we note that the brought forward losses of the demerged unit was not carried forward by M/s SYK Limited to subsequent years, from the enclosed ITR of M/s SYK Ltd. for the immediately succeeding year, being AY 2011-12, found placed at pages 195-196 and 178-200 of the paper book. From a perusal it is evident that the losses of the demerged unit was neither set off during the year nor was carried forward to subsequent years.

26. However, the AO did not accept and was of the opinion that since M/s SYK Limited has not filed a revised return forgoing the set off set off and carry forward of brought forward losses and unabsorbed depreciation attributable to the demerged undertaking he held that both the assessee company and M/s SYK Ltd has taken the benefit of set off and carry forward of brought forward losses and unabsorbed depreciation attributable to the demerged undertaking and hence denied the claim of set off of losses of the demerged undertaking to the assessee.

27. However, it was brought to our notice that the demerged entity namely M/s. SYK has filed a revised computation for AY 2010-11, being the relevant year, before it's jurisdictional Assessing Officer without taking into consideration the brought forward claims and allowances pertaining to the demerged unit. So, the AO's allegation/objection cannot sustain. Moreover, it is noted that when the assessee has brought to the notice of AO the aforesaid facts, the AO being a quasi judicial authority ought to have been fair and just. In this advanced technological era, the AO (Kolkata) could have cross checked the veracity of the contention of M/s. SYK that they have filed revised return of income forgoing the claims of "Vortal Division" for AY 2010-11 without doing that AO has stuck to his allegation which action of AO cannot be countenanced. And in any way the department has the power vested in them to ensure that M/s. SYK does not get the benefit of M/s. Vortal Division for AY 2010-11 after it has filed the revised returns disclaiming the benefits. In the light of the above discussion, we do not find any merit in the objection raised by AO. Hence, there was

no double claim as alleged by the AO since the demerged company (SYK Ltd) has forsaken its claim with respect of brought forward losses of the demerged unit.

28. In the facts and circumstances discussed supra, we note that the scheme of arrangement enabling the demerger was drawn and approved by the respective Board of Directors of the assessee company and M/s. SYK and submitted under sections 391(2) and 394 of the Indian Companies Act, 1956 and was duly sanctioned by the Hon'ble High courts at Calcutta (on 08.03.2011) and Bombay (on 21.04.2011) specifying the appointed date as 01.03.2010. The question of relevancy of effective date/appointed date in a scheme of merger sanctioned by Hon'ble High Court, the Hon'ble Supreme Court held in the case of Marsh all Sons & Co. (India) Ltd. v. ITO (1997) (2) SCC 302, the Hon'ble Apex Court held that "Once the scheme had been sanctioned with effect from a particular date, it is binding on everyone including the statutory authorities. The scheme of demerger, as defined under the Income Tax Act, 1961 u/s. 2(19AA), is summarized as follows:

"As per section 2(19AA) of the Act "demerger" in relation to companies means the transfer of the undertaking in the following manner:

i) All the property of the undertaking, being transferred by the demerged company, immediately before the demerger becomes the property of the resulting company by virtue of the demerger;

ii) All the liabilities relatable to the undertaking, being transferred by the demerged company, immediately before the demerger, become the liabilities of the resulting company by virtue of the demerger.

iii) The property and the liabilities of the undertaking or undertakings begin transferred by the demerged company are transferred at values appearing in its books of account immediately before the demerger.

iv) The resulting company issues, in consideration of the demerger, its shares to the shareholders of the demerged company on a proportionate basis.

v) The shareholders holding not less than three fourths in value of the shares in the demerged company (other than shares already held therein

immediately before the demerger, or by a nominee for, the resulting company or, its subsidiary) become share holders of the resulting company or companies by virtue of the demerger, otherwise than a a result of the acquisition of the property or assets of the demerged company or any undertaking thereof by the resulting company;

vi) The transfer of the undertaking is on a going concern basis.

29. Once demerger is sanctioned by the Hon'ble High court the enabling provision is section 72A of the Act, which allows carry forward and set off of accumulated loss and unabsorbed depreciation allowance in cases of amalgamation or demerger etc. Sub-section (4) of section 72A provides that in the case of a demerger is compatible to the scheme as envisaged and defined u/s. 2(19AA) of the Act, the eligible accumulated loss and the allowance for unabsorbed depreciation of the demerged company shall be allowed to be carried forward and set off in the hands of the resulting company.

30. In the instant case, all the conditions stated in section 72A(4) read with section 2(19AA) of the Act has been fulfilled. In view of the same, assessee company is eligible to claim the set off of brought forward losses transferred from the demerged company M/s. SYK. Since the assessee company meets all the requirements contained in the Income-tax Act, 1961, all the carried forward losses and unabsorbed Depreciation in respect of M/s. Vortal Undertaking were transferred, pursuant to section 72A(4) of the Act, from the demerged company (M/s. Star Ya Kalakaar.Com Limited) to the resulting company (M/s. Padma Logistic & Khanij Private Limited) w.e.f. the appointed date i.e. 01.03.2010. The claim of assessee is as per law and the AO erred in refusing to consider the Revised Return of Income so, the Ld. CIT(A) rightly allowed the claim of assessee and, therefore, the ground nos. 1 and 2 raised by the Revenue lacks merit and, therefore, dismissed.

31. Ground no. 3 of revenue's appeal is against the action of Ld. CIT(A) in restricting the addition u/s 14A upto Rs. 77,678/- as against Rs.18,32,751/- without

appreciating the observation of the A.O. Briefly stated facts are that on perusal of the original computation of income, the AO noted that assessee has earned dividend income of Rs.77,50,000/-, exempt u/s 10(34) of the Act and has suo moto disallowed a sum of Rs. 77,500/- u/s 14A of the Act. However, in the revised return of income filed on 09-06-2011, the assessee has declared dividend income of Rs.77,93,336/- and suo moto disallowed a sum of Rs.77,933/- u/s 14A of the Act. The AO opined that section 14A of the Act provides for disallowance of the expenditure in relation to income which does not form part of the total income and applied Rule 8D and computed an additional disallowance ofRs.18,32,751/- u/s 14A of the Act as follows:

| | | |
|---|---|---|
| Rule 8D(2)(i) Expenditure directly relating to exempt income | | Rs. 77,500/- |
| Rule 8D(2)(i) Amount of expenditure by way of interest | | Rs.9,58,898/- |
| Rule 8D(2)(i) 0.5% of average value of investments | | Rs.8,72,853/- |
| | TOTAL | Rs.19,10,251/- |
| Less: Amount suo moto disallowed by the assessee | | Rs. 77,500/- |
| | | Rs.18,32,751/- |

32. Aggrieved, assessee preferred an appeal before the Ld. CIT(A) who gave relief to the assessee by holding as under:

> *"The Assessing Officer, in paragraph 26.1.3 of the assessment order has stated that:*
>
> > *"Whereas, as per the provision of S. 14A of the Act, there are laid down rules to be adopted to compute the amount of expenses to have been involved to earn such exempted income for disallowance. It is specifically stated in the Rule 8D of the Income Tax Rules, 1962.*"
>
> *It thus appears that the Assessing officer was of the view that the provisions of Section 14A are mandatorily required to be adopted in computing this disallowance under section 14A of the Income Tax Act, 1961. This is not correct. The provisions of section 14A can be invoked only if the Assessing officer, having regards to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under the Act.*
>
> *There is no doubt that the assessee has earned dividend income amounting to Rs.77,50,000 which is exempt from tax and therefore, expenses in connection with such exempt income ought to be disallowed. The assessee has represented that the investments made by the assessee in shares of Aryan Mining & Trading Corporation Pvt. Ltd., Electro Steels Castings Limited, Ganhitya Housing (P ) Limited and Ganit Pragnaya Housing (P) Limited made during the year were strategic in nature and hence, on the basis of various citations referred to by the assessee in its representation, could not be brought under the ambit of disallowance under Section 14A. The claim of the assessee appears authentic to some extent. As far as investments in Aryan Mining &*

*Trading Corporation Pvt. Ltd. is concerned, the same appears to be strategic in nature. From the Audited Statement of Accounts of the assessee it is apparent that most of the income of the assessee in the assessment year under consideration is arising out of sale of iron ore and Aryan Mining & Trading Corporation Pvt. Ltd. is a company which is engaged in the mining of iron ore. However, with respect to other investments, the assessee has not been able to properly substantiate that the investment is strategic in nature.*

*Such other investments cannot be treated as strategic one since they, primarily, do not sync with the business of the assessee. The assessee has claimed that its company is engaged in the business of mining which is evident from the Audited Statement of accounts and at least one investment i.e. investment made in Aryan Mining and" Trading Corporation Pvt. Ltd. amounting to Rs.18,88,20,000 (previous year Rs.12,92,50,000) is a strategic one . Therefore, other investments made apart from this investment are perhaps not strategic and hence provisions of Section 14A ought to be applied.*

*Further, from the Audited Statement of accounts it is evident that the self-owned funds of the assessee company are in excess of Rs. 35 crores whereas the investments are as at the end of the year amount to Rs.20.56 crores. Therefore the claim of the assessee that the availability of interest free funds with the assessee is much more than the amount of investment is correct. Further, as far as unsecured loans taken by the assessee is concerned on which the assessee has paid interest, despite increase in investments, have fallen from Rs.313 lakhs as at the beginning of the year to Rs.48 lakhs as at the end of the, year which shows that the additional investment made during the year is out of self-owned funds of the assessee company. Thus there should be no disallowance on the interest paid by the assessee.*

*In the light of the aforesaid discussion, I hereby limit disallowance under section 14A to investments made by the company in companies other than investment made in Aryan Mining and Trading Corporation Pvt. Ltd. as per follows:*

| *Particulars* | *Rs.* |
|---|---|
| *Opening investments (other than investment made in Aryan Mining & Trading Corporation Pvt. Ltd.* | *1,43,00,500* |
| *Closing investments (other than investment in Aryan Mining & Trading Corporation Pvt. Ltd.* | *1,67,70,500* |
| *Total* | *3,10,71,000* |
| *Average thereof* | *1,55,35,500* |
| *½% thereof* | *77,678* |

*Hence I limit the disallowance to Rs.77,678 and the balance amount of disallowance is not sustained."*

33. Having heard both the parties on this issue, we do not subscribe to the reason given by the Ld. CIT(A) that since the assessee had strategic investment in the M/s. Aryan Mining & Trading Corporation Ltd., the investments made in this company cannot be brought into the ambit of disallowance u/s. 14A of the Act for the simple reason that the Hon'ble Supreme Court in Maxopp (2018) 91 taxmann.com 154 (SC)

has not accepted the "dominant object" theory canvassed by the assessees and held as under:

> *"31. We have given our thoughtful consideration to the argument of counsel for the parties on both sides, in the light of various judgments which have been cited before us, some of which have already been taken note of above.*
>
> *32. In the first instance, it needs to be recognised that as per section 14A(l) of the Act, 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.*
>
> *33. There is no quarrel in assigning this meaning to section 14A of the Act. 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 of the Act. 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. We have 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 assessees 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.*
>
> *34. 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 assessees would apply while interpreting Section 14A of the Act or we have to go by the theory of apportionment. We are of the opinion that 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 of the Act 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 of the Act. This is so held in Walfort Share & Stock Brokers (P) Ltd. relevant passage whereof is already reproduced above, for the sake of continuity of discussion, we would like to quote the following few lines therefrom.*
>
> > *"The next phrase is, "in relation to income which does not form part of total income under the Act". It means that if an income does not form part of total*

*income, then the related expenditure is outside the ambit of the applicability of section 14A.*

** *** ***

*The theory of apportionment of expenditure between taxable and non-taxable has, in principle, been now widened under section 14A."*

*35. The Delhi High court, therefore, correctly observed that prior to introduction of Section 14A of the Act, 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. We, thus, agree with the view taken by the Delhi High Court, and are not inclined to accept the opinion of Punjab & Haryana High Court which went by dominant purpose theory. 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 assessees to have controlling interest in the investee companies have to fail and are, therefore, dismissed."*

34. However, we do agree with the Ld. CIT(A) that no disallowance under Rule 8D(2)(ii) be resorted to, since we note that own funds of the company was to the tune of Rs.35,48,93,349/- as compared to investments of only Rs.20,55,90,500/- as at the end of the year. As such, it can be safely presumed that the assessee was having sufficient own funds to invest in shares. And since the assessee was having a common fund consisting of both own funds and borrowed funds and in case the own funds are sufficient to invest in non-business activities, a presumption drawn is that the said investment is made out of own funds. For this proposition of law, we rely on the judgment of Hon'ble Bombay High court in the case of CIT Vs. Reliance Utilities & Power Ltd. 313 ITR 340 and hold that no disallowance under rule 8D(2)(ii) is warranted. However, we are of the opinion that disallowance under Rule 8D(2)(iii) needs to be recomputed accordingly as per the law laid in REI Agro Ltd. Vs. DCIT (2013) 36 CCH0360 (Kol. Trib.) wherein it was held that –

*"Thus, not all investments become the subject matter of consideration when computing disallowance u/s. 14A read with rule 8D. The disallowance u/s. 14A read with rule 8D is to be in relation to the income which does not form part of the total income and this can be done only by taking into consideration the investment which has given rise to this*

*income which does not form part of the total income." Under the circumstances, the computation of the disallowance under section 14A read with rule 8D(2)(iii), which is issue in the appellant's appeal, is restored to the file of the AO for recomputation in line with the direction given above."*

So, we set aside the order of the Ld. CIT(A) on this issue for the limited purpose of recomputing the disallowance as per Rule 8D(2)(iii) as discussed (supra) and order the AO to do so and allow partly this ground of appeal of the revenue as directed supra.

35. Ground no. 4 of the revenue's appeal is against the action of Ld. CIT(A) in restricting the addition on account of disallowance of rent upto Rs.2,16,000/- as against Rs.11,82,000/-. During the year under consideration, the assessee debited a sum of Rs.30,75,000/- as rent in its P&L Account. Though according to assessee during the course of assessment proceedings, details of such rent debited were furnished before the AO. However, the AO opined that all the premises were not used for assessee's business purposes since rent agreements were not produced and according to him, other concerns were also functioning on the same property and, therefore, disallowed a sum of Rs.11,82,000/- out of the total rent paid of Rs.30,75,000/-. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who gave partial relief to the assessee by holding as under:

*"The assessee has taken various premises on hire and paid rent on the same. The same has been detailed in the assessment order as well s in various submissions filed by the assessee during the course of appellate hearing. The assessee has also filed copies of rental agreements as well as evidence of payment of rent. The Assessing Officer, on the basis of his presumption that some of the rent paid by the assessee were not for business purposes, had disallowed rent' amounting to Rs.11,82,000 out of total rent paid Rs.30,75,000. The assessee had filed detailed submissions and a report was sought from the Assessing Officer in this regard,. From the Assessment records, it is evident that the Assessing Officer has not questioned the genuinety of payment made for rent. However, he was not convinced about the usage of such property for business purposes and hence resorted to addition of Rs. 11,82,000. In his remand report he has also raised some technical issues.*

*1 have carefully perused the Remand Report submitted by the Assessing Officer and the submissions filed by the assessee in this regard. I do not find any infirmity in the claim of the assessee. The assessee has paid rent and copies of rental agreement and evidence of payment are available. The Assessing Officer has raised an issue with respect to non registration or delayed registration of property by the Landlords which are non consequential as far as revenue is concerned. It is well settled law that the assessing authority cannot step into the shoes of the assessee and decide the business expediency of a business expenditure. In this case it has to be proved that the expenditure - that of rent-*

*was the purpose of the appellant's business. This has been brought on record by the appellant and has nowhere been refuted by the AO. However, in the case of rent paid to Nathmall Girdharilal Steels Ltd. the assessee has failed to deduct TDS on rent paid for two properties @ 1,08,000 each totalling Rs.2,16,000 and the same ought to be disallowed under section 40(a)(ia). Therefore, I limit the disallowance to Rs.2.16.000 and the balance rent Rs.9,66,000 is allowed."*

Aggrieved by the aforesaid action of Ld. CIT(A), the revenue is before us.

36. The Ld. AR drew our attention to the fact that the assessee had filed the details of the break up of Rs.11,82,000/- which was disallowed by the AO is as follows and contended that it was exclusively used by the assessee for business purposes.

| Name of the owner to whom rent paid | Purpose of taking the premises on rent | Rent paid (Rs.) |
|---|---|---|
| Atryee Housing (P) Ltd. | Flat at Barbil, Orissa (site of mines) | 60,000 |
| Nathmall Girdharill Steels Ltd | Registered office of the assessee | 1,08,000 |
| Agam Housing Pvt. Ltd. | Land at Rajarhat for parking of trucks and other goods vehicles | 1,08,000 |
| Anshumati Housing (P) Ltd. | Land at Rajarhat for parking of trucks and other goods vehicles | 1,08,000 |
| Dover Properties (P) Ltd. | Flat for accommodating visiting staff and othrs at 14/2, Burdwan Road, Kolkata-700 0027. | 3,00,000 |
| Aisawat Housing (P) Ltd. | Land at Rajarhat for parking of trucks and other goods vehicles | 3,00,000 |
| Sukumar Bose | Railway siding, Barajmanda, Barbil, Orissa | 90,000 |
| Nathmall Girdharill Steels Ltd | Record Room for keeping old files of the assessee company at 159, J. N. Mukherjee Road, Howrah-6. | 1,08,000 |
| | Total | 11,82,000/- |

37. Having heard both the parties, we note that the Ld. CIT(A) has given a clear finding of fact that "the assessee has paid rent and copies of rental agreement and evidences of payment are available" and this finding of fact has not been controverted in the grounds of appeal raised by the revenue which reads as under:

*4) Whether on the basis of facts & circumstances of the case and in law the Ld. CIT(A) erred in restricting the addition on account of disallowance of rent upto Rs.2,16,000/- as against Rs. 11,82,000/- without appreciating the observation of the A.O.*

38. Since the department while preferring the grounds of appeal has not assailed the factual finding rendered by the Ld. CIT(A), the result is that the assessee on the strength of the rental agreements referred to by the Ld. CIT(A) establishes the relation of assessee as that of tenant with the land/building owner. With this factual finding in the backdrop, when we peruse the impugned order of the Ld. CIT(A) we note that the Ld. CIT(A) has taken note that the AO has not refuted the claim of the assessee that the expenditure/rent paid was for the purpose of the business. This factual assertion of Ld. CIT(A) has also not been assailed before us which is evident from the ground raised by the department. So, the factual finding of the Ld. CIT(A) crystallizes and therefore, the order of the Ld. CIT(A) is based on material and cannot be termed as perverse. Therefore, we confirm the action of the Ld. CIT(A) and dismiss the ground of appeal of revenue.

39. Before parting, it is noted that the order is being pronounced after ninety (90) days of hearing. However, taking note of the extraordinary situation in the light of the COVID-19 pandemic and lockdown, the period of lockdown days need to be excluded. For coming to such a conclusion, we rely upon the decision of the Co-ordinate Bench of the Mumbai Tribunal in the case of *DCIT vs. JSW Limited in ITA No. 6264/Mum/2018 & 6103/Mum/2018, Assessment Year 2013-14, order dt. 14th May, 2020.* In light of the above discussion, the appeal of revenue is partly allowed for statistical purposes.

40. In the result, the revenue's appeal is partly allowed for statistical purposes.

Order is pronounced in the open court on 22nd May, 2020

| | |
|---|---|
| Sd/- | Sd/- |
| (J. Sudhakar Reddy) | (Aby. T. Varkey) |
| Accountant Member | Judicial Member |

Dated : 22nd May, 2020

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – ACIT, Circcle-13(2), Kolkata.
2. Respondent – M/s. Padma Logistics & Khanij Pvt. Ltd., P-2, New CIT Road, 3rd floor, Kolkata-700 073.
3. The CIT(A)-14, Kolkata (sent through e-mail)
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

/True Copy, By order,

Asstt. Registrar.