

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA
[Before Shri K.K.Gupta, A.M. & Shri George Mathan, J.M.]

I.T.A. No. 1331/Kol/2011 : Assessment Year : 2008-09

REI Agro Ltd., Kolkata -Vs- DCIT, Central Circle-XXVII, Kol.
(PAN : AABCR 4929H)
(Appellant) (Respondent)

I.T.A. No. 1423/Kol/2011 : Assessment Year : 2008-09

DCIT, Central Circle-XXVII, Kol. -Vs- REI Agro Ltd., Kolkata
(Appellant) (Respondent)

Date of concluding the hearing : 22.05.2013

Date of pronouncing the Order : 19.06.2013

Appearances :

For the Department : Shri L.K.S. Dehiya, CIT(DR)

For the Assessee : Shri Ravi Tulsian, FCA

ORDER

Per Shri George Mathan, J.M.

The ITA No.1331/Kol/2011 is an appeal filed by the Assessee and the ITA No.1423/Kol/2011 is an appeal filed by the Revenue against the order of the CIT(A), Central-I, Kolkata in Appeal No.03/CC-XXVII/CIT(A),C-II/10-11 dated 2nd August, 2011 for the assessment year 2008-09.

2. Shri L.K.S.Dehiya, CIT,D.R appeared on behalf of the Revenue and Shri Ravi Tulsian. FCA appeared on behalf of the assessee.

3. In the assessee's appeal, the assessee has raised the following grounds:

"1. The orders passed by the lower authorities are unwarranted, arbitrary, without proper reasons, invalid and bad in law, in so far as they are against the interest of the appellant company.

2. On the facts and in the circumstances of the case, the learned CIT(A) erred in holding that proportionate management and administrative

expenses are required to be deducted while computing exempt income or dealing with investment matter and in that view, in sustaining the disallowance of Rs.26,09,386/- under Rule 8D(2)(iii) of the Income Tax Rules.

3. On the facts and in the circumstances of the case, the learned CIT(A) erred in sustaining disallowance of Rs.26,09,386/- u/s 14A of the Income-tax Act, 1961, by applying the provisions of Rule 8D(2)(iii) of the Income Tax Rules against meager Dividend income of Rs.1,32,638/- only.

4. The appellant craves leave to amend, alter, modify, add to, abridge and/or rescind any or all the above grounds in future.”

3.1 In the Revenue's appeal, the Revenue has raised the following grounds:

“01. That in the facts and circumstances of the case and in law, the Learned CIT(A) has erred in law in deleting the disallowance of Rs.37727610/- in respect of interest made u/s.14A of the Act read with Rule 8D of IT rules by holding that the investment of shares was made out of own funds of the assessee without considering that the linkage between the funds borrowed and the investments, the income of which is exempt, was not established by the assessee.

02. That in the facts and circumstances of the case, the Ld. CIT(A) has erred in law in deleting the disallowance of Rs.3,77,27,610/- in respect of interest made u/s.14A r/w Rule 8D of the Act, in view of the decision of the Hon'ble Kolkata High Court in the case of Danukha & Sons –Vs- CIT (Central)-I, Kolkata reported in 201 Taxman 105 (Kol) (Mag), wherein it has been held that 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 can make proportionate disallowance.

03. That the Department craves leave to add, modify or alter any of the above ground(s) of appeal and/or adduce additional evidence at the time of hearing of the case.”

4. At the time of hearing, it was submitted by the Id. D.R. that the assessee is a company which is doing the business of rice processing, power generation and retail sale. It was a submission that during the year, the assessee had received dividend income of Rs.1,32,638/-, which was claimed as exempt. The assessee had

not debited any expenses in respect of expenditure incurred for earning such exempt income. The AO has invoked the provisions of section 14A read with rule 8D of the Act and has made a disallowance of an amount of Rs.4,03,36,996/-. It was a submission that on appeal, the Id. CIT(A) had reduced the disallowance under section 14A to Rs.26,09,386/-. It was a submission that against the relief granted of Rs.4,03,36,996/-, the Revenue has filed the appeal in ITA No.1423/Kol/2011 and in respect of disallowance confirmed by the CIT(A) to the extent of Rs.26,09,386/-, the assessee has filed the appeal in ITA No.1331/Kol/2011. It was a submission that the Id. CIT(A) had considered the various case laws to come to the conclusion that no disallowance under section 14A would be made. It was a submission that the case laws relied on by the Id. CIT(A) related to the period prior to the assessment year 2008-09, being the assessment year from which the provisions of Rule 8D came into application. It was a submission that the assessee had invested Rs.103 crores in shares during the relevant assessment year. It was a further submission that there was no increase in the share capital during the relevant assessment year. It was a submission that however, the assessee's loan account had increased by Rs.122 crores. It was, thus, the submission by the Id. D.R. that the investment in the shares was out of interest-bearing funds. It was a submission that the Id. CIT(A) had in his order in para 4.1 held that the assessee was having a common pool in respect of its own fund as also its loan fund. It was a submission that as the assessee had used interest-bearing fund for purchasing shares and the assessee had paid interest on the same, the disallowance as made by the AO by invoking the provisions of section 14A read with Rule 8D was liable to be upheld. It was a further submission that though the AO has in his assessment order specifically held that there is no disallowance liable to be made under rule 8D(i), disallowance under rule 8D(ii) had been made on the basis of the computation provided thereunder, as also under Rule 8D(iii). It was a submission that in view of the decision of the Hon'ble Jurisdictional High

Court in the case of Danukha & Sons –Vs- CIT (Central)-I, Kolkata reported in 201 Taxman 105 (Kol), it was for the assessee to show the source of acquisition of the shares by production of the materials that those were acquired from funds available in the hands of the assessee at the relevant point of time without taking benefit of any loan. The assessee having not shown such availability of funds, the disallowance was liable to be upheld.

4.1 He also relied upon the decision of the Hon'ble Kerala High Court in the case of Leena Ramchandran reported in 339 ITR 296. It was a submission that the order of the Id. CIT(A) was liable to be reversed to the extent that he has reduced the disallowance.

5. In reply, the Id. A.R. submitted that as per the provisions of section 14A(2), the AO was to determine the amount of expenditure incurred in relation to such income which does not form part of the total income, in accordance with such method as may be prescribed. It was a further submission that there was also supposed to be satisfaction to the correctness of the claim of the assessee. It was a submission that at the outset, the AO has not shown that the claim of the assessee that there is no amount disallowable was wrong nor is there any satisfaction recorded to such effect. On this point, the Id. D.R. submitted that the Coordinate Bench of this Tribunal has, in the case of Champion Commercial reported in 26 Taxman.com 342, held that it is only where the assessee offers a disallowance under section 14A, the AO is required to record satisfaction. When no expenditure is offered by the assessee, the AO need not record such satisfaction.

5.1 It was submitted by the Id. A.R. that as per the provisions of section 14A(3), the provisions of sub-section (2) also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to the income which does not form part of the total income under the Act. In the return filed by

the assessee, there is no provision for making a claim that there is no expenditure. The fact that the assessee did not make any disallowance under section 14A, in the return filed itself was the claim that no expenditure has been incurred. The Id. A.R. further drew our attention to P&L a/c. of the assessee for the year ended on 31.03.2008 as also the balance-sheet, which were at pages 78 to 95 of the paper book. It was a submission that the shareholders' funds in the balance-sheet showed that the share capital had increased by Rs.4 crores during the relevant assessment year and the Reserves and Surplus had gone up by Rs.112 crores. The loan fund had increased by Rs.122 crores. It was a submission that the loan funds were used for the acquisition of assets as also towards working capital and in fact the fixed assets net block increased by Rs.116 crores, after considering a depreciation of 57 crores. It was, thus, a submission that the actual increase in the fixed assets when compared to the net block for the year ended on 31.03.2007 was 174 crores. It was a submission that the profits available to the assessee before taxation for the assessment year 2008-09 was Rs.130 crores and the profit, after taxation, was Rs.109 crores. The amount available for appropriation for the assessment year 2008-09 was Rs.128 crores. He further drew our attention to the investments during the year, which is shown at page 84, being the investment in Varrsana Ispat Limited at Rs.103 crores. It was a submission that the other investments, which were there as on the beginning of the assessment year was to an extent of Rs.58,27,282/-. It was a submission that it is out of the shares of this investment of Rs.58,27,282/-, the assessee had received the dividend income and not on the investment of Rs.103 crores. The Id. A.R. further drew our attention to page 362 of the paper book, which was the copy of the loan sanction document from the State Bank of Bikaner and Jaipur dated 22.12.2007 for letter of credit of Rs.175 crores. It was a submission that this was on the security of the stock available with the assessee. He further drew our attention to page 370 of the paper book, which was the letter from Allahabad Bank for reviewing and enhancing the limits for working

capital from the existing Rs.250 crores to Rs.500 crores. It was a submission that this was also enhanced working capital limit, which was to be released only after the tie-up of the entire limit of Rs.1800 crores from the Consortium. This was also for the Letter of Credit purpose. He further drew our attention to pages 372, 374 and 381, which were all credit sanction advices given by the various banks, being United Bank of India, Indian Overseas Bank. It was a submission that all these were for L.C. only. It was a submission that all the loans were directly related to the business of the assessee. The Id. A.R. further drew our attention to the decision of the Coordinate Bench of this Tribunal in the case of Balarampur Chini Mills Ltd. 140 TTJ (Kol) 73, wherein the Tribunal has held that section 14A and Rule 8D can be invoked only when the AO is not satisfied with regard to the account of the assessee that the claim of expenditure made by the assessee is not correct and the claim made by the assessee that no expenditure has been made in relation to income, which does not form part of total income under the Act. Where the assessee has explained that the share capital and reserves, that is its own funds, were utilized for the purpose of investment in shares for earning dividend income which has not been negated by lower authorities and there is no linkage or nexus between the funds borrowed by the assessee and the impugned investments, no interest expenditure can be disallowed by mechanically applying the provisions of rule 8D. It was a submission that the decision of the Hon'ble Jurisdictional High Court in the case of Danukha & Sons (*supra*) would not apply in so far as in that case the assessee was not able to show that the investment was made out of its own independent non-interest bearing funds. It was a submission that no disallowance under section 14A could be made.

6. We have considered the rival submissions. A perusal of the provisions of section 14A, more specifically sub-section (2), shows that if the AO is not satisfied with the correctness of the claim of the assessee, then the AO shall determine the

amount of expenditure incurred in relation to such income, which does not form part of total income under the Act. For this the method is prescribed in rule 8D. The provision of section 14A, sub-section (3) specifies the provision of 14A(2) would also apply where the assessee makes a claim that there is no expenditure incurred. This is because if the assessee does not make a disallowance under section 14A in its computation of total income, when filing the return, then if sub-section (3) was not available, the AO might not be able to make a disallowance under section 14A. Thus, where the assessee makes a claim that only a particular amount is to be disallowed under section 14A or where the assessee does not make a disallowance under section 14A, if the AO proposes to invoke the section 14A, he is to record a satisfaction on that issue. This satisfaction cannot be a plain satisfaction or a simple note. It is to be done with regard to accounts of the assessee. In the present case, there is no satisfaction by the AO and consequently, in view of the decision of the Coordinate bench of this Tribunal in the case of Balarampur Chini Mills Ltd. referred to *supra*, no disallowance under section 14A can be made.

7. Now coming to the merits of the issue. A perusal of the provision of section 14A(1) clearly shows the wordings, “in relation to the income which does not form part of the total income under this Act”. In the present case, this income, which does not form part of the total income under the Act, is the dividend income of Rs.1,32,638/-. Therefore, if any disallowance is to be made in respect of expenditure incurred, it should be in relation to this dividend income of Rs.1,32,638/-. If an assessee has invested in shares, which could get dividend or there is investment which generates dividend income or exempt income as also investment which does not generate exempt income, it is only such investments in respect of which the dividend income or exempted income has been earned which can be considered when computing the disallowance under section 14A read with

rule 8D. A perusal of the provisions of rule 8D also talks of satisfaction in sub-rule (1). Rule 8D(2) has three sub-parts. The first sub-part i.e. (i) deals with the amount of expenditure directly relating to the income which does not form part of the total income. That issue is not in dispute here and therefore, we do not go into it in this case. In second sub-part i.e.(ii), it is a computation provided in respect of expenditure incurred by the assessee by way of interest during the previous year which is not directly attributable to any particular income or receipt. This clearly means that if there is any interest expenditure, which is directly relatable to any particular income or receipt, such interest expenditure is not to be considered under rule 8D(2)(ii). In the assessee's case here the interest has been paid by the assessee on the loans taken from the banks for its business purpose. There is no allegation from the banks nor the AO that the loan funds have been diverted for making the investment in shares or for non-business purposes. Further rule 8D(2)(ii) clearly is worded in the negative with the words "not directly attributable". Thus for bringing any interest expenditure, claimed by the assessee, under the ambit of rule 8D(2)(ii) it will have to be shown by the AO that the said interest is not directly attributable to any particular income or receipt. Why we say here that it is to be shown by the AO is on account of the words in Rule 8D(1) being "where the Assessing Officer, is not satisfied with.

(a)

(b)

in relation to income....., he shall determine the amount of expenditure in relation to such income in accordance with the provisions of sub-rule (2).

In the assessee's case, admittedly, the assessee has substantial capital. The increase in the capital itself is to an extent of Rs.4 crores and in respect of reserves and surplus, the increase is Rs.112 crores. The loans taken during the year admittedly are for the letters of credit and the assessee is bound to provide the bank stock

statement and other details to show the utilization of the loans. No bank would permit the loan given for one purpose to be used for making any investment in shares. The Id. CIT(A), it is noticed that after considering these facts that the assessee had not used any of its borrowings for purchasing the shares, has deleted the disallowance. On this ground itself, the deletion as made by the Id. CIT(A) is liable to be confirmed and we do so.

7.1 In any case, the working of the disallowance under sub-part (ii) of sub-clause (2) of rule 8D as made by the AO also suffers from a substantial error in so far as in the said rule in regard to the numerator B, the words used are the average value of the investment, income from which does not form or shall not form part of the total income as appearing in the balance-sheet as on the first day and in the last day of the previous year. Here the AO has taken into consideration the investment of Rs.103 crores made this year, which has not earned any dividend or exempt income. It is only the average of the value of the investment from which the income has been earned which is not falling within the part of the total income that is to be considered. This is why the question of satisfaction is provided in section 14A and rule 8D(1), that relates to the accounts of the assessee. Thus, it is not the total investment at the beginning of the year and at the end of the year, which is to be considered but it is the average of the value of investments which has given rise to the income which does not form part of the total income which is to be considered. A question may arise as to why the term “average of the value of investment” is then used. The term average of the value of investment would be to take care of cases where there is the issue of dividend stripping. In any case, as we have already held that the assessee has not incurred any expenditure by way of interest during the previous year, which is not directly attributable to any particular income, the findings of the Id. CIT(A) on the issue stand confirmed and consequently the appeal filed by the Revenue stands dismissed.

8. In respect of provisions of rule 8D(2)(iii), which is the subject-matter of the appeal in the assessee's hand, a perusal of the said provision shows that what is disallowable under rule 8D(2)(iii) is the amount equal to ½ percentage of the average value of investment the income from which does not or shall not form part of the total income. Thus, under sub-clause (iii), what is disallowed is ½ percentage of the numerator B in rule 8D(2)(ii). Again this is to be calculated in the same line as mentioned earlier in respect of Numerator B in rule 8D(2)(ii) of the Act.

8.1 Thus, not all investments become the subject-matter of consideration when computing disallowance under section 14A read with rule 8D. The disallowance under section 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 assessee's appeal, is restored to the file of the AO for recomputation in line with the direction given above. No disallowance under section 14A read with rule 8D(2)(i) and (ii) can be made in this case.

9. In the result, the appeal filed by the Revenue stands dismissed and the appeal filed by the assessee stands partly allowed for statistical purposes.

This Order is pronounced in the Court on 19th June, 2013.

Sd/-
(K. K. Gupta)
Accountant Member

Sd/-
(George Mathan)
Judicial Member

Dated : 19th June, 2013

Order pronounced by:

Sd/- Sd/-
A.M. J.M.
(NSS) (GM)

Copy of the order forwarded to:

1. REI Agro Ltd., 46C, Chowringhee Road, Kolkata - 700 071
2. DCIT, Central Circle-XXVII, Kolkata
3. The CIT(A),
4. CIT,
5. DR, Kolkata Benches, Kolkata

True Copy,

By order,

Asstt. Registrar, ITAT, Kolkata

Talukdar(Sr.P.S.)

आयकर अपीलीय अधीकरण, न्यायपीठ – “बि” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
(समक्ष)Before श्री महावीर सिंह, न्यायीक सदस्य एवं/and श्री, लेखा सी.डी.राव सदस्य)
[Before Hon’ble Sri Mahavir Singh, JM & Hon’ble Shri C. D. Rao, AM]

आयकर अपील संख्या / I.T.A No. 504/Kol/2011

निर्धारण वर्ष/Assessment Year : 2008-09

M/s. Balarampur Chini Mills Ltd.
(PAN AAACB 9373 Q)
(अपीलार्थी/Appellant)

Vs Deputy Commissioner of Income-tax,
Central Circle-XIX, Kolkata.
(प्रत्यर्थी/Respondent)

For the Appellant: Shri S. K. Tulsian
For the Respondent: Shri Sumanta Sinha

आदेश/ORDER

Per Mahavir Singh, JM (महावीर सिंह, न्यायीक सदस्य)

This appeal by assessee is arising out of the order of CIT(A), Central-II, Kolkata in Appeal No.90/CC-XIX/CIT(A)C-II/10-11 vide dated 23.02.2011. The assessment was framed by DCIT, Central Circle-XIX, Kolkata u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for Assessment Year 2008-09 vide his order dated 10.11.2010.

2. The first issue in this appeal of assessee is against the order of CIT(A) confirming the action of AO disallowing expenditure attributable to exempted income, dividend, by invoking provisions of section 14A of the Act r.w.s. Rule 8D of Income-tax Rules, 1962 (hereinafter referred to as “the Rules”). For this, the assessee has raised following ground nos. 1, 2 and 7:

“1. That, on the facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming the Ld. A.O.’s order disallowing a sum of Rs.3,90,63,218, as expenditure attributable to exempt dividend income of Rs.1,08,72,574 in terms of Sec.14A of the I.T. Act, 1961, read with Rule-8D of the I.T. Rules,1962.

2. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming Disallowance of Rs.3,90,63,218/- U/s.14A of the Income Tax Act, 1961, by applying Rule-8D of the Income Tax Rules, 1962, disregarding the computation of Disallowance made by the Assessee at Rs. 1,49,995/- duly supported by the Certificate obtained from its Statutory Auditors.

7. That, on the facts and in the circumstances of the case, the Ld. CIT(A) erred in sustaining the addition of Rs.3,90,63,218 being the disallowance u/s.14A of the Act/Rule 8D of the Rules to the Net Profit of the assessee company for the purpose of computation of its Book Profit under the provisions of Sec. 115JB of the I.T. Act, 1961.”

3. The brief facts leading to the above issue are that the assessee company is engaged in the business of manufacture and sale of sugar, industrial alcohol, bio-compost fertilizers and generation of power in the form of steam and electricity. Its head office is at Calcutta but its factories, power undertakings, distillery undertaking etc. are located at various places in U.P. The AO during the course of assessment proceedings noticed that the assessee has claimed exempt income of dividend at Rs.1,08,72,574/- and offered a sum of Rs.1,49,995/- as expenses attributable to such exempt income and disallowed from its claim under the provisions of section 14A of the Act and this was supported by certificate from its statutory auditors. The AO noted that the assessee company has not computed the disallowance in accordance with Rule 8D of the Rules and accordingly, by invoking Rule 8D(ii) of the Rules made disallowance by stating that in the immediate preceding year, the assessee's claim is also disallowed by invoking the provisions of section 14A of the Act r.w.s. Rule 8D of the Rules. It was also noted by AO that the assessment order for AY 2007-08 was upheld by CIT(A), Central-II, Kolkata vide his order dated 06.07.2010. The AO following the decision of CIT(A) for AY 2007-08 computed disallowance as per Rule 8D2(ii) and 8D2(iii) of the Rules and made disallowance at Rs.3,90,63,218/-. Aggrieved, assessee preferred appeal before CIT(A). The CIT(A) also confirmed the action of the AO vide para 4.1 and 4.2 of his appellate order as under:

“4.1. I have gone through the assessment order and submissions of appellant. The undersigned is not empowered to decide the validity of Rule D or admit such an appeal of appellant u/s. 246A of the I. T. Act. The constitutional validity of Rule 8D can be challenged vide petition under Article 226 of the Constitution before the empowered courts. Therefore the issue of unreason ability of Rule 8D in this ground of appeal of appellant is ignored.

4.2. Appellant has itself admitted that some expenditure has been incurred to earn exempt dividend income and appellant estimated such expenditure at Rs.1,49,995/-. No method of estimation or determination of such expenditure of Rs.1,49,995/- has been given by the appellant except for stating that this expenditure has been certified by statutory auditor. Appellant has not maintained accounts in such a manner where all exempt incomes, the corresponding expenditures, the corresponding funds and the corresponding investments have been separately maintained and such separate Profit & Loss account and balance sheet have been certified by any auditor. Non maintenance of separate accounts in respect of exempted income and the fact that appellant has made its own estimation of expenditure to earn exempt income is sufficient reason for satisfaction of Assessing Officer having regards to the accounts of appellant to estimate expenditure u/s. 14A(2) of the I. T. Act read with Rule 8D of the I. T. Rules. Further a certified estimate of such expenditure by a statutory auditor cannot override the estimation of expenditure as prescribed in Income Tax Rules. In view of these facts and position of law, I hold that Assessing Officer has rightly disallowed the expenditure of Rs.3,90,63,218/- consisting of interest of Rs.3,38,47,524/- and indirect expenditure of Rs.52,15,694/- to earn exempt income u/s. 14A of the I. T. Act.”

Aggrieved, assessee came in appeal before Tribunal.

4. We have heard rival contentions and gone through facts and circumstances of the case. The first argument made by the Ld. Counsel before us was that the assessee admittedly earned dividend income at Rs.1,08,72,574/- and claimed exempt u/s. 34/35 of the Act. Ld. Counsel for the assessee stated that it has incurred expenditure to the sum of Rs.1,49,995/- as expenditure was relating to earning of exempt dividend income and this was disallowed suo motu by the assessee in view of certificate of its statutory auditors. Ld. Counsel for the assessee stated that there is no other expenditure except disallowed by assessee which is relatable to exempted income and the lower authorities i.e. neither AO nor CIT(A) has proved any nexus or expenditure attributable to exempted income despite the fact that all books of account and other details explaining that none of the expenditure is relatable to exempted income is disallowable. The Ld. Counsel for the assessee, first of all, filed a statement showing sources of funds and its utilization during the FY 2007-08 relevant to this AY 2008-09. The relevant statement is being reproduced as it is:

“Balarampur Chini Misss Limited

Assessment Year 2008-09

Statement showing Sources of Fund and its utilization during the Financial Year 2007-08

Sources of Fund	Calculation Sheet Sl. No.	Amount (Rs. in Lacs)	Utilisation of Fund	Calculation sheet Sl. No	Amount (Rs in Lacs)
Average Owned Capital Employed	1	98542.26	Average Investments acquired out of Owned Funds	6	10431.39
			Average Net Fixed Assets acquired out of Owned Capital	7	88110.87
Average Rupee Term Loans/ECBs Employed for Projects	2	78503.34	Average Net Fixed Assets acquired out of Rupee Term Loans/ECBs	7	78503.34
Cash Credit Facilities/ Bank Borrowings for Working Capital (Including Excise Loans from Bank)	3	69124.26	Average Net Current Assets financed by Cash Credit Facilities/ Bank Borrowings For Working Capital (Including Excise Loans from Bank)	8	65417.70
			Average Working Capital utilised for Modernisation/ Expansion	7	3706.56

Book Entry for Deferred Tax Liability	4	12951.91	Average Net Fixed Assets amount blocked out of the same. (In form of Depreciation)	7	12630.71
			Average Amount of Misc. Exp. Not W/Off	9	321.20
Average Sources of Funds as Per Audited Balance Sheet as on 31 .03.2008	5	<u>259121.75</u>	Average Application of Funds as Per Audited Balance Sheet as on 31 .03.2008	10	<u>259121.75</u>

1) Average Net Fixed Assets - (Rs.88110.87 + Rs. 78503.34 + Rs. 3706.56 + Rs. 12630.71)Lacs = Rs. 182951.48

Further, Ld. Counsel also filed calculation sheet of opening application of funds and closing application of funds for the entire FY 2007-08 relevant to this Assessment Year. This calculation sheet is being reproduced as it is:

Balarampur Chini Mills Limited

Assessment Year 2008-09

Calculation Sheet

Sl. No.	Particulars	Calculation Particulars	Calculation Workings (Rs in Lacs)	Amount (Rs in Lacs)
1	Average Owned Capital Employed	(Op. Share Capital & Reserves and Surplus plus Cl. Share Capital & Reserves and Surplus)/2	(10271844+94366.07)/2	98542.26
2	Average Rupee Term Loans/ECBs Employed for Projects	(Op.Secured Loans + Cl, Secured Loans-Excise Loans and CC Facilities from Banks + Deposit against Conv. Warrants)/2	(142900.22+109934.96-11643-510-37616.52-1359.52-45619.47+920)/2	78503.34
3	Cash Credit Facilities / Bank Borrowings for Working Capital (Including Excise Loans from Bank)	(Op.CC Facilities+ Cl. CC Facilities + Op. Unsecured Loans from Banks + Cl. Unsecured Loans from Banks + Excise Loans from Banks)/2	(45619.47 + 38976.04 +7500 + 34000 + 11643 + 510)/2	69124.26
4	Book Entry for Deferred Tax Liability	(Op. Deferred Tax Liability + Cl. Deferred Tax Liability)/2	(12483.9+13419.91)/2	12951.91

5	Average Sources of Funds	(Op.Sources of Funds + Cl. Sources of Funds)/2	(293022.56+225220.94)/2	259121.75
6	Average Investments acquired out of Owned Funds	(Op. Investments + Cl. Investments)/2	(20562.12+300.65)/2	10431.39
7	Average Net Fixed Assets	(Op. Net Fixed Assets + Cl. Net Fixed Assets)/2	(191908.44+173994.51)/2	182951.4
8	Average Net Current Assets financed by Cash Credit Facilities / Bank Borrowings for Working Capital (including Excise Loans from Bank)	(Op.Net Current Assets + Cl. Net Current Assets)/2	(80302.35+50533.04)/2	65417.70
9	Average Amount of Misc. Exp. Not W/Off	(Op. Misc. Exp Not W/Off + Cl. Misc.Exp Not W/Off)/2	(249.65+392.74)/2	321 .20
10	Average Application of Funds	(Op. Application of Funds + Cl. Application of Funds)/2	(293022.56+225220.94)/2	259121.75

The Ld. Counsel for the assessee filed Balance Sheet for the year ending 31st March, 2008 and compared the same with the balance sheet for the year ending 31st March, 2007 and showed that the reserve and surplus as on 31st March, 2007 was at Rs.94366.07 (in lacs) and as against the same reserves and surplus (including share capital) becomes at Rs.102718.44 (in lacs). The Ld. Counsel for the assessee also referred to loan funds and the position was stated as under:

LOAN FUNDS

	<u>31.03.2008</u>	<u>31.03.2007</u>
a) Secured Loans	142900.22	109934.06
b) Unsecured Loans	<u>34000.00</u>	<u>7500.00</u>
	176900.22	117434.96

Ld. Counsel for the assessee also stated that even there is reduction in deferred tax liability from 31st March, 2007 at Rs.13419.91 (in lacs) to Rs.12483.90 (in lacs) as on 31st March, 2008. Ld. Counsel also stated that no loan amount is put in investment as is clear from the above position as the investments in the net fixed asset has increased in assessment year 2008-09 from 2007-08 as under:

	<u>31.3.2008</u>	<u>31.03.2007</u>
NET FIXED ASSET	191908.44 (In lacs)	173994.51 (in lacs)
INVESTMENTS	20562.12 (In lacs)	300.65 (in lacs)
NET CURRENT ASSET	80302.35 (In lacs)	50533.44 (in lacs)
MISCELLANEOUS EXPENDITURE	249.65 (in lacs)	392.74 (in lacs)

In view of these facts, Ld. Counsel for the assessee stated that there is no expenditure attributable to exempted income qua administrative expenses, interest expenses or any other directly related expenditure. Ld. Counsel for the assessee accordingly stated that in the present case Rule 8D of the Rules invoked by the lower authorities is without any basis. He stated that in view of the above facts the picture is very clear that there is no investment from interest free or interest bearing loans and there is no directly related expenses relating to exempted income i.e. dividend income. Hence, he urged the bench to delete the addition.

5. On the other hand, the Ld. DR stated that the Rule 8D of the Rules is now mandatory and Hon'ble Bombay High Court in the case of Godrej Boyce has upheld the validity of this Rule and it is applicable for and from AY 2008-09 as held by Hon'ble Bombay High Court. He state that the AO and CIT(A) has rightly computed the disallowance by invoking the provisions of section 14A of the Act and Rule 8D of the Rules. But the Ld. DR could not point out any defect in the statement showing sources of fund and its utilization filed by the assessee as also the calculation sheet of opening application of funds and closing application of funds.

6. We find that during the previous year ended on 31.03.2008 assessee earned Dividend Income of Rs. 1,08,72,574/- which was exempt U/s. 10(34)/(35) of the Income Tax Act, 1961 and assessee in its Return of income offered for Disallowance a sum of Rs. 1,49,995/- as reasonable expenditure relating to earning of its exempt Dividend Income. However, Assessing Officer disallowed a sum of Rs.3,90,63,218/- of Dividend Income earned by the assessee, in terms of Section 14A by applying Rule 8D of the Rules, while assessing the total income of the Assessee. The break-up of the said Disallowance as per Rule-8D made by the Assessing Officer is as under:

i)	Interest Expenditure disallowed as per Rule-8D	3,38,47,524.00
ii)	0.5% of Average value of Investments disallowed under Rule 8D	<u>52,15,694.00</u> 3,90,63,218.00

We find that the computation so made by Assessee was certified by its Statutory Auditors and this fact has been recorded by AO as well as CIT(A). We find from the orders of the lower authorities that none of them had pointed out any defect in the correctness of the Assessee's

claim of expenditure amounting to Rs. 1,49,995/- as certified by its Auditors. We find from the above statement showing sources of funds and its utilization during FY 2007-08 that assessee borrowed money primarily for its main business activities of manufacture and sale of Sugar, Industrial Alcohol, Fertilizer, Generation and Distribution of Power etc and no part of borrowed money had any direct link or nexus with the investments made by assessee company, which had yielded tax-free Dividend Income. The Assessee had substantial Capital of its own i.e., Share Capital plus Reserves amounting to Rs.94,366.07 Lakhs (as on 31.03.2007) and Rs.102,718.44 Lakhs (as on 31.03.2008) averaging at Rs.98,542.26 Lakhs which is more than 9 times of the Average value of Investments, amounting to Rs. 10431.39 Lakhs computed by the AO in the Assessment Order itself. We have taken note from the said Statement that the Assessee had utilized its entire borrowings in the form of Term Loans/ECBs for setting-up Greenfield Projects / Expansion of existing Projects, similarly, borrowings in the form of Cash Credit Facilities were utilized for its day to day requirements of Working Capital to run the business. As per fund flow statement it is clear that entire amount of Investments, yielding tax-free Dividend Income to the Assessee, were acquired from its Owned Funds represented by the Share Capital and Free Reserves and neither Long Term Borrowings in the form of Term Loans ECBs etc. nor Short Term Borrowings in the form of Cash Credit Facilities etc. were used for the purpose of acquisition of Investments at any time during the previous year as is evident from Statement prepared on the basis of Audited Balance Sheet as at 31.03.2008.

7. In view of the above facts, now we have to go to Rule 8D of the Rules, which is being reproduced as it is:

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

- (a) the correctness of the claim of expenditure made by the assessee; or
- (b) the claim made by the assessee that no expenditure has been incurred,

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

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

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

(ii) in a case where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt, an amount computed in accordance with the following formula, namely:-

$$A \times \frac{B}{C}$$

- Where A = amount of expenditure by way of interest other than the amount of interest included in clause (i) incurred during the previous year;
- B = the average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;
- C = the average of total assets as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;
- (iii) an amount equal to one-half percent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year.
- (3) For the purposes of this rule, the 'total assets' shall mean, total assets as appearing in the balance sheet excluding the increase on account of revaluation of assets but including the decrease on account of revaluation of assets."

From rule 8D of the Rules, it is clear that, the AO can invoke this rule in case he is not satisfied with regard to the account of assessee that the claim of expenditure made by assessee is not correct and the claim made by assessee that no expenditure has been made in relation to income which do not form part of total income under the Act, he shall determine the amount of expenditure in relation to such income in accordance with the provisions of Rule 8D(2) of the Rules. Even the provisions of section 14A(2) clearly states that the AO shall determine the amount of expenditure incurred in relation to such income which does not form part of total income under this Act in accordance with such method as prescribed (under rule 8D of the Rules), if the AO having regard to the account 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 total income under the provisions of this Act. The provisions of section 14A was enacted by the Finance Act, 2001 by retrospective effect, w.e.f. 1.4.1962, which postulated that for the purpose of computing the total income no deduction shall be allowed in respect of expenditure incurred in relation to income which do not form part of total income under the Act by an assessee. The memorandum explaining the provision in the Finance Bill, 2001 provides reasons for insertion of section 14A in the Act and the same are reported in (2001) 248 ITR (St.)192 and at page 195 and 196, which are as under:

"Certain incomes are not includible while computing the total income as these are exempt under various provisions of the Act. There have been cases where deductions have been claimed in respect of such exempt income. This in effect means that the tax incentive given by way of exemptions to certain categories of income is being used to

reduce also the tax payable on the non-exempt income by debiting the expenses incurred to earn the exempt income against taxable income. This is against the basic principles of taxation whereby only the net income, i.e., gross income minus the expenditure is taxed. On the same analogy, the exemption is also in respect of the net income. Expenses incurred can be allowed only to the extent they are relatable to the earning of taxable income.

It is proposed to insert a new section 14A so as to clarify the intention of the Legislature since the inception of the Income-tax Act, 1961, that no deduction shall be made in respect of any expenditure incurred by the assessee in relation to income which does not form part of the total income under the Income-tax Act.

The proposed amendment will take effect retrospectively from April 1, 1962 and will accordingly, apply in relation to the assessment year 1962-63 and subsequent assessment years."

From the above memorandum explaining the provisions of Finance Bill 2001 clearly suggests that the expenses incurred can be allowed only to the extent that they are relatable to earning of the taxable income and expenses relatable to exempted income are to be disallowed.

8. Here in the present case, there is no linkage or nexus between the funds borrowed by assessee and the impugned investments, hence, no interest expenditure can be disallowed by mechanically applying the Provisions of Rule 8D of the Rules. The assessee has explained that the share capital and reserves, that is its own funds, were utilised for the purpose of investment in shares for earning dividend income and this has not been negated by lower authorities i.e. neither CIT(A) nor AO. The assessee has explained each and every investment with sources of funds and its utilization as well as opening application of funds and closing application of funds as noted above. It is an admitted position in law that expenditure can be disallowed U/s.14A of the Act if and only if it is incurred in relation to income which does not form part of total income. From the facts of the present case, it is clear that there is no link with expenditure for earning of dividend income incurred by the assessee and once the facts are clear, no disallowance can be made by invoking rule 8D of the Rules. Neither the AO nor CIT(A) has recorded any finding that having regard to the account of the assessee, they are not satisfied with the correctness of the claim of expenditure made by assessee or the claim made by assessee that no expenditure has been incurred in relation to income which do not form part of the total income under the Act for the relevant assessment year. In the absence of any such finding, facts of the present case shows that the investment in shares was made out of own capital employed and not from borrowed funds, no disallowance on account of interest expenditure can be made by invoking rule 8D of the Rules. Accordingly, in the given facts and circumstances, we delete the addition and allow this issue of assessee's appeal.

9. The next issue in this appeal of the assessee is against the order of CIT(A) in confirming the action of AO in reducing the claim of deduction U/s.801A of the Act, by deducting proportionate head office expenses on turnover basis. For this, the assessee has raised following ground nos. 3 to 6:

3. That, on the facts and in the circumstances of the case, the Ld.CIT(A) erred in sustaining the Ld. A.O.'s order reducing the assessee's claim of deduction u/s.80-IA of the I.T. Act, 1961, from Rs.109,61,26,467 to Rs.107,14,75,223 after deducting proportionate Head Office expenses of Rs.2,46,51,244 on turnover basis.

4. That, on the facts and in the circumstances of the case, the learned CIT(A) erred in sustaining the Ld. A.O.'s order reducing the assessee's claim of deduction u/s.80-IB of the I.T. Act, 1961, from Rs.5,13,91,657 to Rs.4,63,56,020 after deducting proportionate Head Office expenses of Rs.50,35,637 on turn-over basis.

5. That, while sustaining the Ld. A.O.'s order reducing the assessee's claim of deduction u/s.80-1A/80-IB of the I.T. Act, 1961 as in Ground Nos. 3 and 4 above, the Ld. CIT(A) arbitrarily rejected the assessee's submissions supported by several judicial decisions holding that indirect expenses or expenses which have a remote connection should be ignored and only expenditure directly relatable to or have direct nexus with the industrial unit should be deducted.

6. That, while dismissing the assessee's submission that the H.O. expenses should not be disallowed, the Ld. CIT(A) erred in observing that the assessee had not identified the direct H.O. expenses or that it itself worked out the pro-rata allocation of H.O. expenditure of Rs. 16.89 crores on the basis of turnover.

10. The AO disallowed deduction u/s. 80IA of the Act after deducting proportionate head office expenses on turnover basis. The CIT(A) also confirmed the action of AO exactly on same facts and same reasoning, as under:

"4. I have gone through the assessment order and submissions of appellant. I have decided same issue with almost identical facts in my appellate order for Assessment Year 2007-08 in appeal no 133/CC-XIX/CIT(A)-C-II/KOL/09-10. The only addition in the argument of appellant in the current appeal is that that the Assessing Officer should have bifurcated the direct or indirect expenditures out of HO expenses which were allocated towards 80IA/ 80IB units and the Assessing Officer should have considered only the direct expenditure on 80IA/ 80IB units out of HO expenditures. However, I find that appellant itself has also not identified the H.O. expenditures which may be considered as direct expenditure towards 80IA/80IB units either on the basis of specific identification method or on the basis of any reasonable method of estimation. Appellant has taken the same argument as in Assessment Year 2007-08 that none of the H.O. expenditures are for any of the 80IA/ 80IB units and this presumption is not supported by any evidence or even probability. In fact appellant had itself worked out the pro rata allocation of entire HO expenditure of Rs. 16.89 crore on the basis of turnover of each eligible unit u/s 80IA or 80IB during the assessment proceedings. I therefore do not find any reason to disturb the allocation of HO expenses made towards eligible 80IA and 80IB units during the assessment proceedings for running such units by the Assessing Officer following my own appellate order for Assessment Year 2007-08 in appeal no 133/CC-XIX/CIT(A)-C-II/KOL./09-10. I confirm the action of Assessing Officer to allocate H.O. expenses of Rs. 2,46,51,244/- being the proportionate H.O. expenses towards eligible 80IA units and I also confirm the action of the Assessing Officer in reducing the appellant's claim of deduction u/s.80IB by its proportionate H.O. expenses

of Rs. 50,35,637/- and reducing the claim of deduction of appellant u/s 80IB of the I. T. Act accordingly, I must add here that even after reducing the claim made u/s 80IA and 80IB by the appellant, Assessing Officer has determined the allowable claim u/s 80IA at Rs. 107. 14 crore and claim u/s 80IB at Rs. 4.64 crore. The Gross total Income of appellant has been determined a loss of Rs.(-)189,13,04,166 by the Assessing Officer and therefore such reduction in allowable claim of deduction u/s 80IA or u/s 80IB will not make any difference to the total income of appellant which is determined at NIL by the Assessing Officer.

11. At the outset, the Ld. Counsel for the assessee stated that similar issues was involved in the Assessee's own case for the Assessment year 2007-08 before ITAT, 'A' Bench, Kolkata, in ITA No.1650/KOL/2010 and Tribunal vide order dated 24.6.2011 has decided the issue in favour of the assessee exactly on similar facts. Ld. Sr. D.R however, conceded that the facts in the present year are exactly identical, hence Tribunal can decide the issue. We find that the Tribunal has decided the issue as under:

"11. We have heard the rival submissions and perused the material available on record. On a careful consideration of the same we are of the view that the claim of the assessee has to be allowed. In order to arrive at the said conclusion we would first refer to the undisputed facts on record.

11.1. The undisputed facts on record are that the assessee made a claim u/s 80IA/80IB of the Act duly supported by the auditors report and Form No.10CCB. It is also an undisputed fact that identical claims qua these undertakings in the very same manner and the very same set-up have been allowed u/s 143(3) proceedings.

11.2. It is also an undisputed fact that the assessee following the earlier years constant practice has reduced from the profits of these undertakings the expenditure directly related to these undertakings.

11.3. It is seen that in the course of assessment proceedings the AO specifically directed the assessee to submit calculation in a certain manner making the pro rata disallowance of the expenditure on the basis of its turn over. A perusal of the assessment order shows that the said calculations were given by the assessee under protest repeating that direct expenses of the undertakings had already been accounted for. The AO as per record chosed not to negatively comment on it and merely insist for providing calculations in a certain manner. Compliance made under protest has been held against the assessee since relying on same the deductions claimed were reduced to Rs.98,80,78,140/- u/s 80IA of the Act and 64,81,301/- u/s 80IB of the Act as against the claim of Rs.101,55,74,745 and Rs.2,74,96,600/- respectively. The assessee has all along been contesting that the direct expenses incurred in the specific undertakings had already been reduced by the assessee from the profits of the said undertakings which was duly supported by the auditors report and Form No.10CCB. It is also a matter of record that identical claims made by the assessee in an identical manner have been allowed to the assessee. For these very undertaking over the years at times as old as since 2000-01 assessment year. It is also an undisputed fact that the authorities have nowhere pointed out that any expenditure which had been incurred by the head office pertain directly to the undertakings for which deduction u/s 80IA/80IB of the Act had been claimed. It is seen that the tax authorities have proceeded on the footing that some expenses must have been incurred by the head office suspicion cannot supplant evidence. Since there is no short coming pointed out in the accounting of the assessee no effort has been made to show that any specific expenditure incurred under the Head office actually pertained to the undertakings for which deduction is being wrongly claimed. This action purely based

on suspicion ignoring the facts on record is not in accordance with law. Accordingly in the peculiar facts on record we find that the orders of the AO and the CIT(A) deserve to be set aside.

11.4. In arriving at the conclusion arrived at we have also taken into consideration the various case laws relied upon by the parties before the Bench we are fortified by the principle laid down in the order of the Kolkata Bench of the Tribunal in the case of M/s. Tide Water Oil (I) Ltd which on facts fully supports the case at hand as the Co-ordinate Bench has on the facts available before it has held that deduction u/s 80IA allowed by the CIT(A) was to be restored by the Tribunal to the file of the AO in view of Rule 46A violations giving directions that direct expenses had to be reduced from the Silvasa Unit and since fresh evidence had been entertained by the CIT(A) without furnishing the same to the AO. The facts were required to be verified. Thus this direction of the Tribunal fully supports the case at hand as there can be no two opinions on the principle that direct expenses pertaining to the eligible units had necessarily to be reduced from the profits of the said units so as to arrive at the deduction claimed. In the second round it is seen that on record it was evident that head office had accounted for office expenditure of Silvasa unit as such reduction of the said direct expenses from the profit of Silvasa unit had to be done, this does not mandate that in a case where direct expenses have already been accounted for in the eligible units even then a proportion of head office expenses on the basis of suspicions must be further reduced. The order of the Co-ordinate Bench has been completely mis-applied on facts. In order to reduce the profits of the eligible unit and burden the assessee it is first necessary to show that specific expenditure relatable to the units were incurred by the head office whether the connection is direct or remote can be looked into only after that here no efforts whatsoever have been made to show that any specific expenditure incurred by the head office in fact pertained to the eligible unit. When the ratio laid down by the Apex Court in the case of Liberty India Ltd. is considered then it is eminently clear that direct connection with the eligible profits is necessarily to be there for income as considered by the Apex Court. In the facts of the present case all the relevant details are available before the AO before whom it is repeatedly agitated that expenses directly connected to the units have already been accounted for. Necessary evidences, Auditors certificate, books of accounts separately maintained for the units and the head office are available the AO refuses to look into the same and insists on applying proportionate disallowance on a pro-rata basis and when the assessee again agitates providing the details by way of a chart made available to the CIT(A) from the same evidence. The AO again refuses to look into it and insists that it is nearly impossible. This obdurate attitude of repeatedly refusing to look into necessary facts is unfortunate. No doubt if the accounts of an assessee are unreliable or are not in the manner as per the requirements of the law then in such a situation at times it becomes incumbent to resort to pro-rata proportionate disallowance of expenses. As it may in certain situations be the best possible method. However in order to apply the same it is first and foremost necessary to hold that the accounts are not reliable/maintained as per law which is not the fact in the present proceedings. To apply such a method to the facts at hand would be a travesty of justice as the repeated stand of the assessee all along has been that the expenses directly connected with these units have already been accounted for in computing the income of the eligible unit. No fault or shortcoming has been pointed out by the department. The law requires that the profit of every unit had to be computed as if it were the only source of income of the assessee during the relevant previous years and such expenditure incurred by the head office to the extent it is relating to the business unit eligible for deduction us 80IA/80IB should be deducted while determining profit of the said unit as eligible deduction u/s 80IA/80IB. This principle has been followed by the Co-ordinate Bench in the first round as well as in the second round in the case of Tide water. No material has been placed on record to show that the assessee in the year under consideration has not followed this principle.

11.5. *Coming to the other judgements referred to before us, it is seen that the Hon'ble Apex Court in the case of Pandian Chemicals Limited vs CIT 267 ITR 278 has dwelt at length on the wording "derived from" and "attributable to" their Lordships in the case of Liberty India Ltd. 218 ITR 317 although in the context of Duty Draw back and DEPB incentives also had an occasion to hold that connotation of the words "derived from" is narrower in meaning as compared to that of the words "attributable to" by using the expression "derived from" Parliament intended to cover source not beyond the first degree. The principle laid down by the Apex Court in the said judgement fully supports the claim of the assessee. Considering the general Head office expenses which are not as per record directly incurred for the said specific units they cannot be said to be such expenses whose connection to the unit is of the first degree. As such these expenses on a proportionate basis cannot be used to reduce the profits of the said undertakings purely based on suspicion. It is the duty of the department to place material on record on the basis of which the claim of the assessee can be rejected. Accordingly it is seen that the judgements of the Apex Court in the case of Liberty India Ltd. and Pandian Chemicals Ltd. fully support the case of the assessee. The facts and circumstances pertaining to the order of the Tribunal in the case of M/s. Tide Water Oil (I) Ltd. as has been observed therein have been wrongly applied to the facts of the present case. The principle laid down in fact fully supports the case of the assessee. Accordingly in terms of the detailed reasons given herein above on facts and position of law the claim of the assessee in ground no.3 and 4 are allowed."*

We find that the issue is squarely covered in favour of assessee and against revenue in assessee's own case for AY 2007-08, taking a consistent view and respectfully following the same, we allow this issue of the assessee's appeal.

12. The next issue in this appeal of the assessee is against the order of CIT(A) confirming levy of Interest U/s.234B & 234C of the Act.

13. The charging of interest u/s. 234B and C of the Act being consequential relief only, AO is directed to re-compute the Interest after giving effect to the Order of Tribunal. Hence, need no adjudication.

14. In the result, the appeal of assessee is partly allowed.

Order pronounced in open court on 29.7.2011.

Sd/-
सी.डी.राव लेखा सदस्य
(C. D. Rao)
Accountant Member

Sd/-
महावीर सिंह, न्यायीक सदस्य
(Mahavir Singh)
Judicial Member

(तारीख) Dated 29th day of July, 2011

वरिष्ठ निजि सचिव Jd.(Sr.P.S.)

आदेश की प्रतिलिपि अग्रेषित:- Copy of the order forwarded to:

1. अपीलार्थी/APPELLANT – M/s. Balarampur Chini Mills Ltd., 234/3A, A.J.C.
Bose Road, FMC Fortuna, Kolkata-700 020
2. प्रत्यर्थी/ Respondent, DCIT, CC-XIX, Kolkata.
3. आयकर कमिशनर (अपील)/ The CIT(A), Kolkata
4. आयकर कमिशनर/CIT, Kolkata
5. वभागिय प्रतिनीधी / DR, Kolkata Benches, Kolkata

सत्यापित प्रति/True Copy,

आदेशानुसार/ By order,

सहायक पंजीकार/Asstt. Registrar.