

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'B' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.5514/Del./2015
(ASSESSMENT YEAR : 2007-08)**

DCIT, Circle 13 (1),
New Delhi.

vs. M/s. Jindal Equipment Leasing &
Consultancy Services Ltd.,
37, Najafgarh Road,
New Delhi.

(PAN : AAACJ0091P)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Smt. Nidhi Srivastava, CIT DR

Date of Hearing : 24.04.2019

Date of Order : 25.04.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The Appellant, DCIT, Circle 13 (1), New Delhi (hereinafter referred to as the 'Revenue') by filing the present appeal sought to set aside the impugned order dated 21.07.2015 passed by the Commissioner of Income-tax (Appeals)-5, Delhi, qua the assessment year 2007-08 on the grounds inter alia that :-

"1. That on the facts and circumstances of the case & in law, the Ld. CIT (A) has erred in deleting the addition of disallowance made u/s 14A to the book profit u/s 154 of the Income Tax Act, 1961.

2. That the order of ld. CIT (A) is erroneous and is not tenable on facts and in law.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee is into the business of dealing in shares and securities, investments and advancing loans etc. Assessing Officer noticed that the assessee has earned dividend income of Rs.7,02,12,550/- which has been claimed as exempt income under section 10 (34) of the Income-tax Act, 1961 (for short ‘the Act’). AO by invoking the provisions contained u/s 14A of the Act read with Rule 8D of the Income-tax Rules, 1962 (for short ‘the Rules’) made the disallowance to the tune of Rs.92,20,419/-.

3. Assessee carried the matter by way of an appeal before the ld. CIT (A) who has partly allowed the appeal. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeal.

4. Assessee has not preferred to put in appearance despite issuance of the notice and consequently, we proceeded to decide the present appeal with the assistance of the ld. CIT DR as well as on the basis of documents available on the file.

5. We have heard the ld. Departmental Representative for the revenue to the appeal, gone through the documents relied upon and

orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. From the facts and circumstances of the case, orders passed by the lower Revenue authorities and arguments addressed by the Id. DR for the Revenue, the sole question arises for determination in this case is :-

“as to whether section 154 of the Act can be invoked on the issues which are debatable one?”

7. Undisputedly, original assessment was framed u/s 143 (3) of the Act making addition of Rs.92,20,419/- u/s 14A of the Act which was reduced to Rs.77,06,410/- by the Id. CIT (A) on appeal. It is also not in dispute that in the second appeal filed before the Tribunal, the issue of section 14A was sent back to AO to decide afresh who has passed the order on 07.11.2012 by making addition of Rs.77,06,410/- u/s 14A in the normal computation but no such addition was made to the book profit. It is also not in dispute that taxable income as per the book profit has been claimed by the assessee at Rs.1,90,67,455/- which was accepted by the AO.

8. However, subsequently AO has rectified its earlier order which was set aside by the Tribunal, u/s 154 on 23.12.2013 by increasing the book profit u/s 154JB to the tune of Rs.77,06,410/-.

9. Ld. CIT (A) has deleted the addition by following the decision rendered by *Hon'ble Supreme Court in the case of Volkart Brothers – 82 ITR 50 and Hon'ble Delhi High Court in the case of CIT vs. RTCL Ltd. – 348 ITR 320* on the ground that when the issue is debatable section 154 cannot be invoked. Since the ld. CIT (A) has deleted the addition by following the settled principle of law that when issue is debatable one section 154 cannot be invoked to make further addition, we find no illegality or perversity in the impudent order passed by the ld. CIT (A), hence appeal filed by the Revenue is dismissed.

Order pronounced in open court on this 25th day of April, 2019.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 25th day of April, 2019
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-5, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**