

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

**(Before Sri J. Sudhakar Reddy, Accountant Member & Sri S.S. Godara, Judicial Member)**

**ITA No. 97/Kol/2018**  
Assessment Year: 2010-11

**Deputy Commissioner of Income Tax, Circle-12(1), Kolkata.....Appellant**  
**Vs.**

**M/s. AKG Finvest Ltd.....Respondent**  
**1<sup>st</sup> Floor**  
**37A, Southern Avenue**  
**(renamed as Dr. Meghnad Saha Sarani)**  
**Kolkata - 700 029**  
**[PAN : AADCA 8306 P]**

**Appearances by:**

*Dr. P.K. Srihari, CIT D/R, appearing on behalf of the Revenue.*

*Shri S.K. Tulsian, FCA, appeared on behalf of the assessee.*

Date of concluding the hearing : November 28<sup>th</sup>, 2019

Date of pronouncing the order : January 8<sup>th</sup>, 2019

**ORDER**

**Per J. Sudhakar Reddy, AM :-**

This appeal filed by the revenue is directed against the order of the Learned Commissioner of Income Tax (Appeals) – 22, Kolkata, (hereinafter the “Id.CIT(A)”), passed u/s. 250 of the Income Tax Act, 1961 (the ‘Act’), dt. 16/10/2017, for the Assessment Year 2010-11.

2. We have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, we hold as follows:-

3. The assessee is a Non-banking Financial Company. It filed its return of income electronically on 29.09.2010, declaring total income of Rs.22,50,430/-. The Assessing Officer completed the assessment u/s 143(3) of the Act on 31/03/2013 determining total income at Rs.6,37,17,496/-. Aggrieved the assessee carried the matter in appeal before the Id. First Appellate Authority. The Id. First Appellate Authority granted part relief.

4. Aggrieved the revenue is in appeal before us on the following grounds:-

*“(i) That on the facts & circumstances of the case and in law, the Ld. CIT(A) has erred by treating the frequent sales & purchases of the assessee company as investment income and not business income.*

*(ii) That on the facts & circumstances of the case and in law, the Ld. CIT(A) has erred by not appreciating that facts that out of total receipts of Rs. 7.01 Crores, only Rs. 24.99 lacs was received by the assessee company as NBFC (interest income).*

*(iii) That on the facts & circumstances of the case and in law, the Ld. CIT(A) has erred by not appreciating the fact that the principles of estoppels and rest-judicata don't apply to proceedings under the I.T. Act, 1961.*

*(iv) That on the facts & circumstances of the case and in law, the Ld. CIT(A) has erred by deleting the disallowance u/s 14A of the Act in MAT provisions u/s 115JB of the Act.*

*(v) That on the facts & circumstances of the case and in law, the Ld. CIT(A) has erred by not appreciating the facts that there are specific columns of additions of expenditure related to exempted income under Section 10, 10AA, 11 or 12 in Schedule MAT under Section 115JB.*

*(vi) That the appellant craves leave to add/alter/amend any of the grounds of appeal during the course of hearing."*

5. Ground Nos. (i), (ii) & (iii) are on the issue as to whether profit on sale and purchase of shares by the assessee company was assessable under the head "income from capital gains" or under the head "income from business".

5.1. The ld. CIT(A) at para 7 page 21 to 32 onwards dealt with the issue. The Tribunal in the assessee's own case for the earlier Assessment Year in ITA No. 1341/Kol/2013, Assessment Year 2009-10, had adjudicated the issue in favour of the assessee and held that the assessee has to be treated as investor and not a trader of sales. Following this decision, the ld. CIT(A) directed the Assessing Officer to assess the income arising on purchase and sale of shares under the head Long Term Capital Gain or Short Term Capital Gain and not under the head "income from business or profession".

The ld. D/R could not point out any factual difference on this issue between the facts of the previous year and the facts of the current year. Thus, we uphold the order of the ld. First Appellate Authority and dismiss these grounds of the revenue.

6. Ground Nos. (iv) & (v) are on the issue of computation of book profits u/s 115JB of the Act with respect to disallowance u/s 14A of the Act. This issue is covered in favour of the assessee and against the revenue by the decision of the Special Bench of the Tribunal in the case of *ACIT vs. Vireet Investments (P) Ltd. [2017] 82 taxmann.com 415 (Delhi - Trib.)*.

6.1. Consistent with the view taken therein, we uphold the finding of the Id. First Appellate Authority and dismiss these grounds of the revenue.

7. In the result, appeal of the revenue is dismissed.

***Kolkata, the 8<sup>th</sup> day of January, 2020.***

*Sd/-*  
**[S.S. Godara]**  
Judicial Member

Dated : 08.01.2020  
{SC SPS}

*Copy of the order forwarded to:*

1. ***M/s. AKG Finvest Ltd***  
***1<sup>st</sup> Floor***  
***37A, Southern Avenue***  
***(renamed as Dr. Meghnad Saha Sarani)***  
***Kolkata - 700 029***
2. ***Deputy Commissioner of Income Tax, Circle-12(1), Kolkata***
3. ***CIT(A)-***
4. ***CIT- ,***
5. ***CIT(DR), Kolkata Benches, Kolkata.***

*Sd/-*  
**[J. Sudhakar Reddy]**  
Accountant Member

True copy  
By order

Assistant Registrar  
ITAT, Kolkata Benches