

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH 'C', NEW DELHI]**

**BEFORE MS.SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No.515/DEL/2016
Assessment Year: 2011-12

DCIT (LTU) Circle-1 NBCC Plaza Pushasp Vihar New Delhi-110017	Vs	Indian Railway Finance Corporation Ltd. UG Floor, East Tower, NBCC Place, Bhisham Pitamah Marg, Lodhi Road, New Delhi – 110 003. PAN : AAACI0681C
(APPELLANT)		(RESPONDENT)

A N D

ITA No.380/DEL/2016
Assessment Year: 2011-12

Indian Railway Finance Corporation Ltd. UG Floor, East Tower, NBCC Place, Bhisham Pitamah Marg, Lodhi Road, New Delhi – 110 003. PAN : AAACI0681C	Vs	DCIT (LTU) Pushp Vihar, Saket New Delhi
(APPELLANT)		(RESPONDENT)

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ITA No.5942/DEL/2016
Assessment Year: 2012-13

Indian Railway Finance Corporation Ltd. UG Floor, East Tower, NBCC	Vs	DCIT (LTU) Pushp Vihar, Saket
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Place, Bhisham Pitamah Marg, Lodhi Road, New Delhi – 110 003. PAN : AAACI0681C		New Delhi
(APPELLANT)		(RESPONDENT)

A N DITA No.6082/DEL/2016

Assessment Year: 2012-13

DCIT (LTU) Circle-1 NBCC Plaza Pushasp Vihar New Delhi-110017	Vs	Indian Railway Finance Corporation Ltd. UG Floor, East Tower, NBCC Place, Bhisham Pitamah Marg, Lodhi Road, New Delhi – 110 003. PAN : AAACI0681C
(APPELLANT)		(RESPONDENT)

A N DCross Objection No.26/DEL/2016(In ITA No.6082/DEL/2016)

Assessment Year: 2012-13

Indian Railway Finance Corporation Ltd. UG Floor, East Tower, NBCC Place, Bhisham Pitamah Marg, Lodhi Road, New Delhi – 110 003. PAN : AAACI0681C	Vs	DCIT (LTU) Circle-1 NBCC Plaza Pushasp Vihar New Delhi-110017
(APPELLANT)		(RESPONDENT)

Appellant by	Shri V. Raja Kumar, Advocate;
Respondent by	Shri Amit Katoch, SR. D. R.;

Date of hearing:	18/11/2019
Date of Pronouncement:	14/02/2020

O R D E R

PER PRASHANT MAHARISHI, AM :

These are 5 appeals of the assessee and Revenue for assessment years 2011-12 and 2012-13 of the same assessee involving similar grounds of appeal and, therefore, they are disposed off by this consolidated order.

Assessment Year : 2011-12 :

2. I. T. Appeal No. 380/Del/2016 is filed by the assessee and I. T. Appeal No. 515/Del/2016 is filed by the Deputy Commissioner of Income Tax, Circle-1, LTU, New Delhi, for assessment year 2011-12 against the order of the learned CIT (Appeals)-22, New Delhi, on 4.11.2015. The assessee has raised effectively the 5 grounds of appeal as under:-

ITA No.380/Del/2016

1. *The Ld. CIT (Appeals) has erred in not allowing complete relief of disallowance of Rs. 5,24,350/- made by Assessing Officer u/s 14A of Income Tax Act, 1961 while computing total income, ignoring the fact that no expenses have been incurred for earning dividend income on the basis of surmises and conjecture.*
2. *The Ld. CIT (Appeals) has erred in not allowing complete relief of disallowance of Rs. 5,24,350/- made by Assessing Officer u/s 14A of Income Tax Act while calculating the book profit u/s 115JB, ignoring the fact that no expenses have been incurred for earning dividend income on the basis of surmises and conjecture.*
3. *The Ld. CIT (Appeals) has erred in confirming the disallowance of Rs. 47,53,000/- made by the Assessing Officer on account of Corporate Social Responsibility ignoring the facts and circumstances of the case.*
4. *The Ld. CIT (Appeals) has erred in confirming the addition of Rs. 2,217/- made by the Assessing Officer on account of prior period expenses ignoring the facts and circumstances of the case.*
5. *The Ld. CIT (Appeals) has erred in confirming the addition of Rs. 2,60,424/- made by the Assessing Officer being provision for Leave Travel Assistance while calculating book profit u/s 115JB of the Income Tax Act, 1961 on the basis of surmises and conjecture.*
6. *The assessee reserves its right to add or delete any grounds of appeal at the time of hearing.*

2.1 The Revenue has raised the three grounds of appeal as under:-

ITA No.515/Del /2016

1. *On the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in deleting addition of Rs.2368.11 crores (on account of difference in gross lease rent received of Rs.5860/- crores and lease rent of Rs.3491.99 crores offered for tax) made by the Assessing Officer by treating the lease as Financial lease and not an operational lease.*
2. *On the fact and in the circumstances of the case and in law, Ld. CIT(A) has erred in deleting disallowance of Rs. 10,00,000/- made by the Assessing Officer on account of membership Fee paid to Airport Authority of India Officers Institute treating it to Capital Expenditure in nature.*
3. *On the fact and in the circumstances of the case and in law, Ld. CiT(A) has erred in deleting disallowance of Rs. 10,00,000/- made by the Assessing officer on account of Membership Fee paid to Airport Authority of India Officers Institute treating it to be allowable u/s 37(1) of the I.T.Act 1961, ignoring the decision of the Kerala High Court in the case of Framatone Connector O EN Ltd. vs DCIT, Special Rsange-2, Ernakulum [2007] 294 ITR 559 (Kerala) wherein the Court by following the decision of the Apex Court in the case of Punjab State Industrial Development Corporation Ltd. vs. CIT [1997] 225 ITR 792 (SC) had upheld the finding of the ITAT, Cochin Bench, that expenditure incurred by the assessee for taking membership in the club was capital expenditure.*

3. The brief facts of the case is that assessee company is a Government of India Undertaking dealing in leasing and finance activities exclusively for the Indian Railways. It is engaged in leasing rolling stock assets to the Ministry of Railways on a single plan relationship basis. It raises funds through loans from the banks and issues bonds. It owns lease rent and earlier interest income. For assessment year 2011-12 it filed its return of income on 29.09.2011 declaring NIL income under the normal computation provisions and disclosed a book profit of Rs.8,99,28,17,953/- under Section 115JB of the Income Tax Act, 1961 (the Act). The learned Assessing Officer passed an assessment order under Section 143(3) of the Act on 11.03.2014 computing the normal income at a loss of Rs.13,64,43,99,192/- and also computed the book profit at Rs.8,99,36,02,727/-. As the book profit tax was higher it was assessed at that. In the normal computation of income the main meaning several additions and disallowances. In the book profit also the AO disallowed Rs.5,24,350/- under Section 14A and provision for leave travel assistance of

Rs.2,60,424/-. The assessee challenged the order before the Id. CIT (Appeals) who partly allowed the appeal of the assessee and, therefore, both the parties are in appeal before us.

4. We first take up the appeal of the assessee in ITA No. 380/Del/2016. The first ground of appeal is against the disallowance under Section 14A of the Act. The assessee has shown exempt income of Rs.10,20,000/- and, therefore, the learned Assessing Officer asked the assessee explanation why disallowance under Rule 8D r.w.s. 14A shall not be made. The assessee submitted that no expenses have been incurred for earning the same. The learned Assessing Officer noted that the explanation of the assessee is not acceptable, but assessee might have incurred certain expenditure, such as, man hours spent, phone calls, travelling, infrastructure expenses etc. Therefore, he applied the provisions of Rule 8D and disallowed Rs.5,24,340/- under Section 14A of the Act. The learned CIT (Appeals) dismissed the appeal of the assessee.

4.1 The learned Authorized Representative submitted that the issue is squarely covered in favour of the assessee by the order of the coordinate Bench in ITA. No. 3992/Del/2014 for assessment year 2010-11. He referred to para No. 13 and submitted that the coordinate Bench held that Assessing Officer has properly recorded the satisfaction but has noted that interest free funds available with the assessee were much larger and then no interest disallowance could be made. However, the disallowance was upheld. He, therefore, submitted that the issue is decided against the assessee.

4.2 The learned Departmental Representative also submitted the same.

5. The issue in the present case is already covered against the assessee in assessment year 2010-11, we do not find any reason to deviate from the same. Therefore, respectfully following the decision of the coordinate bench in

the assessee's own case the disallowance under Section 14A of the Act in the normal computation of the total income is upheld.

6. The second ground is against the addition to the book profit under Section 115JB of the Act of Rs.5,24,350/- made by the Assessing Officer in the normal computation. The learned Authorized Representative submitted that this issue is squarely covered by the order of the coordinate bench in assessee's own case in para No. 15 wherein following the decision of the Special Bench in the case of Vireet Investment in ITA. No. 502/Del/2012 the addition is deleted. The learned Departmental Representative also stated that the issue is covered by that decision. Therefore, respectfully following the decision of the coordinate bench we direct the learned Assessing Officer to delete the addition of Rs.5,24,350/- made by the learned Assessing Officer while computing book profit on account of disallowance under Section 14A made in the normal computation. Accordingly ground No. 2 of the appeal is allowed.

7. Ground No. 3 is with respect to the disallowance of Rs.47,53,000/- on account of coordinate social responsibility. The assessee has claimed the above expenditure stating that Rs.24.96 lakhs and Rs.22.57 lakhs are incurred towards passenger amenities improvement at Bahadur Garh Railway Station and solar lighting at that railway station respectively. The learned Assessing Officer stated that the above expenditure is not wholly and exclusively incurred for the business purposes of the assessee and hence disallowed. The learned CIT (Appeals) also confirmed the same.

7.1 The learned Authorized Representative submitted that the above issue is squarely covered in favour of the assessee in 157 I.T.D. 601. Even otherwise he submitted that the assessee is in the business of leasing the rolling stock to the Indian Railways and Indian Railways is the only customer and, therefore, the above expenditure has direct nexus with the business of

the assessee. It was, therefore, submitted that these expenditure should wholly and exclusively incurred for the purposes of the business.

8. We have carefully considered the rival contentions and perused the orders of the lower authorities. The assessee has incurred the above expenditure in improving the passenger facilities and the solar system at one of the railway stations which is run by Ministry of Railways. The Ministry of Railways is the only customer of the assessee. Therefore, these expenditure have direct nexus with the business of the assessee. Even otherwise Explanation (ii) inserted in section 36(1) with effect from 1.04.2015 is prospective in nature, impugned assessment year is assessment year 2011-12, we direct the Assessing Officer to delete the above disallowance. Accordingly ground No. 3 of the appeal is allowed.

9. Ground No. 4 is against confirming the addition of Rs.2,217/- on account of prior period expenditure. The tax audit report showing that the expenditure of Rs.2,217/- is related to the stationary purchased in earlier years. The assessee explained that the expenditure pertained to the earlier year, but was approved during the year. The Assessing Officer held it to be prior period expenditure and disallowed. The learned CIT (Appeals) confirmed the same. The learned Authorized Representative reiterated the submissions made before the lower authorities and the learned Departmental Representative supported the orders of the lower authorities.

9.1 We have carefully considered the rival contentions and note that the explanation of the assessee is that though the above expenditure related to earlier period but the bills of the same have been approved during the year. As the expenditure have been incurred and approved during the current year though may be pertaining to earlier year it cannot be said to be a prior period expenditure. Similarly in the earlier year in assessee's own case ITAT has deleted the above disallowance. Therefore, respectfully following the decision

of the coordinate bench, we direct the Assessing Officer to delete the disallowance of Rs.2,217/- of prior period expenses.

9.2 Ground No. 4 of the appeal is allowed.

10. Ground No. 5 of the appeal is with respect to adjustment of book profit at Rs.2,60,424/- in the book profit on account of Leave Travel Assistance. In the assessment order for the year the above adjustment has been made by the learned Assessing Officer without making any discussion that how the provision for Leave Travel Assistance can be added. The learned CIT (Appeals) also confirmed the above adjustment. Before him holding that the CIT for assessment year 2010-11 has confirmed the similar addition.

10.1 The learned Authorized Representative submitted that the above issue is squarely covered against the assessee vide para No. 16 of the order of the co-ordinate bench wherein an identical addition was confirmed. The learned Departmental Representative also confirmed the same.

10.2 We have carefully considered that vide para No. 16 in ITA. No. 3992/Del/2014 for assessment year 2010-11 and C.O. No. 100/Del/2015 vide order dated 12.06.2017 the co-ordinate bench has confirmed a similar addition on account of Leave Travel Concession. Therefore, respectfully following the decision of the co-ordinate bench, we confirm the action of the Assessing Officer. Thus, ground No. 5 of the appeal is dismissed.

11. Now we come to the appeal of the Revenue in ITA. No. 515/Del/2016.

11.1 The first ground of appeal is against the deletion of the addition of Rs.2368.11 crores on account of difference in gross lease rent received of Rs.5,860/- crores and lease rent of Rs.3,491.11 crores offered for taxation which was added by the learned Assessing Officer, but deleted by the learned

CIT (Appeals). The learned Assessing Officer made the addition treating the transactions of the assessee as operational lease whereas the assessee treated it as financial lease.

11.2 The learned Authorized Representative submitted that identical issue arose in the case of the assessee for earlier years and the matter reached the Hon'ble Delhi High Court for assessment year 2001-02 and Hon'ble High Court in 362 ITR 548 has decided the issue in favour of the assessee. The learned Departmental Representative relied upon the order of the Assessing Officer.

12. We have carefully considered that in assessee's own case, the Hon'ble Delhi High Court has considered this issue in 362 ITR 548 and further the co-ordinate bench in assessee's own case for assessment year 2010-11 in ITA. No. 3992 (Del) of 2014 has dealt with that issue and deleted the addition made by the learned Assessing Officer confirming the order of deletion of the learned CIT (Appeals) on the identical grounds. In view of this following the decision of the Hon'ble Delhi High Court and co-ordinate bench in assessee's own case, we direct the Assessing Officer to delete the addition of Rs.2,368.11 crores. Accordingly the order of the learned CIT (Appeals) is confirmed and ground No. 1 of the appeal of the Assessing Officer is dismissed.

13. Ground Nos. 2 and 3 are with respect to deletion of disallowance of Rs.10 lakhs made by the Assessing Officer on account of membership fee paid to Airport Authority of India. The assessee has filed the above sum for obtaining the membership of the club. The Assessing Officer disallowed the same holding that it is the payment of enduring benefit and hence of capital nature. So he disallowed the same. The learned CIT (Appeals) allowed the claim of the assessee holding that the same is allowable under Section 37(1) of the Act.

13.1 The learned Departmental Representative submitted that it is the corporate membership, hence same is of enduring benefit and, therefore, correctly disallowed. The learned Authorized Representative supported the order of the learned CIT (Appeals).

14. We have carefully considered the rival contention and find that the assessee has paid this sum for corporate membership of Airport Authority of India Officers Institute. The fact has been noted that the personal expenses of the executives are not incurred. The identical issue arose before the Hon'ble Delhi High Court in 239 ITR 237 wherein it has been held that such expenditure did not bring into existence any benefit of enduring nature. Further the Hon'ble Punjab & Haryana in 351 ITR 196 and Hon'ble Gujarat High Court in 106 taxmann.com 395 has also taken a similar view. In view of this ground Nos. 2 and 3 of the appeal of the assessee are dismissed.

15. In the result, appeal for assessment year 2011-12 filed by the assessee is partly allowed and appeal filed by the Assessing Officer is dismissed.

16. Now we come to appeal for assessment year 2012-13. ITA. No. 6082 (Del) of 2016 is filed by the Revenue and ITA. No. 5942 (Del) of 2016 is filed by the assessee. The assessee has also filed Cross Objection No. 26 (Del) of 2017.

16.1 We first take up the appeal for the Assessing Officer as well as the Cross Objection of the assessee which is against the deletion of addition of Rs.2,935.29 crores on account of difference in gross lease rent received of Rs.7,149.67 crores and lease rent of Rs.4,214.38 crores offered for taxation which is made by the Assessing Officer by treating the lease as financial lease

and not operational lease. The Cross Objection of the assessee is supported in nature of this issue.

16.2 As this issue is squarely covered in favour of the assessee in assessee's own case in 362 ITR 548, we dismiss the appeal of the Assessing Officer and also the Cross Objection filed by the assessee.

17. In ITA. No. 5942 (Del) of 2016, vide ground No. 1 the assessee has challenged the addition on account of disallowance under Section 14A of the Act which is already decided by the co-ordinate bench against the assessee in ITA. No. 3992 (Del) of 2014 for assessment year 2010-11 and, therefore, respectfully following the same we dismiss ground No. 1 of the appeal.

18. Ground No. 2 of the appeal is against addition in the book profit computation under Section 115JB of the Act. An amount of Rs.99,925/- being disallowance made under Section 14A of the Act. This issue is squarely covered in favour of the assessee by the decision of the co-ordinate bench in assessee's own case in ITA. No. 3992 (Del) of 2014 for assessment year 2010-11 wherein para No. 14 following the decision of the Special Bench in the case of Vireet Investment the addition was deleted. Therefore, respectfully following the decision of the co-ordinate bench we direct the Assessing Officer to delete the disallowance of Rs.99,925/- being disallowable sum under Section 14A of the Act computation of book profit under Section 115JB of the Act. Thus ground No. 2 of the appeal is allowed.

19. Ground No. 3 is with respect to the addition of Rs.1,268.69 crores being Leave Travel Assistance provision to the book profit of the assessee under Section 115JB of the Act. The above issue is squarely covered against the assessee by para No. 16 of the co-ordinate bench for assessment year

2010-11. Therefore, respectfully following the decision of the co-ordinate bench, ground No. 3 is dismissed.

20. In the result, appeal of the assessee is partly allowed, appeal of the Assessing Officer and Cross Objection of the assessee are dismissed.

Order pronounced in the open court on: 14.02.2020.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

MEHTA

Date: 14.02.2020

Copy forwarded to:

1. Appellants;
2. Respondents;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI