

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B' NEW DLEHI

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

ITA No. 5404/Del/2017
Assessment Year: 2013-14

Continental Carriers Pvt. Ltd
76-77, Kapashera, Bijwasan
Road, New Delhi-110037.
PAN:AAACC 0136E

Vs.

Income Tax Officer,
Ward-6(3),
New Delhi.

(Applicant)

(Respondent)

Appellant by: Sh. Rajan Malik, Adv.
Respondent by: Sh. Jagdish Singh, Sr. DR

Date of hearing: 16/3/2020

Date of order : 20/3/2020

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the order dated 23/3/2017 in appeal No.335/15-16 of CIT(A)-2 passed by the learned Commissioner of Income Tax (Appeals)-2, New Delhi ("Ld.CIT(A)"), for the Assessment Year: 2013-14, M/s Continental carriers Pvt. Ltd ("the assessee") filed this appeal stating that the Ld. CIT(A) erred in confirming the addition of Rs. 24,66,846/-made by the learned Assessing Officer

while computing “book profit” under section 115 JB of the Income Tax Act, 1961 (for short “the Act”).

2. Brief facts of the case are that the assessee is a company engaged in the business of international freight forward and customhouse agent. For the assessment year 2013-14 they have filed their return of income on 27/9/2013 declaring nil taxable income, but claiming loss of Rs.24,72,462/-. Learned Assessing Officer noticed that the assessee had dividend income and long term capital gains exempt under section 10(38) of the Act and matter disallowance of Rs. 24, 66, 846/-while computing the taxable income. Learned Assessing Officer further noticed that the same was not disallowed while computing the book profit under section 115JB of the Act and stating that no justifiable reply was given by the assessee in that respect, he added it back to the book profits under section 115 JB of the Act.

3. In appeal, Ld. CIT(A) held that the disallowance made under section 14A of the Act by the assessee while computing its normal income at the time of filing its return also needs to be added back to its net profit as per profit and loss account so as to arrive at the correct bookable of it under section 115JB of the Act, the only condition being that the disallowance under section 14 A of the Act forms part of the expenses claimed in the profit and loss account. Ld. CIT(A) accordingly dismissed the appeal of the assessee.

4. Aggrieved by such finding of the Ld. CIT(A), assessee preferred this appeal. Only issue argued before us by the Ld. AR is whether the disallowance under section 14 A of the Act *So Moto* made by the assessee to its normal profits has also to be added to the book profits under section 115 JB of the Act, and basing on the decision of the special Bench of this Tribunal in the case of *ACIT vs. Vireet Investment (P) Ltd reported in (2017) 82 taxmann.com 415 (Delhi-Trib.) (SB)* it is submitted by the Ld. AR that the disallowance under section 14A of the Act read with Rule 8D of the Rules cannot be added while computing profit as per section 115 JB as Explanation -2 that section does not specifically mentions section 14A of the Act, and therefore, no disallowance can be made under section 14 A of the Act while computing book profits under MAT provisions. Ld. DR does not controvert the decision in the *Vireet Investment Private limited (supra)*.

5. In *Vireet Investment (P) Ltd (supra)*, the Special Bench dealt with this aspect at length and held that the computation under clause (f) of explanation 1 to section 115 JB (2) is to be made without resorting to the computation as contemplated under section 14A of the Act read with Rule 8D of the Rules. There is no dispute on this proposition. We therefore, while respectfully following the said addition answer the issue in favour of the assessee.

6. In the result, appeal of the assessee is allowed.

Pronounced in open court on this the 20th March, 2020.

Sd/-

(G.S. PANNU)
VICE PRESIDENT

Sd/-

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 20/3/2020

'VJ'

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI