IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'A', KOLKATA
[Before Shri J. Sudhakar Reddy, AM & Shri S.S. Godara, JM]

I.T.A. Nos. 1626 & 1627/Kol/2018
Assessment Year 2012-13 & 2013-14

D.C.I.T., Circle 8(2) Kolkata**.....Appellant**
P-7, Chowringhee Square,
Kolkata – 700069.

vs

M/s. Oberoi Hotels Pvt. Ltd**.....Respondent**
4, Mangoe Lane, 6th Floor,
Kolkata – 700 001.
[PAN: AAACO 3408 K]

I.T.A. Nos. 1666 & 1667/Kol/2018
Assessment Year 2012-13 & 2013-14

M/s. Oberoi Hotels Pvt. Ltd**.....Appellant**
4, Mangoe Lane, 6th Floor,
Kolkata – 700 001.
[PAN: AAACO 3408 K]

vs

D.C.I.T., Circle 8(2) Kolkata**.....Respondent**
P-7, Chowringhee Square,
Kolkata – 700069.

Appearances by:
Shri A.K. Gupta, FCA appearing on behalf of the Assessee.
Shri Dhrubajyoti Ray, JCIT appearing on behalf of the Revenue.

Date of concluding the hearing : February 20, 2020
Date of pronouncing the order : May 29, 2020

ORDER

SHRI J. SUDHAKAR REDDY, AM

These are cross appeals directed against separate orders of the Commissioner of Income Tax (Appeals) – 3, Kolkata dated 04.06.2018 to the assessment year 2011-12 and dated 04.06.2018 to the assessment year 2013-14.

2. As the issues arises in both these appeals are common and pertain to the same assessee, for the sake of convenience and they are heard together and disposed of by way of this common order.

3. We have heard rival contentions, considered the papers on record and the orders of the authorities below as well as the case was cited, we held as follows.

4. First we take up the department appeal in ITA No. 1626/Kol/2018 for the assessment year 2012-13. The grounds of appeal are as follows:

> *"1. Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in directing to re-compute the disallowance under Rule 8D(2)(iii) on the average value those shares which have yielded the exempted dividend income notwithstanding the facts that those shares were hold as strategic investment.*
> *2. Whether on the facts and circumstances of the case Ld. CIT(A) was justified in deleting addition made u/s 14A to the book profit of the assessee.*
> *3. Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in allowing the ALV of Rs. 3,60,000/- of the house property by rejecting fair market rent of Rs. 1,32,00,000/- and accepting the actual rent received by the assessee company."*

5. Ground No. 1 is dismissed as the Ld. CIT(A) has decided the issue in favour of the revenue and the department has no grievance. In the result, ground no 1 is dismissed.

6. Ground No. 2 is covered in favour of the assessee by the decision of Special Bench of the Delhi Tribunal in the case of Vireet Investments Ltd. (2017) 82 taxmann.com 415 (Delhi – Trib) (SB). The

Ld. CIT(A) has applied this decision and hence we uphold the same. Ground No. 2 is hereby dismissed.

7. Ground No. 3 is on the issue of addition of Rs. 89,88,000/- on account of rental income. This issue is no more res integra as the Tribunal in the assessee's own case in the earlier assessment years in ITA No. 230/Kol/2012 & 233/Kol/2012 for A.Y. 2007-08 had held that the action of the AO has resulted in taxing notional income in the hands of the assessee, which never accrued and hence cannot he brought to tax. The Ld. CIT(A) has followed this judgement. The Hon'ble Calcutta High Court upheld this decision of the Tribunal on this issue in ITAT 50 of 2017 and ITAT 10 of 2017 order dated 20th August, 2018 at page 70 para 1, the Hon'ble High Court held as follows

> *"We do not find any error in law on the part of the Tribunal in its decision on this point. The other question of law suggested by the Revenue was on determination of annual value of certain property of the assessee, being a farm house near New Delhi. The Assessing Officer had undertaken a valuation exercise to come to his conclusion that the rent disclosed by the assessee is much lower than the market value. He has referred to a website www.99acres.com. from which he has referred to higher figures of rent. But this court has consistently held that agreed rent would be the determinant factor for valuation and not the rent revealed from the market search. The authorities on this point are Commissioner of Income Tax vs Kishanlal and Sons (Udyog) Pvt. Ltd. reported in 2003 ITR 481 and Commissioner of Income Tax vs Indra Co. Ltd. reported in 268 ITR 240. The point urged by the Revenue is thus covered. We decline to admit the appeal of the Revenue on this point also."*

As the order passed by the Ld. CIT(A) applies the proposition of law laid down in this judgement, we uphold the same and dismiss this ground of the Revenue.

8. Ground No. 4 is general in nature.

9. In the result, the appeal of the Revenue is dismissed.

ITA No. 1666/Kol/2018

10. Grounds of appeal by the Assessee read as follows:

> *"1. For that the Commissioner of Income Tax (Appeals) erred in holding that the Assessing Officer (AO) recorded his satisfaction properly for the purpose of making disallowance under section 14A of the Income Tax Act, 1961 ('the Act'). The CIT(A) failed to appreciate that there was no discussion in the order of assessment as to how the calculation given by the appellant for disallowance of the expenditure was erroneous and the basis on which the said disallowance was calculated.*
> *2. For that there being no proper satisfaction recorded by the AO for disallowance under section 14A of the Act the same is liable to be deleted.*
> *3. For that further and in any event and without prejudice to the above the disallowance confirmed by the CIT(A) under Rule 8D(2)(iii) is excessive and unreasonable and beyond business expediency.*
> *4. For that further and in event and without prejudice to the grounds, the AO should have examined the actual expenditure incurred in relation to exempted income, along with common attributable expense after excluding specific expense which are related to non-exempted income, prior to applying Rule 8D & as such disallowance is excessive & unreasonable & is required to be reworked.*
> *4. That the appellant craves leave to add, amend, modify, rescind, supplement or alter any of the grounds stated here-in-above either before or at the time of hearing of the appeal."*

11. All the grounds of appeal pertain to the sole issue on quantification of disallowance u/s 14A. The learned counsel for the assessee submitted that application of Rule 8D by the Assessing Officer was bad in law for the reason that proper satisfaction was not recorded by the Assessing Officer. He drew our attention to para 2 page 2 of the assessment order and submitted that, simply stating that the assessee's reply is not satisfactory, would not satisfy the requirements of law. On merits, he submitted that the assessee runs a hotel and disallowance u/s 14A r.w.r. 8D(2)(iii) is the only issue. On a

query from the bench, the learned counsel for the assessee submitted that he would have no objection, if the issue is set aside to the file of the Assessing Officer for de novo exercise on the quantification of the disallowance by applying the decision of the ld. CIT(A) in an appeal for the A.Y. 2015-16 order dated 22nd February, 2019, for the reason that a remand report was called for from the Assessing Officer and the Ld. CIT(A) based the disallowance on the remand report. The ld. departmental representative did not have any objection for this proposal of the learned counsel for the assessee. In view of the above, we set aside the issue to the file of the Assessing Officer for fresh adjudication in accordance with law with the direction to consider and apply the decision of the CIT(A)-Kolkata 23/10190/2017-18 dated 22.02.2019 for the A.Y. 2015-16. The ld. CIT(A) in this order, after obtaining a remand report from the Assessing Officer had restricted the disallowance to Rs. 62.67 lacs. In view of the above discussion all these grounds of appeal are set aside to the file of the AO for fresh adjudication in accordance with law.

12. In the result, the appeal of the assessee is allowed for statistical purposes.

ITA No. 1627/Kol/2018

13. Grounds of appeal by the Revenue read as follows:

> *"1. Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in directing to re-compute the disallowance under Rule 8D(2)(iii) on the average value those shares which have yielded the exempted dividend income notwithstanding the facts that those shares were hold as strategic investment.*
> *2. Whether on the facts and circumstances of the case Ld. CIT(A) was justified in deleting addition made u/s 14A to the book profit of the assessee.*

3. Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in allowing the ALV of Rs. 3,60,000/- of the house property by rejecting fair market rent of Rs. 1,45,20,000/- and accepting the actual rent received by the assessee company.
4. That the appellant reserves the right to amend, alter or add to any ground(s) of appeal before or at the time of hearing of the appeal"

14. Ground No. 1 is on the issue of quantification of disallowance under Rule 8D(2)(iii) r.w.s. 14A of the Act. This decision of the Ld. CIT(A) is in line with the proposition of law laid down by the Hon'ble Jurisdictional High Court in the case of REI Agro Ltd. GA No. 3022 of 2013 (ITAT No. 161 of 2013) judgement dated 23.12.2013. Hence this calls for no interference. Hence we uphold the order of the ld. CIT(A) and dismiss this ground of the assessee.

15. Ground No. 2 is covered in favour of the assessee by the decision of the Special Bench of the Delhi Tribunal in the case of *ACIT vs Vireet Investments (P) Ltd. (2017) 82 taxmann.com 415 (Delhi – Trib) (SB).*

16. As the Ld. CIT(A) applied this binding decision, we find no infirmity in the same. We dismiss Ground No. 2 of the Revenue.

17. Ground No. 3 is identical to the Ground taken on this issue in the A.Y. 2012-13. Consistent with the view taken therein, we dismiss this ground of appeal for the same reason as cited by disposing of this issue for A.Y. 2012-13.

18. In the result, appeal of the Revenue is dismissed.

ITA No. 1667/Kol/2018

19. The sole issue agitated before us, is the disallowance u/s 14A of the Act. As the grounds of appeal are similar to those raised in assessee's appeal for A.Y. 2012-13 and as the facts are identical, consistent with the view taken by us while disposing of the appeal for A.Y. 2012-13 for the very same reason, we set aside this issue to the file of the Assessing Officer with the direction to dispose of the issue by applying our directions on this issue for the A.Y. 2012-13.

20. In the result, the appeal of the assessee is allowed for statistical purposes.

21. Before parting, it is noted that the order is being pronounced after ninety (90) days of hearing. However, taking note of the extraordinary situation in the light of the COVID-19 pandemic and lockdown, the period of lockdown days need to be excluded. For coming to such a conclusion, we rely upon the decision of the Co-ordinate Bench of the Mumbai Tribunal in the case of *DCIT vs. JSW Limited in ITA No. 6264/Mum/2018 & 6103/Mum/2018, Assessment Year 2013-14, order dt. 14th May, 2020.*

22. In the result, appeals of the revenue are dismissed and the appeals of the assessee are allowed for statistical purposes.

Order Pronounced in the Open Court on 29th May, 2020.

Sd/-	Sd/-
(S.S. Godara)	(J. Sudhakar Reddy)
(JUDICIAL MEMBER)	ACCOUNTANT MEMBER

Dated: 29/05/2020
Biswajit, Sr. P.S.

Copy of order forwarded to:

1. Oberoi Hotels Pvt. Ltd., 4, Mangoe Lane, 6th Floor, Kolkata – 700 001.

2. DCIT, Circle 8(2), Kolkata.

3. The CIT(A)

4. The CIT

5. DR

True Copy, By order,

Assistant Registrar / H.O.O.
ITAT, Kolkata