INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "C ": NEW DELHI

BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER

AND

SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No	Assessment Year
4336/del/2010	2004 – 05

The Deputy Commissioner of Income Tax Circle – 11(1) C R Building I P Estate New Delhi	Vs.	IFCI LIMITED IFCI Towers 61 Nehru Place New Delhi PAN: AAACT0668G
(Appellant)		(Respondent)

ITA/ Co No	Assessment Year
4346/del/2010	2004 – 05

IFCI LIMITED IFCI Towers 61 Nehru Place New Delhi	Vs.	The Deputy Commissioner of Income Tax Circle – 11(1) C R Building

PAN: AAACT0668G	I P Estate New Delhi
(Appellant)	(Respondent)
For Assessee	Shri saurav Sood Adv Shri Shashank Sharma Adv Ms Subhashree Rao Adv
For Revenue	Shri Samar Bhadra CIT DR
Date of Hearing	21-08-2020
Date of pronouncement	31/08/2020

O R D E R

Per Prashant Maharishi AM

01. These are the cross appeals filed by the assessee and the learned assessing officer for assessment year 2004 – 05 against the order of the learned Commissioner Of Income Tax (Appeals) –XI, New Delhi dated 5 July 2010.

02. In ITA number 4346/Del/2010, assessee has preferred following grounds of appeal:-

1. That the Commissioner of Income Tax (Appeals) erred on facts and in law in upholding the action of the assessing officer in not allowing depreciation amounting to ₹ 101,237,629/– claimed by the appellant in respect of the assets given on lease.

1.1 That the Commissioner of income tax (appeals) erred on facts and in law in holding that lease transaction

undertaken by the appellant to be a financing transaction.

2. Without prejudice to ground of appeal number 1, that in case the lease transaction undertaken by the appellant was held to be merely a financing transaction, then the assessing officer erred in bringing to tax the entire lease rent received and offered for tax by the appellant in the return of income.

   2.1 that the assessing officer/CIT (A) failed to appreciate that in case the lease transaction undertaken by the appellant was held to be merely a financing transaction, then only the finance/interest component of the gross lease rent received should have been brought to tax as income of the appellant.

3. That the Commissioner of Income Tax (Appeals) erred on facts and in law in upholding the action of the assessing Officer in disallowing expenses amounting to Rs 1, 81,80,000/-u/s 14 A of The Income Tax Act, 1961 to be the same towards earning exempt dividend income.

   3.1 That the Commissioner of Income Tax (Appeals) erred on facts and in law in not appreciating that only expenditure actually incurred and having direct relation to earning of exempt income could be disallowed u/s 14A of the act.

   3.2 That the Commissioner of Income Tax (Appeals) failed to appreciate that no expenditure was actually incurred by the appellant in relation to exempt income and consequently, the provisions of Section 14 A of the act were not applicable.

4. That the Commissioner of Income Tax (Appeals) erred on facts and in law in upholding the action of the assessing officer in not allowing foreign exchange fluctuation loss of Rs. 125,730,000 holding the same to be merely notional in nature

4.1 That the Commissioner of Income Tax (Appeals) failed to appreciate that the aforesaid issue is squarely covered in favour of the appellant by the decision of the Supreme Court in case of CIT versus Woodward Governor India (private) limited 312 ITR 254

03. In ITA number 4336/del/2010 the learned assessing officer has raised the following grounds of appeal:-

1. The order of the learned CIT (A) is wrong, perverse, illegal and against the provisions of law, liable to be set aside.
2. On the facts and circumstances of the case and in law, the CIT (A) has erred in deleting the disallowance of RS. 1,48,43,143 on account of redemption premium

04. Brief facts of the case culled out from the assessment order show that the assessee is a company engaged in the business of leasing and finance and it finances projects in the form of rupees loans, foreign loans, and underwriting and subscription to the capital issues.

05. Assessee filed its return of income on 30/10/2004 declaring loss of Rs 4,484,105,688/–. The return was revised on 31st of March 2006 declaring loss of Rs 4,503,153,821/–. The case of the assessee was picked up for scrutiny and assessment order u/s 143 (3) of The Income Tax Act 1961 was passed by the learned Assessing Officer on 22nd of December 2006 determining total loss

of the assessee at Rs 4,243,163,352/–. Several additions/disallowances were made. Assessee challenged the same before the learned CIT – A. The learned CIT – A as per order dated 5 July 2010 partly allowed the appeal of the assessee. Therefore, both the parties are in appeal before us.

06. We first come to the appeal of the learned assessing officer where the only solitary ground of appeal is with respect to the disallowance of ₹ 1 4843143/– deleted by the learned CIT – A on account of redemption premium.

07. Both the parties agreed before us that this issue is identical to the ground number 5 of the appeal of the learned assessing officer in ITA number 2205/del/2005 for assessment year 2001 – 02. It was confirmed before us that there is no change in the facts and circumstances of the case this year also.

08. We have carefully considered the rival contention and perused the orders of the lower authorities and after hearing the parties, We find that identical issue has been decided by us while deciding ground number 5 of the appeal of the learned assessing officer for assessment year 2001 – 02 and as per paragraph number 30 – 33 of that order we have confirmed the action of the learned CIT – A in deleting the above addition/disallowance. Therefore, for the same reason, we uphold order of the learned CIT – A in deleting the disallowance of ₹ 14843143/– on account of redemption premium. Accordingly, ground number 2 of the appeal of the learned assessing officer is dismissed.

09. Ground number 1 of the appeal of the learned assessing officer is general in nature and therefore same is dismissed.

10. In the result ITA 4336/del/2010 filed by the learned assessing officer for assessment year 2004 – 05 is dismissed.

11. Now we come to the appeal of the assessee in ITA No 4346/Del/2010.

12. The ground number 1 and 2 deals with the issue of allowability of depreciation amounting to ₹ 101,237,628/– in respect of assets given on lease.

13. Both the parties confirmed before us that the facts in that case are identical to the facts in the case of the assessee for assessment year 1999 – 2000 and 2000 – 2001 in ITA no 1200 & 1201/Del/2005. Their arguments are also same as were made in appeal for those years.

14. We have carefully considered the rival contention and perused the orders of the lower authorities. We have also taken on record the arguments of both the parties that there is no change in the facts and circumstances of the case. While deciding the appeal of the assessee for assessment year 1999 – 2000 and 2000 – 2001, in ITA No 1200 & 1201/Del/2005 of order of even date , we have held that

a. the assessee is the owner of the leased assets,
b. Assets are shown in the books of assessee as owned by it,
c. lease rental offered to income tax in the profit and loss account,
d. various clauses of the lease agreement shows it is lease transaction and not of financing
e. certificate of the lessees that the assets are owned by the assessee and they have not claimed depreciation thereon,

and allowed the claim of the assessee holding that assessee is entitled to depreciation on assets given on lease. Therefore, for the similar reasons, we allow ground number 1 & 2 of the appeal of the assessee.

15. Ground number 3 of the appeal of the assessee relates to disallowance of expenses amounting to ₹ 1 8180000/– made by the learned assessing officer and confirmed by the learned CIT – A

u/s 14 A of The Income Tax Act. Facts shows that the assessee has earned dividend income of Rs 218,814,572/– during the year which is claimed as exempt u/s 10 (34) of the act. The learned assessing officer asked the assessee to justify the non-disallowance of expenditure incurred on earning this dividend income. The assessee submitted its reply on 14th of November 2006 submitting that for assessment year 1998 – 99 the learned CIT – A has upheld the disallowance of only ₹ 2 lakhs out of the administrative expenses. The learned assessing officer rejected the contentions of the assessee stating that no evidences been furnished by the assessee company to establish that no expenses have been incurred in earning of the dividend income. Thereafter, the learned assessing officer proportionately disallowed the expenses attributable to earning of dividend income of ₹ 1 8380000/– u/s 14 A of The Income Tax Act. The assessee challenged the same before the learned CIT – A. He upheld action of the learned assessing officer. Therefore assessee is aggrieved and has challenged this confirmation of disallowance.

16. The learned authorised representative submitted as Under:-

- The shares were held by Appellant Assessee as stock-in-trade and as such no disallowance under section 14A of the IT Act was called for.
- Investments in shares were made out of interest free funds hence interest cost cannot be attributed as expenditure in relation to earning of dividend income.
- No cogent reasons were given by the Respondent Revenue for rejecting suo-moto disallowance made by the Appellant Assessee. Also, the reasons as given by the Respondent Revenue with regard to double benefit on account of loss on sale of shares/bonds being exempt due to the transaction of

dividend stripping (reduction in redemption value due to declaration of dividend) was wrong in the light of the decision of *Apex Court* in the case of *CIT vs Walfort Share & Stock Brokers (P.) Ltd. [2010] 192 Taxman 211 (SC)*, the loss on sale of units in a dividend stripping transaction, cannot be considered as an 'expenditure' for disallowance under section 14A of the IT Act. Further, it is submitted that there was no loss on sale of shares/bonds which was claimed as exempt during the year under consideration and no contrary finding to that effect was given by the Respondent Revenue. Further, income/loss from sale of shares in assisted concerns were shown as business income/loss by the Appellant Assessee.

- Reliance by Respondent Revenue on United General Trust case was incorrect ason the ground that though the question framed contained a reference to 'proportionate management expenses' but the controversy was that whether deduction is allowable from gross dividend or net dividend under section 80M of the IT Act and section 14A of the IT Act does not deal with this issue.
- No actual expenditure was incurred by the Appellant Assessee to earn the dividend income. No actual expenditure was incurred on its collection. Also, no follow-up was made for the same. Thus, the disallowance of Rs. 2,00,000/- as made suo moto by the Appellant Assessee was just and reasonable.
- Burden of proof is on the Revenue to show that expenses were actually incurred to earn exempt income and the Respondent Revenue had not brought anything on record to show that interest/administrative expenses were incurred to earn dividend income.

- There was no nexus between interest/ administrative expenditure incurred and the dividend income. Merely because exempt income is earned, it does not mean that disallowance under section 14A of the IT Act must necessarily be called for.

i. Detailed submissions on the above grounds have already been made in the written submissions filed by the Appellant Assessee for AY 2002-03 and the same is not being repeated here for the sake of brevity.

17. The learned departmental representative vehemently supported the order of the learned lower authorities. It was submitted that when the assessee has earned substantial exempt income it couldn't be said that assessee has not incurred any expenditure for earning those income. He further submitted that as the assessee has failed to give any details about the nature of expenditure with evidence, which is claimed to have not been incurred by the assessee for earning of exempt income, the learned lower authorities are correct in taking a view against the assessee.

18. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that the learned assessing officer has not made any disallowance on account of interest expenditure but has merely considered administrative expenses and applied the ratio of the total receipts with respect to the dividend income @ 0.5 % and proportionately disallowed the above sum of ₹ 1 8380000/–. The assessee has claimed before us that it has disallowed certain sum on its own, however no details were given that how sum has been worked out and what is that sum. The assessee has also stated that it has not incurred any

expenditure to earn the dividend income and there is no nexus between the administrative expenditure incurred and the dividend income, however, no reasoning or it substantiation with the facts of the accounts of the assessee were shown to us. Even the learned CIT – A has also not given any reason why he agrees with the action of the learned assessing officer. He has merely reproduced the order of the learned AO and in one line has stated that he agrees with the action of the learned assessing officer in making above disallowance. Therefore, for the reason of

a. absence of proper facts available on record and any explanation of the assessee before the lower authorities,
b. even no facts submitted before us ,
c. confirmation of the disallowance by the learned CIT – A without any reason,

We set aside the whole issue back to the file of the learned CIT – A to decide the issue afresh. The assessee is also directed to furnish all the details and is allowed to raise all such arguments raised before us. Needless to say, that after giving proper opportunity of hearing to the assessee, the learned CIT – A is directed to decide the issue afresh. In view of this ground number 3 of the appeal of assessee is allowed with above direction.

19. Now we come to the 4 th ground of appeal which is against the action of the learned CIT – A in confirming the disallowance of foreign exchange fluctuation loss of ₹ 125,730,000 holding that same is notional in nature. During the assessment proceedings, the learned AO noted that assessee has suffered the above loss on account of foreign exchange fluctuation. The assessee was asked why it should not be disallowed. The assessee submitted a letter on 25th of October 2006 stating that assessee borrows rupee on foreign currency funds to meet its needs. The assets and liabilities are held in foreign currency and accrued income and

expenditure in foreign currency are translated into India in rupee terms at the rates advised by the foreign exchange dealer association (FEMDA)prevailing at the close of its accounting period. The assessee also claimed that above sum is allowable u/s 37 (1) of the act. The learned assessing officer rejected the contentions of the assessee. He held that exchange loss on account of day to day fluctuations in the exchange rate is a notional loss and cannot be determined with certainty until the liability has been actually discharged. He therefore held that it is a notional loss and the loss has not been actually suffered by the assessee. Therefore, it was disallowed.

20. Assessee preferred this disallowance in appeal before the learned CIT – A. Assessee also submitted that the honourable Supreme Court has considered this issue in case of CIT versus Woodward Governor India private limited (2009) 312 ITR 254. The learned CIT – A held that firstly there is no expenditure within the meaning of Section 37 (1) of the act and secondly it has not been laid out or expended to fulfil the conditions of Section 37 of the act. Therefore, he confirmed the action of the learned assessing officer.

21. The learned authorised representative reiterated the submissions made before the learned CIT – A and submitted that this issue is squarely covered in favour of the assessee by the decision of the honourable Supreme Court as stated above. He submitted that foreign exchange liability at the end of the year is an accrued and ascertained liability and cannot be said to be a notional liability.

22. The learned departmental representative vehemently supported the orders of the lower authority and submitted that the foreign exchange loss has not been incurred by the assessee, it is a notional loss, it crystallized when the transaction is concluded.

23. We have carefully considered the rival contention and perused the orders of the lower authorities. The Ld. AO vide order dated 22.12.2006 did not allow deduction of Foreign Exchange Fluctuation Loss of Rs. 12,57,30,000/- for the reason that the amount of liability has neither arisen and nor paid being notional in nature. The Ld. CIT(A) upheld the Ld. AO's order and confirmed addition of Rs. 12,57,30,000/- stating that there was no expenditure within the meaning of Section 37(1) of the Act for which the claim was lodged by the Appellant . In the present case, it is pertinent to mention that the Appellant recorded the actual liability of borrowed rupee and foreign currency funds to meet its needs amounting to Rs. 12,57,30,000/- which is due to be paid by the Appellant. To claim deduction for the foreign exchange fluctuation loss, the Appellant does not have to fall within the ambit of Section 43A of the Act as the Appellant is covered u/s 36 and 37(1) r.w.s 145 of the Act as the expenditure claimed have to be revenue in nature and paid by the Appellant on the due date of repayment of borrowed rupee and foreign currency funds and is not merely notional in nature nor is reinstatement of liability. Decision of Honourabel Supreme court in CIT v Woodword Governor India (P.) Ltd. &Ors. [2009] 312 ITR 254/179 Taxman 326 (SC***)*** covers the issue in favour of the assessee. The ld CIT A has wrongly interpreted the ratio laid down in the case. The Hon'ble Supreme Court, in the said case, allowed foreign exchange fluctuation loss on accrual basis where the assessee was carrying or maintaining the mercantile system of accounting subject to mandatory Accounting Standards and commercial principles. Losses on account of fluctuation of foreign exchange rates owing to reinstatement of liability arisen for stock-in-trade were held to be allowable under section 37(1) of the act. Fluctuation in the rate of exchange with respect to loans taken for revenue purposes was

allowable as deduction u/s 37(1) in the year of fluctuation. The loss on account of fluctuation as on the date of the balance sheet is expenditure u/s 37(1) of the Act. In this case, the Appellant follows mercantile system of accounting, therefore, the deduction to be allowed should be not the amount incurred on the outset but what is actually to be paid in future. Thus, the deduction to be allowed should be equivalent to the amount that the Appellant will be paying at the due date or at the end of the financial year, whichever is earlier. Hence, as held in Woodwrod Governeors India P Ltd (sc) (supra) , the foreign exchange fluctuation loss on borrowed rupee and foreign currency funds amounting to Rs. 12,57,30,000/- is allowable as deduction u/s 37(1) of the Act., Accordingly we reverse the order of the learned CIT – A and allow ground number four of the appeal.

24. In the result appeal of the assessee in ITA number 4346/Del/2010 is partly allowed.

25. In the result ITA number 4346/del/2010 filed by the assessee for assessment year 2004 – 05 is partly allowed and ITA number 4336/del/2010 filed by the learned assessing officer is dismissed.

Order pronounced in the open court on 31/08/2020 .

-Sd/-	-Sd/-
(SUCHITRA KAMBLE)	(PRASHANT MAHARISHI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Dated: 31/08/2020
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi