IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'G', NEW DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA No.2982/Del./2015
Assessment Year: 2010-11

IFCI Ltd., IFCI Tower, 61-Nehru Place, New Delhi	**Vs.**	DCIT, Circle-12(1), New Delhi
PAN :AAACT0668G		
(Appellant)		**(Respondent)**

Appellant by	Shri K. Sampath, Adv.
Respondent by	Shri H.K. Choudhary, CIT(DR)

Date of hearing	24.09.2020
Date of pronouncement	08.10.2020

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 16/02/2015 passed by the Ld. CIT(Appeals)-15, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2010-11 raising following grounds:

1. *That the order of the learned Commissioner of Income Tax (Appeals) - 15 [hereinafter referred to as CIT (A)] is wrong on facts and bad in law.*

2. *That the Ld. CIT (A) erred on facts and in law in giving the direction to verify that lessee have not claimed the 'depreciation on leased assets'.*

> 3. *That on the facts and circumstances of the case, the Ld. CIT (A) erred in overlooking the amount of disallowance u/s 14A made by appellant, determined based on its consistent method of accounting and determination of such expenditure.*
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> 4. *That on the facts and circumstances of the case, Ld. CIT (A) erred in upholding the application of rule 8D on the shares held as stock in trade.*
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> 5. *That on the facts and circumstances of the case, Ld. CIT (A) failed to appreciate that no cogent reason was given by the Assessing Officer for not being satisfied with the disallowance made by the appellant and thereby invoking rule 8D. The CIT (A) should have noted that while actual expenditure by way of fees to Custodian for entire investment portfolio of the appellant, amounted to ? 2,00,000 only, yet appellant in own volition made a disallowance of ? 10,00,000 as a consistent practice.*
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> 6. *That on the facts and circumstances of the case, Ld. CIT(A) erred in upholding the action of Assessing Officer in applying Rule 8D while computing the book-profits u/s 115JB.*
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> 7. *The appellant craves leave to add, alter, amend or vary the above grounds of appeal at or before the time of hearing.*

2. Briefly stated facts of the case are that the assessee is a public limited company engaged in the business of providing financial assistance to enterprises in the form of short, medium or long-term loans or working capital facilities or equity participation schemes etc. and also through business of leasing and hire purchase finance by acquiring to provide on lease or to provide on hire purchase all types of industrial office plant and other assets, required by various businesses.

2.1 For the year under consideration, the assessee filed return of income on 30/09/2010, declaring total income of ₹ 15,52,17,798/- and book profit of ₹ 319,06,63,765/- under section 115JB of the Income Tax Act, 1961 (in short 'the Act').

The assessee also revised the return of income claiming additional tax deduction at source (TDS). The return of income filed by the assessee was selected for scrutiny assessment. The scrutiny assessment under section 143(3) of the Act was completed on 12/03/2013, wherein certain additions/disallowances were made to the returned income. Against the said assessment order, the assessee filed appeal before the Learned CIT(A), who partly allowed the appeal. Aggrieved with the additions/disallowances sustained by the Ld. CIT(A), the assessee is in appeal before the Income Tax Appellate Tribunal (in short 'the Tribunal') raising grounds as reproduced above.

3. Before us, the parties appeared through Videoconferencing facility. The Learned Counsel of the assessee filed electronically the documents and orders of the Tribunal in earlier years.

4. We have heard both the parties and perused the relevant material on record. The ground No. 1 of the appeal is general in nature and, therefore, we are not required to adjudicate upon specifically.

5. The ground No. 2 is in respect of the depreciation on asset, which have been leased to other parties. The assessee is aggrieved only with the direction of the Ld. CIT(A) for verification of the claim of depreciation, if any claimed by the lessee(s). According to the Assessing Officer, the business of so-called leasing was in the nature of hire purchase-cum-finance business and, therefore, he disallowed the claim of the depreciation of ₹ 1,55,80,993/- on the leased assets. The Ld. CIT(A) following order of his predecessor in A.Y.- 2008-09, the direction of the Tribunal in assessment year 1995-96 and decision of the Hon'ble Supreme Court in the case

of CIT Vs Shann Finance Private Limited, 231 ITR 308(SC) & ICDS Ltd Vs CIT 350 ITR 527(SC), allowed the claim of the assessee, subject to verification by the Assessing Officer that lessee(s) have not claimed any depreciation on same assets. The direction of the Learned CIT(A) are reproduced as under:

> *"8.5. It is observed that although the appellant has made submissions before the AO that lessees have not claimed depreciation on leased assets, however, it. appears that the issue has not been verified by the AO as it is not known whether the certificates from lessees were ever produced before the AO. The assessment order is silent on the issue of such verification. Keeping in mind the decision of Hon'ble Apex Court, the issue on depreciation of leased asset is decided in appellant's favour subject to the verification to be made by the AO that in none of the cases of lessees, depreciation has been claimed by them on such leased assets. Ground No. 2 of appeal is therefore, allowed with these directions."*

5.1 Before us, the learned Counsel of the assessee submitted that though the lessees have not claimed depreciation on the same assets, still the assessee cannot be held responsible for any wrong claim of depreciation, if any, by the lessees and, therefore, such direction need to be struck down. He relied on the order of the Tribunal in ITA No.1200/Del/2011 for assessment year 1999-2000 and submitted that while allowing claim of depreciation, no such directions have been issued by the Tribunal in that assessment year.

5.2 On the contrary, the Learned DR submitted that in cases relied upon by the assessee before the Ld. CIT(A), the lessees had not claimed depreciation on leased assets. He submitted that the Tribunal in assessment year 1999-2000 has also mentioned that

the assessee had produced certificate from the lessees that no depreciation was claimed by them, and therefore the Learned CIT(A) allowed the depreciation in the case of the assessee subject to such verification. According to him, there is no error in the order of the Learned CIT(A) in issuing the direction for verification of the depreciation claimed by the lessee(s).

5.3 We find that the Tribunal in assessment year 1999-2000 in first round restored the matter back to the AO for verification, whether the assessee was engaged in the business if leasing of assets. In second round, in order dated 31/08/2020, the Tribunal has deleted the disallowance of the depreciation on the leased assets observing as under:

> *"13. We have carefully considered the rival contentions and also perused the relevant order is placed before us. We also considered the paper book filed by the assessee. On perusal of the balance sheet filed by the assessee placed at page number 51/98 of the paper book it is apparent that assessee has a gross block of assets leased of plant and machinery is on 31st of March 1999 amounting to Rs. 4897.27 millions. As per schedule XVI , note number 2.4 while recognizing the revenue the significant accounting policy followed by the assessee shows that rental on leased the said is accounted for from the commencement date, as prescribed in the lease agreement entered with the lessees. As per note number, five related to the fixed assets and depreciation in note number 5.2 it is stated that depreciation on assets acquired in the course of leasing business is provided on straight-line method at the rates prescribe^ under schedule XIV of the companies act, 1956 or over the primary. Of lease of assets, whichever is higher. In schedule number XI of income from operations, the assessee has shown the lease rental income of RS.1771.59 millions. At page number, 42 - 50 the assessee has also submitted tfie copies of the certificate from third parties wherein they have confirmed that they have taken certain plant and machinery on lease from the assessee and during the tendency of the lease. They have not claimed any depreciation u/s 32 of the income tax act as the ownership of the assets remained with the assessee. Assessee has also produced the copy of lease agreement placed at page number six - 41 of the paper book, which*

has certain specific clauses tabulated by the assessee also in its return submission.

14. According to clause number 2.4 of the lease agreement it is agreed that upon termination of the agreement by a flux of time or otherwise, the lessee shall, at its own cost and expenses, forthwith deliver or cause to be delivered to the lessor the equipment, such time and place as may be directed by the lessor, in good repair, order and conditions subject to normal wear and tear. As per the article IV four of the agreement the lessee was to maintain and keep the equipment however to show with Mark that assessee is the soul and the exclusive owner of those assets.

15. Further, the learned authorised representative has also tabulated the relevant conditions of the lease agreement as under:-

Features	Words in the agreement	Article/clause no.
Intention of parties	"Lease ...have the commercial connotations and only means the hiring or licensing of Plant..." "Let on lease the equipment..."	Article I Definitions 14 Article I - 1.7 Schedule
Return of equipment/lease property	"Upon termination of this agreement by efflux of time or otherwise Lessee shall at its own cost and expense forthwith deliver or cause to be delivered to the lessor..."	Article II -2.4
Payment for equipment	"Lessee has requested the Lessor to make advance payments towards the cost of the equipment"	Article II - 2.5(a)
Lessee "warrantee indicating that the Lessor is owner	"Lessee would have been eligible and could have claimed depreciation....if it had bought the equipment and was operating the same as the owner thereof'	Article III- 3.4
Right of possession with restriction or subletting or assignment	"Keep the equipment at all times in its possession and control at the location shown herein... and shall not remove therefrom sublet or assign the same without prior written consent of Lessor"	Article IV - 4.1
Exclusive ownership of the Lessor	"Affix a name plate or other distinguishing mark identifying the sok and exclusive ownership thereof of the Lessor and not allow or permit the sam to be removed or defaced" "Nor do or cause to do any act whereby it become impossible for the Lessor to take possession of the equipment on th termination of the agreement by any nature whatsoever." "Hold the equipment as bailee..." "Not sell, transfer, assign, lease, let out or otherwise dispose...part with the possession or permit any other person to make use of the	Article IV - 4.1, 4.2, 4.3, 4.11

	equipment or part thereof'	
Right to inspection	*"Permit the Lessor and all person authorised by the Lessor at all reasonable times (immediately in case of an emergency) to inspect, view and examine the state and condition of the equipment..."*	*Article IV - 4.10*
Permission to alter or improve equipment and ownership of the same	*"Not to make any alteration, addition or improvement without prior consent of the Lessor... Provided, however that all such additions, improvements and attachments of any nature what so ever, when made to the equipment by the Lessee (whether or not at its own cost or not and whether with or without approval of Lessor) shall belong to the Lessor "*	*Article IV – 4.12*
Lessee not to claim depreciation which is available to Lessor being owner.	*"Not to claim any relief by way of depreciation or nay other deduction allowance or grant available to the Lessor as the owner of the equipment"*	*Article IV - 4.17*
Lessee is agent of Lessor for purpose of taking delivery.	*"The Lessor hereby appoints the Lessee as its agent to deliver, inspect, receive deliver/obtain clearance from port/customs authorities and installation of the equipment from/by the manufacturer and /or its agents"*	*Article V - 5.1*
Equipment is not stock in trade of the Lessor	*"The Lessor is not the manufacturer or dealer or supplier of the equipment anc has only purchased the equipment selected by the Lessee from the manufacturer or dealer or supplier designated by the Lessee"* *"The Lessor has not at any time, made nor does it hereby make any representation or warranty, whatsoever with respect to the merchantability, quality....or performance of the equipment."*	*Article VI - 6.2, 6.3*
Ownership recognized by successors in title	*"As between the Lessor and the Lessee and their respective successors in title, the equipment shall remain moveable property of and shall continue to be in the ownership of the Lessor"*	*Article VI - 6.7 F*
Right of Lessor to create other interest, assign property	*"The Lessor shall be entitled to, without giving any notice to the Lessee, assign to any person any of its rights title or interest under this agreement or creat any charge, lien, encumbrance or hypothecate the equipment or nay part thereof and the person(s) to or on who such are assigned or conferred shall be entitled to the full benefits of this Agreement"*	*Article VIII - 8.1 F f*
Right to repossess	*"On termination of this Lease, pursuan to clause 9.1 above: - The Lessor shall, without any notice be entitled to remov and repossess the equipment..."*	*Article IX - 9.2*

*16. Honourable Supreme Court ICDS Ltd versus CIT (350 I*TR 527) has also held that definitions of "ownership" essentially make ownership a function of legal right or title against the rest of the world. However, it is "nomen generalissimum", and its meaning is to be gathered from .the connection in which it is used, and from the subject matter to which it is applied. As long as the assessee has a right to retain the legal title against the rest of the world, it would be the owner of the asset in the eyes of law.*

17. Further identical issue arose before the honourable Calcutta High Court in case of SBI Home Finance Ltd versus Commissioner of income tax (280 ITR 6) wherein the assessee was carrying on the business of leasing and
finance and Co approached the assessee for release or finance for a plant which was being set up at the premises of a company. Assessee acquired the said plant and leased out to the other party upon making a symbolic possession. As per the agreement the third party had a right to purchase the plant after expiry of the stipulated period of time. The assessee claimed depreciation u/s 32 which was denied to the assessee. The honourable High Court in para number six held that assessee was the owner of the plant for the purpose of Section 32 and by leasing it out to the other party the assessee has used the plant only for the purposes of with its business for the purpose of carrying on the business of leasing and as such the income earned thereon by way of rental of the plant was a business income. Therefore the honourable court held that the ingredients of ownership and user of the plant in business as required Under the provisions of Section 32 of the act have been fulfilled by the assessee and therefore it is entitled to depreciation available to it u/s 32 of the act.

18. Further in Cosmo films private limited versus CIT [2011] 12 taxmann.com 217 (Delhi)/[2011] 200 Taxman 384 (Delhi)/[2011] 338 ITR 266 (Delhi)/[2011] 245 CTR 23 (Delhi), the honourable Delhi High Court has dealtyvith a question that:

"Whether the Tribunal was justified in law in allowing depreciation on the assets for which the Assessing Officer had treated the transaction as that of finance and not of leasing?"

19. The honourable High Court held that once it is established that the ownership of the said equipment is that of the assessee, then it is clear that the respondent/assessee would be entitled to claim depreciation.

20. Further, in the present case lease rental is received regularly and has been shown in the Profit & Loss A/c. The other parties who are paying lease rentals to the assessee have shown lease rental

> *paid to the assessee. The department has not brought a single case on record that the parties who had paid lease rental has not shown/claimed the deduction on account of lease rental but has claimed deduction of interest paid to assessee. Moreover, the assessee has produced the certificates from the lessee that they have not claimed any depreciation on these assets, which are owned by the assessee. No material contrary to the above facts was shown by the revenue.*
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> *21. In view of above facts, we direct the learned assessing officer to delete the disallowance of depreciation on plant and machinery of 259,839,987/- as claimed by the appellant on plant and machinery given and leased various parties.*
>
> *22. In the result ITA number, 1200/del/2011 fried by 1;he assessee for assessment year 1999 - 2000 is allowed."*

5.4 In the above appeal, the assessee had produced certificates from the lessee(s) before the Tribunal stating that no depreciation was claimed by them. In the instant case before us also the assessee has already produced such certificates before the Ld. CIT(A). The name of such parties have been mentioned by the Learned CIT(A) in para 8.4 of the order, as under:

"(i) The West Coast Papert Ltd.
(ii) Jocil Limited
(iii) Ushodaya Enterprises Pvt. Ltd.
(iv) Priyadarshini Spinning Mills Ltd.
(v) Sri Chamundeswari Sugars Ltd.
(vi) Bihar Hotels Ltd.
(vii) VST Tillers Tractors Ltd."

5.5 In our opinion, the facts and circumstances in the year under consideration are identical to the assessment year 1999-

2000 and there is no change in the circumstances. In the assessment year 1999-2000, the assessee had produced such certificates from the lessees before the Tribunal, whereas in the present case the certificates have been produced by the assessee before the Learned CIT(A). The Ld CIT(A) has not observed anything wrong in those certificates. If he was having any doubt regarding those certificates and if same were produced for the first time before him, he should have admitted the same as additional evidence under Rule 46A of the Income-tax Rules and either he himself should have verified or should have referred the same to the Assessing Officer for verification. The impugned order of the Learned CIT(A) was passed in the year 2015, however nothing has been brought on record before us that anything wrong has been observed by the Departmental Authorities in those certificates. Before us, the Learned DR has also not pointed out anything wrong with those certificates submitted before the Ld. CIT(A). In the facts and circumstances of the case and following the decision of the Tribunal (supra), we do not find any justification or cause for issuing direction by the Learned CIT(A) to the Assessing Officer for verification of the depreciation claimed by the lessees, before allowing depreciation to the assessee on such leased assest. Accordingly, this ground of the appeal of the assessee is allowed.

6. The third ground of the appeal relates to disallowance made under section 14A of the Act read with rule 8D of Income-tax Rules, 1962.

6.1 The assessee earned dividend income of ₹ 63,82,22,092/- as exempt income and made *suo motu* disallowance of ₹ 10 lakh

against such exempted income. It was claimed that all the investment/subscription in shares had been made out of the interest-free funds and no borrowings were made for the purpose of the investment/subscription into shares. However, the Assessing Officer invoked rule 8D of Income-tax Rules and determined the disallowance at ₹ 5,14,64,963/- and after reducing the *suo motu* disallowance of ₹ 10 lakh, addition for the balance amount of ₹ 5,04,64,963/-was made by the Assessing Officer. The assessee could not succeed before the Learned CIT(A). The Ld. CIT(A) upheld the disallowance observing as under:

> *"The appellant itself has admitted that it was incurring expenditure in respect of earning exempt dividend income along with ihe taxable income and expenditure was claimed by the appellant is not separable. In such situation, the applicability of Rule 8D is perfectly justified. So far as the appellant's argument that the nature of appellant's business is such that the shares are part of 'stock-in-trade' is concerned, it is observed that the appellant failed to provide complete details in respect of such stock-in-trade and the quantum of dividend received from such stocks. Therefore, there remains no basis for giving allowance in respect of equities which are not held by the appellant as investments. From the arguments of the appellant, it appears that the entire investments are being categorized by the appellant as 'stock-in-trade' and therefore, it is being argued that disallowance u/s 14A read with Rule 8D should not be applicable in appellant's case. Such argument of the appellant is devoid of merits as the appellant is getting huge dividend income out of such investments even if these are used in regular business of the appellant company. Therefore, the AO's action in making disallowance of ?5,14,64,963/- as against the disallowance of ? 10,00,000/- made by the appellant is fully justified. The same is hereby upheld. The ground of appeal is dismissed."*

6.2 Before us, the Learned Counsel of the assessee, however relied on the order of the Tribunal in assessment year 2008-09 and 2009-10 and submitted that identical disallowance made by

the Assessing Officer under section 14A read with Rule 8D has been deleted by the Tribunal in absence of any dissatisfaction recorded by the Assessing Officer on the claim of the assessee of expenditure against exempted income. The learned DR on the other hand relied on the order of the lower authorities.

6.3 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The relevant finding of the Tribunal in ITA No.2062/Del./2012 & 1984/Del./2012 for assessment year 2008-09, is reproduced as under:

> *"68. We have carefully considered the rival contention and perused the orders of the lower authorities. As the facts available in the assessment order, the assessee has earned exempt dividend income of ₹ 238,145,137 and income from tax-free bonds of ₹ 14,033,171. In the return of income assessee, itself has disallowed a sum of Rs. 2 lakhs u/s 14 A of the income tax act which is also mentioned at paragraph number 6 of the assessment order. On reading of the assessment order at paragraph number 4 we find that the learned Assessing Officer noted that assessee has earned dividend income and tax-free income from boards. Looking at these, he asked the assessee to justify the non-disallowance of expenditure u/s 14 A of the act. He rejected the contention of the assessee with some general statements and thereafter reproduces the provisions of Section 14 A of the income tax act and computed disallowance as per rule 8D. Therefore, it is apparent that, the learned Assessing Officer has not recorded his own satisfaction / finding that how the disallowance shown by the assessee on its own of ₹ 2 lakhs is incorrect. The satisfaction of the Assessing Officer is mandatory in terms of the provisions of Section 14 A (2) of the income tax act. The satisfaction of the Commissioner of income tax appeals cannot be replaced for substituted for the satisfaction of the learned Assessing Officer. The honourable Supreme Court in Maxoop investments Ltd versus CIT [2018] 91 taxmann.com 154 (SC)/[2018] 254 Taxman 325 (SC)/[2018] 402 ITR 640 (SC)/[2018] 301 CTR 489 (SC) has held that having regard to the language of section 14A(2), read with rule 8D of the Rules, it is also made clear that before applying the theory of apportionment, the Assessing Officer needs to record satisfaction that having regard to the kind of the assessee, suo motu*

disallowance under section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the Assessing Officer was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/making the investment in shares is to be examined by the Assessing Officer. In the present case, we do not find any such satisfaction recorded by the Assessing Officer with respect to the disallowance made by assessee on its own. In view of this, we hold that no disallowance u/s 14 A can be made in absence of proper satsifaction. Accordingly, ground number 2 of the appeal of the Assessing Officer is dismissed."

6.4 The Tribunal in the above decision noted that no proper satisfaction for invoking Rule 8D has been recorded by the Assessing Officer. The Tribunal has observed that rejection of the contention of the assessee with some general statement and reproduction of section 14A of the Act, does not amount to recording satisfaction that claim of the assessee of expenditure relatable to exempted income, was not correct. In the year under consideration before us, also the Assessing Officer has recorded following observations and thereafter invoked Rule 8D of Income-tax Rules:

"4.1 The submissions made by the assessee has been considered but not acceptable for the reasons discussed below:

(i) The assessee has earned income which is not liable to tax. The provisions of section 14A clearly prescribe that no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act. The invocation of section 14A is automatic and comes into operation, without any exception, as soon as, the dividend income is claimed exempt. Since the entire dividend income has been claimed exempt and is not part of the total income under this Act, hence section 14A is clearly attracted in

this case and any expenditure relatable to earning of dividend income shall have to be disallowed.

(ii) No evidence has been furnished by the assessee company to establish that no expense has been incurred in earning of the dividend income. This is especially required in light of the fact that certain expenses like cost of borrowings, salary, employee welfare expenses, postage/ telegram expenses, traveling and conveyance expenses, rent etc. are common expenses with regard to earning of dividend income/ interest income and normal/ regular business activity of the assessee company.

(iii) The assessee company is also entitled to claim long term capital loss on sale/purchase of bonds on which dividend income has accrued to the assessee company. Thus, it is seen that on one hand the assessee company is claiming dividend income totally exempt u/s 10(34) and at the same time it is also getting benefited by the fact that due to earning of dividend income, the redemption price of the said bonds has also gone down. The assessee is not entitled to avail this double benefit. Hence, it is all the more necessary to apportion the expenses u/s 14A in respect of dividend income earned by the assessee company.

(iv) The disallowance of administrative expenses and interest expenses on earning of dividend income claimed exempt, is also held/ permitted by the verdict of Hon'ble Supreme Court in the case of CIT vs. United General Trust Ltd. 200 ITR 488 (SC).

v) Section 14A of the I.T. Act was inserted by the Finance Act, 2001 with retrospective effect from 01.04.1962 which provides as under:-

"For the purpose of computing the to tal income under this chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act."

Provided that nothing contained in this section shall empower the Assessing Officer either to reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee u/s 154 for any assessment year beginning on or before the 1st Day of April, 2001.

Subsections (2) and (3) of the section 14A were inserted by Finance Act 2006 and with effect from 1st April 2007. Subsection (2) of subsection 14A provided for prescribed method for determining the amount of expenditure incurred in relation to such income which does not form part of the total income under the Act.

Section 2(24) defines income which in addition to all the other income also includes dividend as per clause (ii) to section 2(24) of

the I. T. Act. Section 2(45) defines total income as total amount of income referred to in section 5 and computed in the manner in this Act. Section 10 of the I.T. Act specifies the incomes which shall not be included in total income. Section 10(33) provides that income received by way of dividend as referred to in section 1150 of the I.T. Act are exempt from tax. Section 1150 of the I.T. Act talks about tax on distributed profits of the domestic company. In other words, the dividend distributed by the domestic company is not taxable in the hands of the recipient.
Rule 8D of the Income Tax Rules was inserted by the IT (Fifth Amendment) Rules, 2008, w.e.f24-03-08 prescribing the "Method for determining amount of expenditure in relation to income not includable in total income".

Further, the earning of exempt income is not in nature of passive activity having no input. In fact in present situation making of Investment, maintaining or continuing investment and time of exit from investment are well informed and well coordinated management decisions involving not only inputs from various source but also acumen of senior management functionaries. Therefore cost is inbuilt into even so called "passive" Investment. There are incidental expenditures of collection, telephone, follow up etc. Therefore, expenses in relation to earning of income are embedded in indirect expenses.
The investment made, being a conscious decision and having deployment of funds clearly brings into picture expenditure by way of cost of funds, "Invested Composite fund having cost needs to be spread so as to apportion appropriate cost of funds invested in the activity lending to carrying of exempt income.*
In view of above, the provisions of sub sections (2) of section 14 A and Rule 8D of IT Rules are in operation and therefore will strictly be adhered to by the assessee."

6.5 We find that the Assessing Officer is under the impression that no expenses have been incurred for earning the dividend income, whereas the assessee has made *suo motu* disallowance of ₹ 10 lakh. The Assessing Officer has not pointed out how the said claim of ₹ 10 lakh, is not correct. The Assessing Officer has jumped to the conclusion without examining the claim of the assessee. In our opinion, the facts and circumstances of the year under consideration being identical to the facts and

circumstances of assessment year 2008-09, respectfully following the finding of the Tribunal (supra), we hold that no disallowance u/s 14A can be made without recording proper satisfaction as required under the law. Accordingly, the disallowance in dispute is deleted. The ground of appeal is allowed.

7. The ground No. 4 of the appeal relates to disallowance under section 14A of the Act while computing book profit under section 115JB of the Act. The Ld. CIT(A) upheld the disallowance observing as under:

> *"9.4. The second part of ground of appeal is regarding the adjustment made by the AO in book profit u/s 115JB of the Act in respect of disallowance made by him u/s 14A of the Act. It has been argued that as per Explanation 1 to section 115JB(2) of the Act, there is no such disallowance contemplated wherein book profit is to be adjusted. The appellant has relied upon the decision of Horible Supreme Court in the case of Appollo Tyres Ltd. vs. CIT (2002) 255 ITR 273 (SC) in this regard. A recent judgment of Hon'ble ITAT, Delhi in the case of Goetz (India) Limited vs. CIT-IV 2009 (32) SOT 101 has been relied upon by the appellant.*
>
> *9.5. On considering the facts of the case as well as the submissions made by the appellant it is observed that the appellant's case is covered by Item (f) under explanation 1 to section 115 JB of the Act. The provision clearly spells out that any amount of expenditure relatable to any income to which section 10 [other than section 10(38)] applies, shall be disallowed and added in the book profit computed u/s 115JB of the Act. Dividend income earned by the appellant comes u/s 10(34) of the Act and therefore, the AO's action in increasing the book profit by adding back the expenditure relatable to exempt income (dividend) is fully justified. So far as the appellant's reliance on cited cases is concerned, the same provide for the adjustments to be made in the book profit computed u/s 115JB of the Act, strictly as per explanation 1 to the section. In view of item (f) to explanation 1, the decisions relied upon by the appellant do not apply. Therefore, this limb of ground of appeal is hereby dismissed."*

7.1 Before us, the Learned Counsel of the assessee submitted that issue in dispute is covered by the direction of the Tribunal in assessment year 2008-09 and 2009-10. The learned DR also could not controvert the position and relied on the order of the lower authorities.

7.2 We have heard rival submission of the parties and perused the relevant material on record. In assessment year 2008-09, the Tribunal has adjudicated the issue as under:

> *"69. With respect to ground number 3 of the appeal of the Assessing Officer which is against the order of the learned CIT – A deleting the disallowance are while computing the book profit of the assessee with respect to the disallowance made in the original computation of the income u/s 14 A of the act. The find that the issue is squarely covered in favour of the assessee by the decision of the special bench of the ITAT in the Asst Commissioner of Income Tax Versus Vireet investments private limited [2017] 82 taxmann.com 415 (Delhi - Trib.) (SB)/[2017] 58 ITR(T) 313 (Delhi - Trib.) (SB)/[2017] 165 ITD 27 (Delhi - Trib.) (SB)/[2017] 188 TTJ 1 (Delhi - Trib.) (SB) wherein it has been held that holding that the computation under clause (f) of Explanation 1 to section 115JB(2). is to be made without resorting to the computation as contemplated u/s 14A read with Rule 8D of the Income-tax Rules, 1962.. Accordingly we restore this ground of appeal back to the file of the learned Assessing Officer to decide the issue without resorting to the rule 8D of the income tax rules for disallowing expenditure in relation to the exempt income by working out the book profit. Thus, ground number 3 of the appeal is allowed with above direction."*

7.3 The issue in dispute in the year under consideration being identical to the issue in dispute before the Tribunal in the assessment year 2008-09 and therefore respectfully following the same, we restore the ground of the appeal back to the file of the Assessing Officer to decide in view of the direction of the Tribunal

in assessment year 2008-09. The ground of the appeal is accordingly allowed for statistical purposes.

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

Order pronounced in the open court on 8th October, 2020.

Sd/- **(BHAVNESH SAINI)** **JUDICIAL MEMBER**	***Sd/-*** **(O.P. KANT)** **ACCOUNTANT MEMBER**

Dated: 8th October, 2020.
RK/-(D.T.D.S.)
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi