

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 5354/DEL/2017 (A.Y 2013-14)

(THROUGH VIDEO CONFERENCING)

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| DCIT C. R. Building, I. P. Estate, New Delhi (APPELLANT) | Vs | IFCI IFCI Tower, 61, Nehru Place, New Delhi AAACT0668G (RESPONDENT) |
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| Appellant by | Sh. S. Vasudevan, Adv |
| Respondent by | Sh. Mahesh Thakur, Sr. DR |

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| Date of Hearing | 22.03.2021 |
| Date of Pronouncement | 25.03.2021 |

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against order dated 29.06.2017 passed by CIT(A)-16, New Delhi for assessment year 2011-12.

2. The grounds of appeal are as under:-

- “1. On the facts and circumstances of the case, the Ld. CIT (A) has erred in deleting the disallowance made on depreciation of finance leased assets amounting to Rs. 1,31,63,444/- holding that it is one of the business of assessee.
2. On the facts and circumstances of the case, the Ld. CIT (A) has erred in deleting the disallowance u/s 14A r.w. Rule 8D, amounting to Rs. 6,13,33,967/- holding that the AO had no occasion to resort to computation

u/s 14A r.w. Rule 8D.

3. On the facts and circumstances of the case, the Ld. CIT (A) has erred in ignoring that disallowance u/s 14A r.w. Rule 8D of the Act cannot be imported into book profit.

4. The appellant craves leave for reserving the right to amend, modify, add or forego any ground(s) of appeal at any time before or during the hearing of appeal. “

3. The assessee company is engaged in the business of providing assistance in the form of short, medium or long term loans for working capital facilities or equity participation individually or in syndicates or in any other form or scheme as may be deemed expedient and there is no change in the business of assessee. The assessee filed its return of income on 30th September, 2011 showing total income of Rs.53,05,09,599/- after set off against carried forward business loss of Rs. 336,89,42,409/- and book profits of Rs. 469,18,16,779/- u/s 115JB. The assessee filed revised return of income on 28th March, 2013 showing the total income at Rs.52,28,02,154/- after set off against carried forward business loss of Rs. 336,94,74,409/- and book profits of Rs.468,69,16,779/- u/s 115JB.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee.

5. The Ld. AR submitted that both the issues contested in the present appeal by the revenue is already covered in assessee's own case for AY 1999-2000, 2000-01,2002-03, 2008-09 (ITA No. 1200 & 1201/Del/2011, 2934/Del/2010 & 2062/Del/2012 order dated 31/08/2020).

6. The Ld. DR submitted that the Revenue is relying upon the assessment order. The Ld. AR further submitted that as regards Ground No. 2, the assessee has only disallowed Rs. 10 lacs for expenses on earning dividend

income of Rs. 6,13,33,967/-. The assessee is disallowing Rs. 10 lacs for last so many years and it is not quantified as per the requirement of Section 14A read with Rule 8D. Therefore, the Ld. DR submitted that the CIT(A) erred in deleting the said disallowance.

7. We have heard both the parties and perused all the relevant material available on record. As related to Ground No.1 relating to disallowance made on depreciation of finance lease assets amounting to Rs. 1,31,63,444/-. It is related to the business of the assessee and this factual aspect was not at all changed from the earlier year and subsequent years. Therefore, Ground No. 1 of Revenue's appeal is dismissed. As regards Ground No.2, the disallowance which is suo-moto made by the assessee is not properly quantified and the same needs to be verified in light of the various decisions of the Hon'ble Delhi High Court as well as the Apex Court decision in case of Maxopp Investment Ltd. 402 ITR 640 (SC). Therefore, we remand back this issue to the file of the Assessing Officer for proper adjudication as per the provisions of Income Tax statute. Needless to say, the assessee be given opportunity of being heard by following principles of natural justice. Ground No. 2 is partly allowed for statistical purpose. As regards Ground No.3 relating to disallowance u/s 14A r.w. Rule 8D of the Act whether imported into book profit or not, the Tribunal in earlier Assessment Years has remanded back this issue to the file of the Assessing Officer and the facts are identical in this year as well. Thus, we are remanding the issue of to the file of the Assessing Officer for proper adjudication after verifying the claim of the assessee. Thus, Ground No. 3 is partly allowed for statistical purpose.

8. In result, the appeal of the Revenue is partly allowed for statistical purpose.

Order pronounced in the Open Court on this 25th Day of March, 2021

**Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 25/03/2021
*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

