

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "C": DELHI
BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI VIJAY PAL RAO, JUDICIAL MEMBER

ITA.No.3644/Del./2018
Assessment Year 2012-13

IFCI Ltd. IFCI Tower, 61, Nehru Place, New Delhi. PAN No. AAACT0668G	vs.	DCIT, Circle 12(1) New Delhi.
(Appellant)		(Respondent)

For Assessee :	Sh. K. Sampath, Adv. Sh. V. Raja Kumar, Adv.
For Revenue :	Ms. Sunita Singh, CIT DR

Date of Hearing :	26.08.2021
Date of Pronouncement :	31.08.2021

ORDER

PER VIJAY PAL RAO, J.M.

1. This appeal by the assessee is directed against the order dated 28.02.2018 of CIT(A) for the AY 2012-13.

The assessee has raised the following grounds:

“On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in: -

- 1) *Confirming the addition made by the Assessing Officer to disallow the depreciation on Plant & Machinery leased to various parties;*
- 2) *Upholding the addition made by the Assessing Officer u/s 14A of the Income Tax Act, 1961 r.w. Rule 8D of the Income Tax Rules, 1962.*

Both the above actions being grossly arbitrary, palpably erroneous and totally unlawful must be quashed with directions for appropriate relief.”

2. Ground no. 1 is regarding disallowance of depreciation on Plant & Machinery leased to various parties. The assessee is a Public Sector Company incorporated with the object to provide medium and long term credit to the Industries as well as provide assistance and services to the industrial and service concerns for their new projects. The assessee has claimed depreciation of Rs. 1,09,18,928/- on lease out plant and machinery. The AO disallowed the claim of the depreciation by following the earlier orders in the assessee's own case. The assessee challenged the action before the CIT(A) but could not succeed.
3. We have heard the Ld. AR as well as the Ld. DR and consider the relevant material on record. The Ld. AR has pointed out that for the AY 2010-11 this Tribunal

has decided the issue in favour of the assessee and allowed the claim of depreciation. He has further submitted that the Tribunal has taken a consistent view since AY 1999-2000 till 2010-11.

4. The Ld. DR has not disputed the fact that this Tribunal has decided this issue in favour of the assessee for all the preceding years and last for the AY 2010-11 in ITA No. 2982/2015 vide order dated 08.10.2010, therefore, this issue is now covered by the earlier decisions of this Tribunal and particularly for the AY 2010-11. The Tribunal has held in para 5.5 as under: -

“5.5 *In our opinion, the facts and circumstances in the year under consideration are identical to the AY 1999-2000 and there is no change in the circumstances. In the AY 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 Ld. 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 Ld. 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 Ld. 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 Ld. CIT(A) to the Assessing Officer for verification of the depreciation claimed by the lessees, before allowing depreciation to the assessee on such leased asset. Accordingly, this ground of the appeal of the assessee is allowed.”

- 5.** Accordingly, to maintain the rule of consistency, we follow the earlier order of this Tribunal and allow the claim of depreciation. The addition made by the AO on this account is deleted.
- 6.** Ground No. 2 is regarding disallowance made by the AO u/s 14A read with Rule 8D. The Ld. AR of the assessee has submitted that an identical issue has been considered by this Tribunal in assessee's own case for the AY 2010-11 and vide order dated 08.10.2010 the Tribunal has deleted the disallowance made by the Assessing Officer u/s 14A. He has, thus,

contended that the facts as recorded by the AO and findings of the AO for making the disallowance u/s 14A are identical as for the AY 2010-11, therefore, on the identical facts and findings the Tribunal has deleted the addition for the AY 2010-11 then the issue is covered by the decision of the Tribunal. His main thrust of argument is on the point that the AO has not recorded his satisfaction while rejecting the *suo moto* disallowance made by the assessee. He has pointed out that the assessee has made a *suo moto* disallowance of Rs. 10 lacs u/s 14A which is in line with the disallowance for the AY 2010-11 which was finally accepted by the Tribunal. Thus, the Ld. AR has submitted that the addition made by the AO is liable to be deleted. He has also relied upon the decision of Hon'ble Supreme Court in the case of Maxopp Investment Ltd. Vs. CIT, 402 ITR 640.

7. On the other hand, Ld. DR has submitted that for the year under consideration the AO has recorded the fact that no evidence has been furnished by the assessee to

establish that no expenses have been incurred in earning the dividend income. The AO has observed that certain expenses like cost of borrowings, salary, employee welfare expenses, postage/telegram expenses, travelling and conveyance expenses, rent etc. are common expenses with regard to earning the dividend income and regular business income. The decision of Hon'ble Supreme Court in the case of Maxopp Investment Vs. CIT (supra) is relevant in respect of disallowance on account of interest expenses but the said decision cannot take away the provisions of Rule 8D(2) towards indirect administrative expenses. When the assessee has made a huge investment in the shares and securities and there is a regular transactions of sale and purchase then it cannot be accepted that the assessee has not incurred any expenditure for earning the dividend income. The AO has not made any addition on account of interest expenditure but he has computed the disallowance being .5% of average investment which is indirect

administrative expenses. Therefore, an *ad hoc* disallowance made by the assessee of Rs. 10 lacs has no basis except the fact that the similar amount was disallowed by the assessee for the AY 2010-11. When there is a change in the transactions of the purchase and sale of the investment and also there is a huge difference in the investment as on 31.03.2012 in comparison to the investment as on 31.03.2010 then the said amount of Rs. 10 lacs has no relevance for making the *suo moto* disallowance. The Ld. DR has thus, submitted that in the absence of any basis for making the *suo moto* disallowance the AO has rightly rejected this claim of *suo moto* disallowance made by the assessee.

- 8.** The order of the Tribunal for the AY 2010-11 shall have no bearing on the facts of the case under consideration. She has relied upon the order of the authorities below. In the rejoinder the Ld. AR has submitted that the reasons given by the Assessing Officer for rejecting the *suo moto* disallowance are

identical as for the AY 2010-11 which are reproduced by this Tribunal in the order dated 08.10.2020. Thus, he has reiterated that the issue is covered by the decision of this Tribunal in assessee's own case for the AY 2010-11.

9. We have considered the rival submissions as well as relevant material on record. For the year under consideration, the assessee has made an investment of Rs. 1867.81 crores the dividend income of which is exempt from tax. There is no dispute that there is a significant difference in the amount of investment as on 31.03.2010 and as on 31.03.2012. The assessee has made the *suo moto* disallowance of Rs. 10 lacs for the AY 2010-11 and same amount of disallowance was also adopted by the assessee for the year under consideration. Thus, except for the disallowance of identical amount for the AY 2010-11 there is no other basis for taking this amount of Rs. 10 lacs as *suo moto* disallowance for the year under consideration. The AO has accepted the claim that the investments were

made out of the interest free funds available with the assessee but he has made the disallowance only on account of administrative expenses. Once there is a regular transaction of purchase and sale of shares by the assessee and the decision of making the investment as well as sale of the investment is taken at the top level of the management then the claim of the assessee that no expenditure is incurred for earning the dividend income is not acceptable and rather it is contrary to the facts. Therefore, the primary onus is on the assessee to show that the *suo moto* disallowance made by the assessee is either based on the actual expenditure incurred by the assessee or estimated on some reasonable and proper basis. The assessee has not claimed that the *suo moto* disallowance of Rs. 10 lacs is based on the actual expenditure rather the assessee has claimed that no expenditure was incurred by the assessee. Therefore, the *suo moto* expenditure is based on estimation only. But the assessee has failed to explain the basis of the

suo moto disallowance except the identical amount was disallowed for the AY 2010-11. Since, no *resjudicata* is applicable in the matter of tax and each year is a separate assessment unit, therefore, until and unless the facts are identical the *suo moto* disallowance made in the AY 2010-11 cannot be applied for the AY 2012-13. Hence, the decision of this Tribunal which is purely on the legal issue of non recording of satisfaction by the AO and not a finding of fact given on the merits of the issue would not operate as a binding precedent for the year under consideration. We find that the AO has clearly pointed out while issuing the show cause notice to the assessee that the assessee has not given any basis for the *suo moto* disallowance of Rs. 10 lacs which amounts to recording the satisfaction by the AO. When the facts for the two assessment years are entirely different then the reasoning recorded by the AO for the year under consideration cannot be compared for the AY 2010-11. Hence, we do not find any substance in the contention

of the Id. AR of the assessee that addition made by the AO is liable to be deleted. Since, the AO has computed the disallowance by applying the formula under Rule 8D which is 0.5% of the average investment then we do not find any fault in the computation of disallowance made by the AO. As we have already discussed that there is a regular transaction of purchase and sale of shares and securities by the assessee, therefore, the administrative expenses which is incurred both for the taxable income and exempt income has to be apportioned as per the formula provided in Rule 8D. Hence, this issue is decided against the assessee and in favour of the Revenue.

10. In the result, the appeal of the assessee is partly allowed.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER
Dated: 31st August, 2021
*Kavita Arora, Sr. PS

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC-2' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar, ITAT Delhi Benches :
Delhi.