

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI
(Through Video Conferencing)**

**BEFORE,
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No.2895/Del/2018
(ASSESSMENT YEAR 2012-13)**

Dy. CIT, Circle-12(1), New Delhi.	Vs.	M/s IFCI Ltd., IFCI Tower, 61, Nehru Place, New Delhi-110 019. PAN -AAACT 0668G
(Appellant)		(Respondent)

Appellant By	Ms. Anima, Sr. DR
Respondent by	Sh. S. Vasudevan, CA Sh. Shashank Sharma, Adv.
Date of Hearing	14.07.2021
Date of Pronouncement	30.09.2021

ORDER

PER SUDHANSHU SRIVASTAVA, JM:

This appeal is preferred by the Department against order dated 28.02.2018 passed by the Learned Commissioner of Income Tax (Appeals)-42, New Delhi {CIT(A)} for Assessment Year 2012-13.

2.0 The brief facts of the case are that the assessee is a company engaged in the business of leasing and finance. The assessee provides financial assistance in the form of short, medium or long term loans for working capital requirements or equity related requirements and also finances projects in the form of Rupee Loans, Foreign Currency Loans, Underwriting and Subscribing to the Capital issues. The return of income was filed declaring an income of Rs.1,67,58,68,134/- after set off against brought forward business loss of Rs.1,95,84,65,473/- and unabsorbed depreciation of Rs.1,70,83,02,735/-. The book profits U/s 115JB of the Income Tax Act, 1961 (hereinafter called 'the Act') were computed at Rs.5,50,26,19,665/-. Subsequently, the assessee revised its return of income showing a total income of Rs.1,42,97,88,723/- after setting off brought forward business loss of Rs.1,95,81,90,350/- and unabsorbed depreciation of Rs.1,70,83,02,735/- and book-profits U/s 115JB at Rs.5,50,26,19,665/-. The assessment was completed at an income of Rs.1,52,19,72,150/- after making disallowance of deprecation amounting to Rs.1,09,18,928/- and disallowance U/s 14A of the

Act amounting to Rs.8,12,64,498/-. The book-profit was computed at Rs.5,58,38,84,160/- after making disallowance u/s 14A amounting to Rs.8,12,64,498/-.

2.1 Aggrieved, the assessee approached the Ld. First Appellate Authority challenging the action of the Assessing Officer in making an addition to book-profits of the assessee by the amount disallowed U/s 14A of the Act. The Ld. First Appellate Authority deleted the aforesaid addition by following the order of the Special Bench of ITAT Delhi in the case of ACIT vs. Vireet Investments Pvt. Ltd reported in [2017] 82 Taxmann.com 415 (Delhi Trib.) (SB).

2.2 Now, the Department has approached this Tribunal and has challenged the deletion of disallowance by the Ld. CIT(A) by raising the following grounds of appeal:-

“1. *Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in holding that the Assessing Officer is wrong in applying the provisions of Section 14A read with Rule 8D in computing the book profit as per section 115JB of the IT Act whereas express provisions of clause (f) of Explanation to Section 115JB state otherwise.*

2. *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.”*

3.0 At the outset, the Ld. Authorized Representative (AR) submitted that the appeal of the Department was liable to be dismissed at the very threshold itself considering the order of the Special Bench of the ITAT Delhi in the case of ACIT vs. Vireet Investments Pvt. Ltd. reported in [2017] 82 Taxmann.com 415 (Delhi Trib.) (SB). The Ld. AR also submitted that identical issue had been decided by this Tribunal in favour of the assessee in assessee's own case for Assessment Years 2008-09 and 2009-10 vide order dated 31.08.2020 in ITA No.2062/Del/2012 and ITA No.2473/Del/2014 respectively.

4.0 Per contra, the Ld. Sr. DR supported the order of the Assessing Officer but fairly accepted that the issue stood covered against the Revenue.

5.0 We have heard the rival submissions and have also perused the material on record. We have also gone through the

judgments relied upon by the Ld. AR in this regard. We agree with the contention of the Ld. AR that the case of the Revenue is not tenable for the reason that ITAT Delhi Special Bench in the case of ACIT vs. Vireet Investments (supra) has categorically held that computation under clause (f) of Explanation-1 to Section 115JB (2) of the Act is to be made without resorting to the computation as contemplated U/s 14A read with Rule 8D of the Income Tax Rules, 1962.

5.1 We further note that the Co-ordinate Bench of ITAT Delhi in assessee's own case for Assessment Years 2008-09 and 2009-10 has again decided the identical issue in assessee's favour in paragraph 69 of the said order by following the orders of the Special Bench of the ITAT in the case of ACIT vs. Vireet Investments Pvt. Ltd. (supra).

5.2 We further note that the Hon'ble Delhi High Court in the case of Pr. CIT vs. Bhushan Steel Ltd. in ITA No.593/2015 vide order dated 29.09.2015, while upholding the view taken by the ITAT, held that addition cannot be made U/s 14A to the book-

profits in absence of any specific reference in section 115JB of the Act.

5.3 Accordingly, respectfully following the settled judicial position in this regard on the issue, we dismiss the grounds raised by the Department.

6.0 In the final result, the appeal of the Department stands dismissed.

Order pronounced on 30th September, 2021.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dated: 30/09/2021

PK/Ps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI