IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER
AND SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.1595/Bang/2013
Assessment year : 2010-11

DCIT, Circle 11(5), Bengaluru-560001.	Vs.	M/s. Jupiter Capital (P) Ltd., No. 54, Richmond Road, Bengaluru-560025. **PAN : AABCJ 5666 R**
APPELLANT		RESPONDENT

Revenue by	:	Shri. Pradeep Kumar, JCIT (DR)(ITAT), Bengaluru
Assessee by	:	Smt. Pratibha, Advocate

Date of hearing	:	13.11.2019
Date of Pronouncement	:	13.12.2019

O R D E R

Per A. K. Garodia, Accountant Member

This appeal is filed by the Revenue and the same is directed against the order of the CIT(A), Bengaluru, dated 30.08.2013 for Assessment Year 2010-11.

2. The grounds raised by the Revenue are as under:-

1. *The order of the Learned CIT (Appeals is opposed to law and the facts and circumstances of the case.*

2. *The CIT(A) erred in restricting the disallowances u/s 14A to an extent of Rs. 1.27,98,632/-from Rs. 1,94,11,402/- holding that*

out of the borrowings a sum of Rs.17 crores was paid towards the cost of an aircraft and the investment was made out of its own funds without appreciating the fact that the interest paid to bank for purchase of aircraft was Rs. 38,95,273/-only and for the purpose of disallowances under rule 8D(2)(ii) all such interest which is not directly attributable to any particular income or receipt ought to be considered.

3. *The CIT(A) erred in restricting the disallowances of the net aircraft expenditure to Rs. 45,60,000/- without appreciating the fact that the CIT(A) himself has held in his order that the assessee not only failed to substantiate the purpose for which the aircraft was used but also failed to produce details regarding the passengers who were flown in the aircraft and the details of landing.*

4. *The CIT(A) erred in holding that the payment of Rs. 20.00.000/- towards purchase of movie right was revenue expenditure without appreciating the fact that neither the movie was sold during the year nor was it disclosed as a stock-in trade and therefore as the assessee had acquired the movie rights, the right were as asset.*

5. *The CIT(A) erred in deleting the protective addition of Rs. 1.71,07,416/- made u/s 36(1)(iii) on loans advanced to sister concern and subsidiary companies holding that interest of Rs. 1,71,07,416/- was considered for the purpose of disallowance under rule 8D(2)(ii) and therefore was a double disallowance without appreciating the fact that the CIT(A) had allowed the appeal on the issue of the disallowance under rule 8D(2)(ii).*

6. *The CIT(A) erred in holding that the interest disallowance of Rs. 1.32,12,143/- was not justified as the assessee had paid interest of Rs. 1,32.12.143/- on loan against fixed deposits and it had received income from FDs of Rs. 40,54.25,289/- without appreciating the fact that the company had advanced money to its sister concern without charging interest or interest at a subsidized rate*

7. *The CIT(A) erred in deleting the entiredisallowance u/s 36(1) of Rs. 1,71,07,416/-*
   without deliberating on the 'interest to others' of Rs. 38.95.273/- included therein.

8. *For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT(A) be reversed and that of the Assessing Officer be restored.*

9. *The appellant craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of the appeal.*

3. The learned DR for the Revenue supported the assessment order whereas the learned AR for the Assessee supported the order of the CIT(A). Regarding the ground No.2 of the Revenue's appeal, he also placed reliance on the judgment of the Hon'ble Karnataka High Court rendered in the case of CIT Vs. Microlabs Ltd., 383 ITR 490. The learned DR for the Revenue filed the written submissions also, which are as under:-

"During the course of scrutiny proceedings, it is observed that the assessee had substantial amount of investment in the share capital of its subsidiary companies and other sister concern which attracts disallowance U/s 14A r.w.r 8D. However, the assessee had not declared any disallowance U/s 14A. Considering non-declaration of any disallowance U/s 14A, an amount of Rs 1.92,11,402 was calculated as disallowance u/s 14A r.w.r 8D and added to the income of the assessee company.

The disallowance u/s 14A is restricted by the learned CIT(A) to Rs 1,27,98,632/- being 0.5% of the average of tax-exempt investment of Rs 255,97,26,543/. The CIT(A) deleted the interest Rs.64,12,770/- holding that out of the borrowings of Rs.1.7 Crore was paid towards the cost of the aircraft. He failed to appreciate that of the total interest Rs.1,71,07,416/- debited to the profit and loss account Rs.38,95,273/- was directly relatable to purchase of aircraft and the balance of Rs.1,32,12,143/-vas paid towards loans taken which could not be directly attributable to any particular income or receipt and hence was liable to be considered for disallowance under rule 8D(2)(ii).

Further, it is required to be noted that Section 14A is based on the premise that the assessee have certain incomes which do not form part of the total income, that is, certain incomes are exempt from tax. It has been the case t 1 ra t the assessee incurs expenditure in relation to the exempt income but the expenditure is claimed as deduction against the incomes which are taxable. This leads to double benefits to the assessee. Firstly, the income itself is exempt from tax. Secondly, the expenditure incurred in relation to the exempt income is claimed as deduction against the taxable incomes. To plug this loophole, section 14A was inserted by the Finance Act 2001 with retrospective effect from 01.04.1962. sub-section (2) of Section 14A was inserted with effect from 01.04.2007 by the Finance Act 2006 wherein, it has been laid down that the AO shall determine the amount of expenditure incurred in relation to such income which does not Form part of the total income under the Income-tax Act in accordance with such method as may be prescribed. It is also laid down in sub-section (3) that the provisions of sub-section (2) shall also apply in relation to a case wherein assesses claims that no expenditure has been incurred by him in relation to the exempt income.

Rule 8D contains the method in accordance with which the AO shall determine the amount of expenditure incurred in relation to the exempt income. Rule 8D has three components. First - the amount of expenditure directly relating to the exempt income. The expression used here is `expenditure'. The expenditure can be of any nature. It may be on account of interest or in the nature of any other expenditure which was incurred directly in relation to the exempt income. The third is a fixed percentage, that is, one hall percent of the average of the value of exempt investment as on first and the last day of the previous year.

The above two methods cover the direct expenditure and the expenditure of administrative nature. However, the legislature did not stop Win. The legislature has also covered the interest expenditure of general nature. This is dealt with in clause (ii) of sub-rule (2) of Rule 8D. The interest expenditure dealt with in clause (ii) is other than the interest incurred directly in relation to the exempt income. [t speaks about that part of interest expenditure which cannot be related directly to the exempt income. The idea behind clause (ii) is to cover that part of interest expenditure which is not directly attributable to any particular income or receipt. It is to cover the utilization of the capital of the assessee whether borrowed capital or own capital. The capital is taken as a pool and its

deployment is considered as to I low much is deployed in the assets (investments) income from which is exempt as against the total assets. Part of the capital is deployed to earn the exempt income and part of the capital is deployed to earn taxable income.

Further, in clause (ii) of sub-Rule (2), for purpose of proportionate allocation, only that part of interest is included which is not directly attributable to any particular income or receipt. The expressions used here are "direct" and "particular income or receipt". In other words, what is excluded in ICIMS of clause (ii) of sub-rule (2), for the purposes of proportional allocation, is that part of interest which is directly attributable to a particular income or receipt. There should be verifiable and direct nexus and proximity between the particular income or receipt and the source should be that part of borrowed muds in regard to which interest expenditure has been incurred. In absence of such direct relationship, no part of interest expenditure can be excluded from the mechanism laid down in clause (ii) of the sub-rule (2) of Rule 8D. It speaks about the particular income or receipt not about business as a whole. It speaks about interest directly attributable to a particular receipt or income. It does not exclude the interest paid on the current account or working capital loans. The capital borrowed by way of working capital loan is a capital of general nature. It is used by the assessee not for earning a particular income or receipt. It is for the business as a whole. Such borrowed capital is deployed in business assets which appear in the balance sheet. The assets appearing in the balance sheet may be of any nature or category that is movable or immovable, financial or non-financial, stock or debtors etc.

Hence, in view of the above, the additions made by the Assessing officer is justified and in accordance with law and may be requested to be upheld.

(ii) The assessee had also advanced share application monies to sister concern and subsidiaries without charging interest for no specific business put pose. The assessee also did not specifically explain the commercial and business expediency for doing this. Hence, the balance of the interest of Rs. 1,71,07,416/- as rendered by it incurred on purchase of aircraft Rs.38,95,273/- i.e., Rs.1,32,12,143/- was held to be disallowable u/s.36(1)(iii) by relying on the judicial pronouncements discussed in the order. -Rs.64,12,278/- of this was held

to be disallowable u/s.14A rwr 8D(2)(ii). The balance of Rs.67,99,865/- was disallowed u/s.36(1)(iii). It was also held that the entire Rs.1,32,12,113/- would be disallowed if the interest under rule 8D(2)(ii) was allowed in any forum. To this extent Rs.67,99,565/- was held protectively u/s.36(1)(iii).

Without appreciating these facts, the Ld.CIT(A) held that there was a double disallowance. Further, the very fact that the assessee earned interest on PDs by itself cannot go to hold that no disallowance can be made u/s.36(1)(iii).

***Ground 3:** During the course of scrutiny proceedings it is seen the assessee company has debited an expenditure of Rs.19,83,42,726/- on an aircraft acquired from M/s.Jupiter Aviation Services Pvt. Ltd. The assessee was asked explain the allowability of the said expenditure. The assessee failed to give the details of the passengers who had flown in the aircraft, details of the landings and the purpose for which the aircraft was used. Hence, in the absence of all these information the expense of Rs. I9,83,42,726/- was disallowed as non-business related expenditure and added to the income of the assessee company.*

The Ld. CIT(A) after considering the appellant submissions and the assessment order has opined that the assessee is eligible for claiming depreciation on the aircraft. Hence, the depreciation on aircraft of Rs.21,00,08,969/ - is allowed by the Ld. CIT(A). However, with regard to the aircraft hire charges, the 1,d. CIT(A) has opined that since the assessee has failed to substantiate the allowability of the said expenditure even before the ld. CIT(A), a sum of Ps.45,60,000/- be disallowed and added back to the income of the assessee.

The addition made on this issue may be submitted to be upheld as the 141.CIT(A) himself has opined that the assessee has failed to substantiate or produce any details regarding the passengers who have flown in the aircraft, details of landing, details of passengers and the purpose for which the aircraft is used even before the Ld.CIT(A) during the course of appeal hearing.

***Ground 4: It** is observed during the course of scrutiny proceedings that the said movies have not been sold during the year under relevance nor has it been shown as assets in the balance sheet as a stock-in-trade. The assessee company has submitted before the CIT(A) that no liability was created against amount of Rs.32,00,000/- paid in the AY 2010-11 as there*

was no certainty of completion of those movies. But, it has to be noted that the assessee has acquired movie rights which is an asset. Considering the same, the purchase of movie rights is taken as asset of the assessee and added to the balance sheet of the company.

Ground 5 & 7: *It is observed during the course of scrutiny proceedings that the assessee company has given share application money of Rs.65.21 Crore to its sister concern and subsidiaries. In accordance with the decision of the Hon'ble High Court of Karnataka in the case of CIT Vs. Mythreyi Pai (152 ITR 247) and in the case of United Breweries Ltd. (321 ITR 546) wherein it was held that expenditure incurred towards purchase of shares is a capital expenditure and it is not qualified for deduction u/ s. 36(1)(iii) of the Act, the indirect interest needs to be disallowed from being claimed as a revenue expenditure.*

Further, it is also seen that the assessee company has advanced money to its sister concern without charging interest or at subsidized rate of interest. On account of the same the indirect expenses of Rs.1,71,07,416/- is disallowed u/s. 36(1)(iii) of the Act. Reliance was also placed on the decision of Punjab & Haryana Cowl in the case of Abhishek Industries Ltd. (286 ITR 1) and the decision of the Hon'ble Supreme Court in the case of M/s. JK Industries Vs. Union of India (SC) 297 ITR 176, wherein it is held that disallowance of interest can be made on borrowed capital when the commercial expediency of utilization of such loan was not specified and proved by the assessee. Accordingly, the indirect interest debited to Rs.1,71,07,416/- was disallowed protectively, which would come into operation if any of the interest amounts are not held as attracted.

It has to be noted that, for the reason that the said disallowance was wade protectively in the assessment order and the said disallowance would come into effect only if any of the interest amount are not held as attracted ii/s. 14A or on account of capitalization of interest towards share application money and vice-versa. Hence, the disallowance of interest expenditure of 1,71,07,416/- made on protective basis, on account of failure on the part of the assessee to explain the commercial and business expediency of amounts lent to sister concern and others, now assumes substantive nature, as the same is not discussed in the CIT(A) order.

Hence, in view of the above, the addition made by the AO is justified and in accordance with the law and therefore, it may kindly be upheld."

4. We have considered the rival submissions. Regarding the various grounds raised by the Revenue, we find that ground No.1 is general and in ground No.2, this is the grievance of the Revenue that the CIT(A) has restricted the disallowance under section 14A to the extent of Rs.1,27,98,632/- as against Rs.194,11,402/- made by the AO. In this regard, we find that as per page No.5 of the Assessment Order, disallowance was made by the AO under section 14A of Rs.192,11,402/- which includes an amount of Rs.64,12,770/- out of interest expenditure and Rs.127,98,632/- out of administrative expenses to the extent of Rs.0.5% of average amount of tax exempt investments. The second disallowance out of administrative expenses has been confirmed by the CIT(A) and he has deleted only disallowance made by the AO out of interest expenditure of Rs.64,12,770/-. In this regard, it is noted by the learned CIT(A) in para 2.7 of his order that the Reserves and Surplus of the assessee increased from Rs.277.07 crores to Rs.1000.63 Crores. As per page 5 of assessment order, tax exempt investments as on 31.03.2011 was Rs.313.11 Crores only and hence, it comes out that the reserve and surplus available with the assessee as on 31.03.2010 at Rs.1000.63 Crores was much more than this tax-exempt investments of the assessee company. In the light of these facts, now we examine the applicability of the judgment of Hon'ble Karnataka High Court rendered in the case of CIT Vs. Microlabs (supra) on which reliance has been

placed by the learned AR of the assessee. In this case, Hon'ble Karnataka High Court has followed the judgment of Hon'ble Bombay High Court rendered in the case of CIT Vs. HDFC Bank 363 ITR 505 wherein it was held that when investments are made out of common pool of funds and non interest bearing funds were more than the investments in tax free securities, no disallowance of interest expenditure under section 14A can be made. Following this judgment of the Hon'ble Karnataka High Court, we decline to interfere in the order of the CIT(A) on this issue. Accordingly, ground No.2 of the Revenue's appeal is rejected.

5. As per ground No.3, this is a grievance of the Revenue that learned CIT(A) has erred in restricting the disallowance of the net Aircraft expenditure to Rs.45.60 lakhs. On this issue also, learned DR for the Revenue supported the assessment order whereas learned AR of the assessee supported the order of the CIT(A). In this regard, it is noted by the learned CIT(A) in para No.4.2 of his order that the assessee has incurred total expenditure on account of Aircraft of Rs.2253,23,695/- including Rs.2100,08,528 being depreciation, Rs.38,95,273/- being interest and Rs.114,19,894/- being expenses. From this total amount of expenses, an amount of Rs.269,80,969/- has been reduced being Aircraft Hire Charges received and net expenditure of Rs.1983,42,726/- was claimed by the assessee. This claim of the assessee was disallowed by the AO by holding that the assessee company has not given the details of the passengers who flew in the Aircraft, details of loadings and the purpose for which the Aircraft was used. This

disallowance was reduced by the learned CIT(A) to Rs.45.60 lakhs. In para No.4.6 of his order, this finding is given by the learned CIT(A) that as per various judgments noted by him in para No.4.5, two conditions are to be satisfied for an assessee to be eligible for claim of depreciation under section 32. These conditions noted by him in para 4.6 of his order are (1) the building, machinery, plant and furniture may be owned by the assessee (2) it should be used for the purpose of its business or profession. A categorical finding has been given by the CIT(A) in his order that the assessee satisfies both the conditions and on this basis, it was held by him that the assessee is eligible for depreciation on the Aircraft. He has further noted that the Aircraft was acquired to run it on hire and air craft charges are in fact received and, on this basis, he decided that depreciation on Aircraft of Rs.2100,08,528/- is allowed. We find that there is no dispute that an amount of Rs.269,80,969/- was earned by the assessee towards aircraft hire charges and the expenses claimed by the assessee of Rs.1983.43 lakhs is after reducing the charges received by the assessee of Rs.269.81 lakhs. Under these facts, we find no infirmity in the order of the CIT(A) as per which it was held by him that the expenses on aircraft including depreciation is allowable. Hence, on this issue also, we find no infirmity in the order of the CIT(A) and we confirm the same. Ground No.3 is also rejected.

6. Regarding ground No.4, we find that in para 13 of assessment order, it is noted by the AO that the assessee company has debited an amount of Rs.32 lakhs towards movies. It is noted by the AO in the same para of the

assessment order that these movies have not been sold in the current year not has it been shown as assets in the Balance sheet or as stock-in-trade. The AO held that this is an asset of the assessee and he disallowed this claim. The learned CIT(A) has held that Rs. 20 lakhs was paid in connection with the assessee's business. The details of the payment of Rs.20 lakhs is available on page 15 of the order of CIT(A) as per which Rs.5 lakhs was paid on purchase of a movie Goonda Police and Rs.15 lakhs for Savada Ramudu on 19.06.2009. On the page 16, it is noted by the learned CIT(A) that the assessee company made advance to M/s. Balaji Communication with regard to these 2 movies Rs. 20 lakhs and hence, it was an advance payment to Balaji Communication in business connection and owing to certain reasons, contact was not finalized and amount was written off as Bad Debt. Reliance was placed on the judgment of Hon'ble Apex Court rendered int eh case of CIT Vs. Abdullabhai Abdulkadar 41 ITR 545 (SC) and reliance was placed on the judgment in the case of CIT Vs. Dhanlakshmi Corporation 46 ITR 1031(Madras). Judgment of the Hon'ble Apex Court is regarding business loss. But nothing has been mentioned about the occurring of business loss in the present case. There is no detail available regarding this aspect as to whether these 2 fields were acquired or not and if not acquired, then the reasons for that. In the absence of any factual finding on this important aspect, in our considered opinion, the order of the learned CIT(A) on this issue is not sustainable. Hence on this issue, we reverse the order of the CIT(A) and restore that of the AO. Accordingly, ground No.4 is allowed.

7. Regarding ground No.5, we find that it is noted by the AO in para 20 of the assessment order that the assessee company has advanced monies to its sister concerns for no specific business purpose. It is further noted by the AO in the same para of the Assessment Order that the assessee company is asked to specifically explain the commercial expediency and business expenditure of amount lent to sister concerns and others. It is noted in the same para that the explanation filed by the assessee on 26.12.2012 has given evasive answer to the issues in the notice dated 13.12.2011. He has further noted that considering these, the entire interest debited of Rs.171,07,416/- is disallowed protectively. He has further observed that these amounts of disallowance would come into operation if any of the interest amounts are not held as attracted under section 14A or on account of capitalization of interest towards share application money advanced and vice versa. As per para No.4.5 and 4.6 of his order, the learned CIT(A) has deleted this disallowance of Rs.171,07,416/-. Hence, we reproduce these 2 paras i.e., 4.5 and 4.6 from the order of the CIT(A). These paras read as under:-

"4.5 It may be mentioned that ownership and use of aircraft for the appellant's business are not disputed by the AO. In addition to the above, the appellant also earned income as hire charges from the aircraft. As per the break-up, major expenses are towards depreciation allowance of Rs.21,00,08,528/-. However, the AO termed the same as expenditure. In this context, it is relevant to quote certain judicial pronouncements as under:

i) In the case of R.B.Jodhamal Kuthiala v. CIT (1971) 82 ITR 570 (SC), the Hon'ble Supreme Court held as under:

"The evacuee property ordinance is an ordinance to provide for the administration of evacuee property and not 7management of evacuee property. Theexpression 'Administration', in relation to an estate, in law means management and settings of that estate. It is a power to deal with the estate. The evacuee could not take possession of his property. He could not lease that property. He could not sell that property without the consent of the Custodian. He could not mortgage that property. He could not realise the income of the property. On the other hand, the Custodian could take possession of that property. He could realise its income. He could alienate the property and he could under certain circumstances demolish the property. All the rights that the evacuee had in the property he left in Pakistan were exercisable by the custodian excepting that he could not appropriate the proceeds for his own use. The evacuee could not exercise any rights in that property except with the consent of the Custodian. He merely had some beneficial interest in that property. No doubt that residual interest in a sense is ownership. The property having vested in the Custodian, who had all the powers of the owner, he was the legal owner of the property. In the eye of the law, the Custodian was the owner of that property. section 9 brings to tax the income from property and not the interest of a person in the property. A property cannot be owned by two persons, each one having independent and exclusive right over it. Hence, for the purpose of section 9, the owner must be that person who can exercise the rights of the owner, not on behalf of the owner but in his own right. It is true that equitable considerations are irrelevant in interpreting tax laws. But, those laws, like all other laws, have to be interpreted reasonably and in consonance with justice. No one denies that an evacuee from Pakistan had a residual right in the property left by him in Pakistan. section 9 sought to bring to tax income of the property in the hands of the owner. Hence, the focus was on the receipt of income."

ii) The High Court of Calcutta in the case of CIT v. Union carbide (I) Ltd. (2002) 124 Taxman 859 (Cal) held as under:

under section 32, it is necessary that the machinery is owned, wholly or partly, by the assessee and 'used for the purposes of the business'; it is the interpretation of the word 'use' in this phrase which would be partly determinative of the issue.

Once ownership by the assessee and the lapse of the whole previous year are established, a full year of shelf-life of the machinery in question has inexorably lapsed. If it is found that during that year, the machinery cannot be said to have been used for the purpose of the assessee's business, then depreciation cannot be allowed but once it is shown that the assessee has put the machinery to use, for the purpose of its business, then further inquiry about the degree or type of use is not permitted to be scrutinised by the language of the section. It may be that the assessee's use is to keep it as a stand-by for the whole year ; it may again be that the assessee has to use it for a trial production or for some other purpose for its business, which is not immediately productive of commercial profit ; these would, again, not go against the assessee. Once the assessee can establish bona fide use of the machinery for the purposes of its business, then and in that event, the assessee establishes its right to claim depreciation.

iii) The High Court of Andhra Pradesh in CIT v. Orient Longman (P) Ltd. (1997) 227 ITR 68 (AP) held as follows:

To claim depreciation under section 32 in respect of buildings, machinery, plant or furniture, one of the conditions to be fulfilled is that they must be owned by the assessee. The requirement of ownership will be deemed to be fulfilled if the assessee has the dominion and control over the property in his own right and not in the right of others. Where the assessee has paid full consideration and has been put in possession of the property and has been in exclusive possession and enjoyment of property as absolute owner thereof, the mere fact that no title deed has been executed in his favour will not deprive him of the right to claim depreciation under section 32.

In view of the decisions of the Allahabad High Court in Addl. CIT v. U.P. State Agro Industrial Corpn. Ltd. [1981] 127 ITR 97, the Andhra Pradesh High Court in CIT v. Sahney Steel & Press Works (P.) Ltd. [1987] 168 ITR 811 and that of the Madras High Court in CIT v. Tamil Nadu Small Industries Development Corpn. Ltd. [1991] 91 CTR (Mad.) 32 it was to be held in the instant case that as the assessee was exercising right of ownership in its own right as owner of the flats in question, the Tribunal was justified in holding that the assessee was entitled to depreciation under section 32.

iv) The High Court of Madras in Waterfall Estates Ltd. V. CIT (4 Taxman 311) (1980) held as under:

1. Section 32 sets out two conditions : (i) the buildings, machinery, plant or furniture should be owned by the assessee, and (ii) it should be used for the purpose of his business or profession. There was no dispute about the ownership of the assets. The question was whether the depreciable assets in the instant case were not exclusively used for the purpose' of the business. Prima facie, it could be said that the assessee had been using the assets for purposes of business, the income from which had been brought to tax. It may be that the assets were useful for other business, but that did not, in any way, effect the conclusion that the assets had been used for the purposes of the business, the income from which was subjected to tax.

v) In the case of JCIT v. Holland Equipment Co. B.V. (2005) 3 SOT 810 (Mum), the ITAT, Mumbai gave a verdict as under:

There is no provision in the Act restricting the depreciation on the basis of number of days for which the asset, is used in the business. According to the second proviso to section 32(1), 50 per cent of the normal depreciation has to be allowed where the asset is used for less than 180 days. That means that the assessee would be entitled to 50 per cent of the normal depreciation even if the asset is used for a single day in the business carried on by the assessee. [Para 9]

A perusal of the second proviso to section 32(1) shows that two conditions must be satisfied before invoking such proviso. The first condition is that the assessee must acquire the asset during the previous year and the second condition is that such asset is put to use for the purpose of business for a period of less than 180 days. The Legislature has used the word 'and' in between these two

conditions and, therefore, these conditions are cumulative. There cannot be two years of acquisition, i.e., one for the purpose of global taxation and another for the purpose of Indian taxation. [Para 10]

vi) similarly, in the case of Siv Industries Ltd. v. DCIT (2008) 306 ITR 114, the High Court of madras held as under:

The claim of the assessee for normal depreciation for the block of assets was restricted to 50 per cent, on the ground that such asset was put to use for a period less than 180 days. The construction of the expression 'put to use' employed in the second proviso to section 32(1) assumes significance. It is axiomatic that in the absence of definition to a word or an expression, the usual course to be adopted is to assign the meaning given to the word or expression in the legal dictionary. [Para 5]

when the expression 'put to use', is given the meaning as defined in the dictionary, it is clear that if the block of assets acquired by the assessee during the previous year is applied or employed for the purpose of business of the assessee in that previous year for 180 days, that would make the assessee eligible for full depreciation. The expression 'put to use for 180 days' was interpreted by the department as well as by the Tribunal.as 'exploited for 180 days', which was not correct, because obviously the machinery could not be used every day, right from the date on which it was put to use first. There may be normal working hours even during a day. There may be holidays intervening the 180 days period. If the depreciation allowance is to be calculated only with reference to the actual time or days the machinery has been actually used, the provision for depreciation would lose its significance. [Para 6]

4.6 The sum and substance of the decisions cited above is that section 32 of the Act sets out two conditions: (i) the buildings, machinery, plant or furniture may be owned by the assessee and (ii) it should be used for the purpose of its business (or profession). In the instant case, the appellant satisfies both the conditions. Therefore, it is eligible for depreciation on the aircraft. As mentioned earlier, the aircraft was acquired to run it on hire; therefore depreciation: on air craft of Rs.21,00,08,528/- is allowed.

However, findings of the Assessing Officer is that air craft hire charges received of Rs.2,69,80,969/-. This include an amount of Rs.25,70,408/- and Rs.15,88,333 received from M/s Laxmi Mines and Minerals and M/s Obalapuram Mining Company Ltd respectively and balance from subsidiary/associates concern. Further it also held that appellant company has not given the details of the passenger who had flown

in the air craft, details of landing, number of passengers and the purpose for which the aircraft was issued. Even at the time of appeal hearing no such details were furnished to ascertain purpose of utilisation of air craft. The air craft was acquired by erstwhile company M/s Jupiter Ariction Service Pvt. Ltd. and after merger with appellant company, became asset of the appellant company with effect from 01/01/2010 and utilised for its business purpose. I find merit in Assessing Officer's findings and after considering the duration of the asset with the appellant company's business and in absence of details sum of Rs.45,60,000/- is disallowed as non-business purpose as well as personal expenditure of the directors and their relatives."

8. From these 2 paras reproduced from the order of the CIT(A), it comes out that this interest expenditure of Rs.171,07,416/- was considered by the AO for making disallowance under section 14A also and out of that, Rs.64,12,770/- was disallowed by the AO but this disallowance had been deleted by the learned CIT(A) while deciding the issue regarding disallowance under section 14A and this order of CIT(A) has been upheld by us while deciding ground No.2 of the Revenue's appeal. It is further noted by the learned CIT(A) that the same interest of Rs.171,07,416/- was disallowed by the AO under section 36(1)(iii) of the Income Tax Act, 1961. This disallowance is also deleted by the learned CIT(A) and against such deletion, ground Nos. 6 and 7 of the Revenue's appeal are relevant and hence, we decide ground Nos.5, 6 and 7 together. In this regard, we find that the AO has made disallowance of Rs.64,12,770/- out of interest expenditure under section 14A and in addition to that, he has made further disallowance of Rs.106,94,646/- out of interest expenditure. In this regard,

it is noted by the AO in para 15 of the assessment order that share application given by the assessee has increased from Rs.6.57 Crores to Rs.65.21 Crores, average of these 2 amounts was worked out at Rs.35,89,85,779/-. The AO has followed two judgments of Hon'ble Karnataka High Court rendered in the case of CIT(A) Vs. Mythreyi Pai 152 ITR 247 and in the case of United Breweries Ltd., 321 ITR 546 and it is noted by him that in these two judgments, it was held that the expenditure incurred towards purchase of shares is a capital expenditure and is not qualified for deduction under section 36(1)(iii) of the IT Act. The AO worked out the interest expenditure at Rs.12% PA. Thereafter, observed that considering this fact that indirect interest expenditure debited to P&L A/c is only Rs.171,07,46/-, the disallowance is restricted to this amount only and since an amount of Rs.64,12,770/- was disallowed under section 14A, he made further disallowance under section 36(1)(iii) of the IT Act, 1961 of Rs.106,94,646/-. This issue has been decided by the learned CIT(A) as per paras 6.2 to 6.6 of his order which are reproduced herein below for ready reference:-

"6.2 In this regard, the appellant's submission is as follows:

> *"The assessing officer has disallowed the entire interest cost incurred by the appellant over and above the sum disallowed under section 14A. Reliance has been placed on the decision of the Honorable High Court in the case of CIT v Mythreyi Pai and United Breweries Ltd. Further, he has stated that appellant has made payments for share application money to various companies without claiming any interest and these are not for any specific business purpose, Under section 14A and under section 36(1)(iii).*

The appellant is a registered NBFC. The main business of the appellant is to lend money and to invest in equity of various companies. The appellant has earned interest income of about Rs.41 crores. The appellant has a share capital and reserves of about Rs.1001 crores.

The appellant has a borrowing of Rs.83 crores. There was no borrowing during the earlier years. Out of the borrowing Rs.17 crores is for purchase of an aircraft. Rs.26 crores is temporary overdraft for operations of the appellant.

The appellant being an NBFC, has made share application to various entities and the shares allotted would held (read `hold') as investments. That is main business of the appellant. These investments are made out of its own resources and not from borrowed funds. The fact that investment have been made for the business of the appellant is conceded by the assessing officer by invoking the provisions of section 14A. If the investment were not for the business of the appellant then section14A should not be applied."

6.3 I have carefully considered the appellant's submission put forth above. As already discussed above, share capital, reserves and surplus and loan amount for the current year and previous year are as under:

Particulars	***Y.E.31/3/2010 (Rs.)***	***Y.E. 31/3/2009 (Rs.)***
Share capital	***62,74,660***	***54,74,650***
Reserves &	***1000,00,89,176***	***276,52,46,671***
Loan funds	***83,10,67,978***	***-***
Deferred tax liability	***4,89,32,667***	***1,32,893***
Total	***1088,63,64,371***	***277,08,54,214***

6.4 The appellant has incurred interest expenses of Rs.2,29,69,222/-, the break-up of interest on fixed loan is as under:

i)	*Interest paid to YES Bank for aircraft*	*Rs.*	*58,61,806*
ii)	*Loan against fixed deposits*	*Rs.*	*1,32,12,143_*
iii)	*Interest to others*	*Rs.*	*38,95,273*
	Total	*Rs.*	*2,29,69,222*

6.5 The AO has admitted that interest amount of Rs.58,61,806/- is directly related to the purchase of aircraft owned by the appellant and balance interest of Rs.1,71,07,416/- pertains to the interest on general purpose. It is

pertinent to note that, while calculating the interest under rule 8D, indirect interest of Rs.1,71,07,416/-was considered and, accordingly, Rs.64,12,770/- was worked out as disallowable u/s 14A of the Act. However, the same interest of Rs.1,71,07,416/- is disallowed u/s 36(1)(iii) of the Act on account of investment in share application money. Thus there is double disallowance of interest.

6.6 During the year under consideration, the appellant received interest income of Rs.40,54,25,829/- from fixed deposits. Considering these facts, there is merit in the appellant's contention that interest paid on loan against fixed deposits of Rs.1,32,12,143/-, in this way also disallowance of further interest of Rs.1,71,07,416/- is not justified. Therefore, the disallowance of Rs.1,71,07,416/-is deleted."

9. From the above paras reproduced from the order of the CIT(A), it is seen that this is the main claim of the assessee before CIT(A) that the assessee is a registered NBFC and the main business of the assessee is to lend money and to invest in equity shares of various companies. It is also claimed before the CIT(A) that the assessee has earned interest income of about Rs.41 Crores and the assessee has a share capital & reserve of Rs.1001 Crores. Out of this capital and reserve of Rs.1000.63 Crores, if we reduce investment in shares considered for 14A disallowance of Rs.313.11 Crores as on 31.03.2010, then also, surplus amount of approx. Rs.688 Crores remains to take care of share application money given by the assessee of Rs.65.22 Crores. By following the same judgment of Hon'ble Karnataka High Court rendered in the case of CIT Vs. Microlabs (supra), we hold that no disallowance is called for in respect of investment by way of share application money of Rs.65.22 Crores and hence, we decline to interfere in the order of the CIT(A) on this issue also and accordingly, these three ground Nos.5, 6 and 7 of Revenue's appeal are also rejected.

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

Pronounced in the open court on the date mentioned on the caption page.

Sd/-	Sd/-
(PAVAN KUMAR GADALE)	**(A. K. GARODIA)**
Judicial Member	**Accountant Member**

Bangalore.
Dated: 13th December, 2019.
/NS/*

Copy to:

1. Appellants
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.