

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH  
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER  
&  
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.3180/Mum/2019  
(Assessment Year :2014-15)**

M/s. Plus Plus Consulting and Services Private Limited 21/A, 2 <sup>nd</sup> Floor, Film Centre 68, Tardeo Road Mumbai – 400 068	Vs.	Dy. Commissioner of Income Tax Officer 7(3)(2), Mumbai Room No.12, Ground Floor Aaykar Bhavan M.K.Road, Mumbai – 400 020
<b>PAN/GIR No.AAECP2089B</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	None
Revenue by	Shri Prasoan Kabra
<b>Date of Hearing</b>	<b>23/11/2021</b>
<b>Date of Pronouncement</b>	<b>26/11/2021</b>

**आदेश / ORDER**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No.3180/Mum/2019 for A.Y.2014-15 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-13, Mumbai in appeal No.CIT(A)-13/DCIT-7(3)(1)/79/2015-16 dated 28/02/2019 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) by the Id. Dy. Commissioner of Income Tax – 7(3)(2) (hereinafter referred to as Id. AO).

2. The only effective issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in substituting the disallowance of interest u/s. 36(1)(iii) of the Act as against disallowance made u/s.14A r.w.Rule 8D(2)(ii) of the Income Tax Rules by the Id. AO while framing the assessment.

3. None appeared on behalf of the assessee. We have heard Id. DR and perused the materials available on record. We find that assessee company is engaged in the business of providing HR consulting services, training and development and staffing services as well as in financial activities. The return of income for the A.Y.2014-15 was filed by the assessee company on 30/11/2014 declaring loss of Rs.1,39,73,198/- under normal provisions of the Act which was duly processed u/s.143(1) of the Act. We find that the Id. AO in the assessment proceedings observed that assessee had made investment in shares to the tune of Rs.10,35,28,236/- which would fetch exempt income for the assessee. Accordingly, he proceeded to examine the applicability of provisions of Section 14A of the Act r.w.r.8D(2) of the Rules. The assessee pointed out that it has not earned any exempt income during the year under consideration out of the investments. The Id. AO disregarded this contention of the assessee and proceeded to apply the computation mechanism provided in Rule 8D(2)(ii) of the Rules and made disallowance of interest in the sum of Rs.1,03,70,364/- under Rule 8D(2)(ii) of the Rules and disallowance of administrative expenses of Rs.4,12,221/- under Rule 8D(2)(iii) of the Rules. This disallowance was subjected to challenge by the assessee before the Id. CIT(A). It was pointed out that assessee's investment in shares were made only with the group company as a strategic investment and accordingly, the provisions of Rule 14A r.w. Rule 8D(2) of the Rules cannot be made applicable thereon. The Id. CIT(A)

appreciated the primary contention of the assessee that since no exempt income has been earned by the assessee during the year under consideration, no disallowance u/s.14A of the Act would come into operation. Accordingly, the disallowance of administrative expenditure made under Rule 8D(2)(iii) of the Rules was deleted. However, the Id. CIT(A) applied the provisions of Section 36(1)(iii) of the Act and held that since investments were made out of borrowed funds by the assessee company, the interest paid on borrowings would be disallowed u/s.36(1)(iii) of the Act. Aggrieved by this order, only the assessee is in appeal before us.

4. We find that assessee had made investments in Neotric Infomatique company which is a group company of the assessee company as a measure of strategic investment. It is not in dispute that the borrowed funds were used by the assessee company for making such strategic investment. The assessee has also pointed out before the Id. AO that this investment made in group company was made on the basis of commercial expediency and as a measure of strategic investment, which has been duly accepted by the Id. AO. The Id. AO had however, applied only the provisions of Section 14A of the Act as according to him, the provisions of 14A of the Act would be applicable even for strategic investment. Hence, the short dispute that ultimately went before the Id. CIT(A) was whether the disallowance u/s.14A of the Act could be made in respect of strategic investments made by the assessee. The Id. CIT(A) is bound to adjudicate only that issue which is before him and not consider a new source of income which is disallowance of interest u/s.36(1)(iii) of the Act as it is not the subject matter of the appeal before him. In any case, in the absence of exempt income derived by the assessee during the year, the disallowance made by the Id. AO u/s.14A of the Act has

been deleted by the Id. CIT(A). The matter ends there. Thereafter, the Id. CIT(A) could not have looked into a new source of income i.e. disallowance of interest u/s.36(1)(iii) of the Act. We also find that from the perusal of the entire CIT(A)'s order, there is not even a whisper about proposal to enhance the assessment by issuing proper enhancement notice to the assessee in terms of Section 251 of the Act. In any case, the undisputed fact is that the borrowed funds has been utilized by the assessee for making investment in the group company which is made in the ordinary course of business and hence, once the borrowed funds are utilized for the purpose of business, the interest paid thereon would be squarely allowable as deduction u/s.36(1)(iii) of the Act. The law is very well settled on this issue by series of judicial pronouncements including various decisions of the Hon'ble Supreme Court.

4.1. In view of the aforesaid observations, we direct the Id. AO to delete the disallowance of interest u/s.36(1)(iii) of the Act in the facts and circumstances of the instant case. Accordingly, the grounds raised by the assessee are allowed.

**5. In the result, appeal of the assessee is allowed.**

Order pronounced on 26/11/2021 by way of proper mentioning in the notice board.

**Sd/-**  
**(AMARJIT SINGH)**  
JUDICIAL MEMBER

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 26/ 11/2021  
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**