

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C" MUMBAI**

**BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER) AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 475/MUM/2021
Assessment Year: 2011-12**

Piramal Corporate Services Private Limited (as successor in business to Piramal Corporate Services Limited Earlier known as Piramal Enterprises Limited)
Piramal Tower Annexe, Ganpatrao Kadam Marg, Lower Partel, Mumbai-400013.

**PAN No. AAACJ 5669 H
Appellant**

Vs. Dy. Commissioner of Income Tax, Range-7(1),
Room No. 624, Aayakar Bhavan, M.K. Road, Mumbai-400020.

Respondent

Assessee by	:	Mr. Ronak Doshi & Ms. Ridhima Romnani, ARs
Revenue by	:	Mr. C.T. Mathews, DR
Date of Hearing	:	04/04/2022
Date of pronouncement	:	27/04/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 25/02/2020 passed by the Ld. Commissioner of Income-tax (Appeals)-13, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2011-12, raising following grounds:

1. *On the facts and in circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) - 13, Mumbai ["the CIT(A)"] erred in confirming the action of the Deputy Commissioner of Income Tax - 7(1) ["the AO"] in disallowing interest expenditure of ₹54,75,858 u/s. 14A of the Income-tax Act, 1961 ("the Act") and an amount of ₹34,11,029/-, on the alleged ground that the Appellant has utilized borrowed funds for the purpose of earning exempt income and that the disallowance u/s. 14A of the Act is to be done in the manner provided in Rule 8D.*
2. *Learned CIT(A) further erred in upholding AO's observation that the interest expenditure is not allowable u/s. 36(1) (ili) of the Act since the same is incurred for non-business activity and erred in observing that the Appellant has not disputed disallowance made u/s. 36(1) (in) disregarding the fact that the AO has specifically made the disallowance u/s. 14A of the Act*
3. *The Learned CIT(A), inter-alia, failed to appreciate and ought to have held that:*
 - a. *The Appellant had suo-moto disallowed interest u/s. 14A of the Act on the basis of the working which is accepted by the Appellate Authorities in earlier years and therefore, no further disallowance is warranted;*
 - b. *The borrowed funds were utilized in investing in investments which have yielded both exempt income and taxable income;*
 - c. *Own funds are higher than the investments made and thus, no interest disallowance u/s. 14A of the Act is called for;*
 - d. *Section 14A of the Act provides for disallowance of expenditure incurred in relation to 'income which does not form part of total income and there has to be a direct nexus between the actual expenditure incurred with the exempt income;*
 - e. *Application of Rule 8D of the Rules is not automatic.*

- f. No objective dissatisfaction was recorded by the A nor any deficiency was shown in the books of accounts of the Appellant before invoking Rule 8D;
 - g. Disallowance under section 14A r.w.r. 8D of the Rules cannot exceed the amount of exempt income.
4. The Appellant therefore prays that the disallowance of Rs. 54,75,858 w/s. 14A [and/or 36(1) (ti)] of the Act and Rs. 34,11,029/- computed under Rule 8D(2)(iii) be deleted or appropriately reduced.

WITHOUT PREJUDICE TO GROUND NO. I:

GROUND NO. I: DEDUCTION OF INTEREST EXPENSE BE ALLOWED U/S.

57 (ii) OF THE ACT:

1. On the facts and in circumstances of the case and in law, the Learned CIT(A) erred in not allowing the deduction of interest expended under the provisions of section 57(iii) of the Act.
 2. The Learned CIT(A) failed to appreciate and ought to have held that the Appellant has disallowed certain portion of interest attributable to investments yielding exempt income and accordingly the balance pertains to investments yielding taxable income which is allowable u/s. 57 (iii) of the Act.
 3. The Appellant prays that deduction of interest of Rs. 54,75,858 be allowed w/s.57(1) of the Act.
2. Briefly stated facts of the case are that the assessee was engaged in the business of providing management consultancy services to its group companies. For the year under consideration the assessee filed return of income on 30/09/2011 declaring total income of ₹360,90,76,255/-. The

return of income filed by the assessee was selected for scrutiny assessment and statutory notices under the Income-Tax Act, 1961 (in short 'the Act') were issued and complied with. The assessment under section 143(3) of the Act was completed on 15/01/2014 after making certain addition /disallowances. On further appeal, the Ld. CIT(A) allowed the appeal partly. Aggrieved, the assessee is in appeal before the Tribunal by way of raising grounds as reproduced above.

2.1 Before us, the assessee filed a paperbook containing pages 1 to 57.

3. The ground No. 1 (one) and 2 (two) of the appeal are interconnected and relate to disallowance of interest amounting to ₹54,75,858/- and disallowance of ₹34,11,029/-. The disallowance in dispute has been made in terms of section 14A of the Act, whereas disallowance of same amount has been considered u/s 36(1)(iii) of the Act.

4. The brief facts qua the issue in dispute are that during the year under consideration, the assessee borrowed a loan from "Nozaki finance and Investment Ltd." at the rate of 6% to 8.82% and paid interest of ₹3,54,90,304/- which has been debited to the profit and loss account for the year under consideration. The assessee invested entire borrowed fund in the

Venture Capital Fund (VCF) of the Piramal Group by the name 'Indiareit fund', which is registered with SEBI. The VCF in turn, used the amount for making investment in shares, mutual funds, debentures and subscription money etc. on behalf of various investors/beneficiaries including the assessee. Under section 10(23FB) of the Act, income of the VCF from investment in a venture capital undertaking (VCU) is exempt and taxes are to be paid on income from investment in VCU by the beneficiary as if the investment in VCU is made by the beneficiary. The VCF is only pass through status entity as the taxes are paid at the beneficiary level. The income is taxable in the hands of the beneficiary, in the same character and in the same manner as if the income of the beneficiary had it directly made the investment in shares or mutual funds etc.

4.1 The assessee made *suo-moto* disallowance under section 14A of the Act amounting to ₹3,00,14,446/- out of the interest on money borrowed for amount invested in VCF. The assessee first computed the percentage of investment made by the VCF in exempted income yielding assets to its total assets during the year and thereafter applied that percentage, over the total interest paid towards money borrowed for computing disallowance of ₹3,00,14,446/-.

4.2 Regarding the balance interest payment, the assessee submitted that the investment made by VCF in the venture and subscription money pending allotment and banks fixed deposits are taxable and hence interest paid by the assessee to that extent does not qualify for disallowance.

4.3 The assessee also submitted that during the year the assessee invested ₹11.90 crore in Indiareit (VCF), out of which amount of ₹1.50 crore was funded out of redemption of unit of Indiariet fund scheme, and disallowance therefore under section 14A of the Act was calculated on the balance amount of ₹15.44 crores utilized out of borrowed funds.

5. The Assessing Officer however observed that business of the assessee was of providing management consultancy and the money borrowed has not been used for the purpose of the business, but used for making investments. Therefore, the entire interest on money borrowed for investment in VCF was disallowable under section 36(1)(iii) of the Act. He also held that interest expenses were directly related to investment for earning exempted income and therefore interest was also disallowable under section 14A of the Act. The Assessing Officer also disallowed expenses in proportion of 0.5% of average investment in terms of rule 8D(2)(iii) of rules amounting to ₹34,11,029/-, which was computed as under:

Opening investment		₹65,14,21,772/-
Closing investment		₹71,29,89,844/-
		₹136,44,11,616/- /2
Average Investment	=	₹68,22,05,808/-
0.5% of ₹68,22,05,808/-	=	₹34,11,029/-

6. The Ld. CIT(A) has noted that assessee did not file detailed working of the *suo-moto* disallowance of ₹3,00,14,416/- and also admitted application of section 14A of the Act. The Ld. CIT(A) upheld that the disallowance made under section 36(1)(iii) of the Act observing as under:

“Further, the appellant has offered the income on sale of Indiareit Funds as Capital gain and not as business income. If the investment is made as a business, then even the income there from has to be offered as business income. The AO has accordingly held in para 4.8 (b) on page 7 and paras 4.8 & 4.9 on page 13 of his order that the entire interest expense debited to the profit & loss account amounting to ₹3,54,90,304/-on borrowed funds for making investment in Indiareit Fund and India Venture Trust - Fund has to be disallowed under section 36(1)(iii) being not incurred for the purpose of business.”

6.1 The Ld. CIT(A) also upheld the disallowance of interest under section 14A observing as under:

5.3.2 I find that the appellant has not disputed the disallowance made by the AO under section 36(1)(iii) vide any of the grounds of appeal in the current appeal. Since disallowance under section 36(1)(iii) was a clear ground of appeal before the appellate authorities in the previous years, the decisions for earlier years do not hold good for the current year since the appellant has accepted the disallowance under section 36(1)(iii) in the current appeal by

not raising a specific ground of appeal. Also, no additional ground of appeal has been taken during the course of the appellate proceedings, nor any ground of appeal has been added to, altered and/or amended. Moreover, as mentioned earlier, the appellant has not specified the investments that are yielding taxable and exempt incomes. Admittedly, the entire investment is made through the Indiareit Fund and India Venture Trust - Fund by using the borrowed funds on which interest expense is being debited. The applicability of section 14A is not disputed by the appellant. There being a direct nexus between the interest expense and the investment, the AO cannot be faulted for applying provisions of section 14A on the entire interest expense of ₹3,54,90,304/-. Accordingly, the disallowance of the interest expense made by the AO is upheld.

7. As far as issue of disallowance of administrative expenses at the rate of 0.5% of the average investment in terms of rule 8d(2)(iii) of the rules, the Ld. CIT(A) directed the Assessing Officer to exclude those investments which are not capable of fetching in exempted income and against which the assessee has not preferred any appeal before the Tribunal.

8. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. As far as issue of disallowance of interest of ₹54,75,858/- in terms of section 36(1)(iii) of the Act and section 14A of the Act is concerned, the Ld. counsel of the assessee relied on the decision of the Tribunal in ITA No.4137 & 6645 /Mum/2012 for AY 2008-09

and 2009-10 in the case of the assessee. The relevant finding of the Tribunal is reproduced as under:

"3.7. During the course of hearing, it was argued on behalf of the assessee that no further disallowance u/s 14A was warranted as interest expenditure was claimed only for that portion of investment made by the assessee in IRF, which in turn invested the same in those items which generate taxable income. After considering detailed submission of the assessee, d. CIT(A) reworked the disallowance after recording detailed findings as under:

"As regards suo-moto calculation of disallowance of interest of Rs 1.01 crores by the appellant u/ s14A, I find that the said disallowance was made on the basis of investments balance as on 31.03.2008 as appearing the audited balance sheet of the IRF scheme I and Scheme III. As the appellant has invested in IRF during the year and the IRF has in turn invested in shares, mutual fund, debentures, application money etc., I find that the disallowance of interest should be made based on the monthly balance in investments in shares, mutual funds, debentures, application money as appearing in the books of IRF scheme I and scheme III. The appellant was asked to recalculate the disallowance of interest based on the monthly balance in investment which generate tax free income and investments which generate taxable investments as per the books of IRF Scheme I and Scheme I. The appellant has submitted the interest calculation as per monthly balance in investments a per the books as certified by CFO of IRF scheme I and III which works out to Rs.1.07 crores. The disallowance u/s.14A is ₹1,07,16,861/- crores as against Rs.1,01,00,417/- crores offered by appellant. The AO shall therefore revise the interest disallowable u/s. 14A at Rs.1,07,16,861/-. Disallowance us.14A works out to Rs.1.07.16.861 cores. The balance interest in any case is allowable

either u/s.36(1)(iii) or u/s. 57 (iii) depending upon whether the investments are by way of stock-in-trade or investment (though for which no working/ findings has been given by the AO.)

Accordingly, there is no reason for disallowance of balance interest without any adverse material on record.

2.3 This ground of appeal is therefore, partly allowed as per aforesaid directions.

3.8. We have gone through the detailed findings of Ld. CIT(A) and also gone through the judgment relied upon by the Ld. Counsel in the case of Rainy Investment Pvt. Ltd., (supra), the relevant portion of the same is reproduced below:

"We have heard the parties, and perused the material on record. Section 14A r/w r. 8D is mandatory in its application where the assessee earns income which is claimed tax-exempt, as dividend income in the instant case. In fact, there is no doubt with regard to this; the assessee itself conceding to the same before us and, besides, being engaged in the business of making investments and earning dividend income as an integral part thereof. The only option, therefore, if it considers the application of the provision as operating to its detriment, is to forfeit its right to exemption from tax in its respect. Qua merits, we find much force in the assessee's argument that 'share application money', to the extent it is actually so, so that it only represents amount/s paid by way of application for allotment of shares, the same cannot be regarded as an investment in shares, or an asset (or asset class) yielding tax-free income, and neither is it capable of yielding any tax-free income. The same would, therefore, in our clear view, have to be excluded in working out the disallowance u/r. 8D. Further, though the Revenue has not disputed the sums reflected as 'share application money' in the

*assessee's balance-sheet, the AO, to whom the matter is to be in any case restored for working out the disallowance by excluding the same, shall, in the set aside proceedings, also examine the veracity of the assessee's claim with regard to the same being share application money'. This is in view of the pertinent questions raised by the Bench in its respect, to which no satisfactory answer was forthcoming during hearing, nor - to be fair to the Id. AR, could possibly be in the absence of any details on record. We state so as the 'share application money' would ordinarily only be public money' and, thus, except perhaps where toward shares of private limited companies, subject to stringent procedure, as is generally in place for such funds. We may further clarify that the exclusion of 'share application money', as opined by us, is not in the least for the reason that it did not yield any tax-free income for the relevant year, but for the reason that it is incapable of any such income. The same is only in the nature of application (offer) money, which would though, on allotment, get adjusted against the cost of the said shares, and only whereupon any rights in the investee company inure to the allottee. No rights, not even inchoate, in the share capital of the issuing company arise on the payment of the share application money, irrespective of the time period for which it may stand. The same may at best yield interest income (or which a special procedure though has to be followed by the company concerned), which is in any case taxable, so that there is no scope for application of sec. 14A thereon. **As such, upon verification of the assessee's claim with regard to the share application money as on 31.03.2007 and 31.03.2008, as appearing in its balance-sheet/ books of account, so that no shares had actually been allotted in its respect as at the relevant dates, the same shall be excluded by the AO from the qualifying amount in reckoning the average investment in working out the disallowance under rules 8D (it) and 8D(it). The A. O. will decide***

the matter per a speaking order, allowing the assessee a reasonable opportunity to present its case before him.

3.9. In our considered opinion, the Ld. CIT(A) has followed correct approach, both on law and facts. The disallowance has been sustained to the extent it pertains to investment in securities enjoying tax-free income and the disallowance has been deleted vis-à-vis investment in the securities enjoying taxable income. Nothing wrong could be pointed in the findings of the Ld. CIT(A), and therefore order of Ld. CIT(A) is upheld. Thus, ground raised by the Revenue is dismissed."

(emphasis supplied externally)

8.1 The further appeal preferred by the Revenue, against the said order of the Tribunal has been dismissed by the Hon'ble Bombay High Court **in Income Tax Appeal (ITA) No. 1786 of 2016 along with ITA No. 1790 of 2016** observing as under:

"4. Having heard the learned Counsel for the parties, we notice that the Revenue does not dispute the Assessee's computation of disallowance of expenditure under Section 14-A of the Act. That be the position, the Commissioner (Appeals) was correct in coming to the conclusion that, the expenditure was allowable either under Section 36 (1) (iii) or 57 (iii) of the Act. Counsel for the Assessee pointed out that, Commissioner has accepted that the Assessee's expenditure in question was in relation to investment, income out of which was not exempt. Under the circumstance, no question of law arises."

8.2 Respectfully, following the decision of the Tribunal (supra) and Hon'ble High Court (supra), we restore the issue-in-dispute to the file of the Assessing Officer for computation of the disallowance under section 14A of

the Act in respect of the exempted income earned from investment in VCF, with the direction to decide the issue following the finding of the Tribunal (supra). As far as balance amount of interest is concerned, the Assessing Officer may verify whether the same pertains to income from the VCF which has been offered for tax by the assessee under the head "profit and gains of the business" (i.e. the income other than in the category of exempted income) and decide the issue of disallowability accordingly. The ground No. one and two of the appeal are accordingly allowed for statistical purposes.

8.3 The remaining ground Nos. 3 (three) and 4 (four) are without prejudice ground and same were not pressed before us, accordingly same are dismissed as infructuous.

9. In the result, the appeal of the assessee is allowed partly for statistical purposes.

Order pronounced in the open Court on 27/04/2022.

Sd/-

**(KULDIP SINGH)
JUDICIAL MEMBER**

Sd/-

**(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 27/04/2022
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai