

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

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI KULDIP SINGH, JM

**ITA No.199/Mum/2023**  
(Assessment Year: 2017-18)

Piramal Capital & Housing  
Finance Limited  
(Formerly known as Dewan  
Housing Finance Corporation  
Limited)  
4<sup>th</sup> Floor, Piramal Tower  
Ganpatrao Kadam Marg,  
Delisle Road,  
S.O. Mumbai  
Mumbai-400 013

Vs.

The Asst. Commissioner of  
Income-tax  
Room No. 1927,  
19<sup>th</sup> Floor,  
Air India Building,  
Nariman Point,  
Mumbai-400 021

**(Appellant)**

**(Respondent)**

**PAN No. AAACD1977A**

**Assessee by** : Mr. Ronak Doshi &  
Mr. Priyank Gala, ARs  
**Revenue by** : Mr. K.C. Selvamani, CIT DR

**Date of hearing:** 16.03.2023

**Date of pronouncement :** 12.06.2023

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. This appeal is filed by Piramal Capital and Housing Finance Ltd. formerly known as (Dewan Housing Finance Corporation Ltd.) for A.Y. 2017-18 against the appellate order passed by the Commissioner of Income-tax (Appeals)-53, Mumbai [the learned CIT (A)] for A.Y. 2017-18 dated 23<sup>rd</sup> November, 2022. By this appellate order, the appeal against the assessment order passed by the Asst. Commissioner of Income Tax, Central Circle, 5(4), Mumbai (the

learned Assessing Officer) under Section 143(3) of the Income-tax Act, 1961 (the Act) dated 30<sup>th</sup> December, 2019, was dismissed as being infructuous. The assessee is aggrieved with that order and has raised eleven grounds of appeal as under:-

*"GROUNDS OF APPEAL*

*GROUND NO. 1: THE ASSESSMENT ORDER PASSED U/S 143(3) OF THE ACT IS BAD IN LAW:*

*1. On the facts and circumstances of the case and in law, Id. Assessing Officer ("the AO") erred in passing the assessment order u/s 143(3) of the Act in the moratorium period declared by the NCLT in terms of section 14 of The Insolvency and Bankruptcy Code, 2016.*

*2. The Appellant prays that the assessment order passed in the moratorium period is bad in law and ought to be quashed.*

*WITHOUT PREJUDICE TO GROUND NO. I. GROUND NO. II: IMPUGNED ORDER IS IN CONTRAVENTION TO THE PROVISIONS OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 ("IBC"):*

*1. On the facts and circumstances of the case and in law, the CIT (A) erred in dismissing the appeal filed by the Appellant as infructuous against the order u/s 143(3) of the Act dated December 30, 2019, passed by the AO in contravention to the provisions of the IBC read with the Resolution Plan ("RP") approved by the Adjudicating Authority under IBC*

*2. Ld. CIT (A) failed to appreciate and ought to have held that*

*i. The RP for acquiring the business of the erstwhile Dewan Housing Finance Ltd. in the insolvency*



*proceedings as per the IBC contained a specific relief in respect of the Tax-appeal proceedings before the CIT (A) for AY 2017-18;*

*ii. The said RP is approved by Hon'ble National Company Law Tribunal vide order dated 7/06/2021 and Hon'ble National Company Law Appellate Tribunal vide order dated 12/07/2021:*

*iii. As per the provisions of the IBC, once the RP is approved it stands frozen and is binding on all the parties including the Central Government:*

*iv. CIT (A) is bound to follow the discipline of judicial hierarchy and cannot opt to pass an order in contravention to the order of Hon'ble ITAT in Appellant's own case wherein it has allowed the relief in terms of the RP and the provisions of IBC.*

*3. The Appellant thus prays that it be held that the assessment order for the captioned year, being prior to the RP, cannot be proceeded further.*

**WITHOUT PREJUDICE TO GROUND NO. I AND II, GROUND NO. III: VIOLATION OF PRINCIPLES OF NATURAL JUSTICE**

*1. On the facts and circumstances of the case and in law, the CIT(A) erred in not providing any opportunity to the Appellant to make submissions on merits.*

*2. The Appellant thus prays that the order passed by Hon'ble CIT(A) be quashed as it is in violation of principles of natural justice.*

**WITHOUT PREJUDICE TO GROUND NO. I, II AND III,**

*GROUND NO. IV: DISALLOWANCE U/S 14A R.W.R. 8D AMOUNTING TO RS. 3,65,56,216/*

*1. On the facts and circumstances of the case and in law. the Id. AO erred in making disallowance u/s 14A of the Act r.w.r. 8D amounting to Rs. 3,65,56,216/-*

*2. The AO, inter-alla, failed to appreciate and ought to have held that:*

*i. Disallowance u/s 14A of the Act can be made only for the expenditure incurred in relation to earning exempt income.*

*ii. Application of Rule 8D is not automatic and the AO could not invoke rule 8D without recording any objective satisfaction for disregarding the disallowance suo-motu made by the Appellant amounting to Rs. 1.78,30,058/- worked out on a scientific basis.*

*iii. Principal of consistency ought to be followed where the suo-motu disallowance made by the Appellant has been accepted in previous assessment years.*

*3. The Appellant prays that the disallowance made by the AD u/s 14A of the Act rwr 8D amounting to Rs. 3,65.56.216/- he deleted or appropriately reduced.*

*WITHOUT PREJUDICE TO GROUND NO. 1, II, III and IV,*

*GROUND NO. V: ADDITION OF DISALLOWANCE U/S 14A WHILE CALCULATING BOOK PROFITS U/S 115JB OF THE ACT:*

1. *On the facts and circumstances of the case and in law, the AO erred in making an addition of disallowance u/s 14A of the Act r.w.r. 8D amounting to Rs. 1.87.26,158/- while calculating the book profits w/s 115JB of the Act.*
2. *The Appellant prays that the AO be directed to delete the aforesaid addition computed in accordance with Rule 8D made to Book Profit u/s 115JB of the Act.*
3. *Without prejudice, the Appellant prays that the addition be appropriately reduced.*

*WITHOUT PREJUDICE TO GROUND NO. 1, II AND III,*

*GROUND NO. VI: CAPITALISATION OF INTEREST ON CWIP AMOUNTING TO RS. 65,53,80,000/-*

1. *On the facts and circumstances of the case and in law, the Id. AO erred in capitalization of interest on CWIP of 65,53,80,000/- being 12% of CWIP closing balance of 54,615 lakhs on ad-hoc basis.*
2. *The AO, inter-alia, failed to appreciate and ought to have held that*
  - i. *The capital expenditure was incurred from the owned funds and there was no nexus of borrowed funds with the CWIP.*
  - ii. *No disallowance could have been made u/s 36(1) (iii) of the Act where the balance in reserves and surplus was higher than the amount of CWIP.*
3. *Without Prejudice, the Id. AO erred in not applying principle of netting of interest for the purpose of determining the net interest expenditure disallowable u/s 36(1)(iii) of the Act, when the Appellant had earned net positive interest income during the year.*



4. The Appellant prays that the disallowance u/s 36(1) (iii) of the Act amounting to Rs. 65.53,80.000/- be deleted.

WITHOUT PREJUDICE TO GROUND NO. I, II AND III, GROUND NO. VII: ADDITION ON ACCOUNT OF UNEXPLAINED CASH CREDIT AMOUNTING TO RS. 4,00,00,000/-

1. On the facts and circumstances of the case and in law, the Id. AO erred in making addition of Rs. 4,00,00,000/- as unexplained cash u/s 68 r.w.s. 115BBE of the Act without granting any opportunity of being heard and without considering submissions filed during the course of assessment proceedings.

2. The Appellant prays that the addition u/s 68 r.w.s 115BBE of the Act amounting to Rs. 4,00,00,000/- be deleted.

WITHOUT PREJUDICE TO GROUND NO. 1, II AND III, GROUND NO. VIII: DISALLOWANCE OF FOREIGN TRAVELLING EXPENSES AMOUNTING TO RS. 4,05,00,000/-:

1. On the facts and circumstances of the case and in law, the Id. AO erred in arbitrarily disallowing an amount of Rs 4,05,00,000/- being 50% of foreign travelling expenses incurred during the year without appreciating the submission of the Appellant that such expenses are incurred for Appellant's business.

2. The Appellant prays that the disallowance of foreign travelling expenses amounting to Rs. 4,05,00,000/- be deleted.

*WITHOUT PREJUDICE TO GROUND NO. I, II AND III,  
GROUND NO. IX: LEVY OF INTEREST U/S 234C OF THE  
ACT:*

- 1. On the facts and circumstances of the case and in law, the Id. AO erred in levying incorrect interest u/s 234C of the Act.*
- 2. The AO further failed to appreciate that the book profits u/s 115JB included profit on sale of investment which accrued on March 31, 2017 and ought to have held that in view of first proviso to section 234C (1), no interest would be applicable.*
- 3. The Appellant prays that the interest u/s 234C be deleted or appropriately reduced.*

*WITHOUT PREJUDICE TO GROUND NO. I. II AND III,  
GROUND NO. X: NON-GRANTING OF CREDIT OF  
DIVIDEND DISTRIBUTION TAX (DDT) PAID AMOUNTING  
TO RS. 18,25,31,557/- AND LEVY OF INTEREST U/S 115P  
AMOUNTING TO RS. 7,11,00,869/-:*

- 1. On the facts and circumstances of the case and in law, the Id. AO in the computation sheet, erred in not granting credit of DDT paid amounting to Rs. 18,25,31,357*
- 2. The AO further erred in levying interest u/s 115P of the Act amounting to Rs. 7,11,00,869/- on the amount of DDT.*
- 3. The Appellant prays that the credit for DDT amounting to Rs. 18,25.31.557/- be granted and interest u/s 144P amounting to Rs. 7.11.00,869/- be deleted.*

*WITHOUT PREJUDICE TO GROUND NO. I, II AND III,*

*GROUND NO. XI: NON-GRANTING OF DEDUCTION U/S 36(1) (viiia) AND 36(1) (viii) OF THE ACT:*

*1. On facts and circumstances of the case and in law, the AO erred in not granting deduction u/s 36(1) (viiia) and 36(1) (viii) of the Act on the assessed income.*

*2. The Appellant prays that the AO be directed to calculate deduction u/s 36(1) (viiia) and 36(1) (viii) on assessed income.*

*The Appellant craves leave to add, amend, alter and/or delete any/all of the above grounds of appeal."*

02. The brief facts of the case shows that

- i. Assessee namely Dewan Housing Finance Corporation Limited filed its return of income for A.Y. 2017-18 on 31<sup>st</sup> October, 2017, declaring a total income of ₹696,13,76,310/-. This return was revised on 31<sup>st</sup> March, 2018 at ₹661,10,85,160/-. Assessee further revised the return on 29<sup>th</sup> March, 2019 at ₹819,74,09,310/-. The return of income was picked up for scrutiny.
- ii. Scrutiny resulted into an assessment under Section 143(3) of the Act where four type of disallowances / additions were made and total income was assessed at ₹895,20,15,470/-. By one of the disallowance under Section 14A of the Act, the book profit was also increased. Accordingly, book profit as per return of income of ₹3,477 crores was recomputed at ₹3,478 crores. Accordingly, assessee was assessed on the book profit.

03. The assessee aggrieved with the assessment order filed an appeal before the learned CIT (A), who passed an order on 23<sup>rd</sup> November 2022. The facts were stated before him that National Company Law Tribunal on 7<sup>th</sup> June 2021 has approved the resolution plan of the assessee and accordingly, as per resolution plan the assessee,

corporate debtor, is successful resolution applicant in the name of Piramal Capital & Housing Finance Limited. By that order there was a reverse merger of Piramal Capital & Housing Finance Limited into Dewan Housing Finance Corporation Limited. The learned CIT (A) further held that vide order dated 12<sup>th</sup> July, 2021, the NCLAT has passed an order no.467 of 2021. According to which all statutory due of the Central and State Government or Local Authorities, if not part of the resolution plan shall stand extinguished and no proceedings in respect of such dues for the prior to the date of approval under Section 31 of the Act could be continued. The learned CIT (A) also followed the decision of the co-ordinate Bench for A.Y. 2014-15 and 2015-16 in ITA No.595/Mum/2020 and 302/Mum/2019 and also of NCLT and NCLAT and thus, held that this appeal cannot be continued and appeal of the assessee was dismissed, as infructuous. It is further to be noted that before the learned CIT (A), the appeal was filed in the name of the assessee by the administrator under IBC 2016 (Insolvency and Bankruptcy Code). Thus, the learned CIT (A) dismissed the appeal being infructuous and directed the learned Assessing Officer to pursue the remedy in accordance with the orders of NCLT and NCLAT. Against this order M/s Piramal Capital & Housing Finance Limited is aggrieved and has filed this appeal.

04. Assessee has raised several grounds of appeal. Assessee submitted a chart mainly pressing ground number 2 that the impugned order passed by the learned CIT – A is in contravention of the provisions of The Insolvency And Bankruptcy Code, 2016 stating that appeal of the assessee should be allowed for statistical purposes. The learned authorized representative referred the approved a resolution plan, the order of the NCLT and the order of the NCLAT. The main contention was that since the resolution plan contain specific prayer for waiver of tax dues pertaining to assessment year 2017 – 18 and the said resolution plan has been approved by NCLT as well as NCLAT , the appellant submits that the "appeal be allowed for statistical purposes" should have been the decision and it be held that no recovery of demand for the said assessment year be made.



The assessee has relied upon the several judicial precedents including the judicial precedent in assessee's own case for assessment year 2014 – 15 and 2015 – 16 as well as in case of penalty order for assessment year 2014 – 15 dated 16 February 2023.

05. The learned departmental representative vehemently contested the claim of the assessee and stated that when they learned CIT – A has categorically held that there is no demand outstanding to be recovered from the assessee, there is no reason of any grievance. He submitted that the learned CIT – A has categorically held that the learned assessing officer if he wants to make consequent recovery of the tax should approach the NCLT as well as the NCLAT and therefore the appeal preferred by the assessee before the coordinate bench is not sustainable.
06. We have carefully considered the rival contention and perused the orders of the lower authorities. The facts are that the Dewan Housing Finance Corporation Ltd was declared insolvent under the insolvency and bankruptcy court 2016 . Resolution plan of Piramal capital and housing finance limited was approved by the order of National company law Tribunal. The order of NCLAT was passed on 7 June 2021 and further the National company law Tribunal also passed an order on 12 July 2021. As per the resolution plan Piramal Capital and housing finance limited was the successful resolution applicant and it was merged with the appellant [ Dean Housing Finance ] with effect from 30 September 2021 and therefore the appellant was renamed to Piramal capital and housing finance limited. In the relevant extract of the resolution plan, the assessment year 2017 – 18 was included. Therefore, it is apparent that the appeal for assessment year 2017 – 18 is covered in the resolution plan. Therefore, there cannot be any action on the assessee for recovery of the tax due for the impugned assessment year. This was also held by NCLAT as per order dated 12/7/2021. Therefore, the learned CIT – A held that when they learned assessing officer is not



capable of recovering any tax dues from the assessee, the appeal of the assessee was held to be infructuous because of that reason and the AO was directed that if he wishes to agitate the issue, AO has to go before the National company law appellate tribunal. As the appeal of the assessee was found to be infructuous, it was dismissed. Against this appellate order, the assessee is in appeal before us. We find that the assessee itself has made a representation before the learned CIT – A as per submission dated 21 November 2022 stating that the tax dues for assessment year 2017 – 18 cannot be recovered from the assessee as it was part of the resolution plan. The learned CIT – A reached at a conclusion that when nothing can be recovered from the assessee, there could not have been any grievance on part of the assessee; therefore he held that the appeal of the assessee is infructuous and was dismissed. Before us also it is apparent that nothing is recoverable from the assessee as the insolvency resolution plan included assessment year 2017 – 18 and tax demand any arising out of that assessment proceedings is not at all enforceable. However the assessee is aggrieved that the learned CIT – A should have mentioned that the appeal of the assessee is allowed. Whether the learned CIT appeal should have mentioned as the appeal of the assessee is dismissed or appeal of the assessee is allowed does not make any difference for the reason that in fact assessment order passed by the learned AO becomes unenforceable. According to the provisions of section 246A, the appeal could be preferred before the learned CIT – A if assessee is aggrieved with the specified assessment. When the learned CIT – A has clearly held that assessment order is not enforceable, there is no reason for filing any appeal before him. Even otherwise, he has already directed the learned assessing officer that the above demand cannot be recovered and if he wants to educate this issue the learned assessing officer should proceed before NCLAT. How an appellate authority should write his order is his prerogative, the ultimately it is to be seen whether the assessee is aggrieved by that order or not. The grievance of the assessee should also be genuine and affecting the



rights of the assessee, in the present case nothing like that has happened. In this case assessee is not required to pay any tax, there is no liability of any nature arising on the assessee as well as the order of the learned CIT – A has become final holding that AO does not have any right to pursue any consequences out of the assessment order against the assessee therefore it is in consequential that whether the appeal of the assessee before the learned CIT – A is stated to be dismissed or allowed. However, as in the past the coordinate benches have held that the appeal of the assessee should be allowed, and even rectified their own orders where originally the appeals were dismissed, in rectification proceedings stating that the appeal of the assessee be allowed. Respectfully following the decision of the coordinate benches in assessee's own case, though it is in consequential, neither creates any right in favour of the assessee is not creates any detriment to any of the rights are available to the assessee, we allow the appeal of the assessee.

07. In the result, appeal of the assessee is allowed to the extent indicated hereinabove.

Order pronounced in the open court on 12.06.2023.

Sd/-  
(KULDIP SINGH)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 12.06.2023

*Sudip Sarkar, Sr.PS& dragon*

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.

BY ORDER,



Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai