

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
MS. MADHUMITA ROY, JUDICIAL MEMBER**

Appeal No.	Appellant	Respondent	Assessment Year
ITA No. 886/Bang/2017	The Deputy Commissioner of Income Tax, Circle – 4(1)(1), Bangalore.	M/s. Kingfisher Finvest India Ltd., “UB Tower”, Level 12, UB City, No. 24, Vittal Mallya Road, Bangalore – 560 001. <b>PAN: AABCV9224B</b>	2009-10
ITA Nos. 1909 & 1910/Bang/2018	The Joint Commissioner of Income Tax (OSD), Circle – 4(1)(1), Bangalore.	The Assistant Commissioner of Income Tax, Circle – 11(5), Bangalore.	2010-11 & 2011-12
ITA No. 797/Bang/2017	M/s. Kingfisher Finvest India Ltd., “UB Tower”, Level 12, UB City, No. 24, Vittal Mallya Road, Bangalore – 560 001. <b>PAN: AABCV9224B</b>	The Deputy Commissioner of Income Tax, Circle – 4(1)(1), Bangalore.	2009-10
ITA No. 1670/Bang/2018		The Deputy Commissioner of Income Tax, Circle – 11(5), Bangalore.	2008-09
ITA Nos. 1671 & 1672/Bang/2018		The Deputy Commissioner of Income Tax, Circle – 11(5), Bangalore.	2010-11 & 2011-12

Assessee by	:	Ms. Girija, Advocate
Revenue by	:	Shri D.K. Mishra, CIT DR

Date of Hearing	:	13-09-2023
Date of Pronouncement	:	21-09-2023

**ORDER**

**PER MADHUMITA ROY, JUDICIAL MEMBER**

The bunch of appeals filed by the respective parties are directed against the order passed by the Ld.CIT(A) in upholding the disallowance u/s. 36(1)(iii) of the Act and deletion of addition made by the Ld.CIT(A) u/s. 14A r.w.Rule 8D. The disallowance made u/s. 36(1)(iii) has been challenged by assessee before us for A.Ys. 2008-09 to 2011-12 and on the contrary, the revenue appeals have been preferred against the relief granted by the Ld.CIT(A) by deleting the addition made under Rule 8D for A.Ys. 2009-10 to 2011-12.

2. Since the entire set of appeals relate to the same assessee, these are heard analogously and are being disposed of by a common order for the sake of convenience.

**ITA No. 1670/Bang/2018 – AY 2008-09**

3. We have heard the relevant submissions made by the respective parties and we have also perused the relevant materials available on record. The short fact leading to the case is this that the assessee is an unlisted public limited company. The Ld.AO completed the assessment upon making addition of Rs.59,49,05,077/- u/s. 14A r.w.Rule 8D

by and under the order dated 17.09.2010 u/s. 143(3) of the Act.

4. In appeal before the First Appellate Authority, the addition on account of interest under the Act was confirmed. However, the Tribunal in ITA No. 1368/Bang/2012 by and under the order dated 17.10.2014 allowed the appeal preferred by the assessee whereupon the Ld.AO on 10.03.2015 passed the order giving effect to the order passed by DCIT and ITAT. However, while doing so, the Ld.AO disallowed a sum of Rs.59,22,08,613/- u/s. 36(1)(iii) of the Act and a sum of Rs.5,06,75,429/- u/s. 14A r.w.Rule 8D(2)(iii) of the Act. In the second set of appeal before the Ld.CIT(A), the addition made u/s. 14A r.w.Rule 8D(2)(iii) to the tune of Rs.5,06,75,429/- stood deleted on 31.03.2018. Against the said disallowance of Rs.59,22,08,613/-, the assessee is in appeal before us.
5. We have perused the order dated 17.09.2010 passed by the Ld.AO, the order dated 17.10.2014 passed by the ITAT and the order giving effect to Ld.CIT(A) and ITAT order on 10.03.2015 by the Ld.AO which are duly furnished by the appellant before us. Upon perusal of the order passed by the Tribunal in ITA No. 1368/Bang/2012 for A.Y. 2008-09, it appears that the Tribunal has been pleased to observe as follows.

*“3. The AO however, was not impressed by the above arguments. As per the AO, the whole of the borrowings*

*were used for making investment in the M/s DAL. Interest claimed was wholly relatable to such investment. According to him, expenditure on interest could not be allowed as a revenue outgo u/s 36(1)(iii) of the Act as well. As per the AO if the expenditure was for obtaining controlling interest and not for earning dividend, such expenditure required to be capitalized. Nevertheless, in the final computation the AO made a disallowance of Rs.59,49,05,077/- u/s 14A of the Act.”*

6. The Ld.AO disallowed u/s. 14A r.w.Rule 8D and not 36(1)(iii) whereas while issuing the order giving effect by the Ld.AO, the interest expenditure of Rs.59,22,08,613/- u/s. 36(1)(iii) has been disallowed on this pretext that the Ld.AO had taken an alternate ground for disallowance. The appellant joins the issue here. According to the appellant, the disallowance u/s. 14A cannot be made unless and until it is accepted as an allowable expenditure u/s. 36(1)(iii) of the Act. The appellate authority dealt with both the issues u/s. 36(1)(iii) and 14A as the entire was in appeal and also decided the issue applying both the sections as the appeal preferred by the assessee was allowed, the addition at any cost is not sustainable in the eye of law. In that view of the matter, the impugned addition requires to be deleted as of the main argument advanced by the assessee's counsel. Infact under these facts and circumstances, it is also submitted by the Ld.Counsel that the Ld.AO should have given an opportunity before making addition u/s. 36(1)(iii) of the Act and hence the issue may be remitted to the file of the Ld.AO for fresh adjudication. Such submissions made by the assessee, is according to us is also acceptable. Neither the Ld.DR has been able to controvert

the same in its true sense. Thus having heard the Ld.Counsel appearing for the parties and having regard to the facts and circumstances of the case, we are of the considered opinion that the issue relating to the addition made u/s. 36(1)(iii) of the Act be remitted to the file of Ld.AO for fresh adjudication of the same upon verification of the claim in accordance with the principles laid down in various decisions. While doing so, we further direct the Ld.AO to adjudicate the issue afresh upon giving an opportunity of being heard to the assessee and upon considering the evidence on record or any other evidence which the assessee may choose to file at the time of hearing of the matter. Thus the assessee's appeal stands allowed for statistical purposes. This common ground by the assessee in all other appeals are allowed with the above observation.

**ITA No. 886/Bang/2017, 1909 & 1910/Bang/2018 - AY 2009-10 to 2011-12**

7. In all the above appeals, the Ld.CIT(A) has followed the order passed by the Hon'ble Tribunal in ITA No. 1368/Bang/2012 dated 17.10.2014 by deleting addition u/s. 14A r.w.Rule 8D and sustain the alternate ground for disallowance of the interest expenditure u/s. 36(1)(iii) of the Act. The revenue is in appeal before us against the order of deletion of addition made u/s. 14A r.w.Rule 8D of the Act. Infact, against the order dated 17.10.2014 passed by the Tribunal in ITA No. 1368/Bang/2012, appeal was referred by the revenue before

the jurisdictional High Court whereupon in ITA No. 100/2015 by and under the order dated 29.09.2020, the Hon'ble Court was pleased to allow the appeal preferred by the revenue with the following observation:

*“6. In view of the aforesaid enunciation of law by the Supreme Court as well as Circular No.5/2014 dated 11.02.2014 issued by the Central Board of Direct Taxes which clearly provides that disallowance under Section 14A of the Act read with Rule 8D has to be made even when the tax paid for a particular year is not earned in exempt income, the substantial question of law framed by this Court is answered in negative and in favour of revenue.*

*7. In view of preceding analysis, the order of the Tribunal insofar as it pertains to disallowance under Section 14A of the Act read with Rule 8D of the Income Tax Rules is hereby quashed.”*

8. Relevant to mention that the above order has been passed ex-parte by the Hon'ble High Court. The assessee further joins issue to this effect that the order passed by the Hon'ble jurisdictional High Court cannot be relied upon as it has now become settled position of law that no disallowance u/s. 14A can be made unless there is exempt income earned by the assessee. Further that the assessee also filed a review application before the Hon'ble High Court against the said order dated 29.09.2020 in ITA No. 100/2015. The moot point involved in this particular case is this that whether the Ld.AO's order while making disallowance u/s. 14A r.w.Rule 8D of the investment made by the assessee in Deccan Aviation Ltd. subsequently known as Kingfisher Airlines Ltd. though from which it has never received any exempt income

is justifiable. Further that, the assessee only received dividend income from other investments and such investments were made from non-interest bearing funds and own funds. It is a trite law that if the interest free funds is available with the assessee is more than the value of the investment then, it is presumed that the assessee has used interest free funds for making investments. Ratio of this aspect has been laid down by the Hon'ble Apex Court in the case of Reliance Industries Ltd. reported in 410 ITR 466. Further that the loans on which the interest expenditure has been incurred has not been utilised for making investment and in that view of the matter, no interest disallowance is called for under Rule 8D(2)(ii). So far as the disallowance made u/s. 8D(2)(iii) is concerned, the Ld.AO has considered all the investments for computation whereas the exempt income has not been received from all the investments. Further that majority of expenses debited to the P&L account were not related to the exempt income. Apart from that the expenses relatable to the exempt income could be identified and the same is also lower than the amount computed by the Ld.AO under Rule 8D(2)(iii) as also the main argument advanced by the Ld.AR. It is the claim of the assessee as represented by the Ld.AR that the entire disallowance u/s. 14A r.w.Rule 8D made by the Ld.AO is higher than the dividend income earned by the assessee. It has also been pointed out by the Ld.Counsel appearing for the assessee that the identical issue was also taken up by the Coordinate

Bench in assessee's own case for A.Ys. 2013-14 and 2015-16 in ITA Nos. 2641 & 2642/Bang/2019 and ITA No. 2477/Bang/2019 by and order dated 18.09.2020, the Coordinate Bench has been pleased to remit the issue to the file of Ld.AO for fresh examination of the same. The relevant observation made by the Coordinate Bench is as follows:

*"8. We have heard the rival contentions and perused the record. It is the submission of the assessee that majority of investments have been made in the earlier years. It is also the submission of the assessee that the investments have been made out of interest free funds provided by the group companies. The Ld. A.R. also submitted that the loans on which interest expenditure has been incurred by the assessee for the year relevant to AY 2013-14 have not been utilised for the purpose of making the investments. Accordingly, it was contended that no interest disallowance is called for under rule 8D(2)(ii) of IT Rules.*

*9. If the interest free funds available with the assessee is more than the value of investments, then the presumption is that the assessee has used interest free funds for making investments. This view is supported by the decision rendered by Hon'ble Supreme Court in the case of Reliance Industries Ltd. 410 ITR 466. There should not be any dispute that, if the assessee is able to demonstrate that the interest free funds available with the assessee is more than the value of investments and further the loan funds have not been used to make the investments, then no disallowance out of interest expenditure is called for under rule 8D(2)(ii). However, since the factual details relating to the issue require examination, we are of the view that the assessee, in the interest of natural justice, should be provided with an opportunity to present its case to the A.O. With regard to the disallowance of administrative expenses made under rule 8(D)(iii), it is the submission of the assessee that the majority of expenses debited to Profit & loss account are not related to the exempt income and further the expenses relatable to the exempt income could be identified and the same is lower than the amount computed by the A.O. under rule 8D(2)(iii). This contention of the assessee also require examination at the end of the A.O.*

*10. Accordingly, we are of the view that this issue requires fresh examination at the end of the A.O. in the light of the discussions made (supra). Accordingly, we set aside the order passed by Ld. CIT(A) and restore this issue to the file of the A.O. for examining it afresh.”*

9. Thus the assessee's case is this that the assessee is having interest free funds more than the value of investments and for that no loan funds have been used to make the investments and in that view of the matter, no disallowance out of interest expenditure is called for under Rule 8D(2)(ii) of the Act. We, therefore, find it fit and proper to examine this particular aspect of the matter by the Ld.AO. So far as the disallowance of administrative expenses under Rule 8D(2)(iii) is concerned, it is submitted that the majority of the expenses debited to the P&L account and not related to the exempt income and further the expenses relatable to the exempt income could not be identified and the same is lower than the amount computed by the Ld.AO applying Rule 8D(2)(iii).
10. This factual aspects, in our considered opinion is also required to be verified by the Ld.AO. We have expressed our this particular opinion at the time of hearing of the matter and the Ld.DR has not opposed the same.
11. We, practically and respectfully following the judgment passed by the Coordinate Bench in assessee's own case as cited above for A.Ys. 2013-14 and 2015-16 do hereby remit

the issue to the file of Ld.AO to consider the issue afresh upon granting an opportunity of being heard to the assessee and upon considering the relevant materials available on record or any other evidence which the assessee may choose to file at the time of hearing of the matter. The Ld.AO, is therefore, directed to pass a reasoned order strictly in accordance with law.

12. Thus the revenue's appeal stands allowed for statistical purposes. This ground raised by revenue in all other appeals are allowed with the above observation.

**In the result, all the appeals filed by revenue and assessee stands allowed for statistical purposes.**

Order pronounced in the open court on 21<sup>st</sup> September, 2023.

Sd/-  
(CHANDRA POOJARI)  
Accountant Member

Sd/-  
(MADHUMITA ROY)  
Judicial Member

Bangalore,  
Dated, the 21<sup>st</sup> September, 2023.  
/MS /

ITA Nos. 797 & 886/Bang/2017,  
1670 to 1672, 1909 & 1910/Bang/2018

Copy to:

1. Appellant
2. Respondent
3. CIT
4. DR, ITAT, Bangalore
5. Guard file

By order

Assistant Registrar,  
ITAT, Bangalore