

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 2015/Mum/2023 (A.Y.2010-11)

ITA No. 1936/Mum/2023 (A.Y.2011-12)

ITA No. 1937/Mum/2023 (A.Y.2012-13)

ITA No. 2016/Mum/2023 (A.Y.2013-14)

&

ITA No. 2017/Mum/2023 (A.Y.2014-15)

DCIT Circle 8(2) (1),

R. No. 624, 6th floor,

Aayakar Bhavan, M. K.

Road, Mumbai-400 020

PAN: AACCA7777K

..... Appellant

Vs.

Piramal Estates Pvt. Ltd.

8th floor, Piramal Tower,

Ganpatrao Kadam Marg,

Lower Parel (W),

Mumbai-400 013

..... Respondent

Appellant by : Shri Ronak Doshi/Priyank Gandhi/Ms.
Jinal Jain, Ld. ARs

Respondent by : Shri N. V. Nadkarni, Ld. CIT-DR

Date of hearing : 08/11/2023

Date of pronouncement : 20/12/2023

ORDER

PER GAGAN GOYAL, A.M:

These appeals by revenue are directed against the order of National Faceless Appeal Centre (for short “NFAC”) dated 29.03.2023 & 28.03.2023 u/s. 250 of the Income Tax Act, 1961 (in short ‘the Act’) for A.Y. 2010-11 to 2014-15 respectively. The revenue has raised the following grounds of appeal in ITA No. 2015/Mum/2023:-

(i) On the facts and in the circumstances of the case and in law, Ld.CIT(A) erred in reclassifying income from service centre business as income from business as against income from house property and thereby erred in not appreciating the fact that the assessee's facts are identical to the facts of the case of Shambhu Investments Pvt. Ltd. v. CIT (Kolkata HC 116 Taxman 795) which was later affirmed by the Hon'ble Supreme Court.

(ii) On the facts and in the circumstances of the case and in law, Ld.CIT (A) erred in holding that the Assessee does not fulfil all the three tests laid down by Shambhu Investments Pvt. Ltd. v. CIT (Kolkata HC 116 Taxman 795) and accordingly the decision cannot be applied to facts of the case for treating the service centre income as income from house property.

(iii) The Ld. CIT (A) further erred in holding that where the assessee has entered into two separate agreements for letting of premises and for providing services and that income from providing services are to be taxed as business income.

(iv) On the facts and in the circumstances of the case and in law, Ld. CIT (A) erred in treating interest income as business income despite the fact that no business exists during the year. The Ld. CIT (A) erred in treating the interest income as income from other sources.

(v) On the facts and in the circumstances of the case and in law, Ld.CIT(A) erred in allowing the claim for interest expense u/s. 24(b) disregarding the fact that interest expenses depends on the actual utilization of funds and not on mere mathematical calculation of basis of area allocated for portion of property used for letting purpose.

(vi) On the facts and in the circumstances of the case and in law, Ld. CIT (A) erred in deleting the disallowance u/s. 14A in the absence of exempt income during the year.

(vii) The Ld. CIT (A) erred in relying on the earlier years tribunal order in the assessee's own case wherein it was held that there cannot be any disallowance u/s. 14A including the suo moto disallowance in the absence of exempt income during the year.

(viii) The Ld. CIT (A) erred in not appreciating the decision of Guwahati Bench decision in the case of Williamson Financial Services Ltd. delivered on 6/7 / 2022 wherein it was held that the amendment by way of clarification inserted in section 14A by Finance Act 2022 is retrospective.

(ix) The Ld. CIT (A) erred in not appreciating the fact that profit from sale of five flats cannot be treated as business income as no business exists during the year.

2. The brief facts of the case are that assessee company is engaged in the business of Service Centre and leasing of Premises, filed its return of income on 15.10.2010 declaring total income at Rs. 28,63,29,970/-. Case of the assessee was selected for scrutiny and statutory notices were issued. Assessment of the assessee was completed at a figure of Rs. 48, 78, 18,870/- after certain disallowances and change in the head of income claimed by the assessee. Assessee being aggrieved with this order of AO preferred an appeal before the Ld. CIT (A), who in turn allowed the appeal of the assessee. Now revenue is being

aggrieved with the order of Ld. CIT (A) preferred the present appeal before us. Lead year in these appeals of Piramal Group will be A.Y. 2010-11 as common grounds are involved in other appeals also for A.Y.'s 2011-12 to 2014-15, ratio will apply *mutatis mutandis* to other A.Y.'s also.

3. We have gone through the order of AO, Order of Ld. CIT (A), submissions of the assessee and grounds raised by the Revenue. It is observed that assessee came into existence in the year 2004-05 after approval of a demerger/arrangement scheme by Hon'ble Bombay High Court in the case of M/s. Piramal Holdings Limited (PHL). Before this arrangement name of the assessee was M/s. Alpex International Pvt. Ltd. and service centre and leasing business was carried out by the PHL up-to 31-12-2004 and w.e.f. 01.01.2005 by the assessee. Name of the Assessee Company was changed from its earlier title M/s. Alpex International Pvt. Ltd. to M/s. Piramal Estates Pvt. Ltd. on 28.01.2014.

4. Brief Synopsis

The base year considered for this synopsis is A.Y. 2010-11. A detailed chart is submitted as **Annexure A** to depict common grounds of A.Y. 2010-11 in other Assessment Years. During the course of Appeal, for A.Y. 2010-11, the Assessee has filed Factual Paper Book (**Page 1 to 175**), Factual Paper Book - II (**Page 176 to 219**) and Legal Paper Book (**Page 1 to 287**). For AY 2011-12, the Assessee has filed Factual Paper Book (**Page 1 to 215**).

5. As regards, Ground No. I, II and III - Treating Income from Service Centre as Income from House Property instead of Income from Business.

I. Facts:

1. The Assessee is engaged in the Service Center Business and is also in the business of Leasing of Premises. It is owning a building named Piramal Tower which comprises of 10 floors having total area of Rs. 2, 83,579/- sq. ft. Out of the 10 floors in Piramal Tower, 9 floors have been rented out to various parties and rental income is received from the same which is offered to tax as Income from House Property and also assessed as same.

2. **In the course of its business of providing service centre and amenities, it has also leased out 10th floor of the Piramal Tower (PT) to Piramal Healthcare Ltd. (earlier known as Nicholas Piramal India Limited) by way of a service centre agreement alongwith various other facilities. The Assessee also provides various services systematically to the occupants of the units in one Piramal Tower Annexe by way of service centre agreements. It is pertinent to note that the Assessee is not the owner of the Piramal Tower Annexe in which it merely provides service centre support services.**

3. Income from the Service Centre Business (i.e 10th floor service centre and PT Annexe) has been offered to tax as Business Income.

II. Action of the Assessing Officer [‘the AO’]:

The AO while computing the income of the Assessee, assessed income from Service Centre Business (i.e 10th floor service centre and PT Annexe) as Income from House Property instead of Income from Business and Professions by placing a strong reliance on the decision of the **Hon'ble Calcutta High Court** in the case of

Shambhu Investments Pvt. Ltd. v. CIT [2001] 249 ITR 47 affirmed by the Hon'ble Supreme Court in [2003] 263 ITR 143.

Further the AO in para 5.10 of the AO's order, observed that security deposit was covering the entire cost of the aforementioned immovable property.

III. Action of the Commissioner of Income -tax (Appeals) ["the CIT (A)"]1:

1. The Ld. CIT (A) has allowed the Assessee's Appeal after carefully perusing the Service Centre documents. The Ld. CIT (A) held that the Assessee is rendering complex nature of services alongwith facilities and high-end infrastructure in addition to mere letting of the premises. Further, the intention of the parties was coming out clearly from the service centre agreement and the relationship between the parties was that of service provider and service user and not landlord and tenant.

2. In addition to above, the Ld. CIT (A) has held that it is quite evident that the security deposit received from Piramal Healthcare Ltd. does not cover the entire cost of premises from which service centre facility is provided by the Assessee.

3. Also, the Ld. CIT (A) has observed that the Assessee has been consistently providing Service Centre facility to Piramal Healthcare Ltd since January 01, 2005 when the leasing business was acquired under the scheme of arrangement from Piramal Holdings Ltd. Prior to its acquisition, the service centre business was carried on by Piramal Holdings Ltd and they continued to provide the same service and facilities alongwith premises to Nicholas Piramal India Ltd. In all the earlier assessment years, the scrutiny assessment was carried out and the AO,

after examining the relevant details called for, has passed the order accepting the service centre as business income. Thus, the Ld. CIT (A) has held that the assumption of the AO that no business exists during the year was not acceptable. Moreover, there was no change in facts with regard to the nature of service and facility provided by the Assessee. Also, the AO has not come to any finding which shows that the services rendered /facilities provided in this year are different from those in the earlier assessment years. The Ld. CIT (A) has also observed that the AO has not given any reasons as to why is he differing with the findings of the earlier assessment orders. Thus, the Ld. CIT (A) concluded that the income from service income is to be taxed under the head Business income and consequential deduction be granted for expenses claimed against business income.

IV. Assessee's submission before the Tribunal:

A. Respondent's intention was to exploit the immovable property by way of complex commercial activities on a systematic basis and thus has in true spirit followed the decision laid down by the Apex Court in case of Shambhu Investments (263 ITR 143)

1. The primary plea of the Respondent is that the income from service centre business is to be treated as Income from Business and Profession has also done in past and which has been accepted by the Department.

2. At the outset, it is important to note that the agreement entered in respect of service centre business is termed as '**Service Centre Agreement**' (Page 49 to 73 of **Factual Paper Book 'FPB'**). Further, the agreement is entered between the

'Service Office Provider' and 'Service User' and not between a 'licensor' and 'licensee'.

3. Also, the Respondent being a company has been authorized by its Memorandum of Association to do Service Centre Business. The relevant clauses of the Memorandum of Association (**Page 27-28 of FPB**) are reproduced below:

"(A) 1. To carry on the business of Business Centre and to purchase or otherwise acquire land, buildings, houses, sheds and other fixtures to build, construct improve, manage, develop, maintain, enlarge, hire workshops, offices, shopping centers, business centers and to let them out to various groups such as but not limited to landlords, co-operative societies, owners, associations, condominiums, corporate parks, companies, commercial complexes, mall, either the entire premises or limited area of the same by way of lease or any form of contract or by any other agreement.

(B) 2. To equip the business centre and any other construction and/or part thereof with all or any amenities or conveniences, drainage facility, electric, telephonic, television installations and other interior decorations and to deal with the same in any manner whatsoever to facilitate customer, and advance money to, and enter into contracts and arrangement of all kinds with tenants, businessman, industrialist, entrepreneur and others. "(Emphasis Supplied)

4. At this stage, the Respondent draws attention to the following paras/clauses/schedules of service centre agreement (**Page 49 to 73 of FPB**):

- As per introductory para **(Page 49 of FPB)** of the agreement both the parties are to be referred as 'Service Office Provider' and 'Service User' respectively. Further the agreement is termed as 'service centre agreement'. The Assessee would like to state that it is a settled legal position that the intention of the party entering into the agreement is to be seen and the agreement is to be read as agreed between the parties. For this the Assessee places reliance on the decision of the **Hon'ble Calcutta High Court** in case of Arun Dua [1989] 186 ITR 494 **(Page 92 to 93 of LPB)**.

- Para A **(Page 49-50 of FPB)**: As per this para, Service Office Provider to provide 120 Car Parking Spaces in the Basement and the exclusive right to use three Elevators having a capacity of 16 persons each as well as the Entrance located on the eastern side of the said building. Further, it is mentioned that once the balance construction is completed the complex would comprise of four ultramodern buildings with all facilities like ample car parking in the spacious basement, state of the art elevators, well-maintained garden etc. A well-equipped Club House is also planned within "Peninsula Corporate Park" and the nearby "Wellspring" building which will offer excellent services like Health club, stress management, yoga center, physiotherapy center, gymnasium, as well as a restaurant.

- Para B **(Page 50 of FPB)**: As per this para, the Serviced Office Provider shall install Central Air-conditioning and provide security, communication and other services (as more particularly described in Schedule 'B' to the agreement) in the said premises;

- **Clause 1 (Page 51 of FPB):** As per this clause, the Serviced Office Provider shall from the commencement date make available to the Service User, the benefit of the use of the said Premises together with all the services provided therein.
- **Clause 3.2 (Page 52 of FPB):** As per this, the Serviced Office Provider shall, in addition to the basic services, make available such additional services referred in Part II of the Schedule B, as may be required by the Service User on "pay by use" basis at mutually agreed fees and for such services the Serviced Office Provider shall raise separate monthly invoices on the Service User and the Service User shall pay the charges under such invoices to the Serviced Office Provider forthwith on demand.
- **Clause 3.3 (Page 52 of FPB):** Upon the Service user paying the Service Fees and performing its covenants and the terms Contained herein, the Serviced Office Provider shall continue to provide the said services to the Service User during the period of this Agreement uninterruptedly and peaceably and so as to enable the service User to have the full benefit thereof; such benefits to continue even in the event of the Serviced Office Provider creating any third party rights or alienating the said Service Centre.
- **Clause 6.15 (Page 59 of FPB):** The Service user shall not have or claim any interest in the said premises as a tenant, sub-tenant or lessee/ sub- lessee or under-lessee or under a leave and license agreement or otherwise. No right as tenant, sub-tenant or otherwise including rights of any nature is/are purported or

intended to be created or transferred by the Service Office Provider in favour of the Service User in, or, in respect, of the said Premises;

This clause clearly establishes that there is no tenant/lessee relationship in so far as the 10th floor is concerned.

- Clause 8 (**Page 63 of FPB**): Various obligations of the Serviced Office Provider are mentioned under this clause.
- Clause 9.1 (**Page 64 of FPB**): If the Service user at any time puts up, a false or adverse claim of tenancy / sub-tenancy / lease / sub-lease / under-lease / leave and license or any other interest in or to the said Premises and/or in or to any other component of the said Service Centre, (other than the right of the Service user to conduct such business in accordance with the provisions of this Agreement) then and in such event the Serviced Office Provider will be entitled to terminate this Agreement and cancel, revoke and withdraw the permission granted hereunder to the Service User to conduct the said business activity.
- Schedule B: Services and facilities (**Page 70-72 of FPB**):

Part 1 - Services and Facilities

1. Installation and Maintenance of an adequate and reliable Central Air conditioning system. The Electricity Charges for the Air-conditioning shall be borne by the Service User.
2. Installation and Maintenance of the three Elevators having a capacity of Sixteen persons each, which are exclusively dedicated for access to and fro in the said premises;

3. Installation and Maintenance of Furniture, fittings and other paraphernalia owned by the Service Office Provider and installed in the said Premises used by the Service User.
4. Manual as well as Electronic Security systems in the said Premises;
5. The provision of an adequate Cleaning and Maintenance service;
6. The provision of water coolers;
7. The provision of adequate Security services and Fire Alarm Systems in the said Premises.
8. Janitorial Service
9. Provide adequate and reliable Electricity Supply
10. Provide direct external telephone lines having a dedicated subscriber number.
11. Provide necessary internal telephone lines.
12. Exclusive use of the spacious Atrium on the ground floor, having a capacity to accommodate around 250 people for holding lunch / dinner parties / meetings.
13. The provision of valet services in the car parking at the basement.

Part II - Additional Services

Available for a Fee on "pay by use" basis

5. High Speed Video Conferencing

6. Copy Machine

9. Secretarial Services

Manned by, highly qualified staff capable of virtually any task, utilizing state of the art equipment and an extensive array of software.

10. Clerical Services

12. Overnight Services

Provision of daily service with in-house pick-up and delivery

14. Legal / Tax Law Library

15. Trendy Internationally Designed Restaurant

16. Multiple-Cuisine Dining - Indian, Chinese, Italian, Roof Top Restaurant, Terrace Garden, Confectionary / Bakery, experience the art of Fine Dining.

17. Table- Tennis, Carom, Darts

18. Billiard / Snooker Room

19. Gym and Health Club, sauna, spa and Jacuzzi with state of the art equipment and professional guidance

20. Fitness Club is equipped with top of the line Techno gym Fitness equipment

21. Auditorium

22. Banquet Hall

23. Bank with ATM

24. Discuss important professional matters in the conference room and then entertain your distinguished guests in the Private Party Room.

5. Now to distinguish the above from a pure lease and license agreement, the Respondent draws attention to the following paras/clauses/schedules of Lease and License agreement **(Page 74 to 96 of FPB)**:

- As per introductory para **(Page 74 and 75 of FPB)** of the agreement both the parties are to be referred as 'The Licensor' and 'The Licensee' respectively. Thus, the Assessee submits that the intention of the parties was to give the said premises on lease and license basis.
- Point II **(Page 75 of FPB)**: it has been agreed between Piramal Holdings Limited and the Licensee that the Licensee will have the option to renew the term of the license for a further period of 33 (Thirty three) months on the same terms and conditions as contained in the said Lease and License Agreement except that the licensee fee payable for the Renewal Term and the quantified damages payable under clause 15 (b) of the said Leave and License Agreement will increase by 12%:
- Point III **(Page 76 of FPB)**: In this point it has been mentioned that pursuant to the Scheme of Arrangement between Piramal Holdings Limited and the

Licensor the rights and obligations of Piramal Holdings Limited in the said Peninsula Tower 27 Piramal Tower stood vested in the Licensor w. e. f. 1st January, 2005;

- Point IV (**Page 76 of FPB**): The rights, title and interest in the Piramal Tower, stood vested in the Licensor subject to all the rights of the Licensee remaining the same under the said Lease and License Agreement, the obligations of the Licensor remaining the same. The Licensee herein recognized the Licensor to be its Licensor for the purpose of the said Lease and License Agreement and have been paying the License fee to the Licensor;

- Clause 6 Point n (**Page 82 of FPB**): To use only the entrance on the western side of Peninsula Tower 21 Piramal Tower for the purpose of ingress and egress of its employees, visitors, agents, etc.

- Annexure 'A' (**Page 92 of FPB**)

1. All common area flooring shall be in Green marble/ Vitrified tiles or equivalent.

2. Main and Service staircase risers and treads shall be Green marble or equivalent.

3. External facade shall be in a combination of Italia glass tiles (or any other permanent finish) cement, paint, aluminum windows and glazing.

4. Three Elevators of sixteen passenger's capacity each

5. Roof Atrium shall be structural frame with polycarbonate or glass

6. Infrastructural work for telephone (From MDF to each floor) with provision of 20 x 2 (40) lines for the said Licensed Premises shall be provided.
 7. Plumbing and sewerage works with interior finished toilets would be provided.
 8. The main wet riser at two locations on each floor with accessories.
 9. Common areas to have sprinkler system. Tapping points to be provided for carrying out sprinkler networking in the office area (Internal sprinkler work to be carried out by the Licensee)
 10. Space for Air Conditioning Chiller plants shall be provided on the terrace level.
 11. Total Raw Power of 130 x 2 (260) KW will be provided for the said Licensed Premises.
6. It is to be noted that the Assessee has entered into a separate agreement with the Licensee for amenities agreement. The relevant paras/clauses/scheduled of the amenities agreement (**Page 97 to 104 of FPB**) is produced hereunder:
- Clause 1 (**Page 99 of FPB**): The Agreement shall run concurrently with the said Lease and License Agreement.
 - Clause 5 (**Page 101 of FPB**): It is hereby agreed that even if Legrand does not avail any of the aforesaid amenities for any reason whatsoever, Legrand shall still be liable to pay the same monthly compensation to the Company as payable under Clause (3) above without any deduction thereof.

7. Thus, to summarize:

- The intention in case of first 9 floors was to rent out space and earn rentals. In fact, in such cases the Assessee only provides basic necessities i.e. for effective rentals like toilets, use of common elevators, space for central air conditioner (and not the air conditioner itself), car parking (no valet parking facility), infrastructural work for telephone (and not dedicated subscriber number), common area facilities, common security service (and not exclusive security). Further, the licensee has to pay both license fees and amenities fees irrespective of whether the amenities were used by the Licensee or not. Also, entry to the said premises was allowed from western side only. Thus, from above it is clear that what is let out by way of Lease and License Agreement is commercial space with basic amenities.
- However, in case of the 10th floor i.e. for Business Service Centre the intention was to provide basic amenities like exclusive right to use three elevators, installation and maintenance of central air conditioning system (and not mere providing of space for air conditioner chiller plants), janitorial service (are a type of commercial cleaning that handles various tasks in professional corporate settings), exclusive use of spacious atrium on the ground floor, valet service for car parking, installation and maintenance of furniture and fittings, providing direct external telephone lines having a dedicated subscriber number (and not only infrastructural work for telephone), manual and electronic security systems alongwith provision of adequate security and fire alarm system, water coolers, high speed video conferencing facility, bank with ATM, Auditorium. Further, entry to the said premises is from eastern side. Thus, from above it is clear that in the

aforesaid case, the intention of the Assessee was to commercially exploit the property and hence the income arising from the same should be treated as Business Income.

8. The Assessee has also prepared a chart bringing out the difference in the scope of different agreements. **(Page No 48 of FPB)**

9. Reliance is placed on the decision of the **Hon'ble Calcutta High Court** in case of **Shambhu Investments (Supra)** which was latter affirmed by the Hon'ble Apex court, has held as under:

"Taking into account the various judicial pronouncements, it clearly appears that merely because income is attached to any immovable property, it cannot be the sole factor for assessment of such income as income from property. What has to be seen is, what is the primary object of the assessee while exploiting the property. If it is found applying such test that the main intention is letting out the property or any portion thereof, the same must be considered as rental income or income from property. In case it is found that the main intention is to exploit the immovable property by way of complex commercial activities in that event it must be held as business income.

“(Emphasis Supplied)

10. It is pertinent to note that the AO while passing the order has only referred to partial portion of the aforementioned judgment passed by the Hon'ble Calcutta High Court. The Hon'ble Calcutta High Court has in true sense held that if it is a case where the intention of the assessee was to exploit the immovable property

by way of complex commercial activities then the income arising from it should be treated as business income.

11. Further, reliance is also placed on the following decisions which states that if the main intention is to exploit the immovable property by way of complex commercial activities then in that even the same should be treated as business income:

- ACIT v. Saptarshi Services Ltd [2004] 264 ITR (St.) 379 (SC) **(Page No. 11 of LPB)**
- CIT v. G.V. Foundations (P.) Ltd. [2022] 138 taxmann.com 168 (Mad. HC) **(Page No. 16 to 19 of LPB)**
- ITO v. Surya Incubation clusters [2014] 65 SOT 70 (Pune Trib.) **(Page No. 20 to 25 of LPB)**
- Harvindarpal Mehta (HUF) v. DCIT [2010] 122 ITD 93 (Mum Trib.) **(Page No. 26 to 33 of LPB)**
- Gesco Corporation Ltd. v. ACIT [2009] 31 SOT 132 (Mum Trib.) **(Page No. 34 to 45 of LPB)**
- ITO v. Shanaya Enterprises (ITA No.3648/MUM/2010) (Mum Trib.) **(Page No. 46 to 55 of LPB)**

12. Also, the AO has stated that the Assessee has recovered the entire cost of the property by way of interest free security deposit. Piramal Healthcare Ltd. occupies an area of 29,780 sq. ft. which is approximately 10.50% of the total area. Further, total cost of Piramal Tower is Rs. 166,00,00,00/- and 10.50% of the aforementioned cost amounts to Rs. 17,43,00,000/-. Out of which, the

Respondent has received an interest free security deposit amounting to Rs. 6,04,54,495/-- from Piramal Health Care Ltd. which is 34.68% of the Rs. 17,43,00,000/--. Thus, it can be seen that the Assessee has not recovered entire cost in the form of interest free security deposit and these observations of the AO are incorrect and irrelevant. The Ld. CIT (A) has also acknowledged the same and has held that deposit received from Piramal Healthcare Ltd. does not cover the entire cost of premises from which service centre facility is being provided by the Assessee. Further, the same is an undisputed fact and no ground against the same has been preferred by the DR. Also, at the time of hearing, the DR could not refuse the same.

13. As regards to the income earned from services provided to occupants of PT Annexe, the Assessee would like to draw your attention to the relevant provisions of charging section 22 for the Head Income received from House Property which reads as under:

"22. The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the- purposes of any business or profession carried on by him the profits of which are chargeable to income-tax, shall be chargeable to income-tax under the head "Income from house property." (Emphasis Supplied)

14. Thus, it is sine qua non for the chargeability under the head Income from House Property, the Assessee ought to be the owner of the property. Thus, since the Assessee is not the owner of the Piramal Tower Annexe in which it merely

provides service centre support services (**Page 105-109 of FPB**), the income received there from cannot be taxed under the head House Property and thus, the Assessee had rightly offered it to tax under the head business income.

B. Hon'ble Bombay High Court was aware that the Assessee was into two separate lines of business

1. It is pertinent to note that the **Hon'ble Bombay High Court** has approved the scheme of arrangement between Piramal Holdings Limited and the Assessee wherein it was expressly mentioned that the demerged undertaking includes the service centre and leasing business which is carried on by the Assessee. Attention is invited to para 1.4 (**Page No 182 of FPB-II**) of the said scheme:

"Demerged Undertaking" means and includes Service Center and Leasing Business carried on by PHL in respect of Nicholas Piramal Tower, being Tower II at Peninsula Corporate Park, Ganpatrao Kadam Marg, Lower Parel, Mumbai 400 013 and factory building with land at Balkum, Thane including all assets (whether movable or immovable, real or personal; corporeal or incorporeal, present, future or contingent) and all the liabilities pertaining thereto, not exceeding the amount specified in Clause 1.4.1 (Hi). "

2. Thus, the Assessee submitted that the demerger by Piramal Holdings limited involved two separate businesses i.e Service Centre Business and Leasing business which was noted by the Hon'ble Bombay High Court.

C. The Assessee has been consistently offering service centre income as business income

1. The Assessee submitted that the same type of income was earned by the Assessee during all the preceding Assessment Years and the same has duly been accepted as business income by the AO after detailed examination.

2. The Assessee has prepared a chart (**Page 199 of the FPB-II**) to depict as to when the Assessee has produced details relating to the Income from service centre and Income from License feed before the AO in the past Assessment Years. The AO in all the earlier Assessment Years, after applying mind accepted the Assessee's stand.

3. The Assessee places reliance on the following judicial precedents:

- **Hon'ble Supreme Court** in the case of **Radhasoami Satsang v. CIT [1992] 93 ITR 321 (Page No. 94 to 101 of LPB)** observed that where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and the parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year and therefore, held that in absence of any material change justifying the Department to take a different view from that taken in earlier proceedings, the question of the exemption of the assessee appellant should not have been reopened.

- **Hon'ble Jurisdictional High Court** in the case of **Quest Investment Advisors Pvt. Ltd. v. PCIT [2018] 96 taxmann.com 157 (Page No. 102-106 of LPB)** held that, in absence of any changes in circumstances, following rule of consistency Assessee's claim in the relevant assessment years shall be allowed.

- Further, the **Hon'ble Jurisdictional Tribunal in Assessee's own case in A.Y. 2009-10 (Page No. 129 to 145 of LPB), inter alia, applied the ratio of consistency while deciding the issue of interest allocation for the purpose of section 24(b) of the Act. The relevant extracts of the said decision are reproduced below:**

"22.....Moreover, when the allocation of interest expenditure in identical manner has been accepted by the Assessing Officer in past assessment years, there is no valid reason for not accepting it in the impugned assessment year when the facts are identical..... "

- **Hon'ble Delhi High Court** in the case of **CIT v. ARJ Securities Printers [2003] 264 ITR 276** following the decision in Radhasoami Satsang (supra) has observed that:

"True that each assessment year being independent of the other, as a general rule, the principle of res judicata or estoppel by record, which applies to civil courts, does not applies to income tax proceedings but yet for the sake of consistency and for the purpose of finality in all litigations, including litigation arising out of fiscal statutes, earlier decisions on the same questions should not be reopened unless some fresh facts are found in the sub sequent year. "

- Similar view has been taken by **Hon'ble Delhi High Court** in the case of **CIT v. Neo Poly Pack (P) Ltd [2000] 245 ITR 492.**

4. Thus, where the Assessee has been carrying on the activity of service centre on year to year basis and the income there from has been offered to tax as business income and also accepted by the Department after detailed scrutiny, the

department is bound by the principles of consistency and ought to accept the same as business income in absence of any change in facts.

Considering the factual matrix of the case and even the position of the assessee prior to demerger the holding company i.e. primal holdings Ltd. (PHL) was also showing the income under the head business and the same was accepted by the revenue consistently. In addition to this fact, PHL was the owner of the property under consideration whereas in this case, the assessee was owner up to 9th floor only and under the scheme of demerger, assessee got ownership up to 9th floor only and 10th floor and annexe of Piramal Tower was not owned by the assessee. Despite the fact, that in substance transaction of the assessee falls under the head income from house property still as assessee is not the owner of 9th floor and annexe, same cannot be taxed under the head house property. In view of this, we confirmed the decision of Ld. CIT (A) treating the same as income from business. In these terms, ground no. I, II & III raised by the revenue are dismissed.

6. As regards, Ground No. IV- Treating Interest Income as Income from other sources instead of Income from Business for A.Y. 2010-11 to A.Y. 2013-14.

I. Facts:

The Assessee is in the business of financing wherein it advances loans to various parties and earns interest thereon on year-on-year basis. It has offered the Interest Income and Other Interest Income in all the earlier Assessment Years as

Business Income and the same was also accepted by the AO in the assessment order.

II. Action of the AO:

The AO without assigning any cogent reasons and also without providing any opportunity to the Assessee has assessed the Interest Income as Income from Other Sources.

III. Action of the Ld. CIT (A):

The Ld. CIT (A) after perusing the submissions and documents filed, observed that the Assessee has granted interest bearing loans out of the interest bearing borrowed funds. Also, the Assessee has received similar interest income on loans advanced in the earlier years and the same were offered as business income and accepted by the Department after verification during the scrutiny assessment in the earlier years. Further, the AO has not pointed out any change in facts. Thus, the CIT (A) taking all of the above facts into consideration held that the Assessee is carrying on the financing business over the years. The Ld. CIT (A) held that the same is evident from the objects clause of Memorandum of Association and also going by the Assessee's conduct. Further the Ld. CIT (A) also referred to the decision rendered in case of the Assessee by the erstwhile Ld. CIT (A) for A.Y. 2009-10. Thus, the Ld. CIT (A) allowed the Assessee's Appeal and directed the AO to treat the interest income as business income.

IV. Assessee's submission before the Hon'ble Tribunal:

A. The Assessee is in financing business by conduct and thus the same should be treated as business income for A.Y. 2010-11 to A.Y. 2013-14.

1. The Respondent has during the course of the Proceedings submitted an exhaustive chart of interest earned (i.e interest income) by it from A.Y. 2007-08 to A.Y. 2012-13 (**Page No. 197 of FPB-II**). Also, the Assessee has produced an exhaustive chart of interest expenses (i.e interest paid) incurred by the Assessee from A.Y. 2006-07 to A.Y. 2012-13 (**Page No. 198 of FPB-II**).

2. From the aforementioned charts it is abundantly clear that the Assessee has borrowed loans from various parties and later on advanced them to other parties in the course of ordinary business. Thus, the Assessee, by conduct, is into the business of financing.

3. Further, as per Clause 32 of MOA (**Page No. 34 of FPB**) it can be inferred that the Assessee is into the Financing business. The Relevant clause is reproduced hereunder:

"32. To borrow or raise moneys or loans for the purposes of the Company, by promissory notes, bills of exchange, hundies and other negotiable or transferrable instruments, or by mortgage, or by debentures, or by debenture-stock, perpetual or otherwise, charged upon all or any of the Company's property (both present and future) including its uncalled capital, upon such terms as the Directors may deem expedient, or to take moneys on deposit at interest or otherwise, and to lend money to customers and others having dealings with the company and to guarantee the performance of contracts by any such persons. "

4. Thus, to summarize, both as per the MOA and as per conduct (i.e considering the chart referred to above at page no. 197 and 198 of FPB, which shows systematic activity of borrowing and lending), the Assessee is into the financing business and hence the interest income should be treated as business income.

5. Reliance in this regard is placed on the decision of the **Hon'ble Ahmadabad Tribunal** in case of **Soham Securities Ltd., (ITA No. 2208/Ahd/2015) (Page no. 112 to 128 of LPB)** wherein the Hon'ble Tribunal held that interest income is to be treated as business income while making the following observation:

"8.4 In addition to the above, we also note that the assessee has been carrying on the business of money lending in a systematic manner without having the registration with RBI as NBFC. Merely, the fact that the assessee is not registered with RBI AS NBFC cannot lead to draw an inference that the assessee is not carrying out the business activity... "

6. Reliance is also placed on the decision of the **Hon'ble Mumbai Tribunal** in case of **Patel Corporation [2017] 167 ITD 83 (Page No. 107 to 111 of LPB)** wherein the AO noted that the assessee did not carry out any business activity during previous year and also failed to bring any evidence on record to show that it was a registered non-banking finance company engaged in business of financing. Therefore, the AO proceeded to assess the interest income as income from other sources. In this regard, the Tribunal upheld the CIT (A)'s order. The Ld. CIT (A) had held as under:

(i) As per the Memorandum of Association, the assessee is permitted to carry on numerous objects, of which the financing object is one of them,

(ii) In the assessee's own case for the assessment years 2006-07, 2007-08 and 2008-09, the AO has accepted the contention that the income of investing and financing is assessable as business income,

(iii) The need for consistency is as important for revenue authorities as it is expected from the assessee

7. Thus, the Assessee submits that if by conduct it is proved that the Assessee is into the business of financing, the interest income earned thereon should be treated as business income.

8. Further, the Assessee submitted that for A.Y. 2014-15, similar grounds of appeal have not been raised by the department before the Tribunal; however the aforesaid question was never in dispute before the Ld. CIT (A). Thus, the Assessee requests that the aforesaid grounds of the department appeal should be dismissed as infructuous.

B. The Assessee has been consistently offering interest income as business income

1. The Assessee is consistent in earning the same type of income during all the preceding Assessment Years and the same has duly been accepted as business income by the AO after detailed examination.

2. The Assessee has presented a chart **(Page No. 199 of the FPB-II)** to depict as to when the Assessee has produced details relating to the financing business before the AO in the past Assessment Years. The AO in all the earlier Assessment Years, after applying mind accepted the Assessee's stand.

3. Reliance in this regard is placed on the following judicial precedents:

- **Hon'ble Supreme Court** in the case of **Radhasoami Satsang v. CIT** (*supra*)
- **Hon'ble Jurisdictional High Court** in the case of **Quest Investment Advisors Pvt. Ltd. v. PCIT** (*supra*)
- **Hon'ble Jurisdictional Tribunal** in Assessee's own case in **AY 2009-10** (*Supra*)
- **Hon'ble Delhi High Court** in the case of **CIT v. ARJ Securities Prints** (*Supra*)
- **Hon'ble Delhi High Court** in the case of **CIT v. Neo Poly Pack (P) Ltd** (*Supra*).

Thus, where the Assessee has been carrying on the activity of service centre and financing on year-to-year basis and the income there from has been offered to tax as business income and also accepted by the Department after detailed scrutiny, the department is bound by the principles of consistency and ought to accept the same as business income in absence of any change in facts. We do not find any inconsistency in the order of Ld. CIT (A) while deciding the matters of the assessee and holding that the net income from interest is chargeable to tax under the head business. In these terms we are not inclined to disturb the order of Ld. CIT (A). Resultantly, ground no. IV raised by the revenue is dismissed.

7. As regards, Ground No. V - Not allowing the claim for interest expense u/s. 24(b) of the Act

I. Facts:

1. The Piramal Tower is a 10 floor building. A portion of this building is used by the Assessee to provide business service centre alongwith various complex services whereas a major portion of the building area is merely leased out by the Assessee to various other companies. The Assessee has entered into various written agreements with the Lessee and the area leased out is in accordance with these agreements. The Assessee also charges the license fee as per the agreements entered into by it with the Lessee.

2. During the years under consideration, the Assessee had incurred interest expense on loan borrowed by it for construction of Piramal Tower. The Assessee has apportioned the interest expense on the basis of the area leased out to the total area of the tower.

II. Action of the AO:

The AO, has, on a protective basis, held that if the Assessee is presumed to be earning service centre fees under the head business income, then the interest u/s. 24(b) of the Act ought to be restricted on the alleged ground that deduction of interest depends upon on the direct utilization of funds and not based on the mere mathematical calculation of area utilization and also relying on the assessment orders of other previous years. The AO merely relied on the Assessment order of AY 2009-10 for making the aforesaid disallowance.

III. Action of the Ld. CIT (A):

The Ld. CIT (A) after perusing all the submissions and documents observed that as a part of arrangement, the Assessee had acquired the tower from Piramal

Holdings Limited along with corresponding loans borrowed from various parties and used for the construction of tower. The Ld. CIT (A) further observed that the area leased out for rental purpose depends on the occupancy of the property for commercial purpose and therefore the area let out changes from time to time. Thus, the Ld. CIT (A) relying on the order of erstwhile Ld. CIT (A) and Tribunal's order in Assessee's own case for A.Y. 2009-10 and on the basis of consistency allowed the Assessee's appeal.

IV. **Assessee's submission before the Tribunal:**

A. Interest expense u/s. 24(b) to be allowed as deduction

1. The Assessee has calculated the area of the building leased out by it and the interest is apportioned on the basis of the ratio of this leased out property to the total area of Piramal Tower.

2. This method of apportionment of interest is based on the ratio of leased out property to the total area of Piramal Tower is followed by the Assessee from the year in which the building was constructed i.e. from F.Y. 2004-05. Further, the utilization of funds has to be seen in the year of construction of the building and it can also be seen that no new funds have been deployed for the construction of Piramal Tower. Thus, utilization has to be considered in first year only. The A.O. has not disputed the utilization of the funds by the Assessee in F.Y. 2004-05 (i.e. A.Y. 2005-06).

3. Also, the lender reviews the utilization of funds and has a right to withdraw the loan anytime when the funds are not being utilized for the desired purpose.

The lender has not taken any action of withdrawal of offer which suggests that the fund has been utilized for the purpose other than that mentioned in the loan agreement.

4. Thus, the Assessee submits that it has rationally utilized the loan for construction of Piramal Tower and claimed the interest expense on the basis of the utilization of the funds. Hence it has bifurcated, the same on the basis of the area leased out to the total area.

5. Further, it is pertinent to note that this issue is squarely covered by the decision of **Hon'ble Tribunal** in case of **DCIT v. Piramal Estates Pvt. Ltd. (ITA No. 519/Mum/2014) (Page no. 129 to 145 of LPB)** in Assessee's own case for **A.Y. 2009-10** i.e. the immediately preceding year wherein coordinate bench, after detailed discussion, has allowed the issue in favour of the assessee. The relevant extracts of the same are reproduced below:

"22. We have considered rival submissions and perused material on record. The factual matrix of the issue reveals that the loan was sanctioned by HDFC Bank for constructing a 10 story building named Piramal Towers by Piramal Holdings Pvt. Ltd. Subsequently, the building and the loan sanctioned was transferred to the assessee. A part of the building was utilized by the assessee and its group companies for commercial purpose and the rest of the building was leased out by the assessee. It is evident; the area leased out for rental purpose depends on the occupancy of the property for commercial purpose. Therefore, the area let out changes from time to time. It is also evident, from the past years the assessee had been allocating the interest on

loan on the basis of area let out and the aforesaid basis of allocation of interest commensurate with the area let out was accepted by the Department from the assessment year 2004-05 onwards, except, the impugned assessment year. As could be seen, the Assessing Officer has disallowed the deduction claimed under section 24(b) of the Act, basically for two reasons viz. (i) the assessee has not proved utilization of fund for construction of property; and (ii) the deduction under section 24(b) of the Act cannot be allowed on the basis of area let out. In our view, the reasons on the basis of which the Assessing Officer disallowed deduction under section 24(b) of the Act are unacceptable. Undisputedly, the loan was sanctioned for construction of the entire building. When a part of the building is used for commercial purpose and the rest of it is let out, the interest expenditure on the loan availed for construction of building has to be apportioned between the area let out and area used for commercial purpose, as this is the most scientific basis on which the interest can be allocated. It is also very much clear that the Assessing Officer has not pointed out any major deficiency in allocation of interest expenditure between the area used for commercial purpose and area let out. The allegation of the Assessing Officer that the assessee at its own will changes the area let out is on a mere presumption. We do not find any material on record to indicate that the Assessing Officer had carried out any specific enquiry to disprove assessee's claim regarding the area let out. Moreover, when the allocation of interest expenditure in identical manner has been accepted by the Assessing Officer in past assessment years, there is no valid reason for not accepting it in the

impugned assessment year when the facts are identical. In any case of the matter, the expenditure incurred by the assessee would be allowable either under section 24(b) or under section 36(l)(iii) of the Act. That being the case, it will make no difference to the Revenue. For the aforesaid reasons, we are inclined to uphold the decision of the learned Commissioner (Appeals) on the issue. Grounds are dismissed. “(Emphasis Supplied)

6. Thus, in light of the aforesaid binding decision, the interest allocation made by the Assessee cannot be disturbed and thus the interest worked out by the Assessee for the purpose of section 24(b) cannot be disturbed.

7. As regards to the question that there is double deduction of interest, the Assessee would like to submit that as a general process the Assessee has apportioned the interest expense on the basis of the area leased out to the total area of the tower. Thus, the Assessee claims the apportioned expense u/s. 24(b) of the Act and disallows the same under the head business income. The residual interest (i.e total interest for Piramal Tower - interest apportioned u/s. 24(b)) is claimed as an expense under the head business income. Thus, to conclude there is no double deduction of the same interest being claimed by the Assessee.

B. Interest expense u/s 24(b) to be allowed as deduction on the basis of consistency

1. The Assessee is consistently claiming the interest expense u/s. 24(b) in the same manner for a number of years and the same has been discussed during the assessment proceedings and further the Assessee has also made relevant submissions to the AO based on which the AO completed the assessment. The AO

in A.Y. 2005-06, 2006-07, 2007-08 and 2008-09 has allowed the claim of interest expense u/s. 24(b) on the basis of the same submissions made by the Assessee. Thus, the AO cannot take a different view now which is already taken by him in the earlier years.

2. The Assessee has prepared a chart (**Page 199 of the FPB-II**) to depict as to when the Assessee has produced and explained in brief the computation of interest u/s. 24(b) of the Act to the AO in the past Assessment Years. The AO in all the earlier Assessment Years, after applying mind accepted the Assessee's stand.

3. Reliance is placed on the following judicial precedents wherein it is held that AO cannot take a different view from the view which is already taken by him in the earlier years and held that principle of consistency must be followed:

- **Hon'ble Supreme Court** in the case of **Radhasoami Satsang v. CIT** (*supra*)
- **Hon'ble Jurisdictional High Court** in the case of **Quest Investment Advisors Pvt. Ltd. v. PCIT** (*supra*)
- **Hon'ble Jurisdictional Tribunal** in Assessee's own case in **A.Y. 2009-10** (*Supra*)
- **Hon'ble Delhi High Court** in the case of **CIT v. ARJ Securities Prints** (*Supra*)
- **Hon'ble Delhi High Court** in the case of **CIT V. Neo Poly Pack (P) Ltd** (*Supra*).

As the issue has already been allowed by the revenue for the A.Y.'s 2005-06 to 2008-09 and next A.Y. i.e. A.Y. 2009-10 allowed by the coordinate bench as discussed (supra). In addition to this revenue has failed to

demonstrate/differentiate the earlier decision of coordinate bench before us. In view of this we find that action of AO is untenable and there is no contradiction of law in the order of Ld. CIT (A). Resultantly, ground no. V raised by the revenue is dismissed.

8. As regards, Ground No. VI, VII and VIII - Deleting the suo-moto disallowance u/s. 14A of the Act.

I. Facts:

The details of exempt income earned and suo-moto disallowance made by the respondent for various years under consideration is as under:

A.Y.	Exempt income earned	Suo-moto disallowance u/s. 14A
2010-11	Nil	Rs. 26,66,03,003/-
2011-12	12,97,766/-	Rs. 42,53,94,873/-
2012-13	Nil	Rs. 1,00,63,30,972/-
2013-14	Nil	Rs. 1,01,49,47,838/-
2014-15	Nil	Rs. 93,56,47,517/-

II. Action of the AO:

The AO has erred in accepting the suo-moto disallowance made by the Assessee u/s. 14A of the Act for various years. It is a settled legal position that it is the duty of the AO to assess the correct income and to point out the reliefs due to the Assessee. Thus, the AO erred in granting relief to the Assessee in spite of various submissions made by the Assessee at the time of assessment proceedings.

III. Action of the CIT (A):

The Ld. CIT (A) relying on the coordinate bench's decision in Assessee's own case for A.Y 2009-10 has held that suo moto disallowance u/s. 14A is not sustainable. The Ld. CIT (A) has observed that the Assessee has right to claim relief of any incorrect disallowance at any stage of the appeal and the appellate authorities are bound to grant the same. Thus, the Ld. CIT (A) has held that when no exempt income is earned, the disallowance made u/s. 14A of the Act is to be deleted and in a case where exempt income is earned by the Assessee, the disallowance u/s. 14A of the Act is to be restricted to the extent of exempt income earned. Thus, the corresponding relief in respect of suo-moto disallowance made is to be granted to the Assessee.

IV. Assessee's submission before the Hon'ble Tribunal:

A. No disallowance is to be made under Section 14A of the Act when no exempt income is earned by the Assessee, even suo-moto disallowance needs to be deleted

1. It is a trite law that no disallowance can be made u/s. 14A of the Act, if no exempt income is earned during the year by the Assessee.

2. For this contention, the Assessee places reliance on the following judicial precedents:

- **The Hon'ble Madras High Court** in case of **Redington (India) Ltd v. ACIT (392 ITR 633)** held as under:

"10. The provision thus is clearly relatable to the earning of actual income and not notional or anticipated income. The submission of the Department to the effect that S.14A would be attracted even to exempt income 'includable' in total income would entail the assessment of notional income, assumed to be exempt in the future, in the present assessment year. The computation of total income in terms of s. 5 of the Act is on real income and there is no sanction in law for the assessment of admittedly notional income, particularly in the context of affecting a disallowance in connection therewith. "(Emphasis Supplied)

- Following the decision of Division Bench in case of Redington (India) Ltd. v. Addl. CIT, the **Hon'ble Madras High Court** in case of **CIT v. Chettinad Logistics (P.) Ltd.** [2017] 80 taxmann.com 221 (Page No. 147 to 151 of LPB) has held that no disallowance u/s. 14A of the Act can be made in absence of any exempt income earned during the year.
- Also, the **Hon'ble Supreme Court** has dismissed the SLP against the said order in **CIT v. Chettinad Logistics (P.) Ltd.** [2018] 257 Taxman 2 (Page No. 146 of LPB) and thus it is a settled law that no disallowance u/s. 14A of the Act can be made in absence of any exempt income earned.
- **The Hon'ble Jurisdictional High Court** in case of **CIT v. Delite Enterprises** [ITA No. 110 of 2009] observed that during the year no profit was earned by the appellant from the partnership firm and therefore, no question of disallowance.
- **Cheminvest Ltd. v. CIT** [2015] 378 ITR 33 (Del HC)

- **PCIT v. IL & FS Energy Development Company Ltd. [2017] (84 taxmann.com 186 (Del HC)**
- **The Hon'ble Mumbai Tribunal** in Assessee's own case for A.Y. 2009-10 (**ITA 779/Mum/2014**) (Page No **129 to 145 of LPB**) held as under:

"14. We have considered rival submissions and perused material on record. We have also applied our mind to the decisions relied upon. Notably, before the first appellate authority, the assessee had specifically pleaded that no disallowance under section 14A r/w rule 8D can be made in the absence of any exempt income earned by the assessee during the year. The fact that the assessee has not earned any exempt income during the year has not been disputed by the Revenue. That being the case, as per the ratio laid down in the decisions cited before us by the learned Sr. Counsel for the assessee, no disallowance under section 14A r/w rule 8D can be made. It needs to be observed, the SLP filed by the Revenue against the decision of the Hon'ble Madras High Court in CIT v/s Chettinad Logistics Pvt. Ltd. (supra) has been dismissed by the Hon'ble Supreme Court. Even, the Hon'ble Jurisdictional High Court in PCIT v/s Ballarpur Industries Ltd., ITA no.51/2016, dated 13th October 2016, has expressed similar view. Thus, following the ratio laid down in the decisions referred to above, we delete the disallowance made under section 14A r/w rule 8D."

3. Thus, the plea of the Respondent is that there should be no disallowance u/s. 14A of the Act when no exempt income is earned by the Assessee. Further, the

suo-moto disallowance inadvertently made by the Assessee also needs to be deleted.

4. The Respondent humbly submits that this issue is squarely covered by the decision of Hon'ble Tribunal in Assessee's own case for A.Y. 2009-10 in M.A. 252/Mum/2020 arising out of ITA 779/Mum/2014 (Page No 152-160 of LPB) wherein an additional ground was raised before Hon'ble ITAT for deleting the suo moto disallowance made by the Assessee in absence of any exempt income earned. Hon'ble Tribunal accepted the Respondent's contention and allowed the issue in favour of the assessee by holding as under:

"6. On applying the ratio of the decision of the Co-ordinate Bench of the Tribunal, we find that the Assessing Officer has made disallowance in respect of the expenditure incurred on exempt income but it has been proved and demonstrated by the learned Authorized Representative for the assessee that the assessee has not received any exempt income, therefore, no addition under section 14A of the Act will be sustainable. Accordingly, we considering the facts, circumstances and the decisions of the Hon'ble High Court and the Hon'ble Tribunal direct the Assessing Officer to delete the suo moto disallowance made by the assessee because there is no exempt income earned by the assessee. Since there is no exempt income and no disallowance related to the exempted income u/s. 14A of the Act is applicable and we allow this ground of appeal of the assessee." (Emphasis Supplied)

5. Further, the Respondent places reliance on the following judicial precedents wherein it was held that suo-moto disallowance inadvertently made by the assessee under Section 14A of the Act needs to be deleted:

- TATA Industries Ltd. v. ITO (ITA No. 4894/Mum/2008) (Mum. Trib.)
- HDFC Bank Ltd. v. ACIT (ITA No. 5480 & 5481/Mum/2014) (Mum. Trib.)
- Sajjan India Ltd. v. ADIT [2018] 89 taxmann.com 21 (Mum. Trib.)
- Rupee Finance and Management (P.) Ltd. v. Dy. CIT [2017] 81 taxmann.com 249 (Mum Trib.)

6. At this stage, since the Assessee is making a plea to delete the suo-moto disallowance made on its own motion (out of abundant caution), it will be relevant to point out the settled legal position that it is the duty of the assessing officer to assess the correct income and to point out the reliefs due to the assessee. For this contention, the Appellant places reliance on the following judicial pronouncements:

- CIT v. Pruthvi Brokers and Shareholders [2012] 349 ITR 336 (Bom HC)
- Balmukund Acharya v DCIT [2009] 310 ITR 310 (Bom HC)
- Choksi Metal Refinery v. CIT (107 ITR 63) (Guj HC)
- Chicago Pneumatic India Ltd v. DCIT (15 SOT 252) (Mum Trib.)

7. Thus, in view of the above and **the Hon'ble Mumbai Tribunal's order in Assessee's own case for A.Y. 2009-10 in M.A. 252/Mum/2020 arising out of ITA**

779/Mum/2014 (Page No 152-160 of LPB), the Assessee's contention that the suo moto disallowance made by the Assessee under Section 14A of the Act be deleted entirely in absence of any exempt income earned during various years under consideration is accepted and order of Ld. CIT(A) on this issue is sustained.

B. Restricting the disallowance u/s. 14A of the Act to the extent of exempt income earned by the Assessee (for A.Y 2011-12 only)

1. During A.Y. 2011-12, the Respondent earned an exempt income of Rs. 12, 97,677/- as dividend on units of Mutual Funds.

2. The Respondent submits disallowance u/s. 14A r.w.r 8D of the Rules cannot exceed exempt income. It is a well-established and a settled legal position even by the Apex Court that disallowance cannot exceed exempt income. For this, the Respondent places reliance on the following judicial pronouncements:

- **Hon'ble Supreme Court** in the case of **PCIT v. State Bank of Patiala (99 taxmann.com 286)** dismissed the SLP filed against the decision of **Hon'ble Haryana High Court** in case of **PCIT v. State Bank of Patiala (99 taxmann.com 295) (Refer Page no. 157 to 161 of LPB)** wherein it was held that amount of disallowance u/s. 14A could be restricted to amount of exempt income only and not a higher figure.

- **The Hon'ble Supreme Court** has dismissed the SLP (**112 taxmann.com 322 (SC)**) against the **Hon'ble Delhi High Court** ruling in the case of **PCIT v. Saraf Builders & Constructions (P) Ltd (101 taxmann.com 167) (Refer Page No. 183 to 195 of LPB)**, where it was held after considering various judicial pronouncements

in this regard and the decision of Hon'ble Supreme Court in case of Maxopp, that disallowance u/s. 14A cannot exceed exempt income of the relevant year.

- **Hon'ble Supreme Court** in the case of **PCIT vs. State Bank of Patiala [2018] 99 taxmann.com 286** dismissed the SLP filed against the decision of **Hon'ble Haryana High Court** in case of **PCIT vs. State Bank of Patiala [2018] 99 taxmann.com 295** wherein it was held that amount of disallowance u/s. 14A could be restricted to amount of exempt income only and not a higher figure.

- Further, reliance is also placed on the following judicial precedents:

- PCIT vs. HSBC Invest Direct (India) Ltd. [ITA No. 1672 of 2016 (Bom HC)]
- Nirved Traders Pvt. Ltd. vs. DCIT [ITA No. 149 of 2017 (Bom HC)]
- PCIT vs. Empire Package (P.) Ltd [2017] 286 CTR 457 (P&H HC)
- Pinnacle Brocom Pvt. Ltd. v. ACIT (ITA No. 6247/Mum/2012) (Mum Trib.)

3. Thus, in view of foregoing facts and legal position, it is held that the disallowance u/s. 14A of the Act ought to be restricted to Rs. 12,97,766/- i.e. the actual exempt income earned by the Assessee and hence the suo moto disallowance inadvertently made by the Assessee should be restricted to the tune of exempt income earned.

C. Amendment inserted vide Finance Act 2022 is prospective in nature

1. In this regard, it is pertinent to note that a non obstante clause and explanation was inserted under Section 14A of the Act vide Finance Act 2022.

2. The Assessee submits that the aforementioned amendment is not applicable to the Assessment Years under consideration.

3. Attention is invited to the explanatory memorandum to Finance Act 2022, which makes it abundantly clear that the amendment inserted under Section 14A of the Act vide Finance Act 2022 would be applicable from April 1, 2022 i.e Assessment Year 2022-23 and onwards. The same is reproduced hereunder for Your Honor's ready reference:

"7. this amendment will take effect from 1st April, 2022 and will accordingly apply in relation to the assessment year 2022-23 and subsequent assessment years."

4. Thus, for all the earlier years (i.e upto A.Y. 2022-23), the law and decisions as referred in Para A & B above, should apply.

5. Also, reliance is placed on the following judicial precedents wherein it was held that the amendment inserted under Section 14A of the Act vide Finance Act 2022 is prospective in nature:

- **The Hon'ble Delhi High Court** in case of **Era Infrastructure [2022] 141 taxmann.com 289 (Delhi) (Page No 1 to 5 of LPB)** has held that no disallowance is called for under Section 14A of the Act if no exempt income has been earned during the year under consideration. Further, the amendment inserted in Section 14A of the Act vide Finance Act 2022 has a prospective application. The same is reproduced hereunder for ready reference:

"8. Consequently this Court is of the view that the amendment of section 14A which is "for removal of doubts" cannot be presumed to be retrospective even where such language is used, if it alters or changes the law as it earlier stood."

- **K Raheja Corporate Services Pvt Ltd (ITA 2521 to 2527/Mum/2021) (Mum Trib.)**
- **Maxivision Eye Hospital (ITA No. 139/CHNY/2020) (Chen Trib.)**
- Further, the **Mumbai Tribunal** in case of M/s. **Vodafone Idea Ltd. (ITA No. 2273 and 2285/Mum/2014) (Page No 202 to 272 of LPB)** relying on the decision of the Hon'ble Delhi High Court in case of Era Infrastructure (*Supra*) and **after considering the decision of Guwahati Tribunal in case of Williamson Financial Services Ltd (ITA No.154-156,159/Gau/2019)** held that no disallowance is called for under Section 14A of the Act, since the Assessee has not earned any exempt income during the year under consideration. Further, the Tribunal held that the amendment inserted in Section 14A of the Act vide Finance Act 2022 would have a prospective application. The same is reproduced hereunder for ready reference:

"5.2 We hold that in the absence of any exempt income there cannot be any disallowance u/s. 14A of the Act. The Id. DR vehemently argued and also filed written submissions on the ground that as per the amendment made in Finance Act 2022 on the provisions of Section 14A of the Act, disallowance u/s. 14A of the Act would apply even when there is no exempt income derived by the assessee. He also argued that the said amendment needs to be construed as retrospective in operation. Reliance in this regard was placed on

the decision of Guwahati Tribunal in the case of Williamson Financial Services Ltd in ITA No.154-156/Gau/2019 for A.Y. 2012-13 to 2014-15 and ITA No.159/Gau/2019 for A.Y. 2009-10 dated 06/07/2022 in support of his contentions. But we find that the Co-ordinate Bench of this Tribunal in a very elaborate order rendered in the case of K. Raheja Corporate Services Pvt. Ltd. in ITA Nos. 2521-2527/Mum/2021 for A.Y.'s. 2012-13 to 2017-18 respectively dated 17/06/2022 had elaborately considered the meaning of expression "for the removal of doubts" incorporated in the explanation in the amendment brought in Section 14A of the Act by Finance Act 2022 and had held that the said amendment need to be construed only prospectively. It is also pertinent to note that the said decision of Mumbai Tribunal relied upon supra has considered various Hon'ble Supreme Court decisions and had arrived at the conclusion in favour of the assessee. In any case, we further find that recent decision of the Hon'ble Delhi High Court in the case of PCIT v. M/s. Era Infrastructure (India) Ltd., in IT A No. 204 of 2022 dated 20/07/2022 had categorically held that the amendment bought in Finance Act 2022 is prospective in operation. "(Emphasis Supplied)

- The **Hon'ble Mumbai Tribunal** in case of M/s. **Welspun Steel Ltd. (ITA No.2137/MUM/2021) (Page No 273 to 279 of LPB)** relying on the decision of co-ordinate bench in case of Bajaj Capital Venture and K Raheja Corporate Services (*Supra*) and Hon'ble Delhi High Court in case of Era Infrastructure (*Supra*), held that the disallowance made under Section 14A of the Act should be restricted to the extent of the exempt income earned during the year and the amendment

inserted in Section 14A vide Finance Act 2022 will have a prospective effect. The same is reproduced hereunder for Your Honor's ready reference:

"6. We have considered the rival submissions and perused the material on record. It is admitted position that the Hon 'ble Bombay High Court and the Hon'ble Supreme Court have clearly held that disallowance under Section 14A of the Act cannot exceed the amount of exempt income earned by the Assessee during the relevant previous year. The stand of the Revenue is that amendments to Section 14A introduced by the Finance Act 2022 apply retrospectively and therefore, the aforesaid judgments no longer hold good. Whereas the contention of the Assessee is that the said amendments to Section 14A of the Act are prospective in nature and therefore, the order of CIT (A), passed by following the binding judgments of the Hon'ble Jurisdictional High Court, cannot be set aside by the applying the amended provisions of Section 14A of the Act.

7. We note that the Mumbai Bench of the Tribunal has, in the case of Assistant Commissioner of Income Tax- Circle 3(1)(1) v Bajaj Capital Ventures (P.) Ltd.: [2022] 140 taxmann.com 1 (Mumbai - Trib.) [29-06-2022] and also in the case of Assistant Commissioner Of Income Tax V. K Raheja Corporate Services Private Limited [ITA No. 2521 to 2527], held that the amendments to Section 14A introduced by the Finance Act 2022 shall apply from Assessment Year 2022-23 and onwards. Further, Hon'ble Delhi High Court in the case of Principal Commissioner of Income-Tax (Central) -2 v. M/s Era Infrastructure India Ltd: [ITA No. 204 of 2022, decided on 20.07.2022] has rejected the contention of the Revenue that amendments to Section 14A introduced by

the Finance Act 2022 shall have retrospective effect. Accordingly, Ground No. 1 raised by the Revenue is dismissed. “(Emphasis Supplied)

Thus, in view of the foregoing decisions, it is abundantly clear that the explanation and Non-Obstante clause inserted under Section 14A of the Act, vide Finance Act 2022, and would not apply retrospectively and thus the disallowance made under Section 14A of the Act liable to be deleted and order of Ld. CIT (A) is sustained on this count. Resultantly, ground nos. VI, VII and VII raised by the revenue is dismissed.

9. As regards, Ground No. IX (A.Y 2010-11) - Profit from sale of flats to be treated as business income

I. Facts of the Case:

During A.Y 2010-11, the Assessee has sold five flats resulting into a gain of Rs. 6, 46, 41,520. The details of the same was submitted to the AO as Annexure 19 vide letter dated January 24, 2013 (Page No. 204 to 205 of FPB of A.Y. 2011-2012)

II. Action of the AO:

The AO erred in treating 'Profits from Sale of Flat' as Income from Other Sources instead of profits and gains from Business or Profession'.

III. Action of the Ld. CIT (A):

The Ld. CIT (A) held that the Assessee's business activities, inter-alia, includes purchase and sale of property/flats. Further, the Ld. CIT (A) held that surplus from sale of flats owned by the Assessee cannot be taxed as income from the other

source being a residuary head of income. Thus, the Ld.CIT (A) allowed the Assessee's appeal and directed the AO to treat the surplus from sale of flats as business income.

IV. Assessee's submission before the Hon'ble Tribunal;

1. At the outset, the Assessee drew our attention to the main object clause of MOA (**Page No. 27 of FPB**) which states as under:

"1b. To carry on business of Business Centre and to purchase or otherwise acquire land, buildings, houses, sheds and other fixtures, to build, construct improve, manage, develop, maintain, enlarge, hire workshops, offices, shopping centers, business centers and to let them out to various groups such as but not limited to landlords, co-operative societies, owners associations, condominiums, corporate parks, companies, commercial complexes, mall, either the entire premises or limited area of the same by way of lease or any form of contract or by any other arrangement.

1c. to sell, let, mortgage or otherwise dispose of all assets not limited to land, building and other property of the Company. "

2. Thus, the Assessee submits that it is quite evident from the main object clause of the MOA that it is in the business of purchasing and selling of flats.

3. Further, the Assessee submits that it is not an isolated transaction that has been undertaken by the Assessee. The Assessee has sold in total five flats during the year under consideration.

4. Thus, admittedly it is a clear position that profit from sale of flats cannot be treated as Income from Other Sources and the same should be treated as business income. However, in case the same was not acceptable to the AO than at best he could have treated the same as capital gains.

We find that MOA of the assessee company and the overall business model confirms the activities of the assessee. Transaction entered into by the assessee in no way can be treated as income from other sources, as an alternative plea assessee offered the same under the head “Capital Gains”, which is ultimately not in benefit of revenue. Hence transaction declared by the assessee under the head “Business” as analyzed and accepted by Ld. CIT (A) also is confirmed. In view of the above facts, Ground No. IX raised by the revenue is dismissed.

10. As regards, Ground No. IX (specific to A.Y. 2011-12) - Claim of long term capital loss on sale of shares

I. Facts;

1. During A.Y. 2011-12, the Assessee sold the investments of Piramal Sunteck Realty Pvt. Ltd. and Topzone Mercantile Company Pvt. Ltd. at book value which resulted into zero profit/loss as per books of account. Thus, the same was not being reflected separately in the Statement of Profit and Loss account.

2. Further, since the starting point for computation of income for purpose of tax is profit and loss account and the adjustments are thereafter made with respect to items debited/ credited therein, this item having no impact in the books of

accounts was missed out. Therefore, the Assessee inadvertently forgot to claim the long term capital loss on sale of such shares in the Return of Income.

3. On perusing facts of capital gains, as called by AO at the time of assessment proceedings, it came to the knowledge of the Assessee that it has inadvertently forgot to claim the said loss.

4. The Assessee had during the course of Assessment Proceedings raised a claim regarding the same vide letter dated January 23, 2014 (**Page No. 204 to 205 of FPB of A.Y. 2011-12**).

II. Action of the AO:

The AO erred in not allowing the claim of the Assessee with regards to Long Term Capital Loss incurred on sale of the equity shares of Piramal Sunteck Realty Pvt. Ltd. and Topzone Mercantile Company Pvt. Ltd.

III. Action of the CIT (A):

The Ld. CIT (A) observed that the AO is bound to assess the correct income and for this purpose, the AO should grant reliefs / refunds suo moto or can do so on being pointed out by the assessee during assessment proceedings for an item the assessee has not claimed in the return, irrespective of the fact that such a claim is not made by revised return of income. Relying on various judicial precedents the Ld. CIT (A) allowed the Assessee's Appeal of claiming long term capital loss.

IV. Assessee's submission before the Tribunal:

1. During A.Y 2011-12, the Assessee transferred equity shares of Piramal Sunteck Realty Pvt. Ltd. and Topzone Mercantile Company Pvt. Ltd. which resulted into zero profit/loss as per books of account and as per Income Tax it has incurred capital loss amounting to Rs. 116,94,91,417-.
2. On perusal of the Schedule 4 - Investment of Financial Statements for year ending March 31, 2009 (Page no. 208-215 of FPB for A.Y 2011-12) it can be seen that these shares are held for more than 12 months and thus on transfer of such shares, the Assessee has incurred a long-term capital loss.
3. The Assessee could not inadvertently claim this long-term capital loss while filing ROI thus, it had claimed this long-term capital loss during the course of assessment proceedings vide letter dated January 23, 2014. (Page No 204 to 205 of FPB for AY 2011-12)
4. At this stage, it is pertinent to note that it is not a case where the long-term capital loss incurred by the Assessee is disputed by the Department. The corresponding ground of Appeal is reproduced hereunder for ready reference:

"(ix) On the facts and in the circumstances of the case and in law, Ld. CIT (A) erred in allowing the claim for long term capital loss on sale of shares made in assessment proceedings despite the fact that the assessee has not claimed the said long term capital loss by filing a revised return of income. "

Thus, the only question raised by the Department is that whether the Ld. CIT (A) was justified in allowing the claim of Assessee which was not claimed by filing a revised return of Income.

5. In this regard, the Assessee submits that as per the settled legal position, the Appellate Authorities have powers to admit additional ground if raised in the course of the appellate proceedings. Reliance is placed on the decision of:

- **National Thermal Power Co. Ltd. v. CIT [1998] 229 ITR 383 (SC)**, wherein it was held that:

"If, as a result of a judicial decision given while the appeal is pending before the tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, there is no reason why the assessee should be prevented from raising that question before the tribunal for the first time, so long as the relevant facts are on record in respect of that We request Your Honour to kindly admit the same and consider the same while disposing our appeal for the captioned assessment year.

- **Jute Corporation of India Ltd. v. CIT and Another [1990] 187 ITR 688 (SC)**, wherein it was held that:

"The appellate authority can modify the assessment order on an additional ground even if not raised before the Income Tax Officer. However while permitting the assessee to raise an additional ground; the appellate assistant commissioner should exercise his discretion in accordance with law and reason. He must be satisfied that the ground raised was bonafide and that the same could not have been raised earlier for good reasons "

- Aforesaid, Supreme Court rulings has been followed by **Hon'ble Jurisdictional High Court** in the case of **CIT v. Pruthvi Brokers & Shareholders Pvt. Ltd. [2012] 349 ITR 336 (Refer Page No 166 to 175 LPB)**.

6. Reliance is further placed on the following judicial precedents:

- **Balmukund Acharya v. DCIT [2009] 310 ITR 310 (Bom HC) (Page No 176 to 183 of LPB)**
- **Choksi Metal Refinery v. CIT (107 ITR 63) (Guj HC)**
- **Chicago Pneumatic India Ltd v. DCIT (15 SOT 252) (Page no 184 to 196 of LPB)**

7. Based on the above-stated decisions of the Apex Court and Jurisdictional High Court, the Assessee requests to kindly consider the claim of long term capital asset.

The only question before us is whether the appellate authorities can entertain a claim of assessee which was not there at the time of filing the revised return, although the same was claimed through filing of letter as mentioned (supra). In this regard relevant judicial pronouncement in favor of revenue is [2006] 157 Taxman 1(SC) Goetze (India) Ltd. v. Commissioner of Income-tax, wherein it was held that before the assessing authority, other than by filing of revised return, assessee can't make any fresh claim, as in this case instead of filing the revised return, assessee simply filed a letter to claim long term capital loss on sale of shares as mentioned (supra). AO rightly denied the same, but the ratio Goetze (India) Ltd. (supra) is not applicable first appellate authority and Tribunal. In view of this without commenting on the merits of the matter, we confirm the decision of Ld. CIT (A), resultantly ground raised by the revenue is dismissed.

11. As regards, Ground No. IX (A.Y 2012-13 and A.Y 2013-14) - Treating other receipts as Income from Business

1. The Assessee submitted that once it is held that the income from service centre, interest income and other receipts are to be treated as business receipts and therefore the same needs to be taxed under the business head, this ground would become consequential. Thus, the Assessee states that this ground being consequential, the receipts should be treated as business receipts and corresponding expenses be deducted at the time of computing income under the business head.

We found force in the contentions of the assessee, that when all the receipts are treated under the head business and there is no activity which can be said to be other than main object of the assessee, these receipts although nomenclature as “Other Receipts” but are part and parcel of main business activity and consequential in nature. Hence the same is to be taxed under the head “Business”. Resultantly, this ground of appeal of revenue is also dismissed.

12. In the result, all the appeals of the revenue are dismissed.

Order pronounced in the open court on 20th day of December, 2023.

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 20/12/2023

Sr. PS (Dhananjay)

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai