

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JM &
MS PADMAVATHY S, AM**

**I.T.A. No.3776/Mum/2024
(Assessment Year: 2018-19)**

Piramal Capital and Housing Finance Ltd., Unit 6th Floor, Piramal Corporate Tower, LBS Marg, Near Kamani Junction, Kurla, Mumbai-400070. PAN : AAACD1977A	Vs.	Addl.-Joint-Deputy-Assistant CIT, NA Maharashtra.
Appellant)	:	Respondent)

Appellant /Assessee by : Shri Ronak Doshi a/w Shri Priyank Gala, AR

Revenue / Respondent by : Shri Ramakrishna Bandi, CIT- DR

Date of Hearing : 06.11.2024

Date of Pronouncement : 12.11.2024

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the order of Commissioner of Income Tax (Appeals)-53, Mumbai [in short 'the CIT(A)'] dated 19.06.2024 for Assessment Year (AY) 2018-19. The only issue contended by the assessee in this appeal pertain to non-granting of deduction of Rs. 33,06,15,314/- erroneously disallowed by the assessee in its return of income under section 43B of the Income Tax Act, 1961 (the Act).

2. The assessee is a company engaged in the business of housing finance and registered with National Housing Bank. The assessee filed the return of income for AY 2018-19 on 28.09.2018 declaring Nil income after claiming loss of Rs. 12,61,37,18,437/-. During the course of assessment proceeding, the assessee filed a letter before the Assessing Officer (AO) stating that –

“Assessee's submission - Revised computation of income

*During the year under consideration, with effect from 31 March 2018, Piramal Finance Limited and Piramal Capital Limited merged with the assessee. In this regard, there were disallowances made under section 43B of the Act in the Tax Audit Report of Piramal Finance Limited as well as the Company. Since the merger took place with effect from 31 March 2018, the disallowance under section 43B of the Act made in Piramal Finance Limited was also reported in the disallowance schedule for the Company. Thus, clause 26(B)(b) of the Tax Audit Report for the Company (enclosed as **Annexure 14**) includes the disallowances already made by Piramal Finance Limited. However, while filing the return of income for the year under consideration, the Company has inadvertently disallowed the expenses in its return of income, though the same pertains to and is already disallowed in the computation of income for Piramal Finance Limited (copy of the computation and ITR V is enclosed as **Annexure 15**). This has led to double disallowance of the same amount*

*The revised computation of income after rectifying the aforementioned mistake is enclosed as **Annexure 16**. In this regard, the letter obtained from the Tax Auditor is enclosed as **Annexure 17**, which confirms the aforesaid understanding. This has also been acknowledged by the Tax Auditor in Clause 32(a) of the Tax Audit Report for AY 2019-20 (copy enclosed as **Annexure 18**).”*

3. The AO while completing the assessment under section 143(3) of the Act., accepted the income returned by the assessee did not give any specific finding with regard to the above submissions made before him. Aggrieved by the same, the assessee filed further appeal before the CIT(A). The CIT(A) did not accept the claim of the assessee that the disallowance is erroneously made in return of income of the assessee since the same disallowance is already made in the hands of the

predecessor which amounts to double disallowance. The reason as stated by the CIT(A) is that the assessee should have filed the revised return of income correcting the error and that the claim cannot be made by filing a letter before the AO. Accordingly, the CIT(A) did not give relief to the assessee. Aggrieved the assessee is in appeal before the Tribunal.

4. The ld. AR submitted that as per the NCLT order the merger of M/s Piramal Finance Ltd. and M/s Piramal Capital Ltd. with the assessee was effective from 31.03.2018 and therefore M/s Piramal Finance Ltd. (the merged entity) also filed the return of income for AY 2018-19 in which M/s Piramal Finance Ltd made a disallowance under section 43B of the Act towards certain accruals. The ld AR further submitted that in the Tax Audit Report of the assessee the auditor has reported the disallowance under section 43B including the amount pertaining to M/s Piramal Finance Ltd and that the assessee has inadvertently missed to exclude the 43B disallowance pertaining to M/s Piramal Finance Ltd. in the computation of income of the assessee. The ld AR also submitted that to the extent of amount pertaining to 43B disallowance of M/s Piramal Finance Ltd there is a double disallowance and accordingly sought relief to that extent. In this regard the ld. AR submitted a table containing the details of 43B disallowance pertaining to the assessee and M/s Piramal Finance Ltd.

5. The ld. DR on the other hand vehemently argued that the 43B disallowance made during the year under consideration could have been claimed by the assessee as a deduction in the subsequent years and therefore the relief towards disallowance made in the year under consideration cannot be given without actual verification of facts.

6. We heard the parties and perused the material on record. M/s Piramal Finance Ltd. which got merged with the assessee company while filing the return of income for AY 2018-19 has disallowed certain amounts under section 43B of the Act. The contention of the assessee is that while filing the return of income for AY 2018-19 the assessee has also included the said amounts as part of disallowance made under section 43B of the Act. The ld. AR during the course of hearing presented the following table with the details of 43B disallowances made in the hands of the assessee and M/s Piramal Finance Ltd.-

	Previous Year-2017-18	Assessment Year: 2018-19			
Particulars	PCHFL Original ROI	PFL Original ROI (CY)	PFL Original ROI (CY)	PCHFL Revised ROI	Difference
Leave Encashment	3,54,47,936	88,57,315	2,04,21,916	61,68,705	2,92,79,231
Bonus	2,94,17,163	1,27,28,957	-	1,66,88,206	1,27,28,957
Interest on loan	29,02,75,068	28,86,07,126	-	16,67,942	28,86,07,126
Total	35,51,40,167	31,01,93,398	2,04,21,916	2,45,24,853	33,06,15,314

7. The CIT(A) denied the claim of the assessee for the reason that the assessee has not filed a revised return of income and has made the claim through a letter before the AO. In this regard it is relevant to consider the decision of the Hon'ble Bombay High Court in the case of CIT Vs. Pruthvi Brokers and Shareholders (2012) 23 taxmann.com 23 (Bom.) where it has been held that

“22. It was then submitted by Mr. Gupta that the Supreme Court had taken a different view in Goetze (India) Ltd (supra). We are unable to agree. The decision was rendered by a Bench of two learned Judges and expressly refers to the judgment of the Bench of three learned Judges in National Thermal Power Comp. Ltd. (supra). The question before the Court was whether the appellant- assessee could make a claim for deduction, other than by filing a revised return. After the return was filed, the appellant sought to claim a deduction by way of a letter before the Assessing Officer. The claim, therefore, was not before the appellate authorities. The deduction was disallowed by the Assessing Officer on the ground

that there was no provision under the Act to make an amendment in the return of income by modifying an application at the assessment stage without revising the return. The Commissioner of Income-tax (Appeals) allowed the assessee's appeal. The Tribunal, however, allowed the department's appeal. In the Supreme Court, the assessee relied upon the judgment in National Thermal Power Co. Ltd. (supra) contending that it was open to the assessee to raise the points of law even before the Tribunal. The Supreme Court held :-

"4. The decision in question is that the power of the Tribunal under section 254 of the Income-tax Act, 1961, is to entertain for the first time a point of law provided the fact on the basis of which the issue of law can be raised before the Tribunal. The decision does not in any way relate to the power of the Assessing Officer to entertain a claim for deduction otherwise than by filing a revised return. In the circumstances of the case, we dismiss the civil appeal. However, we make it clear that the issue in this case is limited to the power of the assessing authority and does not impinge on the power of the Income-tax Appellate Tribunal under section 254 of the Income-tax Act, 1961. There shall be no order as to costs." [Emphasis supplied]

23. It is clear to us that the Supreme Court did not hold anything contrary to what was held in the previous judgments to the effect that even if a claim is not made before the assessing officer, it can be made before the appellate authorities. The jurisdiction of the appellate authorities to entertain such a claim has not been negated by the Supreme Court in this judgment. In fact, the Supreme Court made it clear that the issue in the case was limited to the power of the assessing authority and that the judgment does not impinge on the power of the Tribunal under section 254"

8. A similar view is held by the Hon'ble Bombay High Court in the case of Balmukund Acharya Vs. DCIT (2009) 176 taxman 316 (Bom.). Considering the above decision of the Jurisdictional High Court, we are of the considered view that the contention of the CIT(A) is not tenable for the reason that the claim of the assessee is made towards an inadvertent error made in the return of income and not any fresh claim. Be that as may be, the basis on which the relief is claimed that there is a double disallowance i.e. in the hands of M/s.Piramal Finance Ltd as well as the assessee has to be factually examined before allowing the claim. Therefore

we remit the issue to the AO to verify the claim based on evidences and allow the same in accordance with law. It is ordered accordingly

9. With regard to the contention of the ld DR that the claim based on actual payment in subsequent years also needs to be verified before allowing the claim for the year under consideration, we are of the view that the deduction based on actual payment could be made only in the hands of the assessee as a merged entity since M/s.Piramal Finance Ltd., is no longer in existence post merger. Accordingly in our view subsequent claim in the hands of the assessee based on actual payment will not impeditment the relief sought towards double disallowance made by both M/s.Piramal Finance Ltd., and the assessee under section 43B.

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

Order pronounced in the open court on 12-11-2024.

Sd/-
(SANDEEP GOSAIN)
Judicial Member

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai