IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

Assessee's Appeal

ITA Nos.60/Bang/2012 and 253/Bang/2014
Assessment years : 2008-09 and 2009-10

M/s. Jupiter Capital (P) Ltd., No. 54, Richmond Road, Bengaluru-560025. **PAN : AABCJ5666R**	Vs.	Assistant Commissioner of Income Tax, Circle 11(5), Bengaluru-560001.
APPELLANT		RESPONDENT

Revenue's Appeal

ITA No.282/Bang/2012
Assessment year : 2008-09

Asst. Commissioner of Income Tax, No. 14/3, 5th Floor, Nrupathunga Road, Bengaluru-560001.	Vs.	M/s. Jupiter Capital (P) Ltd., Bengaluru-560025. **PAN : AABCJ5666R**
APPELLANT		RESPONDENT

Assessee by	:	Smt. Sheetal Borkar, Advocate
Revenue by	:	Shri. M. K. Biju, JCIT

Date of hearing	:	22.02.2017
Date of Pronouncement	:	28.02.2017

O R D E R

Per Sunil Kumar Yadav, Judicial Member

These appeals are preferred by the assessee as well as revenue against the respective orders of the CIT(A). Since common issues are involved in these appeals, we preferred to adjudicate through this consolidated order for the sake of convenience. We, however, preferred to adjudicate them one after the other.

2. ITA No. 60/Bang/2012:

Through this appeal the assessee challenged the order of the CIT(A) mainly on the following grounds:

1. The order of the learned Commissioner of Income Tax (Appeals) is opposed to the facts of the case and law applicable to it.
2. The learned Commissioner of Income Tax (Appeals) erred in holding that application of Rule 8D and invoking the provisions of section 14A of the act is correct and justified.
3. The learned Commissioner of Income Tax (Appeals) erred in ignoring the fact that invoking the provisions of section 14A of the act is not automatic.
4. The learned Commissioner of Income Tax (Appeals) erred in ignoring the fact that as per the provisions of section 14A(2) of the act, the provisions

could be invoked only when having regard to the accounts of the appellant, the Assessing Officer is not satisfied with the correctness of the claim of the appellant in respect of such expenditure relatable to income which do not form a part of total income.

5. The learned Commissioner of Income Tax (Appeals) erred in ignoring the fact that in the absence of any such satisfaction in regard to the expenditure claimed in the books of account, under law the Assessing Officer could not have invoked the provisions of section 14A of the act.

6. The learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.1,10,87,925/- out of the finance charges invoking the provisions of section Rule 8D(2)(ii) of the Rules.

7. The learned Commissioner of Income Tax (Appeals) erred in ignoring the fact that the appellant was in possession of huge interest free funds to the extent of 276.25 crores available for investment and even if it is presumed that there were some investments which yielded income exempt under the provisions of the act, no borrowed funds on which financial charges were incurred could be presumed as utilized for the purpose of earning income exempt under the provisions of the act.

8. The learned Commissioner of Income Tax (Appeals) erred in ignoring the fact that there was no nexus between the borrowed funds on which the financial charges were incurred and the investments alleged to have been made for the purpose of earning income exempt under the provisions of the act and under the circumstances, no portion of the financial charges could be disallowed.

9. The learned Commissioner of Income Tax (Appeals) erred in ignoring the fact that out of the financial charges claimed interest to the extent of Rs.5,85,6001/- was already disallowed under the provisions of section 37 of the act and the Assessing Officer by quantifying the disallowance applying Rule 8D(2)(ii) of the Income Tax Rules on the whole of the financial charges has made double disallowance of the same expense.

10. The learned Commissioner of Income Tax (Appeals) erred in not only confirming the disallowance of expenditure of Rs.91,59,391/- made by the Assessing Officer under the provisions of section 8D(2)(iii) of the Rule but also enhancing the same to Rs 1,15,70,677/-.

11. The learned Commissioner of Income Tax (Appeals) erred in ignoring the fact that under the law for enhancing the income the appellant has to be provided with an opportunity of hearing.

12. The order of the learned Commissioner of Income Tax (Appeals) enhancing the disallowance thereby increasing the total income without providing an opportunity of hearing is against natural justice and therefore bad in law.

13. The learned Commissioner of Income Tax (Appeals) erred in ignoring the fact that under the provisions of section 37 of the act the Assessing Officer had separately made disallowances of Rs.99,60,600/- out of the total expenses claimed and again by estimating disallowance under the provisions of the rule 8D of the rules, the same expenditure has been considered twice for disallowance.

14. The learned Commissioner of Income Tax (Appeals) erred in ignoring the fact that the total disallowance made exceeds the expenditure claimed by the appellant and under law the disallowance is warranted out of the expenses claimed and therefore the disallowance cannot exceed the expenditure claimed.

15. The learned Commissioner of Income Tax (Appeals) erred in not appreciating the fact that the investments in subsidiaries are in the interest of the business activity of the appellant and such investments cannot be considered as investments resulting in exempt income for the purpose of computation in Rule 8D r.w.s 14A of the act.

16. The learned Commissioner of Income Tax (Appeals) erred in not appreciating the fact that the investment in private limited companies are not made with the intention of earning dividends and therefore such investments cannot be considered as for the purpose of earning income exempt under the provisions of the act.

17. The learned Commissioner of Income Tax (Appeals) erred in not appreciating the fact that any gain arising on transfer of investments in private limited companies are assessable to tax under the provisions of the act and therefore such investments cannot be considered as for the purpose of earning income exempt under the provisions of the act.

18. The learned Commissioner of Income Tax (Appeals) erred in not providing with a specific opportunity of hearing to the appellant while deviating from the stand taken by the Assessing Officer and confirming a disallowance exceeding a disallowance made by the Assessing Officer.

19. The learned Commissioner of Income Tax (Appeals) erred in not following the principles of natural justice in determining to the extent of Rs.2,26,58,602/- under the provisions of section 14A r.w. Rule 8D of the Income Tax Rules.

20. The learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance of Rs.5,85,600/- out of the financial charges claimed, quantifying notionally at 12% on interest free advances made to M/s.Azure Media Services (P) Ltd a subsidiary of the appellant.

21. The learned Commissioner of Income Tax (Appeals) erred in not appreciating the fact that the advances made to M/s. Azure Media Services (P) Ltd was in the business interest of the appellant and no disallowance was called for on the advances made to the said subsidiary.

22. The learned Commissioner of Income Tax (Appeals) erred in ignoring the ratio laid down in the decision of supreme court in the case of S.A. Builders Vs. CIT(A) (2007) 288 ITR 1 (SC).

23. The learned Commissioner of Income Tax (Appeals) erred in not appreciating the fact that there was no nexus between the borrowed funds on which the financial charges were incurred and interest free advances made to M/s.Azure Media Services (P) Ltd and under the circumstances. no disallowance could have been made.

24. The learned Commissioner of Income Tax (Appeals) erred in not appreciating the fact that the appellant had huge interest free funds almost to the extent of Rs.276.25 crores and under the circumstances, there was no case for presuming that the advances made of Rs.48.80 lakhs made to M/s.Azure Media Services (P) Ltd was out of the borrowed funds.

25. The appellant craves permission to add, delete or alter any of the grounds at the time of hearing.

Prayer

The appellant request the Honourable Tribunal to kindly

i) Hold that the order of the CIT(A) in enhancing the disallowance U/s.14A of the act without providing specific opportunity of hearing to the appellant is against natural justice and bad in law.

ii) Delete the disallowance of Rs.2,26,58,6021- made under the provisions of section 14A of the act r.w. Rule 8D of the Rules.

iii) Delete the disallowance of Rs.5,85,6001- out of the financial charges.

iv) Hold that the investments in subsidiaries are for the benefit of appellant business and the provisions of section 14A has no application for such investments.

v) Hold that the investment in private limited companies are not for the purpose of earning dividend and also since the gain consequent to sale of such investments are chargeable to tax under the provisions of the act, such investments cannot be considered for applying the provisions of section 14A of the act.

3. Though various grounds are raised but they are mainly related on two issues. First issue is regarding the calculation of disallowance under section 14A and the other is disallowance of financial charges of interest free advances given to subsidiary of the assessee.

4. With regard to the calculation of disallowances under section 14A, the learned counsel for the assessee has contended that the AO has not calculated the disallowances as per Rule 8D of the Income Tax Rules. He has estimated the disallowances at 50% of the indirect expenses whereas it should have been computed as per Rule 8D subsection 2, clause (iii). Though the assessee has brought the complete facts before the CIT(A), but he did not look into it and has confirmed the disallowance made by the AO. The learned DR placed reliance upon the order of the AO.

5. Having carefully examined the orders of the lower authorities and in the light of the rival submissions, we are of the view that once it is held that disallowances are to be made under section 14A of the Act, the disallowances are to be calculated as per Rule 8D of the Income Tax Rule. Rule 8D takes care of all types of direct and indirect expenses incurred to earn an exempted income. After the insertion of Rule 8D, the AO has no other option but to calculate the disallowances under section 14A as per Rule 8D of the Income Tax Rules.

6. Having carefully examined the order of the lower authorities, we find that disallowances are not calculated correctly as per Rule 8D. Therefore, we set aside the order of the CIT(A) and restore the matter to the file of the AO with the direction to calculate the disallowances under section 14A of the Act as per Rule 8D, after affording an opportunity of being heard to the assessee.

7. With regard to the next issue of disallowances of financial charges, it is noticed that the assessee has given the interest free advances of Rs.48,80,000/- to its subsidiary M/s. Azure Media Services Pvt. Ltd. Since no interest was charged, the AO has made disallowance of expenditure of Rs.5,85,600/-, being the interest at 12% on the above amount. The assessee preferred an appeal before the CIT(A) and the CIT(A), following the judgment of S. A. Builders Vs. CIT 288 ITR 1, confirmed the disallowances, having observed that the assessee has not furnished the evidence of commercial expediency for advancing such huge amount to its sister concern. While dealing with the issue, the CIT(A) has also placed reliance on the judgment of the Hon'ble High Court in the case of CIT Vs. Accelerated Freeze Drying Co. 324 ITR 316 (Ker).

8. Aggrieved, the assessee is before us with the submission that the assessee has given the interest free advances to its subsidiary, therefore no disallowance can be made. The learned DR placed reliance upon the order of the CIT(A).

9. Having carefully examined the orders of the lower authorities and in the light of the rival submissions, we find that as per judgment of the Apex Court in the case of S. A. Builders, the onus is upon the assessee to prove that the interest free advances to its sister concern was given on account of commercial expediency. If the assessee is not able to establish these facts, the expenditure on disallowance of interest payment on the borrowed funds can be made. During the course of hearing, a specific query was raised to place some evidence that the interest free advances were given on account of business expediency, but nothing has been placed before us. Under these circumstances, we are constrained to hold that the interest free advances were not given to subsidiary on account of business expediency. Therefore, the AO has rightly made 12% as disallowance out of interest free advances. Accordingly, we confirm the order of the CIT(A).

ITA No. 282/Bang/2012:

10. This cross appeal is preferred by the revenue against the order of the CIT(A) on the following grounds:

1. The order of the Learned CIT (Appeals), in so for as it is prejudicial to the interest of revenue, is opposed to law and the facts and circumstances of the case.

2. The learned CIT (Appeals) was not justified in deleting the disallowance of rent paid of Rs.3,75,000/- made u/s 37 of the Act, without appreciating the fact that the assessee has failed to substantiate the payment of rent to the guest house and has also failed to furnish specific proof as regards the actual utilization of the guest house for its business and

that the onus was on the assessee which the assessee failed to discharge.

3. The learned CIT(Appeals) was not justified in deleting the addition of Rs.90,00,000/- made by the Assessing Officer on account of disallowance of claim of goodwill licence fees under the head "Legal and professional charges", without appreciating that assessee had these payments were made to a related party and that no evidence was provided as to the actual profit earned on the strength of the goodwill.

4. The learned CIT(A) has erred in deleting the addition without appreciating that the above payment was held to be excessive and unreasonable as the assessee has not gained any benefit to its business by such a transaction with a related party and the assessee failed to prove the business expediency of such payments.

5. For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT (A) be reversed in so for as the above mentioned issues are concerned and that of the assessing officer be restored.

6. The appellant craves leave to add, to alter, to amend or to delete any of the grounds that may be urged at the time of hearing of the appeal.

11. Though various grounds are raised, but there are mainly only 2 grounds. With regard to first ground i.e., deletion of disallowance of rent paid of Rs.3,75,000/- under section37 of the Act, it has been brought to our notice that this ground is covered by the order of the Tribunal in the case of assessee's sister concern i.e., ACTI Vs. Jupiter ITA No. 801/Bang/2012. Copy of the order is placed on record. In the said order, the Tribunal has

allowed the payment of rent of the Guest House. The learned DR placed reliance upon the order of the AO.

12. Having carefully examined the order of the authorities below, we find that the issue is squarely covered by the case of Jupiter (supra). We therefore find no justification to readjudicate this issue again. We, however, for the sake of reference, extract the relevant portion of the order of the Tribunal:

> *"On careful appreciation of the facts of the case on the issue of the allowability of the expenditure of Rs.11,33,806/- for maintenance of a gues house at Delhi by the assessee, we are inclined to agree with the finding of the learned CIT(Appeals). As rightly observed by the learned CIT(A), the Assessing Officer had not questioned the genuineness of this payment, but questioned only the allowability thereof. We find from a perusal of the Lease Deed dt. 20.07.2007 placed at pages 10 to 20 of assessee's Paper Book, by which the assessee had taken the guest house premises situated at 2nd Floor, A-264, Defence Colony, New Delhi, on rent was for commercial use/purposes as mentioned therein. It is the contention of the assessee that since it is engaged in aviation business, it is required to have liaison and co-ordination with various government departments/agencies in Delhi. The assessee has also furnished details of usage of the guest house, from which it is seen that senior officials of the assessee company had used the guest house on various dates. In view of the above factual matrix, we concur with the decision of the learned CIT(A) in holding that the expenditure of Rs.11,33,806/- incurred as rent on maintenance of guest house at Delhi is allowable and uphold his order. Consequently, Grounds raised at S. Nos. 2 & 3 by revenue are dismissed."*

Since the Tribunal has taken a particular set of facts, we find no justification to take a contrary view. We therefore, following the same, decide this issue in favour of the assessee. Accordingly, the ground of revenue is rejected.

13. The other ground is related to the deletion of addition of Rs.90,00,000/- made by the AO on account of disallowance of claim of goodwill, license fee under the head “legal and professional charges” paid to its Director. The facts in brief are that the assessee has paid a sum of Rs. 90,00,000/- towards goodwill and license fee to M/s. Vectra Holdings Pvt. Ltd., for using the name of Mr. Rajeev Chandrashekhar as a standalone name or in conjunction with other words like “supported by”, “associated with” in India. Mr. Rajeev Chandrashekhar is a Director in both the appellant company as well as M/s. Vectra Holdings Pvt. Ltd. Having observed that the expenditure is unreasonable and excessive in nature, the AO had disallowed the entire payment. When the appeal was preferred before the CIT(A), the CIT(A), following its earlier order for AY 2007-08 has allowed this payment of expenditure.

14. Now the revenue is before the Tribunal with the submission that in the AY 2007-08, the Tribunal has set aside the matter to the AO with the direction to readjudicate the issue afresh by passing a speaking order. It was also brought to our notice that in the AY 2007-08, the assessee has made payment of Rs.45 lakhs under the same head. For that year, the AO has invoked provision of section 40A(2) while making the disallowance and

the Tribunal has restored the matter to the AO to readjudicate the issue afresh.

15. The learned Counsel for the assessee, on the other hand, has contended that in 2007-08, the AO has invoked the provision of section 40A(2), whereas in the impugned AY, the disallowance was made having invoked the provision of section 37 of the Act. Therefore, the Tribunal's finding for the AY 2007-08 could not be binding for the impugned AY.

16. Having carefully examined the orders of the authorities below and in the light of the rival submissions, we find that undisputedly, during the AY 2007-08, the AO has made disallowance of the payment of Rs.45 lakhs on account of goodwill, license fee after invoking the provisions under section 40A(2) of the Act and the Tribunal has restored the matter back to the AO with the direction to examine all aspects and pass a speaking order, whereas in the impugned AY, the disallowance was made under section 37 of the Act. The revenue has taken a contrary stand while making the disallowance in the different AY whereas the nature of payment is same. Under these circumstances, we are of the view that the revenue cannot take a different stand for making the disallowance in different AY. They should take one constant stand in all the years. In AY 2007-08, the matter has already been restored by the Tribunal to the AO to readjudicate the issue afresh. Therefore, we are of the view that in the present year, the matter should go back to the AO for adjudicating the issue afresh after obtaining relevant evidences from the assessee. We, therefore, set aside

the order of the CIT(A) and restore the issue to the AO with the direction to adjudicate the issue afresh after making necessary verification and if the assessee is not able to specify the business expediency of these payments, the AO should take a conscious view for making the disallowance after resorting to a particular provision of the IT Act. Accordingly, this issue is disposed off.

ITA No. 253/Bang/2014

17. This appeal is preferred by the assessee against the order of the CIT(A) mainly on the following grounds:

1. The learned Commissioner of Income tax (Appeals)-I, Bangalore, herein after referred to as assessing officer, erred in considering the interest amount of Rs 3,02,104 as an expenditure disallowable under section 14A of the Act ignoring the fact that corresponding investments does not to the dividend earned by the appellant.

2. The learned assessing officer ought to have appreciated the fact that the appellant had large interest free funds in the form of paid up capital and reserves in the form of Share premium and accumulated profits and therefore it was wrong to conclude that borrowed funds were utilized for earning exempted income.

3. The learned assessing officer should have appreciated the fact that the borrowed capital has been used for business purpose of the appellant and therefore there is no case for disallowance under section 1 4A.

4. The learned assessing officer has erred in ignoring the fact the borrowing has no nexus to the investments which yield dividend income and hence there is no case for disallowance.

5. There is no findings or facts brought on record to establish why the assessing officer is not satisfied with the correctness of the claim of the appellant.

6. No materials have been introduced to establish that the appellant has in fact incurred certain expenditure in connection with exempted income.

7. The learned assessing officer should have appreciated the fact that invoking the provisions of section 14A and rule 8D are not automatic or mandatory.

8. The learned assessing officer has failed to appreciate the fact the provisions of section 14A (2) can be invoked only when he is not satisfied with the correctness of the claim of the appellant in respect of expenditure in relation to income, which does not form part of total income.

9. The learned assessing officer has erred in ignoring the fact that having invoked the provisions of section 14A of the Act read with Rule 8D, the law does not provide an option to arbitrarily estimate a disallowable expenditure.

10. The appellant has admitted earned exempted income to the tune of Rs 14,00,809 and the expenses disallowed is Rs 11,30,403. This represents 81% of the income has been deemed to be cost incurred to earn the said income.

11. To assume that the cost of earning the income is 81% even under the circumstance that the investments existed during previous years is not based on facts or prudence. The appellant is being taxed for a notional income.

Disallowance under section 37 - Rs 28,03,850.

12. The learned assessing officer erred in disallowing the expenditure of Rs 28,03,850 being financial consultancy fee paid to M/s Lexicon Finance ignoring the fact that the expenditure is incurred for the purpose of business.

13. The assessing officer had failed to appreciate the fact that the provisions of section 37 of the Act provides for allowance of expenditure incurred for the business, revenue in nature and genuinely incurred. Under law there is no case for disallowance.

14. The assessing officer should have appreciated the position in law that once the expenditure is genuinely incurred, it is not for the revenue to sit on judgment on its reasonability.

15. The learned assessing officer has observed that the investments of the appellant company during the year has remained same as in the previous year, expenditure claimed towards investment is not allowable deduction. This is contrary to the position taken while determining the disallowance under section 14A.

16. The learned assessing officer has failed to substantiate why he is of the opinion that consulting services has no nexus with earning of interest and dividend income, even though based on this assumption he has disallowed the appellants claim of Rs 28,03,850.

17. The learned assessing officer erred in disallowing the amount of Rs 90,00,000 paid to M/s Vectra Holdings P Ltd for use of their goodwill for the business of the appellant.

18. The learned assessing officer failed to appreciate the fact that the provisions of section 37 of the Act provides for allowance of expenditure incurred for the business, revenue in nature and genuinely incurred. Under law there is no case for disallowance.

19. The assessing officer should have appreciated the position in law that once the expenditure is genuinely incurred, it is not for the revenue to sit on judgment on its reasonability to invoke provisions of section 37 of the Act.

20. The fact that Vectra Holdings P Ltd is a sublicense and the license is granted to Vectra Holding P Ltd by an individual has been ignored

21. The appellant has received any enduring benefit or any right which have permanency for use has been ignored.

22. The right given by the sublicense - Vectra Holdings P ltd is not on an exclusive basis nor is there transfer of right for a permanent use.

23. The fact that the agreement has been terminated with effect from 31.3.2009.

24. The assessing officer has erred in allowing a depreciation of 25% on goodwill on intangible asset. The fact that there is no asset at all has been ignored.

25. The appellant craves permission to add, delete or alter any of the grounds at the time of hearing.

26. For these and other grounds that may be urged at the time of hearing, the

appellant prays that the Honorable bench may kindly delete the addition made consequent to the disallowance of:

a. Disallowance under section 14A of Rs 11,30,403
b. Disallowance under section 37 of Rs 28,03,850
c. Disallowance under section 37 of Rs 90,001000

18. Though various grounds are raised, but they relate mainly on 3 issues. 1st issue is disallowance under section 14A of the IT Act and 2nd issue is disallowance of Rs.28,03,850/- under section 37 of the Act and the 3rd is disallowance of Rs.90,00,000/- under section 37 of the Act.

19. Ground Nos. 1 and 3 are already been adjudicated by us in the foregoing appeals and both the grounds have been restored back to the AO for readjudication. Accordingly, we set aside the order of the CIT(A) and restore the matter to the file of the AO to readjudicate the issue in terms indicated in the foregoing appeals. Therefore, we are left with only one ground i.e., disallowance of Rs.28,03,850/- under section 37 of the Act. The facts borne out from the record in this regard are that the assessee claimed payment towards legal and professional charges amounting to Rs.1,25,80,866/- consisting of payments of Rs.90,00,000/- to M/s. Vectra Holdings and Rs.28,03,850/- to M/s. Lexicon Finance Ltd. The AO sought clarification of payment of fees to M/s. Lexicon Finance Ltd. It was explained that the said fee was being paid @ Rs.2,50,000/- per month by way of consultancy fees. According to the AO, the assessee's contention that payment made in the normal course of business was general in nature

as earning income by way of interest in fixed deposits kept in the banks did not require any consultancy. The AO accordingly disallowed the payments of Rs.28,03,850/-. Aggrieved, the assessee preferred an appeal before the CIT(A) but could not justify the payment of Rs.28,03,850/-. The CIT(A), accordingly confirmed the addition. The CIT(A) has also dealt with the alternate argument of the assessee that the consultancy services are relevant to the current business of Jupiter group and was appointed for advising the appellant on investment strategy. The CIT(A), having dealt with all the arguments of the assessee, was of the view that the expenditure claimed as 'consultancy services' is no nexus with the earning of the interest and dividend income. Relevant observations are extracted here:

> *"I have carefully considered the appellant's submissions and also the reasons given by the AO. The AO has disallowed a sum of Rs.28,03,850/- mainly because, during year relevant to the assessment year under consideration, the appellant earned income by way of interest on fixed deposits kept in the banks and such it did not require any consultation. Further, it was also held that the investments of the appellant company during the year have remained the same i.e. Rs.198,83,23,715/-, which was the same figure in the previous year. Therefore, in the absence of any evidence as to actual service provided by Lexicon Finance Ltd., expenditure claimed towards investment is not allowable deduction u/s 37 of the Act.*
>
> *4.4 The appellant's submission is that M/s Lexicon Finance Ltd., was appointed as consultants for advising the appellant on investment strategy. The consultant was paid an amount of Rs.2,50,000/- per month. The AO has ignored the fact that the appellant has made investment of nearly Rs.200 crores and the consultants assist in monitoring the investment as they have necessary expertise in the said field. It is also submitted that the*

provisions of section 37 of the Act state that, unless the expenditure is capital or personal in nature, which is prohibited by law for the purpose which are an offence, can be allowed. The AO has not established any of the above parameters laid down by the Act but yet choose to disallow the appellant's claim.

4.5 The material available on record reveals that the appellant has issued a letter dated 20/08/2008 to M/s. Lexicon Finance Ltd. for appointment as 'Consultant' and the relevant terms and conditions are as below:

"1. This agreement is made considering that your company has the necessary competence, background, knowledge and expertise in the fields that are considered relevant to current and future businesses of Jupiter Group and that your company is in sound health to undertake the job assigned.

2. Your company will render your services on a full time basis to the Company, its associates, affiliates and group companies effectively in accordance with the terms of this Agreement.

3. Your company shall complete all assignments/projects, and/ or specific requirements as may be assigned to you from time to time.

7. Your company shall ensure that all projects/work assigned to you is completed within the specified/pre-determined time schedule, time being the essence.

9. Your company shall be paid a consolidated monthly retainer fee of Rs.2,50,000/- per month (Rupees Two lakh and fifty thousand only). You shall raise an invoice on the Company and the payment shall be made once a month, before the 10th day of the month. All Payments shall be subject to statutory tax deduction, as may be applicable and payable in Indian Rupees. Professional Service Tax, if applicable, will be separately payable by the company.

13. In the performance of your obligations under this Agreement, your company would have access to documents, files, records, designs etc., in connection with information relating to the business of the Company that

are proprietary and trade secrets of the Company. Your company shall take all reasonable care to ensure that any confidential, proprietary, information (technical, financial or otherwise), documents and other information in written, printed, oral or other form belonging to the Company which comes within your knowledge is not disclosed to any third party. The company would have full and free proprietary rights of ownership of all the designs, documents and products developed by your company and associates during your engagement with the company."

4.6 A plain reading of the agreement shows that the appellant entered into with M/s Lexicon Finance Ltd., No.909, 'A' Wing, Dalamal Towers, Free Press Journal Road, Nariman Point, Mumbai 400-021 an agreement for consultancy service not for the appellant company but also for its associates and group of companies. The consultancy services from M/s Lexicon Finance Ltd. are relevant to the current business of Jupiter group was appointed for advising the appellant on investment strategy. Further, it is submitted that the appellant has made investments of nearly Rs.200 crores and the consultants assist in monitoring the investment as they have the necessary expertise in the said field. In this regard, it is to be mentioned that the appellant has made investment in equity shares of various companies during the financial year 2007-08 of the aggregate value of Rs.198,83,23,715/- whereas M/s Lexicon Finance Ltd. was appointed as 'consultant' on 26/6/2008. Therefore, the 'consultant' had no role to play at all in regard to the investment which already made. Secondly, the said company was appointed not only for the appellant-company but for the group of companies on investment strategy. Thus, in this way, this expenditure is capital in nature.

4.7 During the previous year relevant to the assessment year under consideration, the appellant earned income by way of interest on fixed deposits, dividend and interest on income-tax refund as under:

Interest on F.Ds	*Rs. 2,56,28,816*
Dividend	*Rs. 14,00,309*
Interest on income-tax	*Rs. 15,68,715*
Total	*Rs. 2,85,97,840*

4.8 The other income is only Rs.7,16,470/-. These incomes were computed by the appellant as 'Income from other sources.' In view of the above, the expenditure is allowable u/s 57(iii) of the Act if expended wholly and exclusively for the purpose of making or earning such income. The expenditure claimed as 'consulting services' is no nexus with the earning of interest and dividend income and on this ground also expenses are not allowable. In view of the fact and circumstances discussed above, I find no reason to interfere with the AO's findings and, therefore, the disallowance of Rs.28,03,850/- is confirmed. The appeal in this ground thus fails."

20. Aggrieved, the assessee has preferred an appeal before the Tribunal. But during the course of hearing, he could not justify the expenses incurred on account of consultancy services. He, however, reiterated the submissions raised before the CIT(A).

21. The learned DR placed reliance upon the order of the CIT(A).

22. Having carefully examined the orders of the lower authorities, we find that if any payments are made by the assessee, the onus is upon him to establish that the payments made on the expenditure incurred was on account of business expediency. The assessee failed to establish these facts. In the instant case also, the learned AR of the assessee could not establish that the expenditure was incurred on account of business expediency. Therefore, we find ourselves in agreement with the order of the CIT(A), who has rightly confirmed the disallowances made by the AO.

Accordingly, we confirm the order of the CIT(A) and reject the ground of the assessee.

23. In the result, ITA No. 60/Bang/2012 and 253/Bang/2014 of the assessee are partly allowed for statistical purposes and ITA No. 282/Bang/2012 of the revenue is also partly allowed for statistical purposes.

Pronounced in the open court on this 28th day of February, 2017.

Sd/-	Sd/-
(INTURI RAMA RAO)	**(SUNIL KUMAR YADAV)**
Accountant Member	**Judicial Member**

Bangalore.
Dated: 28th February, 2017.

/NS/

Copy to:

1. Appellants
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.