

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"K" BENCH, MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**IT(TP)A no.6758/Mum./2014**

(Assessment Year : 2009-10)

M/s. Airmid Developers Limited  
M-62 & 63, First Floor  
Cannaught Place, New Delhi 110 001  
PAN - AAGCA5601G

..... Appellant

v/s

Dy. Commissioner of Income Tax  
Circle-3(1), Mumbai

..... Respondent

**IT(TP)A no.7081/Mum./2014**

(Assessment Year : 2009-10)

Dy. Commissioner of Income Tax  
Circle-3(1)(1), Mumbai

..... Appellant

v/s

M/s. Airmid Developers Limited  
14<sup>th</sup> Floor, Indiabulls Finance Centre  
Tower-1, Plot no.612\*613  
Elphinstone Mills, Mumbai 400 013  
PAN - AAGCA5601G

..... Respondent

**IT(TP)A no.949/Mum./2015**

(Assessment Year : 2010-11)

Dy. Commissioner of Income Tax  
Circle-3(1)(1), Mumbai

..... Appellant

v/s

M/s. Airmid Developers Limited  
14<sup>th</sup> Floor, Indiabulls Finance Centre  
Tower-1, Plot no.612\*613  
Elphinstone Mills, Mumbai 400 013  
` PAN - AAGCA5601G

..... Respondent

**IT(TP)A no.1011/Mum./2015**  
(Assessment Year : 2010-11)

M/s. Airmid Developers Limited  
M-62 & 63, First Floor  
Cannaught Place, New Delhi 110 001  
PAN – AAGCA5601G

..... Appellant

v/s

Dy. Commissioner of Income Tax  
Circle-3(1)(1), Mumbai

..... Respondent

Assessee by : Shri K. Gopal  
Revenue by : Shri Manoj Kumar

Date of Hearing – 18/07/2023

Date of Order – 30/08/2023

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present cross appeals have been filed challenging the separate impugned final assessment orders dated 25/09/2014, for the assessment year 2009-10, and dated 31/12/2014, for the assessment year 2010-11 passed under section 143(3) read with section 144C(13) of the Income Tax Act, 1961 ("the Act"), pursuant to the directions issued by the learned Dispute Resolution Panel ("learned DRP") under section 144C(5) of the Act.

**IT(TP)A no.6758/Mum./2014**  
**Assessee's Appeal – A.Y. 2009-10**

2. In its appeal, the assessee has raised the following grounds:-

*"The grounds stated here under are independent of, and without prejudice to one another.*

**Ground No. 1:**

*On the facts and circumstances of the case and in law, the learned Assessing officer (AO) under directions issued by the Hon'ble Dispute Resolution Panel (DRP), erred in making addition of interest expenditure amounting to Rs. 12,923,055/- by reducing Arms Length Price rate from 15% p.a. to 13.83%*

*paid/payable by Assessee to its associate enterprise, as initiated by the learned Transfer Pricing officer ("TPO")*

Ground No. 2:

*On the facts and circumstances of the case and in law, the learned TPO/AO erred and the Hon'ble DRP further erred in upholding/ confirming the action of the learned TPO/AO in not allowing the risk adjustments and yield adjustments, done by the Appellant on account of difference in economic condition and rating of the adjustments.*

Ground No. 3:

*On the facts and circumstances of the case, the learned TPO/AO erred and the Hon'ble DRP further erred in completely ignoring the Appellant's evidence/comparable of 15.55% being rate arrived by reputed agency CRISIL.*

Ground No. 4:

*Without prejudice to Ground no 1 to 3, the learned AO erred and the Hon'ble DRP further erred in upholding/ confirming the action of the learned AO in adding Rs. 12,923,055/- u/s 92CA (3) to the Income of the current assessment year without acknowledging the fact that the adjustments proposed by the learned TPO is under capital account and not under revenue account.*

Ground No. 5:

*On the facts and circumstances of the case and in law, the learned AO under the directions issued by Hon'ble DRP, erred in making disallowance of Rs.300,000/- u/s 14A of the Act.*

Ground No. 6:

*Without prejudice to Ground no 5 that disallowance u/s 14A is not at all warranted on the facts of the case, the learned AO under the directions issued by Hon'ble DRP, erred in ignoring the settled legal proposition that the computation of disallowance u/s 14A as per Rule 8D is compulsory u/s 14A (2) if the A.O. is not satisfied with the claim of the assessee.*

Ground No. 7:

*On the facts and circumstances of the case and in law, the learned AO erred in initiating penalty proceedings u/s 271(1)(c) of the Act.*

Ground No. 8:

*The above grounds are without prejudice to each other. Further, the Appellant craves leave to add, alter, amend and/or withdraw any of the above grounds of appeal and submit such statements, documents and papers as may be considered necessary either at or before the hearing of this appeal as per law.*

*The Appellant prays that the additions made by the learned AO/TPO and upheld by the Hon'ble DRP be deleted"*

3. Grounds No.1-4, pertaining to transfer pricing adjustment were not pressed by the learned Authorised Representative ("*learned AR*") during the hearing. Accordingly, the same are dismissed as not pressed.

4. The issue arising in grounds no.5 and 6, raised in assessee's appeal, is pertaining to disallowance under section 14A of the Act.

5. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is a company and is engaged in the business of developing, constructing, and dealing in real estate, properties, and construction. For the year under consideration, the assessee filed its return of income on 27/09/2009, declaring a total income of Rs.44,66,074. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. The Assessing Officer ("*AO*") passed the draft assessment order dated 08/11/2013, under section 143(3) read with section 144C(1) of the Act proposing the total assessed income of the assessee of Rs.8,56,50,380, after incorporating the adjustment of Rs.1,29,23,055, proposed by the Transfer Pricing Officer ("*TPO*") vide order passed under section 92CA(3) of the Act and addition on account of interest income of Rs.6,82,61,252. The assessee filed detailed objections before the learned DRP against the addition/adjustment proposed by the TPO/AO. While deciding the objections filed by the assessee, the learned DRP observed that the assessee has claimed exempt dividend income of Rs.3,54,39,742, on which no disallowance under section 14A of the Act has been offered by the assessee nor any disallowance under the aforesaid section has been proposed by the AO vide draft assessment order.

Accordingly, the learned DRP asked the assessee to show cause as to why the disallowance under section 14A of the Act be not made and the assessment be not enhanced on this count. In response thereto, the assessee submitted that it has not incurred any expenditure during the year in relation to earning the dividend income. The assessee also submitted that the AO is required to give due regard to the accounts of the assessee before arriving at any disallowance under section 14A of the Act. The learned DRP, vide its directions issued under section 144C(5) of the Act directed the AO to disallow an amount of Rs. 3 lakh under section 14A of the Act. Accordingly, the AO passed the impugned final assessment order, inter-alia, making an addition of Rs.3,00,000, under section 14A of the Act in conformity with the directions of the learned DRP. Being aggrieved, the assessee is in appeal before us.

6. We have considered the submissions of both sides and perused the material available on record. At the outset, it is pertinent note the provisions of section 14A(2) of the Act, which reads as under:-

*"(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act." (emphasis supplied)*

7. Thus, as per section 14A(2) of the Act, if the AO is not satisfied with the correctness of the claim of the assessee in respect of expenditure incurred in relation to income which does form part of the total income, the AO can determine the amount of such expenditure after having regard to the accounts of the assessee. Hon'ble Supreme Court in Maxopp Investment Ltd v. CIT:

[2018] 402 ITR 640 (SC), while emphasising the aspect of recording satisfaction by the AO, observed as under:

*"41. Having regard to the language of section 14A(2) of the Act, read with rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the Assessing Officer needs to record satisfaction that having regard to the kind of the assessee, suo motu disallowance under section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the Assessing Officer was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, the nature of the loan taken by the assessee for purchasing the shares/ making the investment in shares is to be examined by the Assessing Officer."*

Further, Hon'ble Supreme Court in Godrej & Boyce Manufacturing Company Ltd. Vs DCIT: [2017] 394 ITR 449 (SC), observed as under:

*"37. We do not see how in the aforesaid fact situation a different view could have been taken for the Assessment Year 2002-2003. Sub-sections (2) and (3) of Section 14A of the Act read with Rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. Whether such determination is to be made on application of the formula prescribed under Rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of Section 14A(2) and (3) read with Rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable." (emphasis supplied)*

8. As evident from the record, in the present case, no satisfaction as required under section 14A(2) was recorded by the AO, and the disallowance under section 14A of the Act was made only pursuant to the directions issued by the learned DRP. Thus the jurisdictional pre-condition as laid down in provisions of section 14A(2) of the Act was not fulfilled in the present case. Further, the disallowance of Rs.3 lakh computed by the learned DRP was not by applying the mandatory computation provisions of Rule 8D of the Income

Tax Rules, 1962 (*"the Rules"*), and the same was directed merely as a reasonable disallowance under section 14A(1) of the Act. Therefore, in view of the above, we do not find any basis for upholding the disallowance made under section 14A of the Act. Accordingly, the AO is directed to delete the same. As a result, grounds no.5 and 6, raised by the assessee are allowed.

9. Ground no.7, pertains to the initiation of penalty proceedings, which is premature in nature and therefore is dismissed.

10. In the result, the appeal by the assessee is partly allowed.

**IT(TP)A no.7081/Mum./2014**  
**Revenue's Appeal – A.Y. 2009–10**

11. In its appeal, the Revenue has raised the following grounds:–

*"1. Whether on the facts and in the circumstances of the case and in law, the Hon'ble DRP has erred in allowing the interest expenditure of Rs.10,25,58,218/- under section 57(iii) of the Act against the interest income on loan advanced to its sister concern, without appreciating the fact that the interest expenditure was to be capitalized as per the Income Tax Act and also in the view of the Circular No. 2/2007-08 dated 02.07.2007 of RBI that the usage of ECB funds is not permitted for the purpose otherwise than the purpose for which it has been raised or brought in India?"*

*2. The appellant prays that the order of CIT (A) on the above ground be set aside and that of Assessing Officer be restored.*

*3. The appellant craves leave to amend or alter any ground or add a new ground which may necessary."*

12. The only dispute raised by the Revenue, in its appeal, is against the allowance of interest expenditure under section 57(iii) of the Act.

13. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings upon perusal of the

schedule of the balance sheet, it was observed that the closing balance of the work in progress has been arrived at after reducing an amount of Rs.6,82,61,252, which the assessee has also claimed as expenses relating to earning of interest (to the extent of interest earned i.e. Rs.6,82,61,252). The AO, vide draft assessment order, observed that during the year under consideration, the assessee had surplus funds at its disposal and the same were advanced as interest-bearing loans to the sister concerns. Such advancement of loan to the sister concerns has fetched interest income of Rs.6,82,61,252. The AO further observed that the interest income of Rs.6,82,61,252, has been offered to tax under the head "*income from other sources*" and the said amount has been reduced by the interest expenditure incurred for earning the interest income under section 57(iii) of the Act. In response to the show cause notice, the assessee submitted that during the year under consideration, the assessee has borrowed funds for its real estate project on which it incurred interest cost and capitalised the same in the project cost in accordance with accounting guidelines. However, as the gestation period of such real estate project was long, the assessee chose not to keep the unutilised funds idle and give the same as a loan to other companies till the time the funds are needed for the project. Accordingly, during the year under consideration, the assessee earned interest income amounting to Rs.6.83, crore on such deployment and reduced its project cost by the same amount for accounting purposes. The assessee further submitted that since the interest earned by the assessee is Revenue receipt, the assessee offered the same to tax under the head "*income from other sources*" under section 56 and consequently claimed deduction of interest expenditure under



section 57 of the Act. The AO, vide draft assessment order, did not agree with the submissions of the assessee and held that interest earned by the assessee has no connection with the assessee's business and has no direct link with the assets (WIP) meant for the project of the assessee. Accordingly, the AO, vide draft assessment order proposed to tax the interest of Rs.6,82,51,252, earned by the assessee under the head "*income from other sources*" and disallowed the deduction claimed under section 57(iii) of the Act. The AO further held that the assessee has used the funds for the purpose for which it has not been raised or brought in India and thus the same is in gross violation of the RBI guidelines.

14. Against the aforesaid findings, the assessee filed detailed objections before the learned DRP. Vide its directions issued under section 144C(5) of the Act, the learned DRP held that the borrowed funds have been used for advancing the loan by the assessee and therefore there is a direct nexus between the borrowed funds and the amount advanced. Accordingly, the learned DRP directed the AO to allow the deduction of interest expenditure of Rs.10,25,58,218, under section 57(iii) of the Act against the interest income of Rs.6,82,61,252, offered by the assessee as income from other sources. In conformity, the AO passed the impugned final assessment order assessing the total loss at Rs.1,66,07,837. Being aggrieved, Revenue is in appeal before us.

15. We have considered the submissions of both sides and perused the material available on record. As evident from the record, the assessee borrowed Rs.121.05 crore and incurred interest cost amounting to Rs.16,61,53,562, on the said borrowings. It is undisputed that the assessee,

during the year under consideration, utilised the said borrowed funds for giving loans to sister concerns and earned interest income therefrom amounting to Rs.6,82,61,252. In the act of lending borrowed funds to the sister concerns, the assessee incurred interest cost amounting to Rs.10,25,58,218, which was claimed to have been wholly and exclusively for the purpose of earning such income, i.e. interest income of Rs.6,82,61,252. In its return, the assessee duly offered the interest income of Rs.6,82,61,252 to tax under the head "*income from other sources*" and restricted the claim of deduction under section 57(iii) of the Act to the extent of income offered. On the other hand, as per the AO, the funds were borrowed for the purpose of real estate projects of the assessee and the interest cost incurred thereon has no connection with the interest income earned by the assessee. Before proceeding further, it is relevant to note the provisions of section 57(iii) of the Act, which reads as under:-

*"57. The income chargeable under the head "Income from other sources" shall be computed after making the following deductions, namely :—*

*(i).....*

*(ia).....*

*(ii).....*

*(iia).....*

*(iii ) any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income."*

16. Therefore, under section 57(iii) of the Act, any expenditure which is not in the nature of capital expenditure and has been expended wholly and exclusively for the purpose of earning income chargeable under the head "*income from other sources*" is allowable as a deduction. In the present case, there is no dispute regarding the nature of the expenditure and the Revenue

has only disputed that the interest expenditure claimed under the aforesaid section is not wholly and exclusively expended for the purpose of earning the interest income. We find that the learned DRP after duly noting the chronology of events, i.e. borrowing of interest-bearing funds by the assessee and thereafter advancing the same as interest-bearing loan to the sister concern, in para 4.5 of its directions came to the conclusion that the interest expenditure claimed by the assessee is directly related to the interest income earned during the year under consideration. It is undisputed that the assessee utilised the interest-bearing borrowed funds for advancing the loans to the sister concern. Further, it is pertinent to note that the violation of RBI guidelines on the usage of ECB funds for other purposes has no relevance in the allowance of deduction under section 57(iii) of the Act. Therefore, we find no infirmity in the impugned final assessment order passed in conformity with the aforesaid directions of the learned DRP, whereby the interest expenditure of Rs.10,25,58,218, was directed to be allowed under section 57(iii) of the Act against the interest income offered for taxation under the head "*income from other sources*". Accordingly, the impugned final assessment order on this issue is upheld and the grounds raised by the Revenue are dismissed.

17. In the result, the appeal by the Revenue is dismissed.

**IT(TP)A no.1011/Mum./2015**  
**Assessee's Appeal – A.Y. 2010-11**

18. In its appeal, the assessee has raised the following grounds:-

*"The grounds stated here under are independent of, and without prejudice to one another.*

Ground No. 1:

*On the facts and circumstances of the case and in law, the learned Assessing officer (AO) under directions issued by the Hon'ble Dispute Resolution Panel ('DRP'), erred in making addition of interest expenditure amounting to Rs. 14,162,850/- by reducing Arms Length Price rate from 15% p.a. to 13.83% paid/payable by Assessee to its associate enterprise, as initiated by the learned Transfer Pricing officer (TPO')*

Ground No. 2:

*On the facts and circumstances of the case and in law, the learned TPO/AO erred and the Hon'ble DRP further erred in upholding/ confirming the action of the learned TPO/AO in not allowing the risk adjustments and yield adjustments, done by the Appellant on account of difference in economic condition and rating of the adjustments.*

Ground No. 3:

*On the facts and circumstances of the case, the learned TPO/AO erred and the Hon'ble DRP further erred in completely ignoring the Appellant's evidence/comparable of 15.55% being rate arrived by reputed agency CRISIL.*

Ground No. 4:

*Without prejudice to Ground no 1 to 3, the learned AO erred and the Hon'ble DRP further erred in upholding/ confirming the action of the learned AO in adding Rs. 14,162,850/- u/s 92CA(3) to the Income of the current assessment year without acknowledging the fact that the adjustments proposed by the learned TPO is under capital account and not under revenue account.*

Ground No. 5:

*On the facts and circumstances of the case and in law, the learned Assessing officer erred in not following the clear directions of Hon'ble DRP-I, Mumbai given in its order dt. 31.10.2014 and thereby erred in not allowing the entire deductions of Rs. 69,942,651/- u/s 57(iii) against the Income of Rs. 42,307,499/- under the head "Income from Other Sources". In other words, the learned Assessing officer erred in restricting the deductions u/s 57(iii) to Rs. 42,307,499/- instead of total expenditure incurred amounting to Rs.69,942,651/- which was clearly allowed as deduction u/s 57(iii) by the Hon'ble DRP - I, Mumbai given in its order dt. 31.10.2014.*

Ground No. 6:

*On the facts and circumstances of the case and in law, the learned AO erred in making and the Hon'ble DRP further erred in confirming disallowance of Rs.184,268/- u/s 14A read with Rule 8D.*

Ground No. 7:

*Without prejudice to Ground No.3, the AO, erred in considering investments, the income of which are taxable, also in the calculation of average investments while working disallowance u/s 14A r.w. Rule 8D. The AO erred in considering average investment of Rs. 3,68,53,508/- instead of correct average of Rs.350,03,505/- and thus resulting in additional disallowance of Rs. 9,250/-*

Ground No. 8:

*The above grounds are without prejudice to each other. Further, the Appellant craves leave to add, alter, amend and/or withdraw any of the above grounds of appeal and submit such statements, documents and papers as may be considered necessary either at or before the hearing of this appeal as per law.*

*The Appellant prays that the additions made by the learned AO/TPO and upheld by the Hon'ble DRP be deleted."*

19. Grounds No. 1-4 pertaining to transfer pricing adjustment were not pressed by the learned AR during the hearing. Accordingly, the same are dismissed as not pressed.

20. The issue arising in ground No. 5, raised in assessee's appeal, is pertaining to non-compliance of the directions of the learned DRP under section 144C(5) of the Act.

21. We have considered the submissions of both sides and perused the material available on record. We find that the learned DRP vide its directions dated 31/10/2014, issued under section 144C(5) of the Act directed the AO to allow deduction of interest expenditure of Rs.6,99,42,651, under section 57(iii) of the Act against the interest income of Rs.4,23,07,499, offered under the head "income from other sources". The learned DRP further directed the AO to reduce the inventory valuation in schedule 4 of the books of account by the interest expenditure claimed by the assessee. The relevant findings of the learned DRP are reproduced as under:-

*"4.2 Since the facts are same as in last year, respectfully following the same, the AO is cted as under:*

*I. On the facts of the case, since there is a direct nexus between the borrowed funds and the amount advanced, the amount of interest expenditure of Rs. 6,99,42,651/- ( as per submissions dated 14.10.2014) is allowable as deduction under section 57 (iii) against the interest*

income offered as income from other sources of Rs. 4,23,07,499/- (interest on FDR Rs. 73,836+ Interest on ICD 4,22,33,663/-). The AO is directed accordingly to allow deduction of this expenditure under section 57(iii), and allow set off and carry forward of the resultant loss as per law.

II. Further, since the amount advanced as loan has not been used for the purpose of the project, the interest expenditure of borrowed funds is directly linked to the amount advanced on which interest income taxable under the head income from other sources has been earned, cannot be considered under the head business or profession or for capitalization as project cost at all. Although, the AO has not discussed anything on this aspect in the assessment order, the amount capitalised Rs.6,99,42,651/- by the assessee under the project cost in schedule 4, cannot be allowed. The AO is directed to reduce the inventory valuation in the books accordingly."

22. We find that while passing the final assessment order, the AO directed the assessee to reduce the inventory amount in schedule 4 of books of accounts from Rs.4,23,07,499, to Rs.6,99,42,651, as per the directions of the learned DRP, however did not recompute the income under the head "income from other sources" and computed the total income of the assessee at Rs.1,11,70,860. The relevant findings of the AO vide final assessment order are reproduced as under:-

"8. Subject to the above remarks, the total income of the assessee is computed as under:-

	Amt. (Rs.)	Amt. (Rs.)
Total Income/(Loss) as per return of income		(31,76,259)
Add: Addition/Disallowance as discussed above		
a. Transfer Pricing Adjustment	1,41,62,850	
b. Disallowance u/s 14A	1,84,268	1,43,47,118
Total Income Assessed...		1,11,70,859
Rounded off to .....		1,11,70,860

8.1 Further, the assessee is directed to reduce the inventory amount in schedule 4 of books of account from Rs.4,23,07,499 to Rs.6,99,42,651/- as per the direction of the Hon'ble DRP."

23. Since the directions of the learned DRP were not completely complied with by the AO while passing the impugned final assessment order, we deem it appropriate to restore this issue to the file of jurisdictional AO limited to the extent of re-computation of total income in compliance of the directions issued by the learned DRP. Accordingly, ground No.5, raised in assessee's appeal is allowed for statistical purposes.

24. The issue arising in ground No.6 and 7, raised in assessee's appeal is pertaining to disallowance under section 14A read with Rule 8D of the Rules.

25. At the outset, from the perusal of the directions issued by the DRP in para 5.1, we find that the assessee did not press its objections against the disallowance of Rs.1,84,268, made by the AO under section 14A read with Rule 8D of the Rules. Accordingly, the AO vide impugned final assessment order made the addition on the aforesaid count. Since the disallowance under section 14A read with Rule 8D has been admitted by the assessee before the learned DRP and no material has been brought on record to show that the aforesaid directions of the learned DRP were subsequently modified in this regard, we find no merits in the grounds raised by the assessee before us challenging its admitted liability. Accordingly, the impugned final assessment order on this issue is upheld and grounds no.6 and 7, raised in assessee's appeal are dismissed.

26. In the result, the appeal by the assessee is partly allowed for statistical purposes.

27. In its appeal, the Revenue has raised the following grounds:-

"1. Whether on the facts and in the circumstances of the case and in law, the Hon'ble DRP has erred in allowing the interest expenditure of Rs.6,99,42,651/- under section 57(iii) of the Income Tax Act against the interest income on loan advanced to its sister concern, without appreciating the fact that the interest expenditure was to be capitalized as per the Income Tax Act and also in the view of the Circular No.2/2007-08 dated 02.07.2007 of RBI that the usage of ECB funds is not permitted for the purpose otherwise than the purpose for which it has been raised or brought in India?

2. The appellant prays that the order of CIT(A) on the above ground be set aside and that of Assessing Officer be restored.

3. The appellant craves leave to amend or alter any ground or add a new ground which may necessary"

28. The only dispute raised by the Revenue, in its appeal, is against the allowance of interest expenditure under section 57(iii) of the Act. Since a similar issue has already been adjudicated in Revenue's appeal for the assessment year 2009-10, our findings/conclusions as rendered therein shall apply *mutatis mutandis* to this appeal, subject to our directions in assessee's appeal for the assessment year 2010-11 on this issue regarding computation of income. Accordingly, we find no infirmity in the directions of the learned DRP in allowing the claim of deduction of interest expenditure amounting to Rs.6,99,42,651, under section 57(iii) of the Act against the interest income offered by the assessee under the head "income from other sources". As a result, the grounds raised by the Revenue are dismissed.

29. In the result, the appeal by the Revenue is dismissed.

Order pronounced in the open Court on 30/08/2023

**Sd/-**  
**PRASHANT MAHARISHI**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 30/08/2023**



*Copy of the order forwarded to:*

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The PCIT / CIT (Judicial);*
- (4) The DR, ITAT, Mumbai; and*
- (5) Guard file.*

*Pradeep J. Chowdhury  
Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai