

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'F': NEW DELHI)**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 5965/Del/2017
(Assessment Year: 2013-14)
ITA No. : 5966/Del/2017
(Assessment Year : 2014-15)**

Addl. CIT, Special Range-7 New Delhi	Vs.	M/s. Power Links Transmission Ltd., 10 th Floor, DLF Tower-A, District Centre, Jasola, New Delhi-110025
PAN No: AABCT7775M		
APPELLANT		RESPONDENT

Revenue By : Sh. Sushma Singh, CIT- DR
Assessee By : Sh. Manoneet Dalal, Adv., Smt. Yishu
Goel, Adv.

Per Anadee Nath Misshra, AM

(A) These two appeals by Assessee are filed against the order of Learned Commissioner of Income Tax (Appeals)- 38 ["Ld. CIT(A)", for short], dated 15.06.2017 for Assessment Year 2013-14 and A.Y. 2014-15 respectively. Grounds taken in this appeal of Assessee are as under:

ITA No:- 5965/Del/2017, A.Y. 2013-14

"1. On the facts and in the circumstances of the case, the Id. CIT(A) erred in law deleting the disallowance u/s 36(1)(iii) on account of interest expense on borrowings amounting to Rs. 5,64,73,054/-.

2. The appellant craves to be allowed to add any fresh ground(s) of appeal and/ or delete or amend any of the ground(s) of appeal.

ITA No:- 5966/Del/2017, A.Y. 2014-15

"1. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in law deleting the disallowance u/s 36(1)(iii) on account of interest expense on borrowings amounting to Rs. 8,63,54,989/-.

2. The appellant craves to be allowed to add any fresh ground(s) of appeal and/or delete or amend any of the ground(s) of appeal."

(B) The only issue in dispute in these two appeals is regarding the disallowances made by the Assessing Officer ["AO" for short] in the corresponding Assessment Years, u/s 36(1)(iii) of Income Tax Act, 1961 ["IT Act", for short] out of assessee's claim for interest expenses. At the time of hearing before us in Income Tax Appellate Tribunal ["ITAT", for short] . representatives of both sides were in agreement that the issue in dispute in both these appeals before us are covered by orders of Coordinate Benches of Income Tax Appellate Tribunal, Delhi dated 08.02.2019 in ITA No. 1809/Del/2016 for A.Y. 2012-13; and dated 21.12.2018 in ITA No. 3869 & 3870/Del/2014 for A.Y. 2007-08 and 2010-11 respectively. The aforesaid orders dated 08.02.2019 and 21.12.2018; copies whereof were filed during appellate proceedings in ITAT in the present appeals before us; were passed in assessee's own case; and the identical issues were decided against Revenue and in favour of assessee. Both sides were in agreement before us at the time of hearing that the

facts and circumstances in the present appeals before us for A.Y. 2013-14 and 2014-15 are same as facts and circumstances for A.Y. 2007-08, 2010-11 and 2012-13 to which aforesaid orders dated 21.12.2018 and 08.02.2019 pertain. It was also brought to our notice that the aforesaid orders dated 21.12.2018 and 08.02.2019 passed by Co-ordinate Benches of ITAT Delhi on identical issues in assessee's own case have been accepted by Revenue, and no appeal has been filed u/s 260A of IT Act, by Revenue. It was also brought to our notice at the time of hearing, by Ld. Counsel for assessee; that the impugned orders of Ld. CIT(A) deleting the disallowances of interest expenses; were based on earlier orders of Ld. CIT(A) on identical issues for A.Y. 2010-11 and A.Y. 2012-13 in which also disallowances of interest expenses were deleted by Ld. CIT(A); and further, that order of Ld. CIT(A) for A.Y. 2010-11 and A.Y. 2012-13 are already confirmed in aforesaid orders dated 21.12.2018 and 08.02.2019 of Co-ordinate Benches of ITAT, Delhi passed in assessee's own case. For ease of reference, the relevant portion of aforesaid order dated 21.12.2018 of Co-ordinate Bench of ITAT, passed in assessee's own case; which was also followed in aforesaid order dated 08.02.2019 of Co-ordinate Bench of ITAT, Delhi in assessee's own case; is reproduced below :

*"(4) We have heard both sides patiently and we have perused the materials on record, including the paper book, synopsis etc. filed in the course of appellate proceedings in ITAT, carefully. We have also considered the judicial precedents referred to in the record and also the precedents brought to our attention, at the time of hearing before us.
(4.1) The common issue involved in both the appeals filed by Revenue is regarding disallowance of interest U/s 36(1)(iii) of I.T. Act. As mentioned earlier, the Ld. DR did not dispute the facts contended by the Ld. Counsel for assessee. The relevant facts are not in dispute. It is not in dispute that the investments in mutual funds had not started till the time, the assessee*

started earning operating income from transmission of electricity. It is also not in dispute that the borrowed funds were entirely used by the assessee for investment in fixed assets for the purposes of business. It is further not in dispute that the assessee had adequate interest free funds of its own for making investments in mutual funds. It is, furthermore, not in dispute that there were contractual restrictions imposed on assessee in respect of utilization of borrowed funds; and also, the assessee was liable for payment of substantial amounts of liquidation damages/pre-payment charges in case the assessee made pre-payment of loan repayments. Thus, it is also not in dispute that due to contractual restrictions and liquidation damages/pre-payment charges, as aforesaid; it was neither prudent for the assessee to divert any part of borrowed funds for non-business purposes; nor was it prudent to make pre-payment of loan repayments even if the assessee had its own interest free funds. In these specific and peculiar facts and circumstances, there is no case for any disallowance of interest U/s 36(1)(iii) of I.T. Act. Moreover, Ld. DR failed to bring any material facts to our notice to distinguish the facts of the assessee with the facts of the judicial precedents on which the Ld. CIT(A) relied upon and on which the Ld. Counsel for assessee relied upon during appellate proceedings in ITAT. The Ld. DR thus failed to make any case for any interference by us with the order of Ld. CIT(A) on this issue.

(4.2) In view of the aforesaid specific and peculiar facts and circumstances of the case, and in view of the foregoing discussion, we decline to interfere with the decision of Ld. CIT(A) on the issue of disallowance of interest U/s 36(1)(iii) of I.T. Act, on merits. Accordingly, both the appeals filed by the Revenue are dismissed."

(C) Neither side has brought any facts and circumstances to our attention in A.Y. 2013-14 and 2014-15 (to which the present appeals before us, pertain) to distinguish from facts and circumstances of A.Y. 2007-08, 2010-11 and 2012-13 (to which aforesaid orders dated 21.12.2018 and 08.02.2019 of Co-ordinate Benches of ITAT, Delhi pertain); or to persuade us to take a view different from the view taken by Ld. CIT(A) in the impugned orders of Ld. CIT(A) in the present appeals before us. In view of the foregoing; and respectfully following the aforesaid orders dated 21.12.2018 and 08.02.2019 of Co-ordinate Benches of ITAT Delhi, passed in assessee's own case on identical issues in identical facts and circumstances [which

have also been accepted by Revenue (as aforesaid)]; we decline to interfere with the impugned appellate orders of Ld. CIT(A) in both the appeals before us. Accordingly, in the facts and circumstances of the two appeals before us; the issues in dispute in both the appeals before us are decided in favour of assessee and against Revenue. Both these appeals before us are dismissed.

Order pronounced in the open court on 02/03/2021.

Sd/-

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Sd/-

**(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER**

Dated: 02/03/2021

Vinita

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI