IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "B", MUMBAI

BEFORE SHRI D.T. GARASIA, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA Nos.2562/M/2013 & 4852/M/2015
Assessment Years: 2009-10 & 2005-06

Asst. Commissioner of Income-tax, 11(3), Room No.446, 4th Floor, Aayakar Bhavan, Mumbai 400 020	Vs.	Shri Nishith Desai, Prop. of Nishith Desai Associates, 94-B, Mittal Court, Nariman Point, Mumbai – 400 021 **PAN: AAAPD8418K**
(Appellant)		(Respondent)

ITA No.2439/M/2013
Assessment Year: 2009-10

Mr. Nishith M. Desai, Prop: Nishith Desai Associates, 94B, Mittal Court, Nariman Point, Mumbai – 400 021 **PAN: AAAPD8418K**	Vs.	The Addl. Commissioner of Income-tax, Range 11(3), Mumbai
(Appellant)		(Respondent)

Present for:
Assessee by : Shri Firoze B. Andhyarujina, A.R.
Revenue by : Shri N.P. Singh, D.R.

Date of Hearing : 23.02.2017
Date of Pronouncement : 28.04.2017

O R D E R

Per D.T. Garasia, Judicial Member:

The above titled appeal and two cross appeals have been preferred against the orders dated 11.01.2013 & 19.09.2015 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)]-2 Mumbai relevant to assessment year 2009-10 & 2005-06 respectively.

2. Now we will deal with ITA No.4852/M/2015 which is Department's appeal for assessment year 2005-06.

ITA No.4852/M/2015

3. The Revenue has taken the following grounds of appeal:-

> "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the deduction u/s 57 of the Income-tax Act, 1961 claimed under the head "Income from Other Sources" amounting to Rs.53,65,251/-.
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> 2. On the facts and in the circumstances of the and in law, the CIT(A) has erred in deleting the additions made by the AO on account of Financial Expenses amounting to Rs. 2,94,754/- out of total expenses claimed amounting to Rs.25,33,850/- under the head "Financial Expenses".
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> 3. The appellant prays that the order of the CIT(Appeals) on the above grounds be set aside and that of the Assessing officer be restored.
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> 4. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

4. The short facts of the case are as under:

Assessee filed a return of income for assessment year 2005-06 on 30.05.2005. The return was processed under section 143(3) read with section 147 of the Income Tax Act. The assessee in computation of income has claimed interest amount of Rs.53,65,251/- as interest paid to HDFC Ltd. and claimed the deduction under section 57 of the Act. The Ld. A.R. submitted that this loan of Rs.7 crores was taken from HDFC Ltd. The Ld. A.R. explained that the said loan was taken for purchase of debentures of two companies namely Makrupa Chemicals Pvt. Ltd. and TV Zine India.com Pvt. Ltd. to the tune of Rs.7,20,65,400/-. The Assessing Officer (hereinafter referred to as the AO) observed that HDFC Ltd. gives loan for housing purpose. The said loan was also given only for the purpose of housing loan against flat No.51 which is established from the interest certificate obtained from HDFC Ltd. The said certificate contains that this is to certify that Mr. Desai Nishith has been granted a housing loan of Rs.7 crores in respect of property i.e. Flat No.51, NCPA residential apartment. The AO was of a view that the above certificate states that loan of Rs.7 crores is housing loan given by HDFC Ltd. In the said certificate it is categorically mentioned that

certificate is issued for claiming deduction under section 24(b) of the Income Tax Act, 1961, according to the loan application form submitted by the assessee in his submission dated 11.08.14 in Annexure 21, type of loan : assessee has taken home loan. The property Flat No.51, NCPA residential apartment is not in the name of the assessee. The assessee also confirmed that assessee has purchased residential flat No.51 at NCPA residential apartments, Sir Dorabji Tata Road, Nariman Point, Mumbai by acquiring debentures of Makrupa Chemicals Pvt. Ltd. whose principal asset is said flat and debenture of TV Zine India.com Pvt. Ltd. The confirmatory letter states that where title to an immovable property is represented by the securities issued by co-operative societies or a limited company, which directly or indirectly owned the flat or the building, the loan for acquisition of such property is secured by pledge of the debenture and classified as housing loan. Therefore, above loan obtained by the assessee was regarded as housing loan. The assessee has submitted that assessee has purchased the debenture out of the loan secured by the house. Assessee availed this loan for purchase of said debenture with full knowledge and acquaintance of HDFC Ltd. The AO was of a view that the loan taken by the assessee is a housing loan and no deduction can be provided to the assessee in any provisions of said chapter 4. The assessee has claimed the deduction under section 57 of the Act which can be allowed, if any other expenditure not being capital in nature laid out or expediently fully and exclusively for the purpose of making or earning such income. The loan was taken from HDFC Ltd. is not used for housing and same was used for purchase of debentures. Therefore, the assessee has contended that assessee has got the huge money of interest out of which 10% is applied in debentures and assessee had indirect ownership of the property, therefore AO was of a view that assessee is not entitled for deduction under section 57(iii) of the Income Tax Act, 1961. The AO also discussed that the assessee has taken loan from HDFC Ltd. as a housing loan and there was no commercial justification for purchasing the debenture. Therefore, AO also examined the detail about

company TV Zine India.com Pvt. Ltd. and Makrupa Chemicals Pvt. Ltd. The share holding of the companies which are as under:

Name of the Company	Share Holders
TV Zine India.com Pvt. Ltd.	Nishit Desai 5010 shares of Rs.10 each Swati Nishit Desai 5000 shares of Rs.10 each Vikram Shroff 1 share of Rs.10 each Devang Dhruva 1 share of Rs.10 each
Makrupa Chemicals Pvt. Ltd.	Nishit Desai 10 shares of Rs.10 each. TV Zine India.com Pvt. Ltd. 9990 shares of Rs.10 each

Devang Dhruva is the employee of the assessee. Swati Nishit Desai is not having taxable income, therefore Nishit Desai is the only owner of this company. The Makrupa Chemicals Pvt. Ltd. was incorporated on 08.09.1989 and it was incurring loss from A.Y. 1994-95 to 2009-10. The AO has also verified the profit & loss account of the said company and he was of the view that the major items in profit & loss account show that there was no activities, there was no salary and no employee. The rent received by the company was for Flat No.51, NCPA residential apartment from Swiss Bank Corporation. Thus, there is consistent loss in the company. The company owns one immovable property i.e. Flat No.51, NCPA residential apartment. The said flat was purchased on 08.05.91. The said company was taken over by TV Zine India.com Pvt. Ltd. by purchasing the equity of face value of Rs.99900/- at premium of about Rs.3400/- per share. Nishit Desai is the substantial shareholder of the company. The flat was given to Swati Desai by company in the status of employee of the company without any rent. But Swati Desai does not possess any special qualification. The return of subsequent year filed by the Makrupa Chemicals Pvt. Ltd. shows only losses. The said company TV Zine India.com Pvt. Ltd. has invested the amount received from Nishit Desai of Rs.3,45,65,400/- in Makrupa Chemicals Pvt. Ltd. The said amount was received on account of debenture for which the Nishit Desai claimed that he

has taken loan from HDFC Ltd. Similarly TV Zine India.com Pvt. Ltd. was also incorporated on 13.09.2000 and that company is also incurring losses. The AO has also verified the profit & loss account of the said company and the address of the company is 94B, Mittal Court, Nariman Point, Mumbai. But the said premises is owned by Nishit Desai. Therefore, AO was of the view that both these companies had never done any business and there was no intention to do the business at all. Assessee was fully aware about the financial position of this company and he was also aware that the company was just paper company. In spite of this fact assessee has purchased the debenture of both these companies by borrowing funds from the bank. The debentures are unsecured and carry interest at a negligible rate of 0.05%. Though the debentures have been issued by two companies actually entire funds have found their way into the company Makrupa Chemicals Pvt. Ltd. Funds transferred by assessee ostensibly through the debenture to TV Zine India.com Pvt. Ltd. were entirely transferred to Makrupa Chemicals Pvt. Ltd. for acquiring entire share capital. The shares were acquired by TV Zine India.com Pvt. Ltd. at a premimum of Rs.3400/- per share. The premium amount does not appear in the balance sheet of the Makrupa Chemicals Pvt. Ltd. Therefore, there is no justification for assessee to advance a huge sum of Rs.7.2 crores against the debentures that are unsecure and carry a negligible interest rate by utilizing borrowed money at substantial interest. Therefore whole the transaction is colourable device for claiming the tax deduction which assessee should have not availed. Therefore AO has relied upon the decision of Hon'ble Allahabad High Court in the case of CIT vs. Swapna Roy 192 Taxman 105 (All) 2010 and on the decision of Hon'ble Gujarat High Court in the case of Kalindi Investments Pvt. Ltd. 129 taxman 219 and held that investment in the said companies which were in losses for several years. This shows that the investment was not done with bonafide intention. This is a colourable device, therefore interest of Rs.79,92,929/- claimed on the

debentures was disallowed by AO. Matter carried to Ld. CIT(A) and Ld. CIT(A) has allowed the claim by observing as under:

> "9.10 The appellant has cited a number of decisions to support his case. The appellant has cited the decision of Hon'ble Supreme Court in the case of Rajendra Prasad Moody (supra), which supports the case of the appellant directly. The relevant part of this decision is as under:
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> 3. The expenditure to be deductible under s. 57(iii) must be laid out or expended wholly and exclusively for the purpose of making or earning such income. The argument of the Revenue was that unless the expenditure sought to be deducted resulted in the making or earning of income, it could not be said to be laid out or expended for the purpose of making or earning such. income. The making or earning of income, said the Revenue, was a sine qua non to the admissibility of the expenditure under s. 57(iii) and, therefore, if in a particular assessment year there was no income, the expenditure would not be deductible under that section. The Revenue relied strongly on the language of S. 37(1) and, contrasting the phraseology employed in s. 57(iii) with that in s. 37(i), pointed out that the legislature had deliberately used words of narrower import in granting the deduction under s. 57(iii). Sec. 37(l) provided for deduction of expenditure laid out or expended wholly and exclusively for the purpose of the business or profession computing the income chargeable under the head Profits or gains of business or profession". The language used in s. 37(1) was "laid out of expended—for the purpose of the business or profession" and not "laid out or expended—for the purpose of making or earning such income" as set out in s. 57(iii). The words in s. 57(iii) being narrower, contended the Revenue, they cannot be given the same wide meaning as the words in s. 37(l) and hence no deduction of expenditure could be claimed under s. 57(iii) unless it was productive of income in the assessment year in question. The contention of the Revenue undoubtedly found favour with the High Court but we do not think we can accept it. Our reasons for saying so are as follows:
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> 4. What s. 57(iii) requires is that the expenditure must be laid out or expended wholly and exclusively for the purpose of making or earning income. It is the purpose of the expenditure that is relevant in determining the applicability of s. 57(iii) and that purpose must be making or earning of income. Sec. 57(iii) does not require that this purpose must be fulfilled in order to qualify the expenditure for deduction. It does not say that the expenditure shall be deductible only if any income is made or earned. There is in fact nothing in the language of S. 57(iii) to suggest that the purpose for which the expenditure is made should fructify into any benefit by way of return in the shape of income. The plain natural construction of the language of s. 57(iii) irresistibly leads to the conclusion that to bring a case

within the section, it is not necessary that any income should in fact have been earned as a result of the expenditure. It may be pointed out that an identical views was taken by this Court in Eastern Investments Ltd. vs. CIT (1951) 20 ITR 1 (SC): TC41R.491, where interpreting the corresponding provision in s.12(2) of the Indian IT Act, 1922, which was ipsissima verba in the same terms as s. 57(iii), Bose J., speaking on behalf of the Court, observed:

> "It is not necessary to show that the expenditure was a profitable one or that in fact any profit was earned."

It is indeed difficult to see how, after this observation of the Court there can be any scope for controversy in regard to the interpretation of S. 57(iii).

5. It is also interesting to note that, according to the Revenue, the expenditure would disqualify for deduction only if no income results from such expenditure in a particular assessment year, but if there is some income, howsoever small or meagre, the expenditure would be eligible for deduction. This means that in a case where the expenditure is Rs.1,000, if there is income of even Re.1, the expenditure would be deductible and there would be resulting toss of Rs. 999 under the head "Income from other sources". But if there is no income, then, on the argument of the Revenue, the expenditure would have to be ignored as it would not be liable to be deducted. This would indeed be a strange and highly anomalous result and it is difficult to believe that the legislature could have ever intended to produce such illogicality. Moreover, it must be remembered that when a profit and loss account is cast in respect of any source of income, what is allowed by the statute as proper expenditure would be debited as an outgoing and income would be credited as a receipt and the resulting income or loss would be determined. It would make no difference to this process whether the expenditure is X or Y or nil; whatever is the proper expenditure allowed by the statute would be debited. Equally, it would make no difference whether there is any income and if SO, what, since whatever it be, X or Y or nil, would be credited. And the ultimate income or loss would be found. We fail to appreciate how expenditure which is otherwise a proper expenditure can cease to be such merely because there is no receipt of income. Whatever is a proper outgoing by way of expenditure must be debited irrespective of whether there is receipt of income or not. That is the plain requirement of proper accounting and the interpretation of s. 57(iii) cannot be different. The deduction of the expenditure cannot, in the circumstances, be held to be conditional upon the making or earning of the income.

6. It is true that the language of s. 37(1) is a little wider than that of S. 57(iii), but we do not see how that can make any difference in the

true interpretation of s. 57(iii). The language of s. 57(iii) is clear and unambiguous and it has to be construed according to its plain natural meaning and merely because a slightly wider phraseology is employed in another section which may take in something more, it does not mean that s. 57(iii) should be given a narrow and constricted meaning not warranted by the language of the section and, in fact, contrary to such language.

This view which we are taking is clearly supported by the observations of Lord Thankerton in Huges vs. Bank of New Zealand (1938) 6 ITR 636 (HL): TC16R.381, where the learned Law Lord said:

> "Expenditure in course of the trade which is unremunerative is none the less a proper deduction, if wholly and exclusively made for the purposes of the trade. It does not require the presence of a receipt on the credit side to justify the deduction of an expense."

7. We find that the same view has been taken by the Madras High Court in Appa Rao vs. CIT (1962) 46 ITR 511 (Mad) and Mohamed Ghouse vs. CIT (1963) 49 ITR 127 (Mad): TC1 5R. 1170, the Bombay High Court in Ormerods (India) (P) Ltd. vs. CIT (1959) 36 ITR 329 (Bom). TC41R.658, the Allahabad High Court in Chail Behari Lal vs. CIT (1960) 39 ITR 696 (All) : TC41R.659, the Madhya Pradesh High Court in CIT vs. Dr. Fida Hussain G. Abbasi (1969) 71 ITR 314 (MP): TC41R.666, the Kerala High Court in M.N. Ramaswamy Iyer vs. CIT (1969) 71 ITR 218 (Ker): TC41R. 667 and the Orissa High Court in CIT vs. Gopal Ch. Patnaik (1978) 111 ITR 86 (Ori) : TC41R.668. This view is eminently correct as it is not only justified by the language of s. 57(iii) but it also accords with the principles of commercial accounting. The contrary view taken by the Patna High Court in Maharajadhiraj Kameshwar Singh vs. CIT (1957) 32 ITR 377 (Pat). TC41R.656 and Calcutta High Court in Madanlal Sohanlal vs. CIT (1963) 47 ITR 1 (Cal). TC41R,655 must in the circumstances be held to be incorrect.

9.11 It may be seen from the above decision that Hon'ble Supreme Court has held that the expenditure to be deductible under section 57(ii) must be laid out or expended wholly and exclusively for the purpose of making or earning such income. It is the purpose of the expenditure that is relevant in determining the applicability of section 57(iii) and that purpose must be making or earning of income. Section 57(iii) does not say that the expenditure shall be deductible only if any income is made or earned. There is in fact nothing in the language of section 57(iii) to suggest that the purpose for which the expenditure is made should fructify into any benefit by way of return in the shape of income. The plain natural construction of the language of section 57(iii) irresistibly leads to the conclusion that to bring a case within the section, it is not necessary that any income should in fact have been earned as a result of the expenditure. This is exactly the case of the appellant and hence in view of this Supreme

Court decision, the appellant is entitled for deduction of interest under section 57(iii) of the Act.

9.12 In another case of New Sawan Sugar & Gur Refining Co. Ltd, the question was as to "whether, on the facts and in the circumstances of the case, the Tribunal was right in allowing the expenditure of Rs.27,000 paid to M/s K.C. Thapar & Bros. (F) Ltd, as a deductible expense under section 37(1) of the IT Act, 1961, relating to the AY 1972-73?" In this case, while citing the decision of Supreme Court in the case of Rajendra Prasad Moody (supra), Hon'ble Calcutta High Court came to the following conclusion:

> 10. The finding of the Tribunal is that the expenditure was reasonable on the facts of this case and that it was wholly and exclusively laid out for the purpose of business. Although there may be disagreement as to whether the expenditure was for the purpose of business as no contention was raised before the Tribunal that the assessee only derived lease rent which could not be termed as business activity, there cannot be any dispute that it was wholly and exclusively laid out or expended for the purpose of making or earning the income. We are of the view that on the facts of this case, the Tribunal came to a correct conclusion regarding the allowability of the expenditure in question.

9.13 Similar decisions have been rendered in the cases of Sassoon J. David & Co. P. Ltd, 118 ITR 261 (SC) and Jayshree Tea & Industries Ltd, 272 ITR 193 (Cal), as cited by the appellant, although they are in the context of business expenditure deductible under section 37(1) of the Act. In the case of Beam Estates (P) Ltd, 15 Taxmann.com 386 (Delhi) cited by the appellant (supra) Hon'ble ITAT has observed that:

> "The assessee had received loan from NIS and the opening balance thereof was Rs. 1, 02,10,182 and interest thereon was amounted to Rs. 7,10,916. The assessee had advanced a sum of Rs. 1 crore out of the above to MGS. Rs. 13,50, 000 out of the above were recalled and the opening balance thereon as on 1-4-2005 was Rs.86,50,000. Interest earned on the same was Rs.6,92,000. Then the interest paid by the assessee to NIS to the proportion of the amount advanced came to Rs.6,14,992. Hence, admittedly in earning the income of Rs.6,92,000, the assessee had spent Rs.6,14,992 as interest on amount borrowed. Since the interest earned on amount advanced was directly correlated to the interest spent on amount borrowed, there was no infirmity in the directions of the Commissioner (Appeals) that against the interest income of Rs.6,92,000, Rs.6,14,992 should be allowed as expenditure and, hence, the net taxable income under other sources will be Rs.77,008 only. Hence, there was direct nexus between the amount advanced and amount borrowed and, hence, the order of the Commissioner (Appeals) was to be affirmed."

9.14 Above decision is directly in favour of the appellant as the issue involved in the above case is exactly identical to the issue involved in the case of the appellant.

915 It may be noted that in assessment year 2009-10, my Ld. Predecessor has not agreed with the contentions of the appellant and has upheld the order of the AO disallowing the claim of deduction of interest under consideration. With due respect and regard, I do not agree with the view of my Ld. Predecessor. It is seen from the said appellate order that my Ld. Predecessor has not formed an independent view and has only reiterated the findings of the AO including the aspect of 'lifting of veil'. Such an issue of "lifting of veil" is not involved at all in the present case. The simple facts are that the appellant had taken loan of Rs. 7 crores from HDFC Ltd (in the form of a Housing Loan) and had invested the whole amount in purchasing the debentures of the two companies namely Makrupa and TVZine. Since Makrupa was the owner of the concerned residential property i.e. flat No. 51, NCPA Apartments, Apsara co-operative Housing Society, the appellant thus indirectly became entitled to the ownership of the said residential property (it may be noted that the debentures purchased by the appellant were convertible into shares of the companies at the option of the appellant). Hence it cannot be said that there was any colourable device. The utilisation of loan given by the HDFC Ltd was also very much in the knowledge of the bank (i.e. HDFC) because the relevant documents for securing the said loan including the original title documents held by Makrupa in respect of flat No. 51, NCPA Apartments, Apsara cooperative Housing Society along with the original share certificate in this regard issued by Apsara co-operative Housing Society have also been pledged as security with the bank.

9.16 The principle of "lifting of veil" would be applicable only in those cases, where the transaction can be termed to be "sham" or "a transaction in Nullity". In the present case, there is no such allegation made by the AO. At the most, the AO could have only questioned the commercial expediency of the above transaction. However, even that stands proved from the discussion made above. The appellant by virtue of investment in debentures had taken over the company Makrupa which owned the flat No. 51 in NCPA Apartments in Apsara co-operative Housing Society. The said company Makrupa had to repay a deposit taken from erstwhile tenant of the property owned by the company. For that purpose, the appellant had to borrow money to infuse into the company. However, the appellant wanted to secure the funds to be infused by him so that in the event of any future liability on the company, the said funds remain secure. Therefore, it was considered prudent by the appellant to subscribe to the debentures of the company so that it can return the deposit to the tenant. Under this arrangement, whereas there was a possibility of a higher interest income also, the more important consideration was that the appellant was entitled to recover atleast the amount equivalent to what was borrowed from HDFC. If this was not done, the appellant may have

lost all the money by subscribing to shares and he would have been less secure and would have been forced to pay the money borrowed from HDFC. Therefore, this was a prudent commercial decision on the part of the appellant to invest in debentures, more so from the point of view of liability management.

9.17 It is also not the allegation of the AO that the transaction was not done at arm's length. When the debentures were issued, the interest rates prevailing in the market were very low. However, the debenture holder i.e. the appellant was entitled to a higher rate of interest in the event the company makes good profit. Now, Makrupa has actually turned around and has made brisk business over the last 2 years through the franchisee store. The appellant contends that depending on the success of this, more stores may come up. Thus, there is a significant upside to investing in debentures purely in terms of income generation and also to secure the investment.

9.18 The appellant's contention that the predominant intention of investment in debentures was to obtain controlling interest in the company sooner or later as the debentures are convertible, has to be appreciated. Though the rate of interest payable to HDFC is 10.5%, there is a possibility that the appellant may earn upto 18% p.a., if the company makes profit; including from sale of flat or otherwise.

9.19 In this regard, it must be understood that any assessee is entitled to conduct its business as per its own prudency. The transactions undertaken by the appellant cannot be considered either to be sham or a colourable device in any manner, as there is no undue tax gain derived by the appellant. Had the appellant directly purchased the said flat No. 51, NCPA Apartments, Apsara co-operative Housing Society, the appellant would have been entitled to deduction of entire interest under section 24 of the Act. So both way the appellant could not have been denied deduction of interest. In this regard, I would like to cite the case of CWT vs Arvind Narottam, 173 ITR 479 (SC), where three trust deeds were executed by Narottam Lalbhai for the benefit of his son Arvind (a minor) in such a manner so as to reduce the wealth tax liability on the assessee (Arvind Narottam). Practically all properties in that case were kept outside the purview of wealth tax through trust deeds executed in a novel way. The matter which was contested by the Department (which tried to tax the wealth of the trust in the hands of the assessee) up to Supreme Court was decided against the revenue and in favour of the assessee because nothing could be found in the trust deeds which could be held illegal or unlawful. In another case of Muthuram Agarwal vs State of Madhya Pradesh, 87 AIR 109, it has been held that a person cannot be taxed on the basis of inference or analogy without a provision in the statute applicable to the facts of his case.

9.20 The appellant has every right to plan his affairs to reduce the tax incidence. In the case of Azadi Bachao Andolan, 263 ITR 706 (SC), it has been held that every attempt at tax planning cannot be held to be

illegitimate and every person is entitled to claim within the law all the legitimate advantages. In the case of Bunyan and Berry, 222 ITR 831 (Gujarat), while commenting on the decision in the case of McDowell & Co, 154 ITR 148 (SC), Hon'ble Gujarat High Court has observed as under:

> "The court (i.e. the Supreme Court in the case of McDowell) nowhere said that every action or inaction on the part of the taxpayer which results in reduction of tax liability to which he may be subjected in future, is to be viewed with suspicion and be treated as a device for avoidance of tax irrespective of legitimacy or genuineness of the act; an inference which unfortunately in our opinion, the Tribunal apparently appears to have drawn from the enunciation made in McDowell's case [1958] 154 ITR 148 (SC). The ratio of any decision has to be understood in the context it has been made. The facts and circumstances which led to McDowell's decision leaves us in no doubt that the principle enunciated in the above case has not affected the freedom of the citizen to act in a manner according to his requirements, his wishes in the manner of doing any trade, activity or planning his affairs with circumspection, within the framework of law, unless the same fall in the category of colourable device which may properly be called a device or a dubious method or a subterfuge clothed with apparent dignity."

9.21 Other decisions cited by the appellant also support his case for deduction of interest of Rs.53,65,251/- under section 57(iii) of the Act. The appellant has also argued that in the preceding years, the claim of interest made by the appellant under section 57(iii) of the Act was consistently allowed in assessment proceedings u/s 143(3) and hence the principle of consistency has been violated in identical circumstances. In this regard, the appellant has cited the decision of the Bombay High Court in the case of CIT vs. Naishadh V. Vachharajani (supra). This argument of the appellant also cannot be ignored. Hence, the AO is directed to grant deduction of Rs.53,65,251/- under section 57(iii) of the Act. Since, I have decided the claim of the appellant under section 57(iii) of the Act in his favour, I am not discussing the alternate claim of the appellant regarding deduction under section 24 of the Act.

5. The assessee is in appeal in respect of not following Ld. CIT(A) for A.Y. 2009-10 in which the Ld. CIT(A) has upheld the action of AO while in A.Y. 2005-06 the Ld. CIT(A) has allowed the claim of the assessee.

6. Ld. D.R. relied upon the order of Ld. CIT(A) for A.Y. 2009-10 and submitted that the AO has verified the details submitted by the assessee. From the fact it is clear that assessee has taken the loan from HDFC Ltd. for

purchase of property i.e. Flat No.51 and the assessee has used this money to repay the interest on pre-deposit taken from UBS AG and to pay for the consideration of purchase of shares of Makrupa Chemicals Pvt. Ltd. and TV Zine India.com Pvt. Ltd. Assessee has passed on these monies through instrument of Participating Compulsorily Convertible Unsecured Debentures (in short PCCUD). The assessee has subscribed 3750 PCCUD of Rs.10,000/- each total into Rs.3,75,00,000/- in the company M/s. Makrupa Chemicals Pvt. Ltd. The Ld. D.R. submitted that assessee has taken loan from HDFC for purchase of property of flat No.51 NCPA apartments. The assessee has made of huge money to repay the interest free deposit taken from UBS AG and also to pay for consideration for the purpose of purchase of shares of M/s. Makrupa Chemicals Pvt. Ltd. by company M/s. TV Zine India.com Pvt. Ltd. The subscription agreement clearly says that money of PCCUD will be used for repayment of interest free deposit taken from the UBS Warburg. The assessee has passed on Rs.3,45,70,000/- to M/s. TV Zine India.com Pvt. Ltd. through instrument of PCCUD. The assessee had subscribed Rs.3,45,70,000/- (3450 PCCUD of Rs.10,000 each) in the TV Zine India.com Pvt. Ltd. The subscription agreement (para 3) clearly says that money will be used by TV Zine India.com Pvt. Ltd. for purchasing the shares of Makrupa Chemicals Pvt. Ltd. Therefore, the assessee has taken loan only to purchase flat No.51, NCPA apartment by acquiring company M/s. Makrupa Chemicals Pvt. Ltd. and also to clear the interest free deposit taken by M/s. Makrupa Chemicals Pvt. Ltd. from UBS Warburg while letting out the property by Makrupa Chemicals Pvt. Ltd. The assessee and his wife have borrowed the money from HDFC for the purpose of purchasing the property by acquiring the company Makrupa Chemicals Pvt. Ltd. The assessee's contention is that the assessee has borrowed the money to invest in PCCUD of these two companies to make belief arrangement. The apparent is not real. The real purpose for borrowing the money from HDFC is not to invest in PCCUD for the purpose of earning income from PCCUD but to invest in the house property through acquiring the

company Makrupa Chemicals Pvt. Ltd. Therefore AO is justified in not allowing the claim of the assessee.

7. The Ld. Sr. Counsel argued that it is a simple proposition that assessee has borrowed funds from HDFC Ltd. to the tune of Rs.7 crores and invested the said funds in purchase of debentures of two companies. The assessee has paid the interest of Rs.79,92,929/- in assessment year 2009-10 and in assessment year 2005-06 assessee has paid the interest of Rs.53,65,251/- to HDFC Ltd. and claimed the deduction under section 57 of the Act. The assessee claimed the deduction of said amount only under section 57 and not under section 24 of the Act. The Ld. Counsel argued that it is our simple proposition that assessee has borrowed an amount of Rs.7 crores from HDFC on 02.11.02 in A.Y. 2002-03. On the same day, out of the sum of Rs.7 crores borrowed, assessee acquired debentures of two private limited companies namely M/s. Makrupa Chemicals Pvt. Ltd. and M/s. TV Zine India.com Pvt. Ltd. The debenture holder is entitled to invest which can go up to 18%. Besides the debenture holder has also option to convert his debentures into shares at any time from expiry of six months or before 20 years from the date of issue of debenture. The assessee has earned the interest income on debentures of M/s. Makrupa Chemicals Pvt. Ltd. and M/s. TV Zine India.com Pvt. Ltd. The assessee has also paid interest on the said loan from HDFC. The said interest earned and interest payment is shown under the head “Income from other sources” in terms of sections 56 & 57 of the Act. The said borrowings were entirely used for the purpose of acquiring the said debentures. This is evident from the copy of the bank statement indicating the entry of the amount borrowed of Rs.7 crores from HDFC and amount paid towards the investment and debenture of M/s. Makrupa Chemicals Pvt. Ltd. and M/s. TV Zine India.com Pvt. Ltd. It is a conscious decision and commercial decision by the assessee to invest in said debentures. The said debentures are convertible into shares in respect of company. Whenever housing finance is

provided by HDFC to borrowers, the borrowers generally produce the shares and debentures of the co-operative society or a company as the case may be which directly or indirectly enhance the flat or building. Therefore, such loan has been classified as housing loan by HDFC according to their policy. The said loan is secured by original debenture issued by M/s. Makrupa Chemicals Pvt. Ltd. and M/s. TV Zine India.com Pvt. Ltd. The original document was held by M/s. Makrupa Chemicals Pvt. Ltd. in respect of flat No.51, NCPA Apartment. The original share certificate issued by Apsara Co-operative Housing Society Ltd. to M/s. Makrupa Chemicals Pvt. Ltd. and 12 documents were executed at the time of taking the loan and investment in debentures. Therefore, HDFC was fully aware that loan guaranteed by them was being directly invested in the said debentures. As per section 57 of the Act certain deductions are to be made in computing the income chargeable under the head "Income from other sources" and one such deduction is that set out in clause (iii) which says that any expenditure laid out or expended wholly and exclusively for the purpose of making or earning such income. The earning of income or sufficiency or adequacy of the same is not a pre-requisite for claiming the deduction under section 57. It does not say that expenditure shall be deductible only if income is earned. The copy of the bank statement indicates that assessee has borrowed Rs.7 crores from HDFC for the purpose of purchasing the debentures. The nexus between borrowing and utilization of the borrowing is established beyond a shadow of doubt. The assessee has submitted a copy of certificate from HDFC for interest paid, the copy of the application for loan submitted to HDFC, copy of debenture certificate of M/s. TV Zine India.com Pvt. Ltd. and the copy of bank statement indicating the entry of loan taken of Rs.7 crores from HDFC deposited and indicating entry for its utilization for purchase of debentures of M/s. Makrupa Chemicals Pvt. Ltd. and M/s. TV Zine India.com Pvt. Ltd. The principle of lifting of veil would not be applicable in those cases where the transaction can be termed to be sum or the transaction in nullity. In the present case, there is no such

allegation by the AO. However, in this case it can be questioned only on commercial expediency of the above transaction. The assessee by virtue of investment in debenture has taken over the company M/s. Makrupa Chemicals Pvt. Ltd. which owns the flat No.51, NCPA Apartment, Apsara Co-operative Housing Society Ltd. The said M/s. Makrupa Chemicals Pvt. Ltd. had to repay the deposit taken from erstwhile tenant of the property owned by the company. For that purpose assessee had to borrow the money to infuse into the company. However, the assessee wanted to secure the funds between investors by him so in the event of future liability on the company the said fund remain secured therefore it was conscious decision of assessee to subscribe debentures of this company so that it can return the deposit to the tenant. Therefore, this was a commercial decision of the assessee. The assessee is entitled to conduct his business as per his own prudency. Therefore, transaction taken by the assessee cannot be considered as to be sum or co-reliable devices.

The claim of the deduction of interest paid to HDFC Ltd. under section 57 of the Act has been consistently accepted by the Department from A.Y. 2003-04 to A.Y. 2008-09 in scrutiny assessment completed under section 143(3) by Additional Commissioner/Assistant Commissioner and it was also accepted in A.Y. 2005-06 by the Ld. CIT(A). The Ld. A.R. relied upon the decision of CIT vs. Naishadh Cachharajani wherein the Hon'ble Bombay High Court has held that principles of consistency and reasonable expectation on the same set of facts in law on the subject a different view cannot be taken. The AO could not take the different view in subsequent year and the Ld. A.R. relied upon the decision of Rajendra Prasad Moody 115 ITR 519 (SC). He also relied upon the decision of CIT vs. Navsara Sagar 185 ITR 564 and the Ld. A.R. also relied upon the decision relied by the Ld. CIT(A) for A.Y. 2005-06 in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd. 227 ITR 172, Sasson J. David & Co. (P) Ltd. 118 ITR 261 (SC), Jayshree Tea & Industries Ltd. 272 ITR 193, Express Newspapers Ltd. 53 ITR 250 (SC), Ormerods

(India) (P) Ltd. 36 ITR 329 (Bom), Radhasoami Satsang Saomi Bagh s. CIT 193 ITR 321 & CIT vs. Gopala Naicker Bangura 344 ITR 297.

8. We have heard the rival contentions of both the parties. Looking to the facts and circumstances of the case it is submitted fact on record that assessee has taken the loan from HDFC Ltd. and interest paid to bank and which was claimed under section 57(iii) of the Act and under the head 'Income from other sources' on the ground that the borrowings from HDFC Ltd. have been directly utilised for acquisition of debenture of Makrupa Chemicals Pvt. Ltd. and TV Zine India.com Pvt. Ltd. The AO was of a view that the interest paid to HDFC Ltd. is not allowable under section 24 and section 57 of the Act. The Ld. CIT(A) has considered the submission of the assessee and held that the assessee has purchased the debentures of two companies i.e. 3457 debentures of TV Zine India.com Pvt. Ltd. and 375 debentures of Makrupa Chemicals Pvt. Ltd. and total amount was invested of Rs.3,20,65,400/-. The term of debenture was 20 years and assessee has invested this money. Therefore, as per the provisions of section 57 of the Act any expenditure laid out or expended wholly and exclusively for the purpose of making the income under the head 'Income from other sources' will be allowed as deduction. Assessee has borrowed the loan in the name of housing loan but it has been utilised for investing in debentures on the interest income. Therefore, the interest expenditure incurred on borrowed loan as an expenditure laid out wholly and exclusively for the purpose of earning the interest of income under the head 'Income from other sources'. The Ld. CIT(A) has cited the decision of Hon'ble Supreme Court in the case of Rajendra Prasad Moody (supra) wherein the Hon'ble Supreme Court has discussed the issue in detail which reads as under:

> "The expenditure to be deductible under s. 57(*iii*) must be laid out or expended wholly and exclusively for the purpose of making or earning such income. The argument of the revenue was that unless the expenditure sought to be deducted resulted in the making or earning of income, it could not be said to be laid out or expended for the purpose of making or earning such income. The making or

earning of income, paid the revenue, was a *sine qua non* to the admissibility of the expenditure under s. 57(*iii*) and, therefore, if in a particular assessment year there was no income, the expenditure would not be deductible under that section. The revenue relied strongly on the language of s. 37(1) and, contrasting the phraseology employed in s. 57(*iii*) with that in s. 37(1), pointed out that the legislature had deliberately used words of narrower import in granting the deduction under s. 57(*iii*). S. 37(1) provided for deduction of expenditure laid out or expended wholly and exclusively for the purpose of the business or profession in computing the income chargeable under the head "Profits or gains of business or profession". The language used in s. 37(1) was "laid out or expended—for the purpose of the business or profession" and not "laid out or expended—for the purpose of making or earning such income" as set out in s. 57(*iii*). The words in s. 57(*iii*) being narrower, contended the revenue, they cannot be given the same wide meaning as the words in s. 37(1) and hence no deduction of expenditure could be claimed under s. 57(*iii*) unless it was productive of income in the assessment year in question. This contention of the revenue undoubtedly found favour with the High Court but we do not think we can accept it. Our reasons for saying so are as follows."

9. From the above judgement the Hon'ble Supreme Court has held that the expenditure to be deductible under s. 57(iii) must be laid out or expended wholly and exclusively for the purpose of making or earning such income. Therefore, we are of the view that the Ld. CIT(A) is justified in allowing the claim of the assessee. We also find the support of the decision in the case of CIT vs. New Savan Sagar and Gar Refining Co. Ltd. 185 ITR 564 (Cal.) wherein they have relied upon the decision of Hon'ble Supreme Court. Therefore, we are of the view that Ld. CIT(A) is justified in his action and our inference is not required. We also find that Ld. CIT(A) has also discussed this issue in his order regarding corporate veil and we are of the view that the assessee's predominant intention of investment in debentures was to obtain, controlling interest in the company on the ground that rate of interest to HDFC Ltd. is 10.5% wherein assessee made the interest at 8.18%. Therefore, the transaction carried out by the assessee cannot be considered to be sham and colourable devices. Therefore, we are of the view that Ld. CIT(A) is justified in his action. Moreover, we also get the supports from the decision of jurisdictional High Court in the case of CIT vs. Naishadh V. Cachharajani 193 ITR 321 wherein it is held that res-adjudicata does not apply to income tax

proceedings. Each assessment year being a unit what is decided in one year may not apply in following year but where a fundamental aspect framing through the different assessment year has been found as fact one way or other, parties have allowed that the proposition to be sustained by not challenging the order. It would not be appropriate to allow the position to be changed in subsequent year. Moreover, it is also held by the Hon'ble Supreme Court that in absence of any material change justifying the revenue to take a different view of the matter, if there was no change, there is no reason to take a different view in a subsequent year. Hon'ble Supreme Court in the case of Radhasoami Satsang vs. CIT (1992) 193 ITR 321 has categorically held as under:

> "…….. Strictly speaking, resjudicata does not apply to income-tax proceedings. Though, each assessment year being a unit, what was decided in one year might not apply in the following year, where a fundamental aspect permeating through different assessment years has been fond as a fact one way or the other and parties have allowed that position to be sustained by no challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year."

The same view has been taken by the Hon'ble Delhi High Court in CIT vs. Neo Poly Pack (P) Ltd. (2000) 245 ITR 492. Respectfully following the decision of Hon'ble Supreme Court in the case of Radhasoami Satsang Saomi Bagh (supra), we are of the view that the AO has allowed the claim while completing the assessment under section 143(3) for A.Y. 2003-04, 2004-05, 2006-07 & 2007-08 & 2008-09. Therefore, respectfully following the decision of jurisdictional High Court in the case of CIT vs. Naishadh V. Cachharajani (supra), we are of the view that the Ld. CIT(A) is justified in allowing the claim. Therefore, we dismiss the departmental appeal for A.Y. 2005-06 and we allow the claim for A.Y. 2009-10. In the result, ground No.1 of the Revenue is dismissed.

Ground No.2

10. This ground relates to financial expenses of Rs.2,94,754/-. The AO has disallowed Rs.2,94,754/- on the ground that assessee has given interest free advance of Rs.51,35,817/- to related concern. The assessee has debited

Rs.25,33,850/- under the head 'Financial expenses' out of which Rs.2,94,754/- pertains to interest paid for working capital loan obtained against the mortgage of property. As against this, assessee has given loans and advances of more than Rs.2 crores shown in the balance sheet. The assessee was asked to explain why this interest paid to working capital loan should not be disallowed. In reply, the assessee contended that the total interest free advances given by him do not exceed total interest free funds available with the assessee, thus the interest free advances are given out of the capital of the assessee. The AO did not accept the contention of the assessee and he disallowed Rs.2,94,754/- . The matter carried to Ld. CIT(A) and Ld. CIT(A) has allowed the claim by observing as under:

> "10.5 Regarding disallowance of financial expenses, it is seen that the same issue has been considered by my Ld. Predecessor in assessment year 2009-10 and the disallowance made by the AO at Rs.22,53,000/- was directed to be deleted. Since the facts are similar in the current year, respectfully agreeing with my Ld. Predecessor, I direct the AO to delete the disallowance of Rs.2,94,754/- on account of financial expenses. **Thus, ground of appeal No.19 is allowed.**

11. We have heard the rival contentions of both the parties. The AO has disallowed financial expenses of Rs.2,94,754/- being interest on working capital loan on the ground that assessee has given interest free advance of Rs.51,35,817/- to his related concern. We find that assessee has produced the balance sheet of 31st March 2004 and submitted that assessee was having sufficient interest free fund lying in his account, therefore disallowance of interest free advance does not arise. The assessee has given the loans to the party on which no interest has been charged but assessee was having sufficient interest free funds, therefore in our opinion the issue in controversy is covered by the decision of Jurisdictional High Court in the case of CIT vs. Reliance Utility and Power Ltd. 178 Taxman 135 (Bom.) In the said judgement Jurisdictional High Court has held that where an assessee has his own funds as well as borrowed funds, then a presumption can be made that for non business purposes funds have been made out from own funds and borrowed funds have

not been used for the non business purposes. Moreover, assessee has established that borrowings have been utilised for the purpose of which it was borrowed, no part of interest on this borrowing should be disallowed even if the assessee has advanced any interest free advances. It is also fact on record that assessee had interest free fund to the tune of Rs.6,77,75,208/- and out of interest free funds assessee has given the loans on which the interest has not been charged is of Rs.51,35,817/-. Therefore, no disallowance can be made. Moreover, we find that the assessee has utilised this borrowings for the purpose of business. Therefore as per the decision of Hon'ble jurisdictional High Court in the case of CIT vs. Bombay Samachar Ltd. 74 ITR 723 (Bom) which supports the case of the assessee, we are of the view that Ld. CIT(A) is justified in his action and our inference is not required at all.

12. In the result, departmental appeal is dismissed.

13. Now we will deal with the assessee's appeal bearing ITA No.2439/M/2013for A.Y. 2009-10.

ITA No.2439/M/2013 (A.Y. 2009-10)

Ground No.1

14. This ground is already adjudicated by us in ITA No.4852/M/2015. Therefore, respectfully following the same, we allow the appeal of the assessee for this assessment year also.

Ground No.2

15. This ground relates to disallowance of Rs.14,43,735/-.

The short facts of the case are as under:

The AO noticed from the detail of business promotion expenses that there was entry of purchase of Honda Civic car. The assessee was asked to explain how this expenditure is allowable as business expenditure. The AO

has recorded the statement of Shefali Garodia under section 131 of the Act and in her statement she has accepted that she was gifted car to her in September-October 2008 and there was no function on the day the RC book was presented in her name but earlier it was in his name. The AO was of the view that the gift of Honda Civic car to Shefali Garodia is mainly due to personal relationship and the assessee has gifted this car for goodwill among other employees but AO was of a view that it was a personal gift, therefore AO has disallowed the expenditure of Rs.14,43,735/- on the said Honda Civic car treated as non business expenditure.

16. The matter carried to Ld. CIT(A) and Ld. CIT(A) has dismissed the appeal of the assessee.

17. The Ld. A.R. submitted that this car was gifted to Shefali Garodia, ex-employee. Mrs. Shefali Garodia had worked in the Nishith Desai Associates for about 14 years and left the firm w.e.f. 16.08.2008 and all her contractual obligations were also discharged on the same day by the firm. She was gifted a Honda Civic car by delivering the same on second and third week of September 2008. This car was gifted for creating goodwill and good feel about the firm as an own organization and organization treats his employee with respect, dignity, love and affection. There was no contractual obligation exist. But Ld. CIT(A) has not considered that this car was given for maintaining goodwill of the firm. Therefore, it may be allowed.

18. On the other hand, Ld. D.R. relied upon the order of Revenue Authorities.

19. We have heard the rival contentions of both the parties. Looking to the facts and circumstances of the case, we find that Shefali Garodia was relieved from assessee's office from 16.08.2008. The car was purchased on 01.09.2008 and in the same month of September 2008 it was transferred to Shefali

Garodia's name. The terms of employment does not provide for giving any car to her. We find that gift of car is purely gratitude. This expenditure was not incurred wholly and exclusively for the purpose of business. We also find during the course of hearing that whether the assessee has given cars to all his employees. The Ld. A.R. fairly admitted that we have not given car to every employee. Therefore, we are of the view that it is a personal gift rather than part of employment or contribution made to his business. We are of the view that every businessman is free to make the expenditure but it must be allowable subject to that it was wholly and exclusively for the purpose of business. Therefore, we are of the view that Ld. CIT(A) is justified in his action and our inference is not required.

20. In the result, this ground of the assessee is dismissed.

Ground No.3

21. This ground relates to disallowance of Rs.5 lakhs being amount paid to Chatrapati Shivaji Maharaj Vasthu Sangrahalaya and Rs.12,35,250/- paid to American India Foundation.

The short facts of the case are that during the course of hearing the AO found that assessee has paid Rs.5 lakhs to Chatrapati Shivaji Maharaj Vasthu Sangrahalaya. The AO was of a view that this publication is not connected to assessee's business. In view of this, expenditure of Rs.5 lakhs was not for business purpose. Similarly, AO has also disallowed Rs.12,35,250/- made to American India Foundation. The assessee did not explain how the payment is connected with assessee's business. In view of this, he has not allowed the claim. The matter carried to Ld. CIT(A) and the Ld. CIT(A) has dismissed the appeal.

22. The Ld. A.R. submitted before us that Rs.5 lakhs has been paid to Chatrapati Shivaji Maharaj Vasthu Sangrahalaya formerly Prince of Wales Museum towards co-publication of book named "Indian life and landscape by

western artists". Assessee was provided 100 copies of said book which have been used by the assessee for presenting to foreign and Indian potential clients, delegates coming from overseas and visiting India to make presentation such as business law and international taxation. Therefore, this expenditure is incurred for enhancing the professional activity and assessee firm has achieved specialization and professional activity has been grown therefore it may be allowed. Ld. A.R. submitted that Rs.12,35,250/- has been paid to international fiscal association. This association is for international taxation association comprises of tax professional all over the world. Therefore, it enhances the knowledge in the field of international taxation. Therefore, it may be allowed as professional expenditure.

23. On the other hand, Ld. D.R. relied upon the order of AO and Commissioner (Appeals).

24. We have heard the rival contentions of both the parties. Looking to the facts and circumstances of the case, we find that assessee had made payment to Chatrapati Shivaji Maharaj Vasthu Sangrahalaya. This amount has been paid to Chatrapati Shivaji Maharaj Vasthu Sangrahalaya towards co-publication of the book named "Indian life and landscape by western artists". Assessee has been provided 100 copies of the said book which assessee has presented to foreign and Indian clients who are coming to India for professional work such as business law and international taxation. Therefore, we have verified the copy of the relevant pages of the book. We are of the view that this expenditure is a business expenditure, therefore we allow the same.

25. We find that assessee has paid Rs.12,50,000/- to International Fiscal Association (IFA) which comprises of tax professionals from world over and NDA has initiated "IFA-Nishith Desai Center for thought leadership in international taxation to look into the emerging issues in international taxation and find new generation solutions for cross border tax issues in a fair and

equitable manner. Therefore, we are of the view that this is a genuine expenditure for professional development. Therefore, we allow the same. Hence, this ground is allowed.

Ground Nos.4 to 10

26. Ground Nos.4, 5, 6, 7, 8, 9 & 10 are related to disallowance of electricity expenses, general office expenses, rent and rate tax expenses and telecommunication expenses.

The short facts of the case are that AO has disallowed Rs.20,000/- for electricity expenses out of Rs.35,77,096/- on the ground that all the expenses are not incurred wholly and exclusively for the purpose of business. Similarly, for general office expenses out of Rs.39,71,783/- AO has disallowed 20% on the ground that the whole expenses are not wholly and exclusively for the purpose of business. Similarly, rent and taxes of Rs.20,000/- out of Rs.1,64,26,153/- was disallowed. Similarly, telecommunication expenses of Rs.20,000/- was disallowed treating as non business expenditure. The matter carried to Ld. CIT(A) and the Ld. CIT(A) has dismissed the appeal.

27. During the course of hearing, the Ld. A.R. submitted that all these expenses are incurred for business and there was no non business purposes, therefore entire expenses should be allowed.

28. The Ld. D.R. submitted that the assessee before Ld. CIT(A) had already admitted that he was not pressing this ground before Ld. CIT(A) in earlier years, therefore this ground may be dismissed.

29. Having heard both the parties, looking to the facts and circumstances of the case, we find that the assessee himself has not pressed this ground. Therefore, appeal of the assessee is dismissed as assessee had conceded before Ld. CIT(A). Therefore, we dismiss all these grounds of appeal.

ITA No.2562/M/2013 for A.Y. 2009-10

Ground No.1:-

30. The AO has observed that assessee has paid salary of Rs.4,80,000/- to his son Mr. Suril Desai. The AO has given show cause notice to the assessee and in reply to the show cause notice, assessee has taken the contention that salary of Rs.40,000/- per month paid to Suril Desai who is qualified of bachelor of science in management and the salary of Rs.40,000/- per month is commensurate with his qualification and experience. The AO tried to verify whether Suril Desai was qualified as lawyer or not and AO was of a view that this expenditure is in excess under section 40A(2)(b), therefore, he disallowed the same.

Matter carried to Ld. CIT(A) and the Ld. CIT(A) has held as under:

> "7.11. I have gone through the issue. Mr. Suril Desai has completed his B.Sc. in Management from Menlo California. The appellant has paid Rs.40,000/- p.m. for the services rendered by Mr. Suril Desai to the appellant. The AO could not establish that Mr. Suril Desai has not done any services to the appellant's business. The AO also could not establish that Mr. Suril Desai is pursuing full time Law course. The appellant has submitted that Mr. Suril Desai is pursuing part time B.L. Course and has attended to the works of the appellant in the remaining time. Further, from the statement recorded from Advocate Bijal Ajinkya by the AO it is seen that the starting salary for the fresh graduates in Law is Rs.60,000/- p.m. Further, it is seen that this expenditure incurred was accepted by the department in earlier assessment year. Considering all these facts, I hold that the payment made to Mr. Suril Desai has to be allowed fully as deduction for Income Tax purpose. I direct the AO to delete the addition."

31. We have heard the rival contentions of both the parties. Looking to the facts and circumstances of the case, we find that the Ld. CIT(A) has held that AO could not establish that Suril Desai has not done any services to assessee's business. Moreover, in this firm the starting salary for fresh graduate is Rs.60,000/- per month, therefore in this year the salary is Rs.40,000/- only. Therefore, Ld. CIT(A) has allowed the claim and our inference is not required.

32. During the course of assessment proceedings, the AO noticed that assessee has debited Rs.1,20,60,755/- under the head "Business expenses". In

this year the expenses were eight fold increase, therefore the business of the assessee does not increase in eight fold. Therefore, why this expenditure has been incurred? The assessee was asked to produce the bills and vouchers for business promotion expenses. The AO was of a view that the business promotion expenses were containing mainly hotel expenditure and gift of Rs.5 lakhs to Chatrapati Shivaji Maharaj Vasthu Sangrahalaya and gift of Rs.3,410/- and Rs.49,194 to Fariyas Hotel. The AO was of a view that this expenditure is not wholly and exclusively for the purpose of business, therefore he disallowed Rs.1 crore from the said expenses. Matter carried to Ld. CIT(A) and the Ld. CIT(A) has verified the claim and disallowed only Rs.27,35,250/- out of Rs.1 crore by observing as under:

> "8.11. I have gone through the details with regard to the other expenses. I am of the view that the Hotel expenses are met out for the business purposes and hence, no disallowance needs to be made. Similarly, the gift expenses are the normal business expenses in the nature of the business carried on by the appellant. In view of this, I hold that the gift expenses also should be allowed as a deduction.
>
> 8.12. Out of the sponsorship expenses, I am of the view that the following expenses cannot be considered as business expenditure:
>
> i. Amount paid to Aarusha Homes P. Ltd. Rs.10,00,000/- (already *a*ccepted by the appellant).
> ii. Amount of Rs.5,00,000/- paid to Chatrapati Shivaji Maharaj Vastu Sangrahalaya. In this case, the amount is paid towards publishing of a book which is not at all connected with the appellant's business. In view of this, the expenditure of Rs.5 lakhs is not considered as expenditure met out for business purposes and hence, should be disallowed.
> iii. Payment of (USD 25,000) Rs.12,35,250/- made to America India Foundation. It appears to be a donation to a foundation and the appellant could not properly explain how this payment is connected with the business carried on by the appellant. In view of this, I hold that Rs.12,35,250/- cannot be allowed as deduction."

33. We have heard the rival contentions of both the parties. Looking to the facts and circumstances of the case, we find that the assessee has given the break up of the total expenses amount of Rs.96,70,308/- pertains to

sponsorship expenses and 20% amount for gift. The assessee has produced the evidence that out of total expenses of Rs.96,70,308/- expenditure towards the conference and sponsorship of seminars and all the expenditure pertain to hotel, food and travelling expenses. Therefore, this expenditure was verified by the Ld. CIT(A) and Ld. CIT(A) has rightly disallowed Rs.27,35,250/- and our inference is not required.

34. In the result, departmental appeal is dismissed.

Ground No.3

35. The AO found that assessee has claimed electricity expenses of Rs.4,80,000/- for 91/92, Mittal Court. The said premises was owned by Prantik Strategic Advisors Pvt. Ltd. The assessee was asked to explain why the electricity expenses have been paid for the premises of which assessee is not an owner of the property. The assessee contended that he is using the premises for business purpose, but AO did not allow the same. Matter carried to Ld. CIT(A) and the Ld. CIT(A) has allowed the claim observing as under:

> "12.3. I have gone through the issue and submissions of the appellant. The AO has no material evidence to show that the appellant has not used these premises for his business purposes. The appellant has stated that due to shortage of space, the appellant is also using the premises of Prantik Strategic Securities Advisors P. Ltd. The appellant has stated that the appellant has not paid any other compensation but meeting out the electricity expenses of the premises for the premises being used by the appellant for his business purpose. I find that there is nothing on record to show that the premises are not used by the appellant for his business purposes. In view of this, the appellant's submissions are accepted and I hold that the electricity expenses are met out for the business purposes of the appellant and it should be allowed as deduction. The AO is directed to delete the addition."

36. We have heard the rival contentions of both the parties. Looking to the facts and circumstances of the case, we find that the assessee submitted that though the premises belongs to Prantik Strategic Advisors Pvt. Ltd. but assessee is one of the shareholder and Swathi Desai is also director of the said company. Since the assessee company was facing shortage of space to

accommodate their employees, they have used the office premises of Prantik Strategic Advisors Pvt. Ltd. adjoining of assessee's existing office. Therefore, the entire electricity expenses were borne by Nishith Desai Associates. The Nishith Desai Associates does not pay any compensation to Prantik Strategic Advisors Pvt. Ltd. for using the said office premises, therefore they have paid the electricity bill. We are of the view that Ld. CIT(A) is justified in allowing the same.

37. The next ground relates to disallowance of financial expenses of Rs.22,53,000/- out of financial expenses. The AO noted that assessee has debited Rs.22,53,000/- under the head financial expenses. The AO was of a view that the said expenditure is incurred on the interest which is interest expenses and assessee has given the interest free advances. Therefore, AO has disallowed the claim. The matter carried to Ld. CIT(A) and the Ld. CIT(A) has allowed the claim by observing as under:

> "14.7 The appellant has submitted the details of loans given, on which interest has been charged as under:

Particulars	Amount (Rs.)	Date on which loan given
Nilesh Baxi	5,00,000	21/07/2007
Mukund Negandhi	10,000	Prior to 31/03/2001
Vikey Overseas	6,00,000	F.Y.2002-03
Makrupa Chemicals Private Limited	1,2 1,99,294	Running Account
TVZinelndia.com Private Limited	2,37,369	Running Account
Ippro Services (India) Pvt. Ltd.	(5,22,663)	Credit Balance
Prantik Strategic Advisors Pvt. Ltd.	1,19,67,999	Running Account
SwiftIndialnc Corporate Services Pvt. Ltd.	31,01,010	Running Account
Sunage India Consultancy Pvt. Ltd.	1,02,946	F.Y. 2008-09

Eastern Energy & Mines (India) Pvt. Ltd.	8,400	31/03/2007
Sedef Trustee Company Pvt. Ltd.	1,200	31/03/2007
	2,82,05,555	

14,8. The AO had disallowed the amount of Rs.22,53,000/- observing that the appellant was not able to explain with respect to fund flow statement, how the appellant has given interest free loan from capital. In this connection, the appellant stated that it is the balance sheet as at the end of the relevant year that is to be considered and not the relevant point of time when these advances are given for the purpose of making disallowance as held by the Bombay High Court in the case of Reliance Utilities & Power Ltd. (178 Taxman 235).

14.9. As regards running account with Makrupa Chemicals Private Limited, TVZinelndia.com Private Limited, Prantik Strategic Advisors Pvt. Ltd. and SwiftIndialnc Corporate Services Pvt. Ltd., the appellant informed that these are the companies where the appellant has his majority shareholding and as and when the said companies need funding, the appellant has provided funds to them out of his own capital. Further, it has been submitted that the financial expenses of Rs.22,53,000/- does not include any interest on overdraft facility.

14.10. I have gone through the issue. It is seen that the interest expenses which are disallowed by the AO are the interest on loan which are specifically borrowed to acquire the business assets of the appellant. None of the borrowed funds were diverted as interest free loans to the relatives. Further, it is not the case that funds to the relatives are given from the OD account. In view of these facts, I hold that these financial expenses are purely spent for the purposes of the business and it should be allowed fully. I direct the AO to delete the addition."

38. We have heard the rival contentions of both the parties. We find that the Ld. CIT(A) has verified how much interest free fund is available with the assessee and he has verified the balance sheet at the end of the year and Ld. CIT(A) was of a view that assessee has sufficient capital to give interest free loans, therefore in our opinion the issue in controversy is covered by the decision of the jurisdictional High Court in the case of CIT vs. Reliance Utility Power Ltd. 178 Taxman 135 (Bom.). Therefore, in our opinion Ld. CIT(A) is justified in his action and our inference is not required.

39. In the result, appeals of the Revenue are dismissed and appeal of the assessee is partly allowed.

Order pronounced in the open court on 28.04.2017.

Sd/-	**Sd/-**
(Manoj Kumar Aggarwal)	**(D.T. Garasia)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dated: 28.04.2017.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.