IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH ' C '

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER

Sl.No.	ITA No. & Asst. Year	Appellant	Respondent
1.	1056/Bang/2016 2012-13	M/s. Khoday India Limited, Brewery House, 7th Mile, Kanakapura Road, Bangalore-560 062	Dy. Commissioner of Income Tax, Circle 4(1)(1), Bangalore.
2.	1256/Bang/2017 2009-10	Income Tax Officer, Ward 4(1)(2), Bangalore.	M/s. Khoday India Limited, Bangalore.
3.	791/Bang/2017 2009-10	M/s. Khoday India Limited, Bangalore.	Asst. Commissioner of Income Tax, Circle 4(1)(1), Bangalore.
4.	1165/Bang/2016 2011-12	M/s. Khoday India Limited, Bangalore.	Dy. Commissioner of Income Tax, Circle 4(1)(1), Bangalore.
5.	1217/Bang/2016 2011-12	Dy. Commissioner of Income Tax, Circle 4(1)(1), Bangalore.	M/s. Khoday India Limited, Bangalore.
6.	1164/Bang/2016 2010-11	M/s. Khoday India Limited, Bangalore.	Dy. Commissioner of Income Tax, Circle 4(1)(1), Bangalore.
7.	1216/Bang/2016 2010-11	Dy. Commissioner of Income Tax, Circle 4(1)(1), Bangalore.	M/s. Khoday India Limited, Bangalore.

Assessee By : Shri S. Sukumar,Advocate.
Respondent By : Shri M.K. Biju, JCIT (DR) (ITAT)-3, Bengaluru.

Date of Hearing : 12.09.2017.
Date of Pronouncement : 24.10.2017.

O R D E R

Per Bench :

These are three sets of cross appeals for the Assessment Years 2009-10 to 2011-12 and an appeal by the assessee for the Assessment Year 2012-13 directed against respective orders of the Commissioner of Income Tax (Appeals), Bangalore.

2. First we take up the appeal filed by the assessee wherein the assessee has raised common grounds. The grounds raised for the Assessment Year 2009-10 are reproduced as under :

1. The order dated 28.03.2017 of the Commissioner of Income-tax (Appeals)-4 in so far as it is prejudicial to the appellant, is opposed to law, facts and circumstances of the case.

DISALLOWANCE U/S. 14A

2. The learned Commissioner of Income-tax(Appeals) erred in upholding the disallowance made by the Assessing Officer u/s.14A read with Rule 8D amounting to Rs.87,53,342/-, without appreciating the fact that the provisions of section 14A read with Rule 8D have been wrongly invoked.

3. The learned Commissioner of Income-tax (Appeals) ought to have found that Rule 8D would have no application to the facts of the case as no expenditure has been shown to have been incurred against exempt income, so as to discredit appellant's computation.

4. The learned Commissioner of Income-tax(Appeals) ought to have appreciated that the Assessing Officer has not given any specific finding on the contention raised by the appellant that no expenditure has been incurred for earning the exempt income.

5. Without prejudice to the contention that no amount is disallowable u/s.14A, the Commissioner of Income-tax(Appeals) ought to have directed the Assessing Officer to restrict the disallowance u/s. 14A to the extent of the exempt income only.

6. The learned Commissioner of Income-tax (Appeals) ought to have found that none of the borrowings relate to acquisition of shares, since the borrowings are specifically for the purpose of business, the income from which is not exempt.

7. The learned Commissioner of Income-tax (Appeals) ought to have found that the threshold conditions for application of Rule 8D are not satisfied, in that, the appellant has not claimed any expenditure as necessarily been incurred .

8. The learned Commissioner of Income-tax(Appeals) erred in following the decision of the Income Tax Appellate Tribunal for the assessment year 2008-09, though it was brought to his notice that the Income Tax Appellate Tribunal's order has not been accepted by the appellant and the matter is pending before the Hon'ble High Court of Karnataka.

9. The learned Commissioner of Income-tax(Appeals) should have noticed that the appellant had highlighted a material fact on record that no borrowed money was utilised for the purpose of making investment in M/s. Lakshmi Estate or for purchase of shares which remained obscure in earlier year and, therefore, the conclusion arrived at by the Income Tax Appellate Tribunal could accordingly be changed.

10. The learned Commissioner of Income-tax (Appeals) failed to consider various decisions cited in respect of the grounds relating to disallowance u/s.14A.

11. The learned Commissioner of Income-tax (Appeals) having examined the details and not doubting the genuineness of the expenditure, ought not to have directed disallowance of 50% of Rs.30,00,000/-, i.e., Rs.15,00,000/-.

12. The learned Commissioner of Income-tax (Appeals) ought to have known that the payment of sales promotion expenses includes commission which depended on the number of cases sold and lifted and was paid as incentive for improved sales by depots located in various places in the country.

13. The learned Commissioner of Income-tax (Appeals) having accepted that the commission paid is in the course of business, cannot himself decide reasonableness of the commission ignoring the interests of the business.

14. The learned Commissioner of Income-tax (Appeals) ought to have observed that the basis on which disallowance was partly upheld by Income Tax Appellate Tribunal in earlier year was on different set of facts, which are not found in the current year.

15. The learned Commissioner of Income-tax (Appeals) ought to have seen that the Assessing Officer has not found any discrepancy in the claim or on its genuineness.

16. The learned Commissioner of Income-tax (Appeals) should have appreciated that in the very nature of its business, the appellant would be compelled to incur expenditure in cash, but they are within the permissible limits.

17. The appellant craves leave to add, delete, amend or substitute any of the grounds of appeal raised herein.

18. For these and other reasons that may be urged at the time hearing, the appellant prays that the order of the Commissioner of Income-tax (Appeals) in so far as it is prejudicial to the appellant be set aside and appeal may be allowed in the interests of justice.

3. Ground No.1 is general in nature and do not require any specific adjudication.

4. Ground No.2 to 10 are regarding disallowance under Section 14A of the Income Tax Act, 1961 (in short 'the Act') r.w. Rule 8D. The assessee

company is one of the leading manufacturer of Indian Made Liquor (IML) in Karnataka. The Assessing Officer noted that the assessee had declared a total investment at Rs.62.04 Crores and accordingly he proposed to make disallowance under Section 14A and asked the assessee to submit its reply. In response the assessee submitted that it has made investment in **M/s. Lakshmi Estate**, a partnership firm towards business investment which was initially in the form of advance to the firm for the purpose of timber for manufacturing of barrels. Due to unforeseen market conditions the firm could not supply the timber and the situation got changed. Therefore, in order to safeguard the interest of the assessee company it was decided during the arbitration proceedings that the firm has sufficient assets and it would be advisable to be a partner in the firm. The assessee filed the Arbitration Award before the AO and submitted that permission from Company Law Board was also obtained while making advance to the firm for business purpose. It was also contended that the assessee did not earn any income from the said investment and therefore, there was no claim of exempt income in the return of income. Hence, the question of application of Section 14A does not arise. The assessee further explained that it has received a dividend of Rs.45,933 on the investment in shares for which the assessee *suo moto* has made the disallowance. The Assessing Officer did not accept the contention and explanation of the assessee and made the disallowance under Section 14A on account of interest expenditure as

well as indirect administrative expenditure total amounting to Rs.87,53,342. The assessee challenged the action of the Assessing Officer before the CIT (Appeals) but could not succeed.

5. Before us, the learned Authorised Representative has submitted that the Assessing Officer has made a disallowance under Section 14A of Rs.87,53,342 for having earned exempt income by way of dividend of Rs.45,933 only. He has pointed out that the investment which is the other exempted item was only in the partnership firm **M/s. Lakshmi Estate** in which the assessee is having a share of loss of Rs.10,43,428. The assessee though did not made any disallowance in computation of income at the time of filing the return of income however, the assessee volunteered to disallow a sum of Rs.937 in the letter submitted during the course of scrutiny assessment for earning the dividend income of Rs.45,933. The learned Authorised Representative has further pointed out that the total investment comes to Rs.62.03 Crores of which the investment in **M/s. Lakshmi Estate** alone is Rs.61.86 Crores as on 31.03.2009. The investment other than the investment in the partnership firm is only Rs.17,16,599. In comparison to the earlier year the total investment has come down from Rs.62.19 Crores to 62.03 Crores. He has referred to the comparative profit and loss account as well as balance sheet figures and submitted that the assessee produced all these details before the Assessing Officer to show that the investment in the firm was made in the form of advance for purchase of timber and

subsequently under the Arbitration Award the said advances were converted into investment in the partnership firm. Therefore the investment was much prior to 31.03.1998. The learned Authorised Representative has explained that the firm **M/s. Lakshmi Estate** was having extensive forest land in the District of Chikmagalur. The assessee needed timber on large scale for making cask vats and packaging material and for trading on continuing basis. Since the partnership firm could not supply the timber nor was able to repay the money the matter was referred to Arbitrator and in the arbitration proceedings as per award dt.12.02.2003 **M/s. Lakshmi Estate** to agree to admit the assessee as partner with 75% share w.e.f. 1.2.2003. The learned Authorised Representative has thus contended that the money was given to the firm as an advance for purchase of timber which was converted into investment as per Arbitration Award dt.12.02.2003 and therefore it was not a direct investment in the year 2003. He has further submitted that the advance was given to the firm from assessee's own fund. The learned Authorised Representative has referred to the details of availability of assessee's own fund during the year prior to 1997 and during the year 1998. Thus the learned Authorised Representative has submitted that the entire amount of Rs.61,86,76,922 was given from assessee's own fund. Further the investment in shares of Rs.17,16,599 was also from assessee's own fund and not from the borrowed fund. He has relied upon the decision of Delhi Tribunal in the case of **Maruti**

Udyog Limited Vs. CIT 92 ITD 119 and submitted that the burden of proof lies on the person who alleges the existence of fact and if the assessee claimes deduction in respect of any expenditure then onus would be on the assessee to prove that the conditions for its allowbility are satisfied. On the other hand, if the revenue who wants to disallow the expenditure under Section 14A then the onus is on the revenue to prove the interest paid by the assessee on borrowed fund relates to acquisition of share or the investment in the partnership firm. The learned Authorised Representative has referred to the details of loan taken by the assessee and submitted that all the loan taken from the Bank are for specific purposes like loan for working capital, purchase of raw material, purchase of vehicles and only a small amount of loan taken as development loan from Govt. of India of Rs.16,69,000. Further the assessee also took loan of Rs.10.18 Crores from its Director which is interest free. Hence the learned Authorised Representative has submitted that when the assessee did not use borrowed fund then question of disallowance under Section 14A on account of interest expenditure does not arise. Further when the investment is made in the firm and it is a one time decision then the disallowance on account of indirect expenditure is not warranted as the assessee has not incurred any expenditure in this respect. In support of his contention, he has relied upon the decision of Hon'ble Supreme Court in the case of **Godrej & Boyce Manufacturing Co. Ltd. Vs. DCIT** 394 ITR 449 as well as the

decision of Hon'ble jurisdictional High Court in the case of **CIT Vs. Karntaka State Industrial and Infrastructure Development Corporation Limited** 237 Taxman 240 and submitted that it was held that as per the provisions of Section 14A, the Assessing Officer shall determine the amount of expenditure incurred in relation to the exempt income which does not form part of total income if he was not satisfied with the correctness of the claim of the assessee in respect of such expenditure. It is settled principle of law that the Assessing Officer is required to record non-satisfaction of correctness of the claim. In the absence of such recording of non-satisfaction, the disallowance is untenable. The learned Authorised Representative has also relied upon the decision of Hon'ble Punjab & Haryana High Court in the case of **DCIT Vs. Deepak Mittal** 361 ITR 131 as well as **CIT Vs. Hero Cycles Limited** 323 ITR 518. He has then relied upon the decision of Hon'ble Delhi High Court in the case of **Maxopp Investment Limited & Ors Vs. CIT** 247 CTR 162 wherein the principle laid down by the Hon'ble Supreme Court as well as Hon'ble High Courts has been reiterated.

6. On the other hand, the learned Departmental Representative has submitted that for the Assessment Year 2008-09 the Tribunal has decided this issue against the assessee and therefore this issue is covered by the decision of the Tribunal in assessee's own case for the Assessment Year 2008-09 vide order dt.18.07.2012 in ITA No.211/Bang/2012. The learned Departmental Representative has further submitted that even if

there is no income and assessee has a share in the losses of the partnership firm that will constitute exempt income for the purpose of Section 14A of the Act. In support of his contention, he has relied upon the decision of Hon'ble Supreme Court in the case of **CIT Vs. Harprasd & Co. (P.) Ltd.** 99 ITR 118. He has also relied upon the orders of the authorities below.

7. We have considered the rival submissions as well as the relevant material on record. The assessee has brought on record the details and facts that the contribution of the assessee in the share capital of the firm **M/s. Lakshmi Estate** to the tune of Rs.61.97 Crores is not a direct investment but it was only in pursuant to the Arbitration Award dt.12.02.2003 and therefore, the amount in question was paid to the said firm prior to the years 1997 and 1998 as an advance for purchase of timber. We find that this stand was taken by the assessee before the authorities below and neither the Assessing Officer nor the CIT (Appeals) has disputed this fact that the investment in the partnership firm is only an outcome of the dispute between the assessee and the partnership firm **M/s. Lakshmi Estate** regarding the advances paid by the assessee for purchase of timber. Therefore, the outstanding amount being advance given during the year 1997 and 1998 was finally converted into an investment in the partnership firm. Once this payment was made by the assessee in the years 1997 & 1998 then in order to establish that the assessee used the borrowed fund or its own funds the relevant record

and details of those years is required to be verified and examined. Though for the Assessment Year 2008-09, the Tribunal vide order dt.18.07.2012 has given a finding that the disallowance is justified under Section 14A in respect of the investment in question being contribution to the share capital of the partnership firm however, we find that the Tribunal has given the said finding on the presumption that the said investment was made in the year 2003 and the assessee has used borrowed fund for the purpose of said investment or advance given to the partnership firm. It is pertinent to note that neither the Assessing Officer nor the CIT (Appeals) has gone into the aspect whether the assessee was having its own sufficient funds during the years when the advances were given by the assessee to the partnership firm for purchase of timber. Therefore, if the advances were given by the assessee from its own fund then the question of disallowance under Section 14A on account of interest expenditure does not arise.

8. We further note that there are precedents/decisions of Hon'ble High Courts on the point that when there is no exempt income earned by the assessee during the year under consideration from the investment then no disallowance is called for under Section 14A as it is a pre-requisite condition that the expenditure incurred for earning exempt income can only be disallowed under Section 14A of the Act. Without going into the controversy of disallowance in the absence of exempt income we are of

the view that when the assessee has claimed that the assessee has not used the borrowed fund for giving the advances in the years 1997& 1998 as the assessee was having its own sufficient funds then the disallowance on account of interest income can be made only when this fact is established that the assessee has used the borrowed fund for the purpose of advancing the money to the partnership firm for purchase of timber. Accordingly, we set aside this issue to the record of the Assessing Officer for verification of the relevant record and details to find out and ascertained whether the assessee was having its own sufficient fund and the advances were made by the assessee in those years i.e. 1997 & 1998 from assessee's own interest free funds. Needless to say the assessee be given an appropriate opportunity of hearing and to raise pleas and objections on this issue.

9. As regards the disallowance of indirect expenditure, we find that when this investment was made as the outcome of arbitration proceedings and the advance given to the firm was converted as a share in the capital of the partnership firm then it is undisputedly one time decision taken by the assessee for converting the advances into investment. It is not a case of investment in shares and securities for earning the dividend income and to keep tract on the investment portfolio but the investment made in the partnership firm is not like a portfolio of investment in securities to be reshuffled as per the market conditions. Thus in the absence of any findings by the Assessing Officer

to show that the assessee has incurred any expenditure which can be attributable to the investment or earning of income out of the investment in the partnership firm no disallowance is called for to the extent of indirect administrative expenses in this regard. Therefore while computing the disallowance on account of indirect administrative expenditure under Rule 8D(2)(iii) being 0.5% of average investment, the investment in the partnership firm has to be excluded. Hence, the Assessing Officer is directed to reconsider the disallowance on account of indirect administrative expenditure by exclusion of the investment made in the partnership firm from the average investment.

9. Ground Nos.11 to 16 are regarding disallowance of sales promotion expenses. This issue is common for the Assessment Year 2009-10 to 2011-12 and not involved for the Assessment Year 2012-13.

10. We have heard the learned Authorised Representative as well as learned Departmental Representative and considered the relevant material on record. At the outset, we note that an identical year has been considered by this Tribunal in assessee's own case for the Assessment Year 2008-09 vide order dt.18.07.2012 in ITA No.211/Bang/2012 in para 6 as under :

" 6. We have considered the rival submissions and we find that he revenue authorities have proceeded on the assumption that the assessee has deliberately inflated its expenses with a view to reduce its taxable income. As rightly contended on behalf of the the assessee the fact that such expenses are necessary and part of the business of the assessee is not doubted. The only factor which goes against the assessee is the absence of bills and vouchers. In our view, in the given facts and circumstances, it would be just and fair to restrict the disallowance of sales promotion expenses to 25% of unmarked sales promotion expenses 25% of Rs.44,85,014/-. Thus, this ground of appeal is partly allowed."

Thus it is clear that the Assessing Officer made a disallowance of sales promotion expenses on adhoc basis of 50% out of expenses of Rs.44,85,014 which were considered to be doubtful on genuiness. In the year under consideration, the Assessing Officer made an adhoc disallowance of Rs.30 lakhs which was restricted by the CIT (Appeals) to 50%. Following the earlier order of this Tribunal, we restrict the disallowance to 25% of the adhoc disallowance made by the Assessing Officer. It is pertinent to note that the Assessing Officer for the year under consideration has not made disallowance by taking 50% but the Assessing Officer took an adhoc lumpsum disallowance of Rs.30 lakhs. Therefore to maintain the rule of consistency, we restrict the disallowance on this account to 25%. We order accordingly.

Revenue's Appeals.

11. The revenue has raised common grounds in these appeals as under :

1. The Order of the Ld. CIT (A), in so far as it is prejudicial to the interest of the Revenue, is opposed to law and the fact and circumstances of the case.

2. On facts of the case, the Ld.CIT (A) has erred in restricting disallowance to the extent of 25% of the unmarked sales promotion expenses in the absence of proper bill and vouchers being produced by the assessee by reversing the finding of the Assessing Officer.

3. On facts of the case, the Ld. CIT (A) has erred in not appreciating the fact that interest disallowance is called for even if the advance for assets has been made in an earlier year as the assessee would be incurring interest.

4. On facts of the case, Whether the Ld. CIT (A) is right in allowing the appeal of the assessee on the issue of Capitalised interest, in which issue the Department is in further appeal before the jurisdictional Hon'ble High Court.

5. On facts of the case, the Ld. CIT (A) was justified in allowing relief to the assessee without appreciating that the amounts are income in the hands of the assessee in terms of Section 2(24)(x) and no deduction u/s 36(1)(va) can be allowed as the payments were not made on or before the due dates as laid down in Section 36(1)(va) of the Act?.

6. For these and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT (A) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer may be restored.

7. The appellant craves leave to add, alter, amend and / or delete any of the grounds that may be urged.

12. The first common issue raised in Ground No.2 by the revenue is regarding the part relief granted by the CIT (Appeals) on account of sales promotion expenses.

13. We have heard the learned DR as well as learned AR and considered the relevant material on record. As this issue is common to the issue raised by the assessee and in view of our finding on this issue in the appeals of the assessee this ground of revenue'(supra) appeal stands dismissed.

14. The next issue raised by the revenue in Ground Nos.3 & 4 is regarding disallowance of interest by the Assessing Officer by treating the same as capital in nature which was allowed by the CIT (Appeals).

15. We have heard the learned DR as well as learned AR and considered the relevant material on record. At the outset, we note that an identical issue was considered by this Tribunal in the appeal filed by the revenue for A.Y. 2008-09 in ITA No.281/Bang/2012 vide order dt.30.01.2014. The disallowance has been made in respect of the same loan used for purchase of capital asset. The Tribunal for the A.Y. 2008-09 has considered and decided this issue in paras 6 to 6.3 as under :

" 6. We have carefully considered the submissions of both the parties and perused the relevant materials on record and also the case laws on which the learned AR placed strong reliance. It was a fact that the assessee had made advances for purchase of capital assets as listed out at paragraph 10 of the assessment order. It was the stand of the AO that substantial amounts have been paid by the assessee to various enterprises for the purchase of capital goods and, thus, interest on such advances had to be disallowed. Disputing the AO's view, the learned AR took a stand that the machineries and other materials were ultimately utilized for the purpose of the business of the assessee and, thus, interest paid on such borrowed funds had to be allowed u/s 36(1)(iii) of the Act even though the funds were spent on acquisition of machineries etc. We find substantial force and merit in the argument of the learned A.R. To avail deduction u/s 36(1)(iii) of the Act in respect of interest on borrowed capital, as rightly highlighted by the CIT (A) in his findings, the assessee has to fulfill three conditions prescribed, namely:
(a) That money (capital) must have been borrowed by the assessee;
(b) That it must have been borrowed for the purpose of business; &
(c) That the assessee must have paid interest on the said amount and claimed it as a deduction.

6.1. In the present case, all the above three conditions prescribed in s. 36(1)(iii) of the Act have since been fulfilled, the AO was not justified in disallowing the interest debited to P&L A/c by 15% on adhoc basis. A disallowance cannot be resorted to for the sake of disallowing a portion of the claim of an assessee without adducing a credible documentary proof justifying for such a disallowance. The AO had not brought on record any documentary evidence to contradict that the assessee had fulfilled the conditions contained in s. 36(1)(iii) of the Act.

6.2. We shall now analyse the judicial view on a similar issue as under: (i) In the case of Madhav Prasad Jatia v. CIT (1979) 118 ITR 200 (SC), the Hon'ble Supreme Court has held as under:
"Under s. 10(2)(iii), three conditions are required to be satisfied in order to enable the assessee to claim a deduction in respect of interest on borrowed capital, namely, (a) that

money (capital) must have been borrowed by the assessee, (b) that it must have been borrowed for the purpose of business, and (c) that the assessee must have paid interest on the said amount and claimed it as a deduction. It cannot be disputed that the expression "for the purpose of business" occurring in s. 10(2)(iii) and also in s. 10(2)(xv) is wider in scope than the expression "for the purpose of earning income, profits or gains" occurring in s. 12(2) and, therefore, the scope for allowing a deduction under s. 10(2)(iii) or s. 10(2)(xv) would be much wider than the one available under s. 12(2).—CIT vs. Malayalam Plantations Ltd. (1964) 53 ITR 140 (SC) relied on.

(ii) The Hon'ble Madhya Pradesh High Court in the case of D & H Secheron Electrodes Pvt. Ltd v. CIT – (1983) 142 ITR 528 (MP) has ruled as under:

"Under s. 36(1)(iii), to sustain a claim for deduction of the amount of interest, all that is necessary is that the capital must have been borrowed by the assessee; secondly, it must have been borrowed for the purpose of the business or profession of the assessee and, thirdly, that the assessee should have paid that amount by way of interest. In the instant case, the Tribunal has not given any finding holding that the conditions required to be satisfied under s. 36(1)(iii) were not fulfilled. The only ground, for disallowing a part of the interest, given by the Tribunal was that the assessee had not chosen to charge interest on advances made to the three concerns. The contention urged on behalf of the Department, in the instant case, that a part of the capital borrowed by the assessee was not for the purpose of the business, cannot be considered because that is not the finding of the Tribunal. All that the Tribunal has found is that the assessee was not entitled to claim deduction in respect of a part of the interest, as the assessee had not charged interest to the three sister concerns, to whom advances were made. This ground cannot justify disallowance of interest."

(iii) The Hon'ble jurisdictional High Court in the case of CIT v. Insotex (Private) Ltd. (1984) 150 ITR 0195 (Kar) has held as under:

"The assessee had a running business. The capital borrowed by the assessee was admittedly used for purchasing new machinery and land. For giving the benefit of s. 36(1)(iii) to the assessee, what is necessary to examine is whether the assessee has used the borrowed capital for the purpose of business. If that is found (to be) true, then, one need not examine further as to whether the asset purchased from borrowed capital has been in fact used by the assessee.—Calico& Dyeing and Printing Works vs. CIT (1958) 34 ITR 265 (Bom) : TC15R.907 followed; Challapali Sugar Ltd. vs. CIT 1974 CTR (SC) 309 : (1975) 98 ITR 167 (SC) distinguished."

(iv) Yet another judgment, the Hon'ble jurisdictional High Court in C.T.Desai v. CIT (1979) 120 ITR 240 (Kar) ruled that –

"12. Sec. 36(1)(iii) of the Act is analogous to s. 5(e) of the Madras Act and s. 10(2)(iii) and (iv) of the Indian IT Act, 1922. Hence, the above principle equally applies to the present case. There can be no distinction between interest paid on capital if borrowed by the assessee for

his film distribution business and the interest on the capital for the acquisition of the lease of ITA No.281 of 2012 Khoday India Ltd Bangalore Page 8 of 8 theatre for carrying on the business of exhibition. Both are for purposes his film business, and deductible under s. 36(1)(iii) of the Act while computing his profits and gains of business."

6.3. Taking into account the facts and circumstances of the issue as deliberated upon in the fore-going paragraphs and also in conformity with the judicial views (supra), we are of the view that the CIT (A) was justified in deleting the addition made by the AO. It is ordered accordingly."

In view of the earlier order of this Tribunal in assessee's own case, we do not find any error or infirmity in the impugned order of CIT (Appeals) qua this issue.

16. Ground No.5 is regarding disallowance made by the Assessing Officer on account of contribution to ESI & PF.

17. We have heard the learned DR as well as learned AR and considered the relevant material on record. At the outset, we note that this issue is covered by the decision of the Hon'ble jurisdictional High Court as well as decision of this Tribunal in assessee's own case for the Assessment Year 2008-09. The CIT (Appeals) has discussed and decided this issue in para 12 as under :

12. This issue was also discussed in the order of Hon'ble ITAT in Khoday India Ltd. v ACIT in ITA No. 211(b)/2012 in its order dated 18.07.2012 for assessment year 2008-09. The ITAT noted that it was held in CIT v Alom Extrusions Ltd.(supra) that the deletion of second proviso with effect from 01.04.2004 had retrospective effect. The ITAT referred to the decision of Hon'ble Delhi High court in CIT v AIMIL Ltd. in ITA No. 1063 of 2006 in the order dated 23.12.2009. The Delhi High Court had held that an assessee can get the benefit of deduction under Income-tax Act if the actual payment is made before the due date of filling of return. Following the decision, ITAT had held that the assessee was entitled to claim of deduction.

The learned counsel has furnished several decisions of Karnataka High Court in which it has been held that deduction of amounts relating to sums mentioned in section 36(1)(va) read with section 2(24)(x) are allowable if paid before the due date of filling of return. The decisions relied upon are the following:

- CIT v Spectrum Consultants India (P) Ltd. (2014) 266 CTR 0241 (kar)
- ESSAE Teradoka (P) Ltd. v DCIT (2014) 366 ITR 408 (Kar)

Following the ratio of Hon'ble Karnataka High Court, the addition made of Rs.51,91,743 towards PF and ESI contributions of the employees is deleted."

Thus it is clear that the CIT (Appeals) has followed the decisions of the Hon'ble jurisdictional High Court in the case of **CIT Vs. Spectrum Consultants India (P) Ltd** 266 CTR 241 as well as in the case of **Essae Teradoka P. Ltd. Vs. DCIT** 366 ITR 408 (Kar).

When the payment was made before the due date of filing of the return of income, then disallowance made by the Assessing Officer is not justified and accordingly we do not find any error or illegality in the order of CIT (Appeals) qua this issue.

18. In the result, the appeals of the assessee are partly allowed and the appeals of revenue are dismissed.

Order pronounced in the open court on the 24th day of Oct.,2017.

Sd/-	Sd/-
(JASON P BOAZ)	**(VIJAY PAL RAO)**
Accountant Member	Judicial Member

Bangalore,
Dt.24.10.2017.

*Reddy gp

Copy to :

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

Senior Private Secretary
Income Tax Appellate Tribunal
Bangalore.