

**IN THE INCOME TAX APPELLATE TRIBUNAL “H”
BENCH, MUMBAI**

**BEFORE SHRI R. C. SHARMA, AM &
SH. SANDEEP GOSAIN, JM**

आयकरअपीलसं./ I.T.A. No. 3951/Mum/2016
(निर्धारणवर्ष / Assessment Year: 2011-12)

Shankar Packagings Ltd. 303, Turf Estate, Off Dr. A. E. Moses Rd, Shakti Mill Lane, Mahalaxmi(w), Mumbai-400011	बनाम/ Vs.	DCIT RG 5(3) R. No. 573, Aayakar Bhavan, M. K. Road, Mumbai-400020
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAACS8076P		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Apurva R. Shah, AR
प्रत्यर्थीकीओरसे/Respondentby	:	Shri M. C. Omi Ningshen, DR

सुनवाईकीतारीख/ Date of Hearing	:	17/04/2018
घोषणाकीतारीख / Date of Pronouncement	:	17/05/2018

आदेश / ORDER

Per Sandeep Gosain, Judicial Member:

The present Appeal filed by the assessee is against the order of Ld. CIT (Appeal) – 10, Mumbai dated 22.03.16 for AY 2011-12 on the grounds mentioned herein below:-

*The Commissioner of Income Tax (Appeals) - 10,
Mumbai erred -*

*1. In confirming a disallowance u/s 36(iii) of Rs.
5,41,283/-*

*2. In confirming a disallowance u/s 14A of Rs.
14,96,145/-*

*3. In presuming that the interest free funds available
with the appellant were used for acquisition of the
gross block of fixed assets first (without adding
accumulated depreciation then to the interest free
funds) and therefore presuming that advances given for
capital expenditure as well as investments made must
have come out of borrowed funds.*

*4. In not appreciating that there was no specific
borrowing made for the above purposes.*

*5. Without prejudice, in not appreciating that a large
portion of capital advances was given in earlier years
where no disallowance of interest was done and that
therefore to that extent at least it had to be presumed
that non interest bearing funds were utilized.*

*The Appellant craves leave to add, alter or amend the
grounds as may be advised from time to time.*

2. The brief facts of the case are that assessee is a company engaged in the business of manufacturing of flexible intermediate bulk containers. The return of income for AY 2011-12 was filed on 30.09.2011 declaring total income of Rs. 10,46,83,507/-. Later on, the case was selected for scrutiny and after serving statutory notices and seeking reply, order of assessment u/s 143(3) was passed by AO on 12.03.14 thereby making disallowances of Rs. 5,41,283/- u/s 36(1)(iii) of I.T. Act and Rs. 14,96,145/- u/s 14A of the I.T. Act.

Aggrieved by the order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the case of both the parties partly allowed the appeal of the assessee.

Now before us, the assessee has preferred the present appeal by raising the above grounds.

Ground No. 1, 3, 4 & 5.

3. These grounds raised by the assessee are inter connected and inter related and relates to challenging the order of Ld. CIT(A) in confirming the disallowance of Rs. 5,41,283/- u/s

36(1)(iii) of the I.T. Act, therefore we thought it fit to dispose of these grounds by this common order.

4. At the very outset, Ld. AR appearing on behalf of the assessee reiterated the same arguments as were raised before Ld. CIT(A). It was submitted by Ld. AR that since the interest bearing funds available with the assessee at the beginning of the year were substantial compared to the advances given and there are no specific borrowings done towards the said advances, it must be presumed that the same have been given from interest free funds. Ld. AR in order to support his stand also relied upon the decision of Hon'ble Bombay High Court in case of **Reliance Utilities Ltd, 313 ITR 340 and HDFC Ltd, 366 ITR 505.**

Ld. AR further submitted that advances during the year were only Rs. 30,823/- and the rest was advanced in the past and therefore, in such circumstances, if at all the disallowance has to be made, it should have been restricted to the advances given during the assessment year in question. It was further submitted by Ld. AR that there was no disallowance in earlier year on this

issue and the disallowance in the present year is also no warranted.

5. On the other hand, Ld. DR relied upon the orders passed by revenue authorities.

6. We have heard counsels for both the parties and we have also perused the material placed on record, judgment cited by both the parties as well as the orders passed by revenue authorities. We find that the revenue authorities had disregarded the arguments of assessee by relying upon the balance sheet of the assessee and the Ld. CIT(A) has categorically mentioned that out of own funds of Rs. 50.33 crores, the loans and advances outstanding are Rs. 17.96 crores only showing that the advances are within the limits of own funds. It has also been categorically mentioned that from the asset side of the balance sheet, the gross block of fixed assets stand of Rs. 71.54 crores and the net block stand a Rs. 52.30 crores and after comparing with the same, it was presumed that own funds were locked up in fixed assets, therefore Ld. CIT(A) reached to the conclusion that there was

every possibility that assessee had made the advances from borrowed funds.

Although, Ld. CIT(A) has mentioned the decision of Hon'ble Bombay High Court in the case of Reliance Utilities Ltd and HDFC Ltd, but nowhere categorically distinguished the same.

Ld. AR on the other hand, submitted that assessee had adequate interest free funds available in the form of capital and reserves that there were no specific borrowings done for giving advances on capital gain. It was further submitted that advances only Rs. 30,823 had been advanced during the year and the rest was advances in the past. Therefore, it is to be presumed that the advances have been given from interest free funds.

After having gone through the facts of the present case and the orders passed by revenue authorities, we find that the assessee had adequate interest free funds aggregating to Rs. 42.01 crores and the advances given in the year under consideration, is only insignificant and the rest of advance made in the past. Therefore, while relying upon the proposition laid down by the Hon'ble Bombay High Court in case of **Reliance**

Utilities Ltd, 313 ITR 340 and HDFC Ltd, 366 ITR 505, it is to be presumed that since the interest free funds available with the assessee at the time of beginning of the year and there is no specific borrowings done towards the said advances, therefore it is to be presumed that the same have been given from interest free funds. Therefore, in view of our above discussion, we direct the AO to delete the additions made u/s 36(iii) of the I.T. Act. Accordingly, these grounds raised by the assessee are **allowed**.

Ground No. 2.

7. This ground raised by the assessee relates to challenging the order of Ld. CIT(A) in confirming the disallowance of Rs. 14,96,145/- u/s 14A of the I.T. Act.

8. Ld. AR appearing on behalf of the assessee submitted before us that the present case is fully covered by the order of Hon'ble ITAT in ITA No. 4868/Mum/12 for AY 2009-10 in assessee's own case wherein the identical grounds raised in the present appeal have already been decided on merits.

9. On the other hand, Ld. DR relied upon the orders passed by revenue authorities.

10. We have heard both the parties and we have also perused the material placed on record as well as the orders passed by revenue authorities.

We find that the identical ground has already been decided by the Coordinate Bench of Hon'ble ITAT in ITA No. 4868/Mum/2012 for AY 2009-10 in assessee's own case. The operative portion of the order of Hon'ble ITAT contained in para no. 5, which is reproduced below:-

5. Having heard the rival contentions, we find merit in the submissions made by the assessee. A perusal of the financial statement filed by the assessee shows that the shareholder's fund available with the assessee at the beginning of the year is Rs. 33.09 crores which is far excess of investment of Rs. 4.17 crores available at the year end. Hence, by following the decision of Hon'ble Jurisdictional High Court in the case of HDFC Bank Ltd. (supra), we hold that there is no requirement to make interest disallowance as per Rule 8D(2)(ii) of the I.T. Rules. Since the assessee itself has disallowed a

sum of Rs.2,00,893/- towards administrative expenses, we direct the Assessing Officer to allow set off of the same against the amount computed by the AO under Rule 8D(2)(iii) of the I.T Rules and make addition of only incremental amount to the total income returned by the assessee. We order accordingly.

After having gone through the facts of the present case as well as considering the orders passed by revenue authorities and Hon'ble ITAT as mentioned above in assessee's own case, we find that the identical issues have already been decided by the Hon'ble ITAT in assessee's own case for AY 2009-10 in ITA No. 4868/Mum/12. Therefore, respectfully following the decision of the Coordinate Bench of Hon'ble ITAT and in order to maintain judicial consistency, we apply the same findings in the present case which are applicable *mutatis mutandis* in the present case and in view of the above findings, since the assessee itself has disallowed a sum of Rs. 1.34 lakhs towards administrative expenses, we direct the AO to allow set off of the same against the amount computed by the AO under Rule 8D(2)(iii) of the I.T

Rules and make addition of only incremental amount to the total income returned by the assessee. Therefore, we order accordingly.

11. In the net result, the appeal filed by the assessee stands **allowed.**

Order pronounced in the open court on 17th May. 2018

Sd/- (R. C. Sharma)	Sd/- (Sandeep Gosain)
लेखासदस्य / Accountant Member	न्यायिकसदस्य / Judicial Member
मुंबई Mumbai;दिनांक Dated :	17.05.2018
<i>Sr.PS. Dhananjay</i>	

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार
 (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai