

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'E', NEW DELHI**

**BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND  
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA No.6080/Del/2015  
Assessment Year: 2008-09

M/s. Cedar Infonet Pvt. Ltd., C/o- R.S. Ahuja & Co., CAs., C-353, Defence Colony, New Delhi	<b>Vs.</b>	ACIT, Central Circle-11, New Delhi
<b>PAN :AABCC9486E</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	S/sh. R.S. Ahuja & Sahil Jain, CAs
Respondent by	Sh. Gaurav Sharma, Sr.DR

Date of hearing	30.08.2018
Date of pronouncement	12.10.2018

**ORDER**

**PER O.P. KANT, AM:**

This appeal by the assessee has been preferred against the order dated 31/12/2013 passed by the Ld. Commissioner of Income-tax (Appeals)-XXXI, New Delhi[in short the Ld. CIT(A)] for assessment year 2008-09 raising following grounds:

*(A) That on the facts & circumstances of the case the learned ITO & the CIT(A) erred in:*

- 1) Disallowing a sum of Rs.82,17,976/- u/s 14A of the Income Tax Act.*

- 2) *Enhancing the disallowance u/s 36(1)(iii) from Rs.27,89,101/- to Rs.68,47,671/-*
- 3) *Confirming the disallowance u/s 36(1)(iii) of Rs.57,89,101/-*

**2.** The assessee also filed revised form No. 36 on 10/01/2018, wherein the assessee corrected the amount contested in ground No. 2 as under:

- “2) Enhancing the disallowance u/s 36(1)(iii) from Rs.57,89,101/- to Rs.1,26,36,772/-“.*

**3.** Briefly stated facts of the case are that in the case of the assessee a search and seizure action under section 132 of the Income-tax Act, 1961 (in short ‘the Act’) was carried out on 24/09/2009 and consequently, a notice under section 153A of the Act was issued on 28/04/2010. In compliance, the assessee filed return of income, declaring loss of Rs.1,99,40,112/-. Thereafter, notices under section 143(2) and 142(1) of the Act were issued and complied with. The assessment was completed on 29/12/2011 after making certain additions/disallowances. Aggrieved, the assessee filed appeal before the Ld. CIT(A), who partly allowed the appeal, but enhanced the disallowance on one issue. Aggrieved with the order of the Ld. CIT(A), the assessee is in appeal before the Tribunal raising the grounds as reproduced above.

**4.** In ground No. 1, the assessee has challenged disallowance made under section 14A of the Act. The facts qua the issue in dispute are that at the relevant year-end i.e. 31/03/2008 the total investment in shares etc. stood at Rs.27,04,02,581/- and

the during the relevant previous year, the assessee company received dividend of Rs.1,42,36,728/-, which was claimed as exempt from tax. No disallowance was made by the assessee out of the expenditure claimed in the profit and loss account against earning the said exempt dividend income. According to the Assessing Officer in view of section 14A of the Act, the expenditure incurred for earning the dividend income was liable to be disallowed. He invoked Rule 8D of the Income Tax Rules, 1962 (for short 'the Rules') and made disallowance of Rs.2,01,90,351/- as under:

a) Amount of expenditure by way of interest		Rs. 3,26,13,920/-
b) Average value of investment		Rs. 17,77,02,581/-
c) Average of total assets		Rs. 2,56,75,709/-
(Value of assets as on 1 <sup>st</sup> day of the year And last day of the year)		
Formula	$\frac{A \times B}{C}$	= Rs. 1,90,62,589/-
d) Amount equal to one half% of average value of investments		Rs. 11,27,762/-
<b>Total disallowance</b>		<b>Rs. 2,01,90,351/-</b>

**4.1** On further appeal, the Ld. CIT(A) reduced the addition to Rs.82,17,976/-.The finding of Ld. CIT(A) on the issue in dispute can be summarized as under:

- (a) that the main activity of the assessee is investment activity and the assessee has incurred loss of Rs.57.35 lakhs from the trading activity, despite dividend income of Rs.1.42 crores credited to the profit and loss account.

- (b) that the assessee has made investment of Rs.27.04 crores out of which Rs.8.97 crores relates to current year's addition of investment and, thus, on the main activity of investment considerable manpower and resources have been utilized.
- (c) that the assessee did not come forward to provide the breakup of expenses related to manpower and other resources used for investment activity, thus, rejected the contention of the assessee that no expenditure was incurred toward investment activity.

**4.2** The Ld. CIT(A) analyzed the interest payments of Rs.3,26,13,920/- debited to profit and loss account by the assessee and held that interest payment of Rs.30,29,178/- was amount of the interest incurred directly towards investment in shares of Cedar Hospitality and interest of Rs.1,26,36,772/- incurred was towards funds diverted to non-business purposes and the balance interest amount of Rs.69,47,970/- was held to be expenditure by way of interest not directly attributable to any particular income or receipt. Accordingly, the Ld. CIT(A) recomputed the disallowance as per Rule 8D of the Rules at Rs.82,17,976/-. Before us, the Ld. counsel of the assessee submitted that the Assessing Officer made disallowance without discovering any type of dissatisfaction regarding the claim of the assessee that no expenditure had been incurred toward the dividend income. The Ld. counsel further submitted that the assessee earned dividend income from the old investments, which was made by the assessee from the own funds and during that period there was no loan appearing in the balance sheet. The Ld.

counsel emphasised that dividend received is by way of a single payment received on 71, 18, 364 equity shares of M/s Tulip IT Services (Telecom) Ltd @ Rs. 2 per share on 20/11/2007 and there is no other transaction in dividend ledger during the year.

**4.3** It was submitted that all the investment (except the investment in M/s Cedar Hospitality of Rs.3.25 crores ) was made out of own business funds as the details of utilization of the borrowed funds were duly submitted before the Revenue during assessment proceeding and same details were duly accepted by the Ld. CIT(A) and according to which all the investment were made out of internal accruals of the business earned over the period and, thus, no amount of interest can be attributed whether directly or indirectly towards investment in shares.

**4.4** In respect of investment in M/s. Cedar Hospitality made out of loan funds arranged during the year, the learned counsel submitted that assessee has not received any dividend from said investment.

**4.5** Without prejudice to the above arguments, the learned counsel submitted that department had applied clause (i) of sub-rule (2) of rule 8D w.e.f. 01/08/2007 irrespective of the fact that rule 8D came into force from 24/03/2008 and that too came with prospective effect. The learned counsel further submitted that it is settled that no disallowance can be made u/s 14A where the Revenue has failed to establish any nexus between the expenditure incurred and income earned either taxable or exempt. Further, the case flow of the assessee was not seen. Therefore, the disallowance on a percentage/prorate basis was improper in the absence of anything brought by the department to rebut the appellant's stand that no expenditure was incurred

to earn exempted income. The AO & CIT(A) failed to quantify the expenditures/nature of expenditure before disallowing the same as CIT(A) disallowed the proportion of the interest expenditure without appreciating the real facts of utilization of loan funds by the assessee Company.

**4.6** The Ld. counsel submitted that without Prejudice above, the calculation of disallowance under clause(ii) of Sub-Rule (2) of Rule 8D made by CIT(A) was prima facie wrong as Ld. CIT(A) has taken net current Assets (i.e. Current Assets minus Current Liabilities) while calculating the total Assets instead of taking the Gross Current Assets. The Actual average of total Assets on the first day and last day of the previous year comes out to Rs. 52.38 Crores whereas the CIT (A) wrongly calculated it as Rs. 38.59 Crores.

**4.7** He further submitted that, as per clause(ii) of Sub-Rule(2) of Rule 8D if the interest expenditure incurred by the assessee is directly attributable to any particular income or receipt, the same interest should not be considered while calculating disallowance under Rule 8D. It is a clear fact that the assessee had advanced Rs. 20.77 Crores, from the borrowed funds, to its sister concerns and charged interest @ 20%, whereas it has paid interest on the borrowed funds @ 14%.

**4.8** In support of the contention, that no disallowance could be made without recording dissatisfaction on the claim of the assessee of having incurred no expenditure for earning exempt income, the learned counsel relied on following judicial pronouncement:

- a) *Godrej & Boyce Manufacturing Company Ltd. Vs. Deputy Commissioner of Income Tax & Another, (2017) 295 CTR 121 (SC);*
- b) *CIT Vs. I.P. Support Services India (P) Ltd., (2015) 378 ITR 240 (Del.);*
- c) *Maxopp Investment Ltd. & Others. Vs. CIT, (2012) 247 CTR 0162 (Del.);*
- d) *ACB India Ltd. {Formerly MS Aryal Col Benefications (P) Ltd.}, (2015) 374 ITR 108 (Del); and*
- e) *Amway India Enterprises (P) Ltd. Vs. Income Tax Officer, (2014) 91 CCH 4 (Del.);*

**4.9** The learned DR, on the other hand, relied on the finding of the Ld. CIT(A) with reference to investment in group companies, he submitted that in view of the decision of the Hon'ble Supreme Court in the case of Maxopp Investment (supra) disallowance under section 14A has to be made in case of strategic investment made in group companies also.

**4.10** We have heard the rival submission and perused the relevant material on record. In view of the various decision cited by the Ld. counsel, it is settled law that the dissatisfaction as to the claim of the assessee of the amount incurred towards exempted income or no expenditure incurred towards exempted income, is prerequisite for invoking provisions of section 14A(2) read with rule 8D of the Rules. We find that the Ld. CIT(A) in para 4.3.1 of the impugned order has recorded that AO has not given the finding that he was not satisfied with assessee's claim of no expenditure incurred on the investment activity. The relevant finding of the Ld. CIT(A) is reproduced as under :

*“4.3.1 The AO has disallowed Rs. 2,01,90,351/- u/s 14A. From the assessment order it is noted that the AO has made the disallowance by merely stating that the assessee has made investment of Rs. 27,04,02,581/- crores during the year and earned dividend (Rs. 1,42,36,728/-) from the same and that S. 14A provides for disallowing expenditure incurred by the assessee on such income which is not included in the total income. I do not find any merit in the disallowance made by the AO on such lines. The AO has not given a finding that he was not satisfied with the appellant’s claim that no expenditure was incurred on the investment activity. The AO has mechanically applied Rule 8D on the ground that the appellant had received dividend income. This is not tenable as held in the judicial pronouncement relied upon by the AR. Therefore, I do not agree with the AO’s action in disallowing expenses straight away on the above lines. It is however, noted that the main business of the assessee appears to be investment activity. The appellant and other similar companies of the group are direct or indirect investors in the flag ship company of the group.”*

**4.11** The Ld. CIT(A) did not find any merit in the disallowance made by the Assessing Officer in view of the above observation. In our opinion, once the Ld. CIT(A) has himself observed that the disallowance has been made without recording the dissatisfaction, which was a prerequisite for making such a disallowance, he is not justified in sustaining the disallowance.

**4.12** But in subsequent para 4.3.2 of the impugned order, the Ld. CIT(A) himself expressed dissatisfaction on the claim of the assessee of no expenditure incurred towards investment activity and proceeded to re-compute the disallowance under section 14A of the Act. The finding of the Ld. CIT(A) are reproduced as under : para 4.3.2 to 4.3.9 of Ld. CIT(A) .

*“4.3.2 Though appellant has accounted trading turnover of Rs. 25.57 Crores, there is hardly any income from trading activity. There is loss of Rs. 57.35 lakhs. This is when around 60% of the purchases (Rs. 9.52 Crores) are from the Group Concerns*

themselves. Not only that, almost 50% of the sales are again made to the group concern only (Rs. 13 Crores). It is also noted that the P&L A/c shows a net loss as above in spite of the dividend income of Rs. 1.42 Crores and other income of Rs. 2.68 Crores credited to P&L A/c. As against this the appellant has made an investment of Rs. 27.04 Crores out of which Rs. 8.97 Crores relates to current Year's addition to the investment. Thus it is clear that the appellant is engaged in investment activity and therefore it cannot be denied that considerable man power and resources must have been employed/utilized for investment activity. The appellant has not come forward to provide the breakup of expenses relating to man power and other resources used for investment activity the income from which is not include in the total income. In view of this, it has to be held that there is no substance in appellant's submission that no expenditure was incurred towards investment activity. Such submission is therefore liable to be rejected. Further Rule 8D is applicable to the current year.

4.3.3 Therefore the issue to be considered is the computation of disallowance u/s 14A. It is not denied that the appellant has investments, income from which is not taxable. The appellant has on its own not allocated any expenditure relating to such expenditure. There are two components while making disallowance as per Rule 8D.

First one is the interest component. From the chart submitted by the AR during the appeal proceedings (copy enclosed to this order as Annexure-A), it is seen that the appellant has borrowed Rs. 20 Crores from DBS Chola Mandalam Finance Ltd. and Rs. 55.89 Crores from Barclays Bank Ltd. The interest paid on these borrowed funds has been charged to P&L A/c. The AR has given the details of utilization of these borrowed funds which is as under:-

S.No.	Particulars	Amount	Int. Rec@20%
1	Loan Given (Golf)	157516890	3727175
2	Loan Given (Firepro)	50157290	7523250
3	Investment (cedar Hospitality)	32500000	
4	Payment of Creditors	5271844	
5	Advance to Suppliers (Tulip Telecom Ltd.)	410892703	
6	Repayment of loan	91740839	
7	ROC Fees Paid	140052	
8	Payment to Tulip Singapore	10732990	
	Total	758952608	11250425

4.3.4 From the above table, it is seen that Rs. 3.25 Crores is the only borrowed amount which has been directly diverted for making investment in Cedar Hospitality, the income from which is not taxable. In ground No.4 in the

succeeding paragraphs, I am holding that the funds utilized by the appellant for payment to Tulip Singapore and advances to Tulip Telecom Ltd. are for non-business purposes. Interest incurred on those funds will not be allowed for deduction u/s 36(l)(iii). The interest on borrowed funds used for investment in Cedar Hospitality is liable to be straightway disallowed as there is a direct nexus between funds borrowed and investment in Cedar Hospitality. The same works out to Rs. 30,29,178/- as per the working given by the AR.

4.3.5 For the purpose of computing disallowance under rule 8D the interest of Rs. 1,26,36,112/- directly relating to the funds which have been diverted and advanced to Tulip Telecom Ltd and Tulip Singapore cannot be treated as interest which is not directly attributable to any particular income or receipt.

4.3.6 It is seen that the appellant has claimed to have earned interest from sums given to Golf Technologies Private Limited and Firepro Wireless and Technologies Private Limited. However the ledger accounts of the said two concerns show that there are several purchase and sale transactions in the said account. In the case of Golf Technologies the appellant has classified certain payments as loan. However it is observed that there are also purchases matching the same loan amounts on different days. Thus I find that the classification given by the appellant to some payments as loan is an artificial one. The reasons are not known. Further there are also receipts in the same account. Similarly in the case of Firepor there are considerable sale and purchase transactions. The total credits are to the tune of Rs. 12.23 crores. There are also purchases. In this given scenario, it cannot be held that the interest income charged to these two parties is directly linked to the amounts advanced to them by borrowing from the banks. Therefore in the given circumstances in the appellant's case I'm unable to hold that the interest charged to these two parties should be reduced from the interest expenditure while computing disallowance under Rule 8D.

4.3.7 In addition, as noted in the earlier paragraphs (4.3.2), the main activity of the assessee is investment activity. Thus it is clear the appellant is engaged in investment activity and therefore it cannot be denied that considerable man power and resources must have been employed/utilized for investment activity. The appellant has not come forward to provide the breakup of expenses relating to man power and other resources used for investment activity the income from which is not include in the total income. In view of this, it has to be held that there is no substance in appellant's submission that no expenditure was incurred towards investment activity. Such submission is therefore liable to be rejected. Further Rule 8D is applicable to the current year.

4.3.8 To sum up, the amount of expenditure directly relating to income which does not form part of the total income would be Rs. 30,29,178/- being interest on loan fund directly invested in the Cedar hospitality (As given by the AR). The interest expenditure to be considered for including in the formula given at Rule 8D(2)(ii), the interest expenditure would be Rs. 69.47,970/- as under.

(i) Interest debited to P&L A/c	Rs. 3,26,13,920/-
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Less:	(a) Interest relating to Cedar Hospitality	Rs.30,29,178
	(b) Interest relating to funds diverted to	

*non business purposes*

Rs.1,26,36,772/-    Rs.1,56,65,950/-  
Rs. 69,47,970/-

4.3.9 Thus the disallowance under section 14A read with Rule 8D comes to Rs. Rs.82,17,976/- as under.

(i) Amount of expenditure directly relating to income which does not form part of the total income- Rs. 30,29,178/-

(ii)  $A*B/C = 69,47,970 \times 22,55,52,581 / 38,58,94,797 = 40,61,035/-$

(iii) Amount equal to one-half percent of average of the value of investment - Rs. 11,27,763/-

TOTAL = Rs.82,17,976/- “

**4.13** In our considered opinion, the recording of dissatisfaction whether expressly or impliedly, is a requirement of law for making disallowance by the Assessing Officer and the Ld. CIT(A) cannot substitute the said dissatisfaction, which the Assessing Officer is required to record. Though on the merit, the Ld. CIT(A) has correctly recomputed the disallowance by way of segregating the interest expenditure directly related to investment for earning exempt income and interest which could not be directly attributable to any particular income, but once he himself has held that mechanical applying of Rule 8D by the AO is not tenable in view of the judicial pronouncement relied upon by the Ld. AR, he cannot proceed to recompute the disallowance.

**4.14** We also note that as per the records available before us, the Revenue has not filed any appeal challenging the finding of the Ld. CIT(A) that Assessing Officer has not given any finding as to dissatisfaction on the claim of the assessee of no expenditure incurred towards investment activity.

**4.15** In view of the above facts and circumstances, the action of Ld. CIT(A) in proceeding on merit to re-compute the disallowance

under section 14A read with Rule 8D, is not justified and we accordingly reject it. The ground No.1 of the appeal is accordingly allowed.

**5.** The grounds No. 2 and 3 of the appeal relates to disallowance under section 36(1)(iii) of the Act. The disallowance of Rs.57,89,101/- was made by the Assessing Officer, however the same has been enhanced to Rs.1,26,36,772/- by the Ld. CIT(A), thus, the addition of Rs.68,47,671/- has been made by the Ld. CIT(A).

**5.1** The facts qua the issue in dispute are that the Assessing Officer observed that the assessee raised loan funds at high rate of interest but transferred to a sister concern or group concern at lower rate of interest or no interest without any business purpose. The Assessing Officer noted that the assessee paid interest of Rs.3,26,13,920/- on loans raised, whereas shown receipt of Rs.2,68,24,817/- from interest, accordingly the excessive payment of interest to the tune of Rs.57,89,101/- was disallowed by the Assessing Officer.

**5.2** Before the Ld. CIT(A), the assessee submitted that it raised loan of approximately Rs.75 crores and out of which Rs.20.75 crores was given as loan and the balance is utilized for the business purpose. It was further submitted that the assessee paid interest at the rate of 14% per annum, whereas it has recovered interest at the rate of 20% per annum. According to the assessee Rs.55 crore has been utilized for the business purpose, the interest expenditure on the same is an allowable expenditure under section 36(1)(iii) of the Act. The assessee also submitted that the Assessing Officer has used the interest paid figure for making disallowance under section 14A of the Act but again same

amount is considered for disallowance under section 36(1)(iii) of the Act.

**5.3** The Ld. CIT(A) noted that the assessee borrowed about Rs. 20 crores from M/s DBS Chola Mandalam and Rs. 59.89 Crores from Barclay Bank. Before the Ld. CIT(A), the assessee submitted details of utilization of the funds as under:

<i>S.No.</i>	<i>Particulars</i>	<i>Amount</i>	<i>Int. Rec@20%</i>
1	<i>Loan Given (Golf)</i>	<i>157516890</i>	<i>3727175</i>
2	<i>Loan Given (Firepro)</i>	<i>50157290</i>	<i>7523250</i>
3	<i>Investment (cedar Hospitality)</i>	<i>32500000</i>	
4	<i>Payment of Creditors</i>	<i>5271844</i>	
5	<i>Advance to Suppliers (Tulip Telecom Ltd.)</i>	<i>410892703</i>	
6	<i>Repayment of loan</i>	<i>91740839</i>	
7	<i>ROC Fees Paid</i>	<i>140052</i>	
8	<i>Payment to Tulip Singapore</i>	<i>10732990</i>	
	<i>Total</i>	<i>758952608</i>	<i>11250425</i>

**5.4** It is observed by the Ld. CIT(A) that on the amounts given to to sister concerns namely (Golf Rs.15.75 Croes and Firepro Rs. 5.01 Croes) the assessee collected interest at the rate of 20%, however, on the amounts utilized in the form of Cedar Hospility (Rs.3.25 Crores), advanced to suppliers (Tulip Telecom –Rs. 41.09 crores) and payment to Tulip Singapure (Rs. 1.07 Crores) no interest was charged.

**5.5** The Ld. CIT(A) held that the advance to M/s Tulip Telecom of Rs. 41.08 crore was not for the purpose of business observation as under:

*“4.4.8 It is noted here that the appellant claims that it has transferred the loan fund to Tulip Telecom Ltd as advance to suppliers. However, it is noted that the turnover of the appellant company in the following year i.e. F.Y.2008-09, was just Rs. 18.75*

*crore as against Rs. 41.08 crore claimed to be the advance to suppliers. If the amount was paid to Tulip Telecom Ltd as advance for purchase, then the appellant should have received supplies of at least Rs. 41 crore and accordingly the turnover of the appellant should have been much more than that, unless it has shown the supplies in stock-in-trade. From the balance sheet of the appellant as at 31/03/2009, it is seen that stock-in-trade at the end of F.Y.2008-09 was NIL. Further, the purchases made by the appellant company from the Tulip Telecom was just Rs. 9.32 crores during next year i.e. F.Y. 2008-09, out of total purchase of Rs. 18.75 crores. Thus the submissions of the appellant that the amount given to Tulip Telecom Ltd. was an advance for purchases is completely untenable. Therefore the interest paid by the appellant on the amount borrowed from the Barclays Bank and immediately diverted to Tulip Telecom Ltd. is liable to be disallowed as expenditure not incurred of the purpose of assessee's business."*

**5.6** The Ld. CIT(A) noted in the impugned order that the Ld. AR agreed with the disallowance of interest as pointed out by the Ld. CIT(A) and provided calculation of the interest with the request that no penalty should be levied on the said disallowance. According to the Ld. CIT(A) the interest on funds used for Cedar hospitality was already disallowed under section 14A of the Act and thus interest corresponding to advance to suppliers Tulip Telecom (Rs.41,08,92,703/-) and payment to Tulip Sangapore (Rs.1,07,32,990/-), totalling to Rs.42,16,25,693 /- at the rate of 14% per annum was liable to be disallowed under section 36(1)(iii) of the Act. The Ld. CIT(A) provided calculation of the said interest at Rs.1,26,36,772/-, and thus the Ld. CIT(A) enhanced the addition by Rs.68,47,671/-.

**5.7** Before us, the learned counsel of the assessee submitted that the assessee had advanced funds to M/s Tulip Telecom Ltd. from time to time and also received funds from the said party and a running account was maintained. A chart of such a running

account submitted in the written submission is reproduced as under:

“Amount in Rs. (crores)”

<i>Particulars</i>	<i>Dr.</i>	<i>Cr.</i>
<i>Opening</i>	<i>1.78</i>	<i>-</i>
<i>Sales</i>	<i>4.82</i>	<i>-</i>
<i>Mutual Advances</i>	<i>39.17</i>	<i>39.61</i>
<i>Closing Balance</i>	<i>6.16</i>	<i>-</i>

**5.8** The Ld. counsel submitted that mutual advances were made by the assessee in the normal course of business. The Ld. counsel also submitted that the authorities have ignored the fact that fund advanced to M/s Tulip Telecom was received back during the year and the balance outstanding was only of Rs. 6.16 crores. The learned counsel in support of the contention that no disallowance could be made under section 36(1)(iii) of the Act relied on the decision of the Hon’ble Delhi High Court in the case of **CIT Vs Lalsons Enterprises (2010) 324 ITR 426 (Del)**. The learned counsel further submitted that the financial institution/Banks can only provide funds to the company for the purpose of business and thus the advancement of fund for the purpose of the business cannot be ruled out.

**5.9** On the other hand, Ld. DR relied on the finding of the Ld. CIT(A) and submitted that in view of the decision of the Hon’ble Punjab & Haryana High Court in the case of **Abhishek Industries** reported in **268 ITR 1** the funds advanced to sister concern for non-business purposes are liable for disallowance under section 36(1)(iii) of the Act.

**5.10** We have heard the rival submissions and perused the relevant material on record. In the facts of the case, it is undisputed that the assessee has borrowed more than Rs. 75 crores with interest rate of Rs. 14 percent and out of which amount of Rs. 42.16 crore has been advanced to two sister concerns, namely, M/s Tulip Telecom Ltd (Rs.41.08 crores) and M/s. Tulip Singapore (Rs.1.07 Crores) without any interest. The claim of the assessee is that said amount has been advanced for the purpose of business and thus no disallowance could be made under section 36(1)(iii) of the Act. The assessee has submitted summary of the transaction between M/s Tulip Telecom and the assessee and claimed that amount of Rs. 39.61 crore was by way of mutual advances, but assessee has not submitted or justified as how the said advance was for the purpose of business. Merely making a claim that a running account exists between the two parties and funds are received and paid from time to time, it cannot be established that the funds provided by the assessee to M/s Tulip Telecom Ltd are in the nature of the business advances. In the case of **Lalsons Enterprises** (supra) the Tribunal noted that advances are made in the course of the business as borne out from the record, but in the instant case the assessee has failed to substantiate with documentary evidence that the advances are for the purpose of the business, and this ratio of the above decision cannot be applied over facts of the instant case. In the case of **Abhisek Industries** (supra) the Hon'ble High Court of Punjab and Haryana has held that the onus is on the assessee to prove that borrowed funds extended to sister concerns have been utilized for the purpose of the business.

The relevant finding of the Hon'ble High Court is reproduced as under:

*“14. As far as the issue of establishment of nexus of the funds borrowed vis-a-vis the funds diverted towards sister-concern on interest-free basis is concerned, in our view, the stand of the assessee that the onus of proving the nexus of funds available with the assessee with the funds advanced to the sister-concerns without interest is on the Revenue is not correct. Sec. 36(1)(iii) of the Act provides for deductions of interest on the loans raised for business purposes. Once the assessee claims any such deduction in the books of account, the onus will be on the assessee to satisfy the AO that whatever loans were raised by the assessee, the same were used for business purposes. If in the process of examination of genuineness of such a deduction, it transpires that the assessee had advanced certain funds to sister-concerns or any other person without any interest, there would be very heavy onus on the assessee to be discharged before the AO to the effect that in spite of pending term loans and working capital loans on which the assessee is incurring liability to pay interest, still there was justification to advance loans to sister-concerns for non-business purposes without any interest and accordingly, the assessee should be allowed deduction of interest being paid on the loans raised by it to that extent. In our view, even the plea of nexus of loans raised by the assessee with the funds advanced to the sister-concerns on interest-free basis, may be it is pleaded to be out of sale proceeds or share capital or different account cannot be accepted.”*

**5.11** In the instant case, the assessee has failed to substantiate that the funds extended to sister concern were for the purpose of the business. In our opinion, the finding of the Ld. CIT(A) on the issue in dispute is well reasoned and we do not find any infirmity in the same, accordingly we uphold the disallowance of Rs.57,89,101/- made by the Assessing Officer, as well as the

amount of enhancement of Rs.68,47,671/- by the Ld. CIT(A), which makes the total disallowance to Rs.1,26,36,772/-. The grounds No. 2 and 3 of the appeal of the assessee are accordingly dismissed.

**6.** In the result, the appeal of the assessee is partly allowed.

**Order is pronounced in the open court on 12<sup>th</sup> October, 2018.**

**Sd/-**  
**[SUDHANSHU SRIVASTAVA]**  
**JUDICIAL MEMBER**

**Sd/-**  
**[O.P. KANT]**  
**ACCOUNTANT MEMBER**

Dated: 12<sup>th</sup> October, 2018.

RK/-(D.T.D.)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi