

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "E": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA.Nos.2556 & 2557/Del./2017  
Assessment Years 2013-2014 & 2014-2015

The DCIT, Circle Karnal, Aayakar Bhawan, Sector-12, Karnal.	vs.,	Mahesh Timber Pvt. Ltd., Timber Market, Sadar Bazar, Karnal. PAN AACCM5526G
(Appellant)		(Respondent)

Cross Objection Nos.153 & 154/Del./2017  
Arising out of  
ITA.Nos.2556 & 2557/Del./2017  
Assessment Years 2013-2014 & 2014-2015

Mahesh Timber Pvt. Ltd., Timber Market, Sadar Bazar, Karnal. PAN AACCM5526G	vs.,	The DCIT, Circle Karnal, Aayakar Bhawan, Sector-12, Karnal.
(Appellant)		(Respondent)

ITA.Nos.2558 & 2559/Del./2017  
Assessment Years 2013-2014 & 2014-2015

The DCIT, Circle Karnal, Aayakar Bhawan, Sector-12, Karnal.	vs.,	Mahesh Industries Pvt. Ltd., Timber Market, Sadar Bazar, Karnal. PAN AAF3CM3302F
(Appellant)		(Respondent)

Cross Objection Nos.155 & 156/Del./2017  
Arising out of  
ITA.Nos.2558 & 2599/Del./2017  
Assessment Years 2013-2014 & 2014-2015

Mahesh Industries Pvt. Ltd., Timber Market, Sadar Bazar, Karnal. PAN AAFCM3302F	vs.,	The DCIT, Circle Karnal, Aayakar Bhawan, Sector-12, Karnal.
(Cross Objector)		(Respondent)

For Revenue :	Ms. Rinku Singh, Sr. D.R.
For Assessee :	Shri Ashish Goel, C.A. And Ms. Umang Luthra, Advocate

Date of Hearing :	11.07.2019
Date of Pronouncement :	01.08.2019

**ORDER**

**PER BHAVNESH SAINI, J.M.**

This order shall dispose of all the above departmental appeals and cross objections filed in the cases of two Assessee's.

2. We have heard the rival submissions and perused the findings of the authorities below. Learned Counsel for the Assessee submitted that issue is same in all the appeals and they have mainly argued in the case of Mahesh Timber

Pvt. Ltd., for A.Y. 2013-2014 and stated that order in this case may be followed in other appeals

ITA.No.2556/Del./2017 & C.O.No.153/Del./2017

Mahesh Timber Pvt. Ltd., – A.Y. 2013-2014

3. The Departmental Appeal as well as Cross Objection by assessee are directed against the Order of the Ld. CIT(A), Karnal, Dated 09.03.2017, for the A.Y. 2013-2014. The Revenue in Departmental Appeal has challenged the Order of Ld. CIT(A) in deleting the addition of Rs.2,37,05,217/- on account of disallowance of interest under section 36(1)(iii) of the I.T. Act.

4. The Ld. CIT(A) on going through the assessment order and observation of the A.O. summarised the issue and noted that A.O. has observed that assessee had incurred interest liability to the tune of Rs.5.90 crores on interest bearing funds, but, had made interest free advance to some parties. The assessee was asked to explain why proportionate disallowance on interest should not be made under section 36(1)(iii) of the I.T. Act. The A.O. after

considering the reply of assessee relied upon decision of Punjab & Haryana High Court in the case of Abhishek Industries 286 ITR 1 (P&H) and came to the conclusion that amount advanced to the following parties could not be considered for allowing interest under section 36(1)(iii) of the I.T. Act viz., (1) M/s. Anand Enterprises (2) Sourabh Enterprises and (3) Shiv Shankar Timbers. The A.O. has also observed that during assessment proceedings, the statement of Directors, shareholders and proprietors of these companies were taken. During the statement it was mentioned that assessee company had given huge interest free advance to these parties out of its interest bearing funds and then amount of such advances was further given free of interest by these parties to the Directors and shareholders of the assessee company i.e., Shri Ashok Mittal, Shri Madan Lal Mittal and Shri Bharat Bushan Mittal who have further invested this money in purchase of shares of assessee company on premium. The A.O. observed that there were clear diversion of huge interest bearing funds by the assessee company for providing personal

benefits to its Directors/shareholders. The A.O. referred to statements of the persons recorded above and came to the conclusion that assessee company had given huge interest free advance to some of parties out of interest bearing funds who had inturn invested in assessee company in the shape of share application money. The A.O. concluded that this is a clear cut diversion of huge interest bearing funds by the assessee company for providing personal benefits to the Directors/shareholders. The A.O. relied upon several decisions in support of the observations above. The A.O. with regard to other parties has considered that these advances were for non-business purposes. On the basis of the findings and observations, the A.O. has come to the conclusion that assessee had used a colourable devise to divert the income of the assessee company for personal benefits of his Directors/Shareholders. The Directors/Shareholders benefited in their personal capacity and become wealthier by acquiring shares of the assessee company at a huge premium. The A.O. further emphasized that there was no evidence regarding business expediency

for making these interest free advances. As a result, A.O. has computed disallowance on a proportionate basis and made disallowance of Rs.2,37,05,217/-.

5. The assessee challenged the addition before the Ld. CIT(A). The written submissions of the assessee is reproduced in the appellate order. The Ld. CIT(A) made the summary of the statement of the assessee which is reproduced as under :

*“The AR of the appellant has primarily made the following submissions :-*

- i) The AR has argued that the interest free advances given to M/s Anand Enterprises, M/s Saurabh Enterprises and M/s Shiv Shankar Timber were given out of business expediency since the amounts advance to them were received back by the appellant through share application money/premium, these funds become available to the assessee and to that extent the interest*

*payment on this amount also was for business purpose only.*

- ii) The AR has strongly argued that even before the Assessing Officer, it had been clearly brought out in the reply dated 23.03.2016 that the appellant had sufficient free funds available to justify the interest free advances given to the three parties M/s Saurabh Enterprises, M/s Anand Enterprises and M/s Shiv Shankar Timber. It was emphasized that these details were reproduced by the AO on page 8 of the assessment order. However the A.O. has not appreciated that despite various judicial pronouncements regarding availability of sufficient interest free funds, such disallowances should not have been made.*
- iii) The AR has also emphasized that the interest free advances were given to these*

*three parties in order to comply with the RBI guidelines under automatic approval route. The appellant company needed to increase its net worth by way of issuing more shares and therefore any disallowance in this regard was not justified. It was submitted that the advances were for business expediency.*

- iv) The AR further emphasized that in view of the decision of Munjal Sales Corporation 298 ITR (SC), Reliance Utilities & Power Ltd. 178 Taxman, Radico Khaitan Ltd. 274 ITR (Allahabad), Rockman Cycle Industries Ltd 176 Taxman (P&H), Hero Cycles (SC), Gautam Motors & Metro Institute of Medical Sciences (supra), the AR submitted that since no nexus between the borrowed funds and the interest free advances and at the same time the appellant had sufficient funds to justify the interest free advances*

*the disallowances were not justified.”*

6. The Ld. CIT(A) considering the submissions of the assessee and judicial decisions, deleted the addition. His findings in para 4.3 are reproduced as under :

*“4.3. Findings :-*

*After going through the facts and submissions as well as the various judicial pronouncements on this issue, this ground is being finalized after making the following observations:-*

*On going through the computation of disallowance it is observed that the disallowances of interest made by the AO u/s 36(1)(iii) comprised of the following components:-*

- 1. M/s Anand Enterprises Rs.1,24,94,126/-*
- 2. M/s Shiv Shnakar TimbersRs. 5,07,743/-*
- 3. M/s Saurabh Enterprises Rs.1,03,95,471/-*
- 4. M/s Shivam Shipping Services Rs. 1,425/-*
- 5. M/s Swayam Shipping Services Rs. 41,231/-*
- 6. M/s Radhika Shipping Services Rs. 2,42,528/-*
- 7. M/s. Tiaga Timber Trading Pvt. Ltd.,*

Rs.19,992/-

*The AO has taken the statement of four persons to come to the conclusion that the interest free advances were used for investment in the share capital/premium of the company. In the above cases, the disallowances relating to such amounts given for investments in shares of the appellant company relates to M/s Anand Enterprises, M/s Shiv Shankar Timber and M/s Saurabh Enterprises.*

*b) The AR has emphatically argued that in the case of M/s Anand Enterprises and M/s Saurabh Enterprises there was substantial opening balance as on 01.04.2012 also. The AR has further argued that despite the increase in borrowed funds of Rs.14.92 crores during the year, the appellant company has also introduced interest free funds of Rs.10.82 crores during A.Y. 2013-14. The AR has therefore argued that the amounts sanctioned by the banks on which interest had been paid is tightly monitored by the banks and the same could not be*

*diverted for any other purpose. In this regard, the AR relied upon the decision of Gautam Motors 334 ITR Delhi and Metro Institute of Medical Sciences (Supra). In the present case also the AO has not considered the various judicial pronouncements including Munjal Sales Corporation 298 ITR, Hero Cycle (2015)(SC), Reliance Utilities (P&H) (Supra), wherein the availability of interest free funds with the assessee has to be considered before making any disallowance u/s 36(1)(iii) of the Income Tax Act.*

*c) In the present case the AR has provided details of interest free funds available with the appellant and has strongly argued that the funds on which interest was being paid by the appellant to the banks, could not have been diverted for other purposes. The AO has only relied upon the decision of Abhishek Industries (P&H), but has not subsequent judgments of Hero Cycles(2015) SC, Munjal Sales 298 ITR (SC) and Reliance Utilities*

(P&H) (*supra*).

d) Further in view of decision of Gautam Motors 334 ITR (Del.) & Metro Institute of Medical Sciences (2013) Delhi ITAT, since interest payment is related directly to the working capital, the same cannot be disallowed. In Hero Cycles (SC) (2015) it has been clearly observed that if there were adequate reserves and surplus as in the case of the present appellant, it establishes that the assessee had sufficient interest free funds available. The following chart provided by the A.R establishes the surplus available :-

S.No.	Source	Balance as on 01.04.2012	Balance as on 31.03.2013
1.	Share Capital	138329100.00	163549100.00
2.	Reserve and Surplus	408999475.39	500469317.76
3.	Interest free Unsecured loans	32180666.00	23711666.00
	Sub Total	579509241.39	687730083.76
	Net Increase in interest free funds		108220842.00
4.	Net Current Assets	691337454	953947872.00
5.	Net Increase in Current Assets		262610418.00
6.	Net Increase in Borrowed Funds in working capital		149244699.00 .
7.	Net increase in Interest Free Advances		35470774.00

The decision of Hero Cycles (*supra*), Reliance Utilities (*supra*), Kapsons Associates (*supra*) is subsequent to

*the decision of Abhishek Industries which has been overruled on this issue by the Apex Court.*

*e) From the facts of the present case it is observed that the appellant had sufficient interest free funds for giving the interest free advances to the parties. In this regard, the AR of the appellant has clearly identified that all the interest claimed related to working capital of the assessee and the banks closely monitor the use of these funds or the specified purpose. The copy of ledger provided by the AR is reproduced as follows:-*

**MAHESH TIMBER PVT. LTD.**

*H.O. : Timber Market, Karnal – 132 001*

**BANK INTEREST**

**Ledger Account**

**1-Apr-2012 to 31-Mar-2013**

<i>Date</i>	<i>Particulars</i>	<i>Vch Type</i>	<i>Vch No./Excise Inv. No.</i>	<i>Debit</i>	<i>Credit</i>
02.04.2012	TO STATE BANK OF INDIA C/A	Payment		4,78,885.00	
03.04.2012	TO STATE BANK OF INDIA C/A	Payment		15,592.00	
27.04.2012	TO STATE BANK OF INDIA C/A	Payment		4,21,294.00	
30.04.2012	TO STATE BANK OF INDIA C/C	Payment		32,03,152.00	
	TO ORIENTAL	Payment		7,21,461.00	

	BANK OF COMMERCE				
	TO STATE BANK OF INDIA B/D	Payment		4,82,017.00	
10.05.2012	TO STATE BANK OF INDIA C/A	Payment		2,07,347.00	
31.06.2012	TO STATE BANK OF INDIA C/C	Payment		34,91,699.00	
	TO STATE BANK OF INDIA C/C	Payment		333.00	
	TO STATE BANK OF INDIA B/D	Payment		5,00,703.00	
	TO ORIENTAL BANK OF COMMERCE	Payment		6,09,877.00	
30.06.2012	TO STATE BANK OF INDIA B/D	Payment		4,59,959.00	
	TO STATE BANK OF INDIA C/C	Payment		31,89,376.00	
	TO ORIENTAL BANK OF COMMERCE	Payment		5,89,709.00	
31.07.2012	TO ORIENTAL BANK OF COMMERCE	Payment		6,06,503.00	
	TO STATE BANK OF INDIA C/C	Payment		33,01,259.00	
	TO STATE BANK OF INDIA C/C	Payment		369.00	
	TO STATE BANK OF INDIA B/D	Payment		4,75,881.00	
	TO STATE BANK OF INDIA B/D	Payment		71.00	
	TO STATE BANK OF INDIA C/A	Payment		889.00	
31.08.2012	TO STATE BANK OF INDIA C/C	Payment		33,83,278.00	
	TO STATE BANK OF INDIA C/C	Payment		46,503.00	
	TO STATE BANK OF INDIA B/D	Payment		4,86,876.00	
	TO STATE BANK OF INDIA B/D	Payment		6,652.00	
	TO ORIENTAL BANK OF COMMERCE	Payment		9,15,001.00	
8.9.2012	BY STATE BANK OF INDIA C/C	Receipt	REF. NO. 13737906		76,441.00
	BY STATE BANK OF INDIA B/D	Receipt	REF. NO. 13737916		10,957.00
27.9.2012	TO HDFC BANK LTD., KARNAL	Journal	CH. NO. 981248	50.00	
29.9.2012	TO ORIENTAL BANK OF COMMERCE	Payment		11,31,797.00	
	TO ORIENTAL BANK OF COMMERCE C/A	Payment		1,010.00	
30.9.2012	TO STATE BANK OF INDIA C/C	Payment		32,09,797.00	

	TO STATE BANK OF INDIA C/C	Payment		1,927.00	
	TO STATE BANK OF INDIA C/A	Payment		4,859.00	
	TO STATE BANK OF INDIA B/D	Payment		4,57,829.00	
	TO STATE BANK OF INDIA B/D	Payment		160.00	
3.10.2012	TO ORIENTAL BANK OF COMMERCE C/A	Payment		5.00	
31.10.2012	TO ORIENTAL BANK OF COMMERCE	Payment		12,55,267.00	
	TO STATE BANK OF INDIA C/C	Payment		33,86,284.00	
	TO STATE BANK OF INDIA C/C	Payment		17,010.00	
	TO STATE BANK OF INDIA B/D	Payment		4,67,793.00	
	TO STATE BANK OF INDIA B/D	Payment		181.00	
	TO STATE BANK OF INDIA C/C	Payment		35,16,578.00	
	TO STATE BANK OF INDIA C/C	Payment		51,228.00	
	TO STATE BANK OF INDIA B/D	Payment		4,55,078.00	
	TO STATE BANK OF INDIA B/D	Payment		668.00	
	TO ORIENTAL BANK OF COMMERCE	Payment		12,19,277.00	
31.12.2012	TO ORIENTAL BANK OF COMMERCE	Payment		10,01,291.00	
		Payment		<b>3,97,72,775.00</b>	<b>87,398.00</b>
	TO STATE BANK OF INDIA C/C	Payment		36,11,201.00	
	TO STATE BANK OF INDIA C/C	Payment		49,692.00	
	TO STATE BANK OF INDIA B/D	Payment		4,71,314.00	
	TO STATE BANK OF INDIA B/D	Payment		613.00	
	TO STATE BANK OF INDIA C/C	Payment		33,26,303.00	
	TO STATE BANK OF INDIA C/C	Payment		10,227.00	
	TO STATE BANK OF INDIA B/D	Payment		4,67,642.00	
	TO STATE BANK OF INDIA B/D	Payment		100.00	
	TO ORIENTAL BANK OF COMMERCE	Payment		10,14,906.00	
	TO STATE BANK OF INDIA C/A	Payment		72.00	
26.02.2013	TO ORIENTAL BANK OF	Payment		8,97,056.00	

	COMMERCE				
	TO STATE BANK OF INDIA C/C	Payment		29,18,109.00	
	TO STATE BANK OF INDIA C/C	Payment		78,617.00	
	TO STATE BANK OF INDIA B/D	Payment		4,631.00	
	TO STATE BANK OF INDIA B/D	Payment		3,91,542.00	
16.3.2013	TO STATE BANK OF INDIA C/A	Payment		2,51,434.00	
18.3.2013	TO STATE BANK OF INDIA C/A	Payment		500.00	
31.3.2013	TO STATE BANK OF INDIA C/C	Payment		28,37,201.00	
	TO STATE BANK OF INDIA C/C	Payment		1,12,089.00	
	TO STATE BANK OF INDIA B/D	Payment		8,785.00	
	TO STATE BANK OF INDIA B/D	Payment		3,66,071.00	
	TO ORIENTAL BANK OF COMMERCE	Payment		11,80,463.00	
	TO STATE BANK OF INDIA C/A	Payment		2,654.00	
				<b>5,77,73,997.00</b>	<b>87,398.00</b>
	By Closing Balance				5,76,86,599
				<b>5,77,73,997.00</b>	<b>5,77,73,997</b>

*The A.O. has nowhere pointed out the use of these interest bearing funds for providing the interest free advances to various parties. Accordingly, in view of the various judicial pronouncements including Hero Cycles Ltd., in CA.No.514 of 2008 dated 05.11.2015, CIT vs. Kapsons Associates (2016) 381 ITR 204, Munjal Sales Corporations 298 ITR and Reliance Utilities (supra) it is clear that the interest claimed by the appellant is linked directly the*

*working capital and prima facie no disallowance out of this interest can be considered as non-business purpose.*

*f) The AO has not appreciated that the interest claim of the appellant was not related to any interest free advances but was only related to the working capital of the assessee. The argument of the AR relating to business expediency for enhancing the share capital of the assessee has also not been controverted by the Assessing Officer.*

*g) With regard to the other four parties, the AR has argued that there were regular suppliers and amounts had been advance<sup>^</sup> in regular course on account of business expediency. The AO has not brought any specific instance to dispute these advances as not being on account of business expediency. Therefore, the disallowance relating to M/s Shivam Shipping Services, M/s Swayam Shipping Services, M/s Radhika Shipping Services and M/s Tiaga Timber, is also not justified.*

*h) Alternatively, the AR has also argued that interest free advances were given to these three parties M/s Anand Enterprises, M/s Shiv Shankar Timbers and M/s Saurabh Enterprises was also on account of business expediency to meet certain RBI guidelines, which require a higher share capital to avail of certain benefits. It was argued by the AR that these funds had also been brought back for use of the appellant through share application money and therefore to that extent the amounts shown as interest free advances had also been received back by the appellant company. The AR has relied upon various judicial pronouncements including SA Builders (Supra), Madhav Parsad Jethia (Supra) and there to argue that under similar circumstances no interest could be made, where business expediency was involved.*

*After careful consideration of the facts of the present case as well as various judicial pronouncements, it is clear that the interest claimed of the assessee*

*related to the working capital of the appellant, the appellant had sufficient surplus interest free funds as per the balance sheet and also the interest free advances given to other parties were out of business expediency. Accordingly, I am inclined to agree with the arguments of the appellant that this disallowance u/s 36(1 )(iii) was not justified. This addition is therefore deleted. The grounds are allowed.”*

7. The Ld. D.R. merely relied upon the Order of the A.O. but did not point out any error in the Order of the Ld. CIT(A) in deleting the addition.

8. On the other hand, Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that advances were given for business expediency and assessee-company had sufficient interest free funds available to justify interest free advance given to the parties and advances were given to comply with the RBI guidelines. He has submitted that A.O. placed reliance on the Judgment of the Punjab & Haryana

High Court in the case of M/s. Abhishek Industries Ltd., 286 ITR 1 (P&H) which have been subsequently overruled by the Judgment of Hon'ble Supreme Court in the case of Hero Cycles P. Ltd., vs. CIT [2015] 379 ITR 347 (SC).

9. We have considered the rival submissions and do not find any merit in the departmental appeal. The assessee pleaded before the authorities below that advances were given out of business expediency and that assessee-company had sufficient interest free funds available to justify the interest free advance given to the parties. It was also explained that interest free advances were given to the parties to comply with the RBI guidelines under automatically approval route. The assessee company needed to increase its net worth by way of issuing more shares, therefore, advances were given for business expediency. The submissions made by the assessee-company have been supported by evidence and material on record which have not been rebutted by the Ld. D.R. through any evidence or material on record. The assessee-company also submitted that A.O. has failed to prove any nexus between the

borrowed funds and the interest free advances at any time because assessee-company has sufficient interest free funds available to justify the advances. The finding of fact recorded by the Ld. CIT(A) have not been challenged in any manner before us. The A.O. merely relied upon Judgment of the Hon'ble Punjab & Haryana High Court in the case of M/s. Abhishek Industries (supra) which have been subsequently overruled by the Hon'ble Supreme Court in the case of Hero Cycles Pvt. Ltd., (supra). Considering the totality of the facts and circumstances in the light of finding of fact recorded by the Ld. CIT(A), we do not find any justification to interfere with the orders of the Ld. CIT(A) in deleting the addition. This ground of appeal of Revenue is dismissed.

10. In the result, ITA.No.2556/Del./2017 of the Revenue dismissed.

C.O.No.153/Del./2017

11. On Ground Nos. 1 and 2 of the cross objections, the assessee challenged disallowance of Rs.6,67,874/-

under section 14A of the I.T. Act. The authorities below confirmed the addition following the Order for A.Y. 2012-2013 in the case of assessee despite assessee explained that no exempt income have been earned in assessment year under appeal. Learned Counsel for the Assessee at the outset submitted that in A.Y. 2012-2013, ITAT, Delhi-E Bench in the case of assessee while considering the departmental appeal and cross objection has allowed this ground following the decision of Hon'ble Delhi High Court in the case of Cheminvest Ltd., Copy of the Order dated 04.07.2019 is placed on record. The Ld. D.R. also stated that the issue is covered in favour of the assessee. Following the Order for the A.Y. 2012-2013, we set aside the Orders of the authorities below and delete the addition. Ground Nos. 1 and 2 of the cross objection of the assessee are allowed.

12. Learned Counsel for the Assessee did not press Ground No.3 of cross objection and the same is accordingly dismissed.

13. In the result, C.O.No.153/Del./2017 of the Assessee is partly allowed.

ITA.No.2557/Del./2017 & C.O.No.154/Del./2017

Mahesh Timber Pvt. Ltd., Karnal – A.Y. 2014-2015

14. The Departmental Appeal as well as Cross Objection by assessee are directed against the Order of the Ld. CIT(A), Karnal, Dated 12.03.2017, for the A.Y. 2014-2015.

15. On Ground No.1 of the departmental appeal, the Revenue challenged the deletion of addition of Rs.1,89,01,764/- on account of disallowance of interest under section 36(1)(iii) of the I.T. Act. It is stated that this issue is same as have been considered in A.Y. 2013-2014 (supra). Following the same order, we dismiss the departmental appeal.

16. In the result, ITA.No.2557/Del./2017 of the Revenue dismissed.

17. On Ground Nos. 1 and 2 of the cross objection, the assessee challenged the disallowance of Rs.5,99,920/- under section 14A of the I.T. Act. It is stated that this issue is same as have been considered in A.Y. 2013-2014.

Following the same reasons for decision for the same, we set aside the Orders of the authorities below and delete the addition. Ground Nos. 1 and 2 of the cross objection of the Assessee are allowed.

18. On Ground No.3 of the cross objection, assessee challenged the disallowance of Rs.2,90,201/- on account of car and telephone expenses.

19. The Ld. CIT(A) noted that A.O. disallowed these expenses on account of personal use of car and telephone expenses. The A.O. observed in the assessment order that since no log book on car and calls details register of telephones were maintained and produced for verification, 1/5<sup>th</sup> of all these expenses were disallowed. The A.O. made the addition of Rs.5,80,402/-. The assessee submitted before Ld. CIT(A) that accounts are audited and no specific instance of personal use have been pointed out by the A.O, therefore, addition is unjustified. The Ld. CIT(A) considered it to be excessive addition, restricted the addition to 10% of the claim instead of 20% made by the A.O. This ground was partly allowed.

20. After considering the rival submissions, we are of the view that addition is unjustified. The assessee is a company and is a legal entity. Therefore, there is no justification to make any adhoc disallowance on this issue. There may not be any personal use of these facilities by the company. We rely upon the Judgment of Hon'ble Gujarat High Court in the case of Sayaji Iron & Engineering Company vs. CIT [2002] 253 ITR 749 (Guj.). The addition is, therefore, liable to be deleted. We, accordingly, set aside the Orders of the authorities below and delete the addition. Ground No.3 of the cross objection of the assessee is allowed.

21. On Ground No.4 of the cross objection, assessee challenged the disallowance of Rs.11,02,935/- on account of sales tax. Learned Counsel for the Assessee did not press this ground of appeal of the cross objection and the same is accordingly dismissed.

22. In the result, C.O.No.154/Del./2017 of the Assessee is partly allowed.

ITA.No.2558/Del./2017 & C.O.No.155/Del./2017 –

Mahesh Industries Pvt. Ltd., Karnal – A.Y. 2013-2014

23. The Departmental Appeal as well as Cross Objections are directed against the Order of the Ld. CIT(A), Karnal, dated 09.03.2017 for the A.Y. 2013-2014.

24. The Revenue on Ground No.1 challenged the deletion of addition of Rs.96,71,474/- on account of disallowance of interest under section 36(1)(iii) of the I.T. Act. Both parties said that the issue is same as have been considered in the case of Mahesh Timber Pvt. Ltd., in ITA.No.2556/Del./2017 (supra). Following the reasons for decision for the same, we dismiss the departmental appeal.

25. In the result, ITA.No.2558/Del./2017 of the Revenue dismissed.

C.O.No.155/Del./2017 :

26. On ground No.2 of the cross objection, the assessee challenged the disallowance of Rs.66,055/- on account of car and telephone expenses @10%. Both parties stated that this issue is same as have been decided in

C.O.No.154/Del./2017 (supra). Following the reasons for decision in that cross objection, we set aside the Orders of the authorities below and delete the entire addition. Cross Objection of the assessee allowed.

27. In the result, Cross Objection No.155/Del./2017 of the Assessee is allowed.

ITA.No.2559/Del./2017 & C.O.No.156/Del./2017

Mahesh Industries Pvt. Ltd., - A.Y. 2014-2015

28. The Departmental Appeal and Cross Objection are directed against the Order of the Ld. CIT(A), Karnal, Dated 12.03.2017, for the A.Y. 2014-2015.

29. In the Departmental Appeal, the Revenue challenged the deletion of addition of Rs.1,43,93,015/- on account of disallowance of interest under section 36(1)(iii) of the I.T. Act, 1961. Both parties said that the issue is same as have been considered in the case of Mahesh Timber Pvt. Ltd., in ITA.No.2556/Del./2017 (supra). Following the reasons for decision for the same, we dismiss the departmental appeal.

30. In the result, ITA.No. ITA.No.2559/Del./2017 of the Revenue is dismissed.

C.O.No. 156/Del./2017

31. The assessee in the cross objection on Ground Nos. 1 and 2 challenged the disallowance of Rs.96,463/- on account of car and telephone expenses.

32. Both parties stated that this issue is same as have been decided in C.O.No.154/Del./2017 (supra). Following the reasons for decision in that cross objection, we set aside the Orders of the authorities below and delete the entire addition. Ground Nos. 1 and 2 of the Cross Objections of the assessee are allowed.

33. The assessee did not press Ground No.3 of the cross objection of the assessee and the same is dismissed as not pressed.

34. In the result, C.O.No.156/Del./2017 of the Assessee is partly allowed.

35. To sum-up, all the Departmental Appeals are dismissed and Cross Objections Nos.153, 154 & 156/Del./2017 of the Assessee are partly allowed and C.O.No.155/Del./2017 allowed.

Order pronounced in the open Court.

Sd/-  
(B.R.R. KUMAR)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 01<sup>st</sup> August, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "E" Bench
6.	Guard File

//By Order//

Asst. Registrar : ITAT : Delhi Benches :  
Delhi.