

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, AHMEDABAD
[CONDUCTED THROUGH VIRTUAL AT AHMEDABAD]**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No. 2821/Ahd/2013
(Assessment Year: 2010-11)

Takshashila Gruh Nirman P. Ltd. Ground Floor, Block-A, Manav Mandir, Opp. Raman Nagar Society, Nr. Old Aradhana – Vidyalay, Cross Road, Maninagar, Ahmedabad	Vs.	The ITO, Ward-8(1), Ahmedabad
[PAN No. AAACY1535D]		
(Appellant)	..	(Respondent)

Assessee by :	Shri M. K. Patel, AR
Revenue by :	Shri Purushottam Kumar, Sr. DR
Date of Hearing	26.10.2021
Date of Pronouncement	29.10.2021

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is directed against the order dated 23.09.2013 passed by the Ld. CIT(A)-XIV, Ahmedabad arising out of the order dated 06.02.2013 passed by the ITO, Ward-8(1), Ahmedabad under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to “the Act”) for A.Y. 2010-11 with the following grounds:-

- “1. That on facts, and in law, the learned CIT(A) has grievously erred in confirming the disallowance of interest of Rs. 9,14,000/- u/s. 36(i)(iii).
2. That on facts, and in law it ought to have been held that no disallowance is called for as all advances are for business purpose only.
3. The appellant craves leave to add, alter, amend any ground of appeal.”

2. The assessee's contention is this that no disallowance is called for as all the advances are for business purpose only.

3. We have heard the respective parties and we have also perused the relevant materials available on record.

4. The Ld. Counsel appearing for the assessee drew out attention to the order passed by the Ld. CIT(A) from which it appears that the loan and advances given to Chanakya Buildcon Pvt. Ltd., Chanakya Infracon Pvt. Ltd., Takshashila Properties Pvt. Ltd. and advances to the supplier of material and labour were accepted by the Ld. CIT(A), as this were made for business purposes. However, the loans and advances made to the sister concern/associated concern namely Takshashila Infrastructure Pvt. Ltd., Youngstar Infrastructure, Kamlesh K. Gondalia (HUF) and the relatives and the friends of the assessee altogether to the tune of Rs. 6,80,51,184/- has not been accepted by the Ld. CIT(A). It also brought to our notice that out of the total loan and advances of Rs. 11,59,51,927/- the interest free and own fund available with the assessee was Rs. 10,68,11,665/- and the difference of Rs. 91,40,272/- was considered by the Ld. CIT(A).

In fact, the disallowance was worked out by taking 10% of the average rate of interest on the difference amount of Rs. 91,40,272/- amounting to Rs. 9,14,000/-. The assessee joints issues here. According to the assessee the Ld. CIT(A) did not accept the advances to the sister concern/associated concern on the ground of non-utilization by them for business purposes totaling to Rs. 6,80,51,184/- as mentioned at Paragraph 8 of Page 22 of the order passed by the Ld. CIT(A). In that view of the matter it was contended by the Ld. AR that instead of Rs. 11,59,51,927/- the loan and advances given to the parties Rs.

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6,80,51,184/- which was not accepted by the Ld. CIT(A) to be considered for determination of disallowance. Finally the assessee is having interest free and own fund more than the said amount of Rs. 6,80,51,184/- the impugned disallowance is not sustainable.

On this aspect the assessee drew our attention to the additional submission dated 03.09.2019 filed by the appellant before the Ld. CIT(A) wherein Rs. 10,68,11,665/- is shown as the own fund and interest free fund available as on 31.03.2010.

5. Upon perusal of the records of the matter including the order passed by the authorities below we find substance in such submissions made by the Ld. AR. We also note that Ld. DR also failed to controvert such contention made by the Ld. AR. Since the assessee's own fund and interest bearing fund is Rs. 10,68,11,665/- which is more than the non-acceptance of the amount of loan and advances made to the parties as mentioned at Page 22 of the order passed by the Ld. CIT(A) to the tune of Rs. 6,80,51,184/- the impugned disallowance under Section 36(i)(iii) of the Act is not sustainable in the eye of law and hence the same is liable to be quashed. We, thus, order accordingly.

6. In the result, the appeal preferred by the assessee is allowed.

This Order pronounced in Open Court on	29/10/2021
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Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad; Dated 29/10/2021
TANMAY, Sr. PS

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

TRUE COPY
आदेश की प्रतिलिपि अद्येषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.

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3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT,
Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad