

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"G" BENCH, MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.7020/Mum./2017**  
**(Assessment Year : 2011-12)**

Dy. Commissioner of Income Tax  
Circle-4(3)(2), Mumbai

..... Appellant

v/s

SKM Fabrics (Amana) Ltd.  
99, Niranjan, Ground Floor  
Marine Lines, Mumbai 400 002  
PAN – AAFCS2660E

..... Respondent

Assessee by : Shri Yogesh Joijode  
Revenue by : Shri Hoshang B. Irani

Date of Hearing – 10.03.2022

Date of Order – 24/05/2022

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the Revenue challenging the impugned order dated 28.09.2017, passed by the learned Commissioner of Income Tax (Appeals)-9, Mumbai [*"learned CIT(A)"*], for the assessment year 2011-12.

2. In this appeal, the Revenue has raised following ground:-

*"On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in directing the A.O. to delete the disallowance of interest of Rs.8,08,01,969, made u/s 36(1)(iii) of the Act towards*

*interest expenditure without appreciating the fact that even though the assessee company has shown losses and loss of the assessee of the year under consideration was increased to Rs.10.91 crore as against Rs.5.12 crore shown in earlier year, assessee continued to divert its "interest bearing funds" for giving "interest free advances / loans" for unknown purpose."*

3. The only issue arising in present appeal is with regard to deletion of disallowance of interest under section 36(1)(iii) of the Act.

4. The brief facts of the case pertaining to this issue, as emanating from the records are: The assessee is engaged in business of trading of locally man-made grey fabrics as well as manufactured/processed finished fabric through outside processor, whenever considered expedient. For the year under consideration, assessee filed its return of income on 01/10/2011 declaring total loss at Rs. 10,92,25,828. During the course of assessment proceedings, from the perusal of assessee's balance sheet, it was observed that the assessee has shown loans and advances given at Rs. 98,87,66,137. It was also noticed that the assessee has taken loans and paid interest on the same. Upon perusal of profit and loss account, it was further noticed that the assessee has debited an amount of Rs. 10,65,00,980 under the head "interest". Accordingly, assessee was asked to show cause as to why the interest expenses claimed should not be disallowed by invoking the provisions of section 36(1)(iii) of the Act as interest free loans and advances were given out of interest-bearing funds. In reply, assessee submitted that the interest debited to profit and loss account is incurred for the business purpose and all advances given are also for the business purpose, therefore, should be allowed. It was further

submitted that the amount of secured loan with regard to term loan from banks are utilised for the purpose of capital work in progress and therefore the interest on the said amount has been capitalised in the capital work in progress and not debited to the profit and loss account for the year under consideration. The Assessing Officer vide order dated 26/03/2014 passed under section 143(3) of the Act did not agree with the submission of the assessee and held that interest payment form substantial part of the expenses as per the profit and loss account and the assessee has failed to prove that the interest-bearing funds borrowed were used for business purpose. Further, the Assessing Officer noted that interest-bearing funds form 54.48% of the total funds of the assessee. Accordingly, the Assessing Officer worked out the disallowance of Rs. 8,08,01,969 under section 36(1)(iii) of the Act, as under:

Loans and advances given interest-free	Rs. 98,87,66,137
Amount considered for charging interest (being 54.48% of the above loans and advances)	Rs. 53,86,79,791
Interest chargeable at 15%	Rs. 8,08,01,969

5. In appeal before the learned CIT(A), assessee, by referring to the schedules to balance sheet, submitted that total loans and advances given by the assessee as on 31/03/2011 was Rs. 98.87 crores as compared to Rs. 92.18 crores as on 31/03/2010, i.e. there was rise in loans and advances of Rs. 6.69 crores, during the year under consideration. Assessee further submitted that there is also increase in unsecured loans received by the assessee of Rs. 26.93 crores (Rs. 50.09 crores as on 31/03/2011 and

Rs. 23.16 crores as on 31/03/2010) during the year under consideration. Accordingly, assessee submitted that it has utilised the increased interest free unsecured loans received during the year under consideration for the purpose of excess grant of Rs. 6.69 crores as loans and advances. Thus, assessee submitted that it had sufficient interest free funds, which were utilised for making the loans and advances and no part of interest-bearing funds were utilised for making interest-free loans and advances.

6. Learned CIT(A) vide impugned order dated 28/09/2017 allowed the appeal filed by the assessee, after considering financials of the assessee. Being aggrieved, the Revenue is in appeal before us.

7. During the course of hearing, Shri Hoshang B. Irani, learned Departmental Representative vehemently relied upon the order passed by the Assessing Officer.

8. On the other hand, Shri Yogesh Joijode, learned Authorised Representative relied upon the submissions filed by the assessee before the lower authorities.

9. We have considered the rival submission and perused the material available on record. In order to decide the issue at hand, it is relevant to note the following data from the schedules to balance-sheet as on 31/03/2011, which is forming part of the paper book at page nos. 7 – 9:

<i>Particulars</i>	<i>Balance as on 31.03.2011 (Amount in Rs.)</i>	<i>Balance as on 31.03.2010 (Amount in Rs.)</i>
<i>Schedule 2</i>		
<i>Term Loan from Bank of India</i>	<i>41.89 crore</i>	<i>50.09 crore</i>
<i>Export Packing credit from Central Bank of India</i>	<i>0</i>	<i>75.58 crore</i>
<i>Cash credit facility from Central Bank of India</i>	<i>75.02 crore</i>	<i>0</i>
<i>Vehicle Loan</i>	<i>0.01 crore</i>	<i>0.08 crore</i>
<i>Schedule 3</i>		
<i>Unsecured Loans</i>	<i>50.09 crore</i>	<i>23.16 crore</i>
<i>Schedule 9</i>		
<i>Loans and Advances</i>	<i>98.87 crore</i>	<i>92.18 crore</i>

10. From the aforesaid data, it is clearly discernible that loans and advances given by the assessee, during the year under consideration, marginally increased by Rs. 6.69 crores, whereas the interest-free unsecured loans obtained by the assessee rose by Rs. 26.93 crores. Further, there was a reduction in term loan from Bank of India. During the year under consideration, the assessee has repaid amount of Rs. 75.58 crores of Export packing credit facility by availing a fresh cash credit facility from Central Bank of India.

11. Thus, from the financials of the assessee it is evident that from the loans/credit facility availed from the aforesaid Banks there was no scope for making any payment of interest free loans and advances. Further, it is also evident that assessee had sufficient interest free funds for making any

loans and advances. The aforesaid financial state of affairs of the assessee has also not been disputed by the Assessing Officer.

12. Further, we find that the Assessing Officer has neither denied nor brought anything contrary to the fact that the amount of secured loan with regard to term loan from banks were utilised by the assessee for the purpose of capital work in progress and the interest on the said amount was capitalised in the capital work in progress and not debited to the profit and loss account, for the year under consideration. We further find that the Assessing Officer merely on an *ad hoc* basis made the additions under section 36(1)(iii) of the Act, without bringing anything on record to suggest that interest-bearing funds were actually utilised for the purpose of advancing funds on which no interest was charged by the assessee.

13. In view of the above, we find no infirmity in the impugned order passed by the learned CIT(A) deleting the disallowance made by the Assessing Officer under section 36(1)(iii) of the Act. Accordingly, the sole ground raised by the Revenue in present appeal is dismissed.

14. In the result, appeal by the Revenue is dismissed.

Order pronounced in the open court on 24/05/2022

**Sd/-**  
**PRASHANT MAHARISHI**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 24/05/2022**

*Copy of the order forwarded to:*

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The CIT(A);*
- (4) The CIT, Mumbai City concerned;*
- (5) The DR, ITAT, Mumbai;*
- (6) Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai