आयकर अपीलीय अधिकरण "ए" न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल ,लेखासदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VP AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपील सं. ITA No.388/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2010-11)

M/s. Southern Petrochemical Industries Corporation Limited 88, Spic House, Mount Road, Guindy, Chennai-600 032.	बनाम / Vs.	**Income Tax Officer** Corporate Ward-3(1) Chennai-600 034.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. **AAACS-4668-K**		
(अपीलार्थी**/Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थीकीओरसे/ **Appellant by**	:	Shri R. Vijayaraghavan & Shri Saroj Kumar Parida (Advocates)-Ld. ARs
प्रत्यर्थीकीओरसे/**Respondent by**	:	Shri Nilay Baran Som (CIT) & Shri AR V Sreenivasan (Addl. CIT)-Ld. DRs

सुनवाईकीतारीख**/Date of Hearing**	:	16-10-2023
घोषणाकीतारीख /**Date of Pronouncement**	:	10-01-2024

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee was heard along with other appeals for various assessment years having common issues. This appeal arises out of an order passed by learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] on 25.01.2023 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 30.03.2013. The grounds raised by the assessee are as under: -

1. The order of National Faceless Appeal Centre (NFAC), Delhi is contrary to law, facts and in the circumstances of the case.
2. The CIT(A) / NFAC erred in confirming the disallowance of bad debt written off amounting to Rs.5,25,00,000/-.
2.1 The CIT(A) / NFAC ought to have appreciated that due to one-time settlement with customer outstanding resulted in write off of Rs.525 lakhs. The original outstanding was Rs.875 lakhs and the customer agree to settle for Rs.200 lakhs based on "one time settlement agreement with customers" and net Rs.675 lakhs. Out of the balance Rs.675 Lakhs Company adjusted in the books credit balance to the tune of Rs.150 lakhs appearing against the said customer adjusted and net balance written off during the financial year 2009-10.
2.2 The appellant relies on the decision of the Supreme Court in the case of TRF Limited Vs. CIT, Reported in 323 ITR 397 (SC).
3. The CIT(A) / NFAC erred in confirming the disallowance of proportionate interest expenses on advanced to sister concerns amounting to Rs.85,71,947/-.
3.1 The CIT(A) / NFAC ought to have appreciated that Hon'ble ITAT in appellant own case for the AY 2000-01 by order dated 20.10.2004 allowed the claim in respect of advances given to the subsidiaries (Dubai and Jordan) as being made for the purposes of and in the course of the business of the Appellant and hence interest on borrowings cannot be disallowed on the ground that it is relatable to advances to or investments in these units. While giving effect to the ITAT order the Assessing Officer has allowed such advances as business expenditure.
3.2 The CIT(A) /NFAC ought to have appreciated that the appellant had sufficient interest free funds available to them to cover the advances made to the group companies. As has been held by the various High Courts and Supreme Court, if an assessee had sufficient own funds to cover the interest free advances to group concerns, such advances should be considered to have been given out of own funds and no part of the interest on borrowings can be disallowed on account of such advances.
3.3 The appellant reliance on among other decisions:
CIT vs. Bharti Televenture Ltd 331 ITR 502 Del.
Reliance Utility and Power Ltd. vs. CIT, 313 ITR 340 (Bom.)
CIT vs. Hotel Savera - 239 ITR 795 (Mad)
CIT (LTU) Vs. Reliance Industries Ltd - 307 CTR 121 SC-Civil Appeal
PCIT v Sintex Industries 403 ITR 418 Guj confirmed by93 Taxman.com 24 SC.

As is evident, the additions / disallowance which forms the subject matter of this appeal are i.e., (i) Disallowance of bad debts written-off; (ii) Disallowance of proportionate interest expenditure.

2. The Ld. AR advanced arguments on impugned issues citing various judicial decisions and also filed written submissions to support the case of the assessee. The revenue also advanced arguments and filed written submissions in support of impugned order. Having heard

rival submissions and upon perusal of case records, our adjudication would be as given in succeeding paragraphs. The assessee being resident corporate assessee is stated to be engaged in manufacturing and marketing of fertilizers, pharma, biotech products and providing engineering services.

3. Disallowance of bad-debts written-off.

3.1 The assessee claimed write-off of loan for Rs.525 Lacs. The Ld. AO disallowed the same on the ground that the said amount should have been credited to the Profit & Loss Account in earlier years but this condition was not fulfilled. Accordingly, the write-off was disallowed.

3.2 During appellate proceedings, it transpired that the assessee made advance of Rs.875 Lacs to five entities. However, these parties defaulted in the repayment and the assessee agreed to settle the same for Rs.200 Lacs based on one time settlement agreement with the customers. Out of balance amount of Rs.675 Lacs, credit balance of Rs.150 Lacs lying in customer's account was adjusted and net balance of Rs.525 Lacs was written-off and clamed as bad debts. The amounts were stated to be due against sale of goods. However, Ld. CIT(A) upheld the disallowance against which the assessee is in further appeal before us.

3.3 We find that similar issue of loss of advances has been decided by us in assessee's appeal ITA No.206/Chny/2023 as under: -

> 9.2 From the facts, it emerges that the assessee has made trade advances to M/s SSIL who was engaged by the assessee to transport imported raw material. The advances so made had direct business nexus with the assessee. However, SSIL ran into trouble and ultimately ordered to be wound up by Hon'ble High Court of Madras. Under these circumstances, the impugned advance given by the assessee was lost and the same became irrecoverable. The same, in our considered opinion, would constitute business loss for the assessee. The conditions of Sec.36(2), though may not be fulfilled, however, the advances so lost by the assessee would certainly be allowable as business loss. The ratio of decision of

Hon'ble High Court of Madras in the case of **M/s Inden Biselers Ltd. (47 Taxman 225)** would apply wherein it was held that similar amount claimed by the assessee was only a revenue amount and as such a trading loss. It was incidental to the business of the assessee. The substantive adjudication was as under: -

> **17.** In the instant case, the assessee carried on business of exporting iron ores to foreign countries through the State Trading Corporation. In order to supply 1,50,000 tons of iron ore to the State Trading Corporation., the assessee entered into an agreement with the Corporation, a transport company, which owned ten lorries under hire-purchase agreement entered into by it with Sundaram Finance (P.) Ltd. In order to carry on the business of regular supply of iron ore by the assessee to the State Trading Corpn., the Corporation has to regularly transport iron ore from various mines to the places indicated by the assessee. As the transport corporation was in financial strain, in order to pay off its dues under hire-purchase agreement to Sundaram Finance (P.) Ltd. and to clear off its other debts, the assessee had been making advances to the transport corporation on the understanding that the freight charges payable by the assessee to the Corporation for transporting iron ores are to be adjusted from the advances paid by the assessee. The statement of case shows that in fact during the first year of the three-year period, the freight charges payable by the assessee to the Corporation come to Rs. 2,10,389. During the second year of the agreement also, a sum of Rs. 76,993 has been paid by the assessee as freight charges. Only during the third year, the Corporation did not transport any iron ore and as such, no liability as freight charges payable by the assessee to the Corporation arose. After adjusting the freight charges towards the liabilities, a sum of Rs. 2,09,768 remained payable by the Corporation to the assessee at the end of the assessment year 1963-64.
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> **18.** Transport of iron ore is absolutely necessary for the business of the assessee. In order to maintain regular supply, the assessee had advanced money to the Corporation. However, owing to the default committed by the Corporation, large sums remained payable to the assessee by the Corporation even after adjusting freight charges. As pointed out earlier, the advances do not result in making a capital asset. Therefore, in the light of the various decisions cited, there is no difficulty in holding that the amount claimed by the assessee was only a revenue amount and as such a trading loss. It was incidental to the business of the assessee. We, therefore, answer the question in favour of the assessee and against the revenue.
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> **19.** Though the learned senior standing counsel for the revenue argued at length questioning the finding of the Accountant Member of the Tribunal that the claim can also be allowed as a bad debt falling under section 36(1)(*vii*) as well as an expenditure wholly incurred for the purpose of business falling under section 37(1), we feel that it is not necessary to go into that contention to answer the reference as we agree with the finding of the Tribunal that the expenditure is allowable as a trading loss. As that conclusion is sufficient, we answer the reference against the revenue and in favour of the assessee. The revenue will pay the costs of the assessee. Counsel's fee Rs. 500.

We find that the ratio of aforesaid decision is squarely applicable to the facts of the present case. The decision of Hon'ble High Court of Gujarat in the case of **M/s Pure Beverages Ltd. (209 ITR 131)** and also the decision of Hon'ble High Court of Bombay in the case of **M/s IBM World Trade Corporation (186 ITR 412)** lays down similar proposition. Respectfully following all these binding decisions, we delete the

impugned disallowance as sustained in the impugned order. The corresponding grounds raised by the assessee stand allowed.

We find that the facts are similar in this year also. It could be seen that the advances have been given in the ordinary course of business and the same has become irrecoverable. The same are not on capital account. Therefore, facts being pari-materia the same, taking the same view, we would hold that the claim was allowable as business loss. The corresponding grounds raised by the assessee stand allowed.

4. Disallowance of proportionate Interest Expenditure

4.1 The assessee advanced interest free loans of Rs.90.84 Crores to sister concerns. The Ld. AO worked out proportionate interest disallowance of Rs.85.71 Lacs and disallowed the same. The advances given by the assessee were as under: -

No.	Name of the Party	Amount (In Lacs)
1.	SPIC Fertilizers & Chemicals Ltd. (SFCL, FZE), Dubai	1741.01
2.	Indo Jordan Chemicals Ltd. (IJCL)	4829.84
3.	SPIC Petrochemicals Ltd. (SPC)	318.91
4.	National Aromatics and Petrochemicals Corp. Ltd. (NAPCL)	1468.75
5.	Tuticorin Alkali Chemicals and Fertilizers Ltd. (TAC)	693.63
6.	Others	31.86
	Total	9084

4.2 During appellate proceedings, the assessee assailed the impugned disallowance on the ground that all these investments had business nexus and also raised plea of sufficiency of own funds to make these investments. However, rejecting the submissions of the assessee, Ld. CIT(A) confirmed the impugned disallowance except disallowance made against advances given to M/s Tuticorin Alkali Chemicals and Fertilizers Ltd. (TAC). The adjudication of Ld. CIT(A) reduced the

impugned disallowance to Rs.79.17 Lacs against which the assessee is in further appeal before us.

4.3 We find that this issue has been decided by us in assessee's favor in ITA No. 204/Chny/2023 for AY 2004-05 as under: -

> Our findings and Adjudication
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> 11. From the facts, it emerges that impugned advances have been given by the assessee in the ordinary course of business to all these entities. The investments have been made in joint ventures entities though the projects may not have fructified for the assessee. It could be seen that SFCL, FZE is 100% subsidiary of SFCL Mauritius in which the assessee owns stake of 83.54%. The investment made by the assessee was for expansion of assessee's business. This business of this entity is stated to be having direct nexus with the assessee's main business of manufacturing of Urea and fertilizers etc. The assessee has undertaken to buy back the entire production of Urea from this entity. The ministry of chemicals and fertilizers, vide its letter dated 03.12.1998, informed the assessee that import of urea by assessee from this entity will be given preference. The aforesaid facts substantiate the arguments that investments made by the assessee had direct business nexus and therefore, the test of commercial expediency, in our opinion, was duly satisfied by the assessee. It could be said that the investments were made in furtherance of business interest and the ratio of decision of Hon'ble Supreme Court in the case of **CIT V/s S.A. Builders (288 ITR 1)** would favor the case of the assessee. In this decision, it was held by Hon'ble Court that once nexus was established between the expenditure and the purpose of the business, which need not necessarily be the business of the assessee itself, revenue could not disallow the claim assuming what was reasonable. In fact, Tribunal in ITA No.232/Chny/2022 order dated 23.09.2022 for AY 2017-18, in similar issue, quashed revisionary proceedings on the ground that the loss of investments so made by the assessee was a business loss and the same was one of the possible views. Considering the same, the view taken by Ld. AO in allowing the business loss was upheld. To allow the expenditure, it would not be necessary that the project should fructify. Considering all these facts, we would hold that impugned disallowance against this entity could not be sustained.
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> Similarly, the investments made in IJCL were made as a joint venture investment. This entity was to manufacture phosphoric acid and the entire production was to be sold to the assessee. The assessee made 60% contribution in this entity. The venture was to ensure supply of critical raw material for the assessee. Simply because the project could not fructify would not disentitle the claim of the assessee that it had business connection with this entity. The investment made by the assessee has RBI approval vide letter dated 22.09.1994 which is placed on page nos.100 & 101 of paper-book-1. This being so, disallowance of interest either u/s 37(1) or u/s 36(1)(iii) could not be said to be justified. We order so.
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> The advances given to SPEL have been given by the assessee as a promoter entity to meet its debt obligations and capital expenditure. The advances were given by the assessee to this entity only up-to financial year 2000-01. During impugned year, the advances made by the assessee have been converted into equity shares. In earlier years, when the advances were given, the assessee is having sufficient own interest free funds to make these investments. The working of the same has been

given on page nos. 7 & 8 of the paper-book-1. Similar findings have been rendered by us in assessee's own case vide ITA No.170/Chny/2023 for AY 2003-04. Therefore, the assessee's ground would succeed to that extent both on commercial expediency as well as on the ground of having sufficient own funds.

M/s NAPCL is a joint venture entity of the assessee to produce Benzene, orthoxylene, paraxylene and PTA. However, the project has failed to commence production which has led to impugned disallowance. Nevertheless, there is direct business nexus of making the investment. The reason for delay in execution of the project is the fact that there was delay in getting regulatory approvals which is beyond the control of the assessee. The assessee has entered into MOU with Chennai Petroleum Corporation Limited to establish a large petrochemical plant near Chennai. The plant was to produce raw material for the assessee. The same has resulted into formation of this entity. As per the terms of MOU, the expenses of the joint venture are to be shared equally by the joint venture entities. Considering the same, the assessee has advances sum to this entity towards it share of the expenditure of the project. The investment would ultimately convert into equity shares. All these facts would establish the claim of the assessee that the investment had direct business nexus and therefore, no disallowance could have been made for this investment.

Regarding investment in SPC, upon perusal of page no. 182 of the paper-book, it could be noted that the assessee has, in fact, charged interest from this entity. The outstanding loan amount including interest has been converted into equity and bonds which is evident from assessee's financial statements. Therefore, there is no question of disallowing interest against this investment.

The Ld. AR has pointed out that there is no investment made by the assessee in SPIC Technologies Ltd. for Rs.2200.66 Lacs. In fact, the assessee has made investment of Rs.220.66 Lacs in another entity viz. M/s SPIC Bio technologies Ltd. The Ld. AR has stated that the assessee has surplus net owned funds in the year in which the advances were given. The position of net owned funds has been summarized on page nos. 34 to 37 of paper book-2 along with extract of Balance Sheet, Profit & Loss Account and status of reserves and Surplus. After going through the same, we concur with the submissions of Ld. AR that the assessee had surplus net funds and disallowance need not be made in terms of decision of Hon'ble Supreme Court in the case of **CIT V/s Reliance Industries Ltd. (307 CTR 121)** which held that it could be presumed that the investments were made out of interest free funds available with the assessee. The ratio of decision of Hon'ble Madras High Court in **CIT V/s Hotel Savera (239 ITR 795)** as well the decision of Hon'ble Bombay High Court in **CIT V/s Reliance Utilities (313 ITR 340)** also supports the case of the assessee.

The interest disallowance on inter-corporate deposits of Rs.675 Lacs has been deleted by us in assessee's own case vide ITA No.170/Chny/2023 for AY 2003-04 on the ground that in the year when these deposits were placed, the assessee had sufficient own funds to make the investments. Taking consistent view, no disallowance is called for against these ICDs.

Finally, considering the facts and circumstances of the case, the impugned disallowance of Rs.5519.30 Lacs as sustained in impugned order could not be sustained in law. We order so.

In the above order, detailed findings have been rendered by us with respect to each of the parties under consideration. We have concurred with the plea of business nexus as well as sufficiency of own funds. The facts are quite similar in this year. Therefore, taking consistent view in the matter, we delete the impugned disallowance and allow the corresponding grounds of appeal.

5. The appeal stand allowed in terms of our above order.

Order pronounced on 10th January, 2024

Sd/-	**Sd/-**
(MAHAVIR SINGH)	**(MANOJ KUMAR AGGARWAL)**
उपाध्यक्ष / **VICE PRESIDENT**	लेखा सदस्य / **ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated :10-01-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :
1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकरआयुक्त/CIT 4. भागीयप्रतिनिधि/DR
5. गार्डफाईल/GF