

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH, AHMEDABAD**

**BEFORE DR.BRR KUMAR, VICE PRESIDENT  
SHRI TR SENTHIL KUMAR, JUDICIAL MEMBER**

I.T.A. No.1513/Ahd/2024  
(Assessment Year: 2018-19)

Kiri Industries Limited, 7 <sup>th</sup> Floor, Hasubhai Chambers, Nr. Town Hall, Ellisbridge, Ahmedabad-380006.	Vs.	The Deputy Commissioner of Income Tax, Circle-2(1)(1), Ahmedabad.
[PAN No.AAACK9025C]		
(Appellant)	..	(Respondent)

<b>Appellant by :</b>	Shri Tushar Hemani, Sr. Advocate with Shri Parimalsinh B Parmar, AR
<b>Respondent by:</b>	Shri Rignesh Das, Sr. DR

<b>Date of Hearing</b>	12.12.2024
<b>Date of Pronouncement</b>	19.12.2024

**ORDER**

**PER: DR. BRR KUMAR, VICE PRESIDENT:**

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi, vide order dated 01.08.2024 passed for the Assessment Year 2018-19.

2. The Assessee has taken the following grounds of appeal:-

1. *The Ld. CIT(A) has erred in law and on facts of the case in confirming the disallowance of Rs. 1,56,10,238/- u/s. 14A r.w. Rule 8D.*

2. *The Ld. CIT(A) has erred in law and on facts of the case in confirming disallowance of Rs. 88,94,666/- u/s. 36(1)(va) r.w.s. 2(24)(x) off the Act.*
3. *Alternatively and without prejudice, the disallowance amounting to Rs. 24,99,739/- u/s. 36(1)(va) r.w.s. 2(24)(x) of the Act shall be deleted on account of contributions made within the grace period.*
4. *The Ld. CIT(A) has erred in law and on facts of the case in confirming the disallowance of foreign commission of Rs. 57,74,100/- u/s. 40(a)(ia) of the Act.*
5. *Alternatively and without prejudice. the disallowance of foreign commission shall be restricted to 30% of the expenditure as per Section 40(a)(ia) of the Act.*
6. *The Ld. CIT(A) has erred in law and on facts of the case in confirming disallowance of interest expense of Rs. 35,18,785/- u/s. 36(1)(iii) of the Act.*
7. *Both the lower authorities have erred in law and on facts of the case in not following the decision of Hon'ble ITAT in earlier years in the appellant's own case wherein the disallowances made u/s. 40(a)(ia) and 36(1)(iii) on identical facts were deleted.*
8. *The Ld. CIT(A) has erred in law and on facts of the case in confirming additions u/s. 14A and 36(1)(iii) of the Act simultaneously. Legally it is well settled that the additions u/s. 14A and 36(1)(iii) cannot go together as the same results in double taxation not permissible as per the scheme of the Act.*
9. *Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations. and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. The action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*
10. *The Ld. CIT(A) has erred in law and on facts of the case in confirming action of the Ld. AO in levying interest u/s. 234A/B/C/D of the Act.*
11. *The Ld. CIT(A) has erred in law and on facts of the case in confirming action of the Ld. AO in initiating penalty proceedings u/s. 270A of the Act.*
12. *The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.*

**Disallowance u/s.14A of the Act.**

3. The AO made the disallowance u/s.14A of the Act, of Rs.1,56,00,000/- being 1% of the average of the investment. The Ld.CIT(A), confirmed the addition based on the judgement of Hon'ble S.C in the case of the Max Opp Investments Ltd. Vs. CIT 91 taxmann.com 154(SC)[2018]. For the case of ready reference, the adjudication of the Ld.CIT(A), is reproduced as under:

*5.0. Grounds 1 to 5 relate to disallowance of Rs. 1,56,10,238/- u/s 14A made by Ld AO. The Contention of the appellant is that Ld AO has erred in law and on the facts of the case in invoking the provisions of Rule 8D of the Income Tax Rules, 1962 without recording any dissatisfaction to the claim of appellant. It is also argued that the appellant had own funds in excess of investment made and when interest free funds are more, it is to be presumed that investment was made out of interest free funds. It is also argued that the quantification of disallowance is excessive and erroneous. It is argued that the appellant has made investment in the nature of long-term strategic investments in its own subsidiaries and joint ventures. The objective of the appellant behind investing in its own subsidiaries was not to earn dividend income out of it but to acquire controlling interest in those subsidiaries/joint venture/ associates companies. The Appellant received dividend of Rs. 2,80,00,000/- on preference shares of Lonsen Kiri Chemical Industries Ltd. (from Strategic investment) on which exemption is claimed u/s. 10(34) of the Act and dividend of Rs. 60,000/- on shares of Kalupur Commercial Co. Op. Bank, which is offered to tax by the company. The Appellant further submits that annual average of monthly averages of opening and closing balances of investment during the year = Rs. 1873,22,85,124/12 = Rs. 156,10,23,762/-. Now, 1% of Rs. 156,10,23,762/- (i.e., amount of the annual average of the monthly average of the opening and closing balances of the value of investment as per Rule 8A(2)(ii) of the Rules) = Rs. 1,56,10,238/-. It is submitted that the Appellant has not incurred any expenses for earning such exempt income, due to which no disallowance of expenses is called for.*

*5.1. The submission of the appellant is duly considered. I find that the Ld AO has duly recorded his satisfaction for invoking the provisions of section 14A of the Act. It is admitted by the appellant company that it has invested in the shares of associate companies, which can generate exempt income. To do this, the appellant has incurred indirect cost in the form of administrative expenses and interest has been incurred in the process. Thus, there is a direct and proximate nexus between the investment made in these companies and indirect cost incurred by the appellant. Further, the appellant has contended that the investments were made from company's own funds and for the purposes of business expediency. However, the appellant has*

not shown when these investments were made and at the time of investment whether appellant had enough surplus non-interest-bearing fund to invest in the shares of the associate companies. Therefore, this argument of the appellant is not acceptable.

5.2. The Hon'ble Karnataka High Court, in a recent decision, in the case of *M/s United Breweries Ltd. vs. DCIT, Central Circle-2(3)*, upheld the view of the Tribunal in dismissing the assessee's appeals (ITA No.419/2009, dated 31/05/2016) and holding that section 14A is applicable even where motive in acquiring shares is to obtain controlling interest in companies. Further, Hon'ble Supreme Court in the case of *Max opp Investments Ltd vs. Commissioner of Income-tax (Civil appeal nos. 104-109 of 2016)* [91 taxmann.com 154 (SC) (2018)] while deciding the issue that whether section 14A would be applicable in case where the shares are not held with the intention of earning dividend, but for retaining control over the subsidiaries (often referred to as 'strategic investment') or as stock-in-trade, and whether the intention or dominant purpose of holding shares would be relevant in determining applicability of section 14A, has marked an end to this controversy by holding that the dominant purpose for which the investment into shares is made is not relevant. As the dividend earned on shares held in the companies is non-taxable, it would trigger the applicability of section 14A and consequently, expenditure which is attributable to the dividend income must be disallowed. In view of the case law cited supra, the argument of the assessee that in the case of investment made in the subsidiary company, disallowance u/s 14A should not be made cannot be accepted. The relevant portion of the judgement is reproduced as under-

"34) Having clarified the aforesaid position, the first and foremost issue that falls for consideration is as to whether the dominant purpose test, which is pressed into service by the assessee would apply while interpreting Section 14A of the Act or we have to go by the theory of apportionment. We are of the opinion that the dominant purpose for which the investment into shares is made by an assessee may not be relevant. No doubt, the assessee like Max opp Investment Limited may have made the investment in order to gain control of the investee company. However, that does not appear to be a relevant factor in determining the issue at hand. Fact remains that such dividend income is non-taxable. In this scenario, if expenditure is incurred on earning the dividend income, that much of the expenditure which is attributable to the dividend income has to be disallowed and cannot be treated as business expenditure. Keeping this objective behind Section 14A of the Act in mind, the said provision has to be interpreted, particularly, the word 'in relation to the income' that does not form part of total income. Considered in this hue, the principle of apportionment of expenses comes into play as that is the principle which is engrained in Section 14A of the Act This is so held in *Walfort Share and Stock Brokers P Ltd.*, relevant passage whereof is already reproduced above, for the sake of continuity of discussion, we would like to quote the following few lines there from.

35) The Delhi High Court, therefore, correctly observed that prior to introduction of Section 14A of the Act, the law was that when an assessee had a composite and indivisible business which had elements of both taxable and non-taxable income, the

*entire expenditure in respect of said business was deductible and, in such a case, the principle of apportionment of the expenditure relating to the non-taxable income did not apply. The principle of apportionment was made available only where the business was divisible. It is to find a cure to the aforesaid problem that the Legislature has not only inserted Section 14A by the Finance (Amendment) Act, 2001 but also made it retrospective, i.e., 1962 when the Income Tax Act itself came into force. The aforesaid intent was expressed loudly and clearly in the Memorandum explaining the provisions of the Finance Bill, 2001. We, thus, agree with the view taken by the Delhi High Court, and are not inclined to accept the opinion of Punjab & Haryana High Court which went by dominant purpose theory. The aforesaid reasoning would be applicable in cases where shares are held as investment in the investee company, may be for the purpose of having controlling interest therein. On that reasoning appeals of Max opp Investment Limited as well as similar cases where shares were purchased by the assesseees to have controlling interest in the investee companies have to fail and are, therefore, dismissed.*

*40) We note from the facts in the State Bank of Patiala cases that the AO, while passing the assessment order, had already restricted the disallowance to the amount which was claimed as exempt income by applying the formula contained in Rule 8D of the Rules and holding that section 14A of the Act would be applicable. In spite of this exercise of apportionment of expenditure carried out by the AO, CIT(A) disallowed the entire deduction of expenditure. That view of the CIT(A) was clearly untenable and rightly set aside by the ITAT. Therefore, on facts, the Punjab and Haryana High Court has arrived at a correct conclusion by affirming the view of the ITAT, though we are not subscribing to the theory of dominant intention applied by the High Court. It is to be kept in mind that in those cases where shares are held as 'stock-in-trade', it becomes a business activity of the assessee to deal in those shares as a business proposition. Whether dividend is earned or not becomes immaterial. In fact, it would be a quirk of fate that when the investee company declared dividend, those shares are held by the assessee, though the assessee has to ultimately trade those shares by selling them to earn profits. The situation here is, therefore, different from the case like Max opp Investment Ltd. where the assessee would continue to hold those shares as it wants to retain control over the investee company. In that case, whenever dividend is declared by the investee company that would necessarily be earned by the assessee and the assessee alone. Therefore, even at the time of investing into those shares, the assessee knows that it may generate dividend income as well and as and when such dividend income is generated that would be earned by the assessee. In contrast, where the shares are held as stock-in-trade, this may not be necessarily a situation. The main purpose is to liquidate those shares whenever the share price goes up in order to earn profits. In the result, the appeals filed by the Revenue challenging the judgment of the Punjab and Haryana High Court in State Bank of Patiala also fail, though law in this respect has been clarified hereinabove."*

*5.5. Coming to the contention of the appellant that the quantification of disallowance is excessive and erroneous, it is seen that the Ld AO has correctly invoked the provisions of Rule 8D(2) (ii) of the Act. As regards the monthly average value of the*

*opening and closing of the value of investment, I find the information in this respect was furnished to the Ld.AO by the appellant only.*

5.6 *In view of the facts and circumstances of the case and the discussion above, I uphold the addition made by the AO u/s.14A of the Act amounting to rs.1,56,10,238/-. Grounds of the appellant are dismissed.*

4. The provisions of Rule 8D of Income-tax Rules reads as under:

*(1)Where the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with-*

*(a)the correctness of the claim of expenditure made by the assessee; or*

*(b)the claim made by the assessee that no expenditure has been incurred,in relation to income which does not form part of the total income under the Act for such previous year, he shall determine the amount of expenditure in relation to such income in accordance with the provisions of sub-rule*

*(2)The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely:-*

*(i)the amount of expenditure directly relating to income which does not form part of total income; and*

*(ii)an amount equal to one per cent of the annual average of the monthly average of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income :Provided that the amount referred to in clause (i) and clause (ii) shall not exceed the total expenditure claimed by the assessee.*

Since the disallowance made by the AO of Rs.1,56,10,238/- is right as per the provisions of Rule 8D(2) related to disallowance u/s.14A of the Act, we decline to interfere with the order of the Ld.CIT(A) on this issue. In the result, the appeal of assessee on this ground is dismissed.

**Disallowance u/s.36(1)(va) of the Act.**

5. This issue has been settled by the order of the Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. Vs. CIT-(2022) 448 ITR 518(SC) vide order dated 12.10.2022 observed that there is a marked distinction between the nature and character of the two amounts viz., the employers' contribution and employees' contribution required to be deposited by the employer. The first one is the employer's liability is to be paid out of its income whereas the second is deemed an income, by definition, since it is the deduction from employees' income and held in trust by the employer. The Hon'ble Apex Court held as under:

*" 54. In the opinion of this Court, the reasoning in the impugned judgment that the non-obstante clause would not in any manner dilute or override the employer's obligation to deposit the amounts retained by it or deducted by it from the employee's income, unless the condition that it is deposited on or before the due date, is correct and justified. The non-obstante clause has to be understood in the context of the entire provision of Section 43B which is to ensure timely payment before the returns are filed, of certain liabilities which are to be borne by the assessee in the form of tax, interest payment and other statutory liability. In the case of these liabilities, what constitutes the due date is defined by the statute. Nevertheless, the assesseees are given some leeway in that as long as deposits are made beyond the due date, but before the date of filing the return, the deduction is allowed. That, however, cannot apply in the case of amounts which are held in trust, as it is in the case of employees' contributions- which are deducted from their income. They are not part of the assessee employer's income, nor are they heads of deduction per se in the form of statutory pay out. They are others' income, monies, only deemed to be income, with the object of ensuring that they are paid within the due date specified in the particular law. They have to be deposited in terms of such welfare enactments. It is upon deposit, in terms of those enactments and on or before the due dates mandated by such concerned law, that the amount which is otherwise retained, and deemed an income, is treated as a deduction. Thus, it is an essential condition for the deduction that such amounts are deposited on or before the due date. If such interpretation were to be adopted, the non-obstante clause under section 43B or anything contained in that provision would not absolve the assessee from its liability to deposit the employee's contribution on or before the due date as a condition for deduction."*

6. As the issue of payment of employees' contribution towards the PF has been settled by the judgment of Hon'ble Supreme Court, the appeal of the assessee on this ground is liable to be dismissed.

**Disallowance u/s.40(a)(i) of the Act**

7. The AO made the disallowance of Rs.57,74,000/- u/s.40(a)(i) of the Act, in respect of commission paid to non-resident agents as no TDS was effected on the commission payment. The said disallowance was confirmed by the Ld.CIT(A)

8. At the outset, it was submitted that the amounts have been paid to non-resident agents who are not tax payable entities in India for the services rendered abroad. The commission agents who have been paid commission do not have any permanent establishment in India. Hence, no disallowance u/s.40(a)(i) of the Act, is attracted as the entities were not situated in India. It was also submitted that the issue has been covered by the order of the Tribunal in the assessee's own appeal in ITA No.1849/Ahd/2016.

9. We have gone through the details before us and also order of the tribunal the relevant part of the Tribunal with regard to commission payment is as under:

*“We have heard the rival contention and perused the materials on record carefully. The assessing officer has disallowed the commission paid to foreign agents by holding that the income arising on account of commission paid to overseas agents was deemed to accrue or arise in India and was accordingly taxable under the provision of section 5(2)(b) r.w.s. 9(1)(i) of the Act but the assessee has failed to make the compliances with the provisions of section 195(2) of the Act. In this case, the non-residents agents have rendered their services outside India in connection with procurement of sale. All the agents have overseas offices and they were not having any permanent establishment in India. At the time hearing learned DR has not brought any material on record suggesting that the non-resident agents are having any permanent establishment in India or services were provided within India. In absence of such finding it is held that the commission income earned by the foreign agent cannot be deemed to be accrue or arise in India. Regarding the applicability of section 195 of the Act, we observe that once the income is not taxable, there is no liability of deduction of tax, therefore, it was not applicable for*

*the assessee to deduct tax. Therefore, there was no violation of provision of section 195 of the Act. Accordingly, this ground of appeal of the revenue is dismissed.”*

10. Hence, respectfully following the above decision of Co-ordinate Bench of the Tribunal in assessee’s own case, the appeal of the assessee on this ground is allowed.

**Disallowance u/s.36(i)(iii) of the Act**

11. The AO made disallowance of Rs.35,18,000/- u/s.36(1)(iii) of the Act on account of Capital Work In Progress (CWIP). The Ld.Counsel before us submitted the assessee has sufficient own funds which can be utilized as capital work in progress and for capital advances. The details are as under:

*The company had substantial owned funds at its disposal as demonstrated below.*

<i>Particulars</i>	<i>Balances as on 31.03.2018</i>	<i>Balances as on 31.03.2017</i>
<i>Share Capital</i>	<i>30,24,39,510</i>	<i>27,84,3,510</i>
<i>Reserve and Surplus</i>	<i>4,40,73,58,880/-</i>	<i>2,39,22,86,283/-</i>
<i>Share Warrants</i>	<i>39,93,,00,001</i>	<i>1,27,05,00,001</i>
<i>Total owned funds</i>	<i>5,10,90,98,391</i>	<i>394,12,25,794</i>
<i>Advances for capital goods</i>	<i>4,31,05,100</i>	<i>11,73,64,087</i>
<i>CWIP</i>	<i>32,12,84,510</i>	<i>36,03,38,642</i>
<i>Total of capital advance and CWIP</i>	<i>36,43,8,610</i>	<i>47,77,02,729</i>
<i>Ratio of interest free funs to capital advance and CWIP</i>	<i>14.02 times</i>	<i>8,25 times</i>

*As can be seen in the above table, the assessee had sufficient interest free funds available for investment in capital advances and CWIP.*

*Further, considering the creditors for capital goods, the net deployment of funds in capital advances and CWIP is Rs. 36,43,89,610/-. And the ratio of interest free funds to capital advance and CWIP would work out to be 14.02 times for FY 2017-18.*

*We further submit that as per section 36 (i) (iii), the amount of interest paid is an allowable education if the interest is paid on capital borrowed for the purpose of the business of assessee. In the given case, the assessee has borrowed money for the*

purpose of business of the company. Thus, the assessee has fulfilled the conditions required to be fulfilled for claim of deduction of interest u/s 36 (i) (iii) of the Act.

The bare reading of Section 36(1)(iii) is as follows:

"36(1)The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in Section 28-

(i) and (ii)\*\*\*\*.

(iii) the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession:-

Provided that any amount of the interest paid, in respect of capital borrowed for acquisition of an asset for extension of existing business or profession (whether capitalized in the books of account or not); for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, shall not be allowed as deduction.

Explanation. Recurring subscriptions paid periodically by shareholders, or subscribers in Mutual Benefit Societies which fulfill such conditions as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause." INCOME TAY DEPARTMEN rowed within

The sub section has three important words or phrases that are core to understanding of this Section i.e. (i) Interest, (ii) Borrowed and, (iii)

For the purpose of business or profession. In the following paras we would elucidate the meaning of these with reference to this particular section.

i. Meaning of "Interest" The definition of "interest" in Section 2(28A) means "interest payable in any manner in respect of any moneys borrowed or debt incurred". But for Section 36(1)(iii),

"interest" is restricted to that on money borrowed and not on debt incurred. In simple words, the essence of interest is that it is a payment which becomes due because the creditor has not had his money at his disposal. It may be regarded either as representing the profit he might have made if he had had the use of his money, or conversely, the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation.

ii. Concept of "borrowed" - Provisions of Section 36(1) (iii) concern capital borrowed and not other debts or liability. A loan of money undoubtedly results in a debt, but every debt does not involve a loan. Liability to pay a debt may arise from diverse sources and a loan is one of such sources. The legislature has, under this clause, permitted as an allowance interest paid on capital borrowed for the purposes

*of the business; and the capital, in this context, means money and not any other asset purchased on credit [Bombay Steam Navigation Co. Pr. Ltd. v. CIT, 56 ITR 52(SC)].*

*iii. The phrase "for the purpose of business" The expression "for the purpose of business occurs in Section 36(1) (iii) and also in Section 37(1). A similar expression with different wording also occurs in Section 57(iii) which reads as "for the purpose of making or earning income". This issue came up for consideration before the Supreme Court and the Hon'ble Supreme Court while giving judgment in the case of Madhav Prasad Jatia V. CIT, (SC) 118 ITR 200 has established that the expression occurring in Section 36(1)(iii) is wider in scope than the expression occurring in Section 57(iii). Thus, meaning thereby that the scope for allowing a deduction under Section 36(1)(iii) would be much wider than the one available under Section 57(iii). This phrase, as held by many legal pronouncement, is the most important yardstick for the allowability of deduction Under Section 36(1) (iii) of Income Tax Act, 1961. While explaining the meaning of this phrase the Hon'ble Supreme Court in the case of S. A. Builders Ltd. Vs. CIT(A), Chandigarh reported in 288 ITR 1 has used the word "commercial expediency". By using this phrase Hon'ble Supreme Court has given a new dimension and clarified the concept further. In the judgment the Supreme Court has defined commercial expediency as "an expression of wide import and includes such expenditure as a prudent businessman incurs for the purpose of business. The expenditure may not have been incurred under any legal obligation, but yet it is allowable as a business expenditure, if it was incurred on grounds of commercial expediency". Further, following this judgment the High Court of Delhi, in the case of Punjab Stainless Steel Inds. Vs. CIT 324 ITR 396, has further elaborated "The commercial expediency would include such purpose as is expected by the assessee to advance its business interest and may include measures taken for preservation, protection or advancement of its business interests, which has to be distinguished from the personal interest of its directors or partners, as the case may be. In other words, there has to be a nexus between the advancing of funds and business interest of the assessee-firm. The appropriate test in such a case would be as to whether a reasonable person stepping into the shoes of the directors/partners of the assessee- firm and working solely in the interest of the assessee-firm/ company, would have extended such interest free advances. Some business objective should be sought to have been achieved by extending such interest free advances when the assessee- firm/company itself is borrowing funds for running its business". Thus, for allowance of a claim for deduction of interest under this provision following three conditions are there:*

*i. The money, that is capital, must have been borrowed by the assessee*

*ii. It must have been borrowed for the purpose of business.*

*iii. The assessee must have paid interest on the borrowed amount i.e. he has shown the same as an item of expenditure.*

*The above mentioned three conditions have been established legally Madhav*

*Prasad Jatia Vs. CIT by Supreme Court judgment in the case of, (1979) 118 ITR 200 (SC).*

*The proviso to Section 36(1)(iii) was inserted by Finance Act, 2003 w.e.f. 01.04.2004 relating to A.Y. 2004-05 and subsequent years. This was inserted to disallow interest on moneys borrowed for acquiring a capital asset till the date on which the asset was brought to use even if it is for extension of existing business. Following facts are important for consideration.*

*This proviso is to operate prospectively as held by Hon'ble Supreme Court in the case of Deputy Commissioner of Income Tax. Vs. Core Health Care Ltd. (SC) 298 ITR 194.*

*An expenditure may either relate to a new units on expansion of existing business or it may relate to a totally new business apart from existing business. In the latter case, pre-commencement expenditure of new business would be required to be capitalized.*

*They cannot be charged to the pre-existing business. It is only for the former case, that relates to expansion of existing business, that can be allowed under Section 36(1)(iii). This was analyzed in the case of CIT Vs. Vadilal Dairy International Ltd. [2010] 328 ITR 544 by Gujarat High Court.*

*It is further submitted that the interest on borrowings in connection with the expansion of the existing business of the company can be claimed as deduction under section 36(1)(iii) of the Act.*

*We place our reliance on the following decisions:*

- *CIT vs Reliance Utilities & Power Ltd. 313 ITR 340*
- *GNFC vs DCIT 73 TTJ 787*
- *Vardhman Polytex Ltd. vs. CIT (2012) 25 taxamnn.com 281(SC)*
- *HDFC Bank Ltd. [2014 (8) TMI 119-Bombay HC*
- *UTI Bank Ltd. [2013 (8) TMI 238 - Gujarat HC*
- *Heaven Associates C/o. Akshat Heaven vs ITO -2019 (6) TMI 539 ITAT Ahmedabad.*
- *DCIT VS Vodafone Shared Services Ltd. 2019 (7) TMI 427-ITAT Ahmedabad*

12. From the detailed examination of the borrowings of the assessee and payment of interest since no loan amount has been raised and utilized for the purpose of Capital Work in Progress (CWIP), since the assessee's own funds

- 13-

far exceed the value of the CWIP by 14 times, no addition is called for in this account. The notional interest calculated by the Assessing Officer on the closing balance of CWIP cannot stand test of legal scrutiny.

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

**This Order pronounced in Open Court on 19.12.2024**

**Sd/-**  
**(TR SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

(True Copy)

Ahmedabad; Dated 19.12.2024

Manish, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
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 फाइल / Guard file.

आदेशानुसार/ BY ORDER,

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