

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH MUMBAI**

**BEFORE HON’BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**

**ITA No. 110/Mum/2024  
(Assessment Year: 2010-11)**

Lakozy Motors Pvt Ltd 8, Shah Industrial Estate, next to Ghanshyam Industrial Estate, off Veera Desai Road, Andheri West, Mumbai – 400058.	Vs.	ITO – 10(2)(1) Room No. 373, 3 <sup>rd</sup> Floor Aayakar Bhavan, MK Road, Mumbai – 400020.
PAN/GIR No. AAACL1889K		
(Applicant)		(Respondent)

Assessee by	Shri Satyaprakash Singh
Revenue by	Shri Sunny Kachhwaha, Sr. DR

Date of Hearing	23.01.2025
Date of Pronouncement	25.02.2025

आदेश / ORDER

**PER SANDEEP GOSAIN, JM:**

The present appeal has been filed by the assessee challenging the impugned order 10.11.2024 passed u/s 250 of the Income Tax Act, 1961 (‘the Act’), by the National Faceless Appeal Centre (NFAC), Delhi / CIT(A) for the assessment year 2010-11.

*On the facts and in the circumstances of the case and in law,  
the Hon'ble National Faceless Appeal Centre (NFAC) erred in*

*upholding the decision of Ld.AO of disallowing Rs.11,41,095/- on account of interest claimed in profit & loss A/c u/s 36(1)(iii) of the act without considering the submission preferred and judicial precedents identical to its case quoted by the appellant. The appellant company prays that the said disallowance may please be deleted.*

2. This ground raised by the assessee relates to challenging the order of disallowance of interest u/s 36(1)(iii) of the Act. In this regard, Ld. AR appearing on behalf of the assessee outrightly submitted that this ground is squarely covered in favour of assessee by the decision of the Coordinate Bench of ITAT in assessee's own case in **ITA No. 2726/Mum/2023 for the A.Y 2013-14**.

3. Whereas on the contrary, the Ld. DR relied upon the orders passed by the revenue authorities.

4. I have heard the counsels of both the parties and have perused the material placed on record, judgments cited by the respective parties and the orders passed by the revenue authorities. I noticed that the '*identical ground*' has already been decided by the Coordinate Bench of this Tribunal in assessee's own case for A.Y 2013-14 in ITA No. **2726/Mum/2023** and operative portion is contained in para 5 & 6 and the same is reproduced herein below:

5. *The Brief facts of the case pertaining to this issue, as emanating from the record, are : during the assessment proceedings, on verification of details filed by the assessee, it was observed that the assessee has borrowed loans, long-term capital borrowings of INR 3,85,44,906 and short-term borrowings of INR 1,27,04,814. It was also observed that the assessee has claimed an interest expenditure of INR 69,25,239. It was further noticed that the assessee has advanced INR 2,98,36,451 which includes advances to related parties of INR 1,41,49,131. During the assessment proceedings, the assessee was asked to furnish the details of loans and advances given to the related parties and the nature of relation with each party. However, the assessee only furnished the names of the parties without giving any details of relation with them. Accordingly, the AO vide order passed under section 143(3) of the Act disallowed the proportionate interest expenditure of INR 21,48,282 in respect of the interest-free advances given to the related parties. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee on this issue.*

6. *We have considered the submissions of both sides and perused the material available on record. From the perusal of the Balance Sheet of the assessee for the year ending 31/03/2013, forming part of the paper book from pages 1-18, we find that the assessee has share capital and reserves and surplus of INR 4,35,09,958, which is more than interest-free loan of INR 1,41,49,131, advanced by the assessee to the related parties. We find that the Hon'ble Jurisdictional High Court in CIT v/s Reliance Utilities & Power Ltd., [2009] 313 ITR 340 (Bom.), held that if funds are available with the assessee, which are sufficient to meet the investment, then the presumption would arise that the investment is made out of funds so available with the assessee. Accordingly, we find no basis in the proportionate disallowance of interest expenditure made by the AO and upheld by the learned CIT(A). Therefore, the same is directed to be deleted. As a result, ground no. 1 raised in assessee's appeal is allowed.*

5. From the perusal of the orders in assessee's own case (supra) and after going through the documents placed on record, I found from the balance sheet of the assessee that assessee has share capital, reserves and surplus, which is more than interest free loans and advances by the assessee to the related parties. Therefore, while placing reliance upon the decision of Jurisdictional High Court in the case of ***CIT Vs. Reliance Utilities & Power Ltd, [2009] 313 ITR 340 (Bom)***, wherein it was held that ***“if funds are available that the assessee which are sufficient to meet the investment, then the presumption would arise that the investment is made out of funds so available with the assessee”***

6. I find no basis in the proportionate disallowance of interest expenditure made by the AO, therefore while relying upon the decision of the Coordinate Bench of ITAT in assessee's own case for the A.Y 2013-14, I direct the AO to delete the additions. As a result, the ground No. 1 raised by the assessee stands allowed.

*Ground No. 2*

*On the facts and in the circumstances of the case and in law, the Hon'ble National Faceless Appeal Centre (NFAC) erred in upholding the decision of the Ld.AO of disallowance of Rs. 18,66,766/- on account of expenses claimed in profit & loss A/c under the head Sales Promotion Expenses without considering the submission preferred and judicial precedents identical to its case quoted by the appellant. The appellant*

*company prays that the said disallowance may please be deleted.*

7. This ground raised by the assessee relates to challenging the disallowance of sales promotion expenses claimed in profit and loss account. In this regard, the Ld. AR appearing on behalf of the assessee submitted that this ground is also squarely covered in favour of the assessee by the decision of the Coordinate Bench of ITAT in assessee's own case in **ITA No. 2726/Mum/2023 for the A.Y 2013-14.**

8. Whereas on the contrary, the Ld. DR relied upon the orders passed by the revenue authorities.

9. I have heard the counsels of both the parties and I have also perused the material placed on record, judgments cited by the respective parties and the orders passed by the revenue authorities. I noticed that the identical ground has already been decided by the Coordinate Bench of this Tribunal in assessee's own case for A.Y 2013-14 in ITA No. **2726/Mum/2023 (supra)**, wherein disallowance was restricted to 15% of the same expenditure. Since the nature of the expenditure during the year under consideration is also similar, therefore while following the decision of Coordinate Bench in assessee's own case (supra), I direct the AO to restrict the

disallowance of expenses of sales promotion to 15% in the present case. As a result, the ground No. 2 raised by the assessee stands partly allowed.

*Ground No. 3*

*On the facts and in the circumstances of the case and in law, the the Hon'ble National Faceless Appeal Centre (NFAC) erred in upholding the decision of Ld.AO of disallowance of Rs.3,62,804/- on account of Section 14A r.w.r 8D. The appellant company prays that the said disallowance may please be deleted.*

10. This ground raised by the assessee relates to challenging the order of disallowance u/s 14A r.w.s 8D of the Act. In this regard Ld. AR submitted that this ground is also squarely covered in favour of assessee by the decision of the Coordinate Bench of ITAT in assessee's own case in **ITA No. 2726/Mum/2023 for the A.Y 2009-10**.

11. Whereas on the contrary, the Ld. DR relied upon the orders passed by the revenue authorities.

12. I have heard the counsels of both the parties and I have also perused the material placed on record, judgments cited by the respective parties and the orders passed by the revenue authorities. I noticed that the identical ground has already been decided by the Coordinate Bench of this Tribunal in assessee's own case for A.Y 2009-10 and I am of the view that The Assessee's

share capital and reserves and surplus is INR 4,22,41,582, which is more than its investments generating exempt income of Rs.1,03,22,511.

13. In view of the decision of Hon'ble Jurisdictional High Court in ***CIT v/s Reliance Utilities & Power Ltd., [2009] 313 ITR 340 (Bom.)***, since the interest free funds are available with the Assessee, which are sufficient to meet the investments generating tax-free income, the presumption would be that the investment is made out of funds so available with the Assessee.

14. Accordingly, the disallowance u/s.14A r.w. Rule 8D of Rs.3,62,804 made by the AO and upheld by the learned CIT(A) is deleted.

15. In the result the appeal filed by the assessee stands partly allowed.

Order pronounced in the open court on 25.02.2025.

Sd/-

**(SANDEEP GOSAIN)**  
**JUDICIAL MEMBER**

Mumbai, Dated 25/02/2025

KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार ( Asst. Registrar)  
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai