

**IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER  
AND SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**ITA No. 487/Mum/2024  
Assessment Year 2017-18**

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| DCIT (CC)-7(3, Mumbai<br>AAyakar Bhavan,<br>Mumbai-400020. | Vs. | Macrotech Developers Limited<br>412, Floor-4, 17G Vardhaman<br>Chamber, Cawasji Patel Road,<br>Horniman Circle, Fort<br>Mumbai-400001, Maharashtra<br><b>PAN: AAACL 1490 J</b> |
| (Appellant)  |     | (Respondent)   |

**Present for:**

Assessee by : Shri Niraj Sheth  
Revenue by : Shri Hemanshu Joshi, Sr. DR

Date of Hearing : 06.12.2024

Date of Pronouncement : 03.03.2025

**ORDER**

**PER AMARJIT SINGH, ACCOUNTANT MEMBER:**

The appeal of the Revenue for the assessment year 2017-18 is directed against the order dated 15.11.2023 passed by the Id. Commissioner of Income Tax, Appeal [CIT(A)] – 49, Mumbai. The solitary issue in the appeal filed is the disallowance of interest expenses amounting to Rs. 5,56,27,303/- for not utilising the funds for the purpose of business.

2. Fact in brief is that return of income declaring loss of Rs. 9,65,778/- and book profit u/s 115B at Rs. (-) Rs. 9,65,778/- was filed on 31.10.2017. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 09.08.2018. During the course of assessment, the assessing officer noticed that assessee has debited interest expenses of Rs. 3951.64 lakhs in the

P&L A/c. The assessing officer observed that borrowed funds have been utilized for the purpose of investment. On query, the assessee submitted that it had acquired Compulsory Convertible Debentures (CCD) of Shreeniwas Cotton Mills Ltd. of Rs. 1005.20 crores which was interest bearing @ 14.75%. After verification of the detailed filed, the assessing officer noticed that no interest has been received on the amount of Rs. 504,97,49,410/-. The assessing officer was of the view that interest bearing funds have been utilized for investment of Rs. 504,97,49,410/- in the compulsory convertible debentures of Shreeniwas Cotton Mills Ltd. of which no interest has been received during the year under consideration. Therefore, an amount of Rs. 5,56,27,303/- being the interest expenses u/s 36(1)(iii) of the Act was disallowed.

3. The assessing officer filed appeal before the ld. CIT(A). The ld. CIT(A) has allowed the appeal of the assessee. The extract of the decision of ld. CIT(A) is reproduced as under:

*“9. During the course of assessment proceedings, the AO noticed that the appellant company had debited interest expenses of Rs.3951.64 Lakhs in the Profit & Loss Account. It appeared from the Balance Sheet of the appellant that the borrowed funds had been utilized for the purpose of making investments. Therefore, the AO required the appellant to explain why interest cost pertaining to investment should not be disallowed. In reply, the appellant submitted before the AO that during the year, the company had acquired CCD of SNCML of Rs.1005.20 Cr., which was interest bearing @ 14.75% and the said investment was made out of OCD of Rs.450 Cr. issued to M/s. Jawala Real Estate Pvt. Ltd. and loan of Rs.555 Cr. from Lodha Developers. The appellant further submitted that it had earned interest of Rs.37 Cr. on the face value of the CCD (approx. Rs.500 Cr.) @ 14.75% and had offered the same to tax. The company had not incurred any interest expenditure on the investments and the entire interest expenditure of Rs.39.51 Cr. had been incurred on unsecured borrowings. Therefore, even if it is presumed that the appellant company*

had interest-free investment of Rs.505.32 Cr. (purchase consideration of Rs.1005.20 Cr. less face value of investment Rs.499.88 Cr.), the same should be presumed to be funded out of non-interest bearing funds of OCD of Rs.450 Cr. issued to M/s. Jawala Real Estate Pvt. Ltd. and other opening interest-free balances. On this basis, the appellant contended before the AO that no disallowance of interest on account of investment in CCD was warranted.

10. The AO observed that as per the Balance Sheet of the appellant company, the investments as on 31/03/2016 was Rs.45646.59 Lakhs and the investments as on 31/03/2017 was Rs.146186.51 Lakhs. Thus, fresh investments of Rs.100539.92 Lakhs had been made during the year, which was made in Compulsory Convertible Debentures (CCD) of Shreeniwas Cotton Mills Ltd. The borrowings of the appellant company as on 31/03/2016 amounted to Rs.16678.75 Lakhs and the borrowings as on 31/03/2017 stood at Rs.116218.89 Lakhs. Thus, the appellant had obtained fresh borrowings of Rs.99540.14 Lakhs during the year. The AO also observed that interest cost of the appellant on borrowings has also gone up from Rs.35,000/- as on 31/03/2016 to Rs.39,51,64,000/- as on 31/03/2017. The investment in the CCDs of M/s. Shreeniwas Cotton Mills Ltd. was of Rs.1004,85,67,710/-, excluding other expenses capitalized. However, the appellant had received interest @ 14.75% only on the face value of Rs.499,88,18,300/- and no interest had been received on the amount of Rs.504,97,49,410/-. The AO, therefore, held that clearly, interest-bearing funds have been utilized by the appellant for investment of Rs.504,97,49,410/- in the CCDs. He further held that since no interest had been received by the appellant on the amount of Rs.504,97,49,410/- during the year under consideration, interest cost pertaining to the said amount is disallowable u/s. 36(1)(iii) of the Act. The AO, accordingly, worked out the interest disallowable at the rate of Rs.12.75% at Rs.5,56,27,303/-. The detailed working of interest disallowable has been given in para 6.3 of the impugned assessment order. The above amount of Rs.5,56,27,303/- was, accordingly, added to the total income of the appellant.

11. Before me, the appellant has made detailed submissions on the issue, which are reproduced herein above. The appellant has contended that it had utilized the borrowed funds for the purpose of its business, and, therefore, no disallowance u/s. 36(1)(iii) was warranted. Further, the AO cannot decide as to what is commercial expediency. It is also not material that the interest paid by the appellant on its borrowings is greater than the interest earned by it or that the appellant charges no

interest at all. The appellant has also placed reliance on various decisions in support of its contentions. The appellant has also submitted that the issue has been decided in its favour by Hon'ble ITAT in its own case for A.Y. 2009-10. It is further submitted that the issue is also covered by the order of Hon'ble ITAT in the case of a group company, viz. Macrotech Developers Ltd. (Successor to Ajinath Hi-Tech Builders Pvt. Ltd.) for A.Ys. 2013-14 & 2014-15 and by the order dated 21/05/2018 of learned CIT(A)-49, Mumbai, in the case of another group company, viz. Aasthavinayak Real Estate Pvt. Ltd. for A.Y. 2014-15.

12. I have carefully considered the contentions of the appellant, order of the AO and the facts of the case.

12.2 The Appellant is engaged in the business of construction and development of real estate. I have perused the Annual accounts(2016) of Shreeniwas Cotton Mills Limited (SNCML) . It is seen that SNCML is also engaged in the business of real estate development. SNCML was developing projects viz., World One, World Crest, World View, Supremus II and commercial project at Worli in Mumbai.

12.3 The Appellant held 95.30% shares in SNCML as on 31 March 2016. Postacquisition of CCDs, the effective shareholding of the Appellant in SNCML would be 99.76%. During the year under consideration, the Appellant acquired compulsory convertible debentures (CCD's) for an amount of Rs. 1,005.20 crores at a premium, bearing interest rate @ 14.75% of Shreeniwas Cotton Mills Limited ('SNCML'). The details of acquisition of CCDs are as under-

| <i>Date of payment</i>            | <i>No of CCDs</i> | <i>Purchased from</i>                       | <i>Total investment (in Rs.)</i> |
|-----------------------------------|-------------------|---|----------------------------------|
| '01.09.2016                       | 3,458,835,341     | <i>Tramos Limited, Cyprus</i>               | 689,00,00,000                    |
| 18.10.2016                        | 1,151,073,859     | <i>Tramos Limited, Cyprus</i>               | 229,29,39,127                    |
| 28.12.2016                        | 388,909,100       | <i>HDFC Venture Trustees Co. Ltd, India</i> | 86,56,28,583                     |
| <i>Total</i>                      | 4,998,818,300     | ∴   | 10,048,567,710                   |
| <i>Other expenses capitalized</i> |                   |   | 34,43,000                        |
| <i>Total Investment</i>           |                   |   | 1005,20,10,710                   |

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12.4 From the above facts, the contention of appellant that investment made in CCD's of SNCML is a strategic investment to acquire controlling interest in its subsidiary, appears to be correct. I have also gone through the Financial statements of SNCML for the year 2015-16, 2016-17, and 2017-18. It shows that the borrowed funds have been used for the business purpose by the subsidiary company.

12.5 From the above discussion, it is seen that the main object of the appellant is real estate development and construction activities. The capital borrowed by the appellant has been invested in Compulsory convertible Debentures of Shreenivas Cotton Mills Ltd as a strategic investments in subsidiary wherein the construction projects were in progress. The appellant is able to substantiate the commercial expediency as the main object is not to earn an interest but to engage in real estate and construction activities. This issue is covered by the decision of Hon'ble Bombay High court in case of Shrishti Securities Pvt Ltd (321 ITR 498), wherein the Honble High court has decided as under-

"We may also gainfully refer to the judgment of the Calcutta High Court in Rajeeva Lochan Kanoria's case (supra). The learned Court was considering section 36(1)(iii) and was pleased to observe as under :—

"The only enquiry that is to be made is whether the payment of interest was in respect of capital borrowed for the purpose of the assessee's business or profession. There is no dispute that the capital was borrowed in the instant case and interest was paid on the borrowed capital. It is to be established that the amount was borrowed for the purpose of business or profession. The amount borrowed may be utilized for the purpose of acquisition of stock-in-trade or for the purpose of acquisition of capital assets. But so long as the money is utilised for business purposes the interest will have to be allowed as deduction. It is well-settled that business expenditure is not confined to expenses incurred on revenue account. Capital expenditure may not be allowed as a deduction under section 37 because the section specifically bars any deduction of expenditure of capital nature. But section 36 is differently worded. There is no bar in section 36(1)(iii) to allowance of interest paid in respect of capital borrowed which has been utilised for purchase of a capital asset. The position of law in this regard was explained by the Supreme Court in

*the cases of India Cements Ltd. v. CIT [1966] 60 ITR 52 and State of Madras v. G.J. Coelho [1964] 53 ITR 186 ."* (p. 620)

9. *Considering these judgments and the test that the object of the loan is irrelevant, the interest which was disallowed to the extent of investment will have to be allowed as held by the Tribunal".*

12.6 *The issue of interest claimed u/s 36(1)(iii) of the Act was also under dispute in the A.Y 2009-10. In the A.Y.2009-10, the appellant had borrowed an amount of Rs 384 crores from the group sister concern and invested an amount of Rs.241 crores in acquiring shares of M/s Shrinivas Cotton Mills ltd. The Appellant paid interest on borrowed funds, but did not charge any interest on amount advanced out of borrowed funds. Hence, Ld. AO had made disallowance of Rs. 22,25,08,203 under section 36(1)(iii) of the Act. Aggrieved by the order of Ld. AO, the Appellant filed an appeal before Ld. CIT(A)-38. The learned CIT(A)-38, vide order dated 25.04.2014, decided the appeal as under-*

*"The investment in the form of purchase of shares with a view to acquire controlling interest in another company is considered to be business purpose. Respectfully following the decision of Hon'ble Bombay High Court in the case Srishti Securities Pvt. Ltd. referred above, the disallowance of interest of Rs. 22,25,08,203/- made by the A.O. is hereby deleted.."*

12.7 *This decision of CIT (A) was challenged before the ITAT. The Hon'ble ITAT 'A' Bench, Mumbai vide order dated 30 July 2019 upheld the order of Ld. CIT(A)-38. The relevant portion of the decision is reproduced as under-*

*"10. We have gone through the decision rendered by jurisdictional High Court in the case of Srishti Securities Pvt. Ltd. (321 ITR 498) dated 22.01.2009, wherein the Hon'ble High Court held that the object or the purpose of the capital borrowed whether it is for the purpose of acquisition of stock-in-trade or expenditure of capital nature will not be relevant and as long as the capital borrowed is for the purpose of business, the same will have to be allowed. The investment in the form of purchase of shares with a view to acquire controlling interest in another company was considered to be a business purpose."*

*"11. Thus, from the records which are in the shape of written submission filed before Ld. CIT(A) and contained in para no. 6 of the order of Ld. CIT(A), we also noticed that assessee had invested the amount by*

*purchasing the shares of M/s Srinivas cotton Mills Ltd for obtaining controlling stakes in the said company. Therefore, respectfully following the decision of Hon'ble Bombay High court in the case of Srishti Securities Pvt. Ltd, we uphold the order of Ld. CIT(A)."*

*12.8 The facts of the present case are identical to the facts of Appellant's own case for A.Y 2009-10. Therefore, the decision of the Hon'ble Mumbai Tribunal in Appellant's own case for AY 2009-10 is squarely applicable to the facts of this case.*

*12.9 The Honble ITAT, Mumbai "D" Bench, vide order dated 23.05.2022, has decided similar issue of disallowance under section 36(1)(iii) in the case of Macrotech Developers Ltd. (Successor to Ajitnath Hi-Tech Builders Private Limited) which is a group concern of appellant, for A.Y.2013-14 and 2014-15. The relevant para is reproduced as under*

*"12. We considering ratio of judicial decisions and the facts envisaged by the Ld.AR duly substantiated with the material evidences and the main objects of the assessee's business is real estate development and construction activities. The assessee has obtained these loans for the purpose of providing advances to the sister concerns, where the construction projects are in progress and the assessee is able to substantiate the commercial expediency as the main objects of the assessee is not to earn interest, but to engage in real estate and construction activities. Therefore the action of the CIT(A) that there is no commercial expediency is not tenable and is not supported with any findings except relying on the facts that the higher rate of interest has been paid on loans borrowed. The Ld.AR explained the accounting concept on the weighted average rate of interest considering the variability of interest rate range from @8.75% to 16% though this approach cannot be incorporated in the audited financial statements but the reasonableness and explanations to provide the loans to sister concerns cannot be over looked and the group transfers between one sister concern to another sister concern as per requirement of funds. The Ld.AR submissions are realistic and duly supported by the material information and is appreciated. Accordingly, we do not find merits in the findings of the CIT(A) and we rely on the judicial decisions and commercial expediency explained by the Ld.AR that the assessee's business activities as a going concern and the construction projects are in progress. Any delay in project construction activities due to financial crunch will increase the overheads of the projects. Accordingly, we set aside the order of CIT(A) on this disputed issue and direct the Assessing*

*officer to delete the addition and allow the grounds of appeal of the assessee.”*

*12.10 Respectfully following the decision of Honble Jurisdictional High court in case of Shrishti Securities Pvt Ltd as mentioned above and decision of Jurisdictional Mumbai ITAT in appellants own case for the A-Y 2009-10 [ITAT “A” Bench order dated 30.07.2019], the appeal raised in ground no.1 is allowed.”*

4. Heard both the sides and perused the material on record. The assessee has earned interest income of Rs. 39.37 crores on investment made in compulsory convertible debentures of Shreeniwas Cotton Mills Ltd. It is undisputed fact that assessee held 95.30% shares in the Shreeniwas Cotton Mills Ltd. and after acquiring compulsory convertible debentures, the shareholding of the assessee company in that company would be of 99.76%. This fact was not converted by the assessing officer that assessee had made investment in the said associated company to acquire controlling interest in its subsidiary. The assessee has also submitted before both the authorities that it had interest free investment of Rs. 505.32 crores (purchase consideration Rs. 1005.20 crores – face value of investment of Rs. 499.88 crores) and the said investment was presumed to be funded out non-interest bearing fund of OCD of Rs. 450 crores as discussed in the finding of ld. CIT(A). The ld. CIT(A) has also discussed the decision of Hon'ble Jurisdictional High Court in the case of Shristi Securities Pvt. Ltd. and the decision of ITAT in the case of the assessee itself on the proposition that investment made with a view to acquiring controlling interest in an another company is considered to be for the purpose of business. In view of the above fact and after considering the details finding of ld. CIT(A), we do not find any

infirmity in the decision of Id. CIT(A). Accordingly, the appeal of the Revenue is dismissed.

5. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 03.03.2025.

**Sd/-**  
**(ANIKESH BANERJEE)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 03.03.2025  
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR

//True Copy//

By Order

Assistant Registrar  
ITAT, Mumbai Benches, Mumbai