

IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD "A" BENCH: HYDERABAD

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT  
AND  
SHRI MANJUNATHA G, ACCOUNTANT MEMBER

ITA.No.406/Hyd./2023  
Assessment Year 2016-2017

Kamineni Health Services Private Limited, Hyderabad. PAN AAACK8313R	vs.	The ACIT, Circle-2(1), Hyderabad – 500 084. Telangana.
(Appellant)		(Respondent)

For Assessee :	Shri Sashank Dundu, Advocate
For Revenue :	Shri Srinath Sadanala, Sr. AR

Date of Hearing :	17.04.2025
Date of Pronouncement :	24.04.2025

**ORDER**

**PER MANJUNATHA G. :**

This appeal has been filed by the Assessee against the order dated 07.06.2023, of the learned CIT(A)-National Faceless Appeal Centre [in short the "NFAC"] Delhi, relating to the assessment year 2016-2017.

2. The assessee has raised the following grounds in the instant appeal :

1. *“On the facts and in the circumstances of the case, the order of the Ld. Commissioner(Appeals) (hereinafter referred to as National Faceless Appeal Centre(NFAC)), is bad in law and contrary to the facts of the case.*
2. *The NFAC ought to have noticed that a sum of Rs.4,43,00,000/- was invested in the form of share application money in the group company known as M/s. Kamineni Heath Care Pvt Ltd and thus the same cannot be treated on par with advance/loan within the meaning of section 36(1)(iii) of the Act.*
3. *In the alternative, the NFAC ought to have noticed that the appellant had common funds out of which investment was made towards purchase of shares and hence the mere fact that loans were borrowed cannot be basis for assuming that only interest bearing funds were utilised.*
4. *The NFAC ought to have noticed that advances given M/s United Steel Allied Industries Pvt. Ltd. (USAIPL) in the course of business on 31.03.2016 cannot be treated as advance without any business purpose since the tax authorities overlooked the fact that M/s USAIPL is a group company and the appellant company maintained a running account for obtaining interest free advances and also providing interest free advances from time to time.*
5. *The NFAC ought to have not confirmed the disallowance of deemed interest expenditure owing to the ratio laid down in the decision of the Hon'ble Supreme Court in the case of S.A. Builders v. CIT 288 ITR 1 (SC) and ACIT vs. Tulip Star Hotels Ltd. (2012) (SC).*
6. *For these and other grounds that may be urged at the time of hearing. appellant prays that the Hon'ble Tribunal may be pleased to delete the arbitrary additions made in the case of the Appellant.”*

3. Briefly stated facts of the case are that, the assessee-company is engaged in the business of “Health Care”. The assessee-company had filed its return of income on 15.10.2016 admitting total income of Rs.(-)64,54,988/- for the impugned assessment year 2016-17. The return was processed u/s.143(1). The case was selected for complete scrutiny under Manual Selection and notice u/s 143(2) of the Act dated 08.09.2017 was issued and served on assessee. Subsequent notices u/s.142(1) were also issued to the assessee-company on 03.08.2018, 13.10.2018 and 12.11.2018 calling for information. In response, the assessee-company has furnished break-up of other long terms loans and advances of Rs.3,14,56,451/- to M/s United Steel Allied Ind Private Limited and Rs.4,43,00,000/- to M/s Kamineni Health Care Private Limited vide its letter dated 05.11.2018. The Assessing Officer issued notice u/s. 142(1) dated 12.11.2018 to explain the sources of fund given as loans and advances to M/s United Steel Allied India Private Ltd and M/s Kamineni Health Care Private Ltd and interest received from them and also pointed to

assessee, that why interest had not been charged on loans and advances given to related parties i.e., M/s United Steel Allied Ind Private Limited, M/s Kamineni Health Care Private Limited. If not why corresponding interest debited in P&L account @ rate of 12% should not be disallowed. In response to the said notice, the assessee-company vide its letter dated 16.11.2018 submitted that the amount of Rs.3,14,56,451/- is relating to advance given to one of the group company which has been repaid during the F.Y. 2016-2017. With respect to amount paid to M/s. Kamineni Health Care Pvt. Ltd., of Rs.4,43,00,000/- it was the submission of the assessee-company that the said sum is not an advance/loan and it is an investment in the said company. The assessee-company further submitted that as per the disclosure requirements under Companies Act, 2013, this share application money was shown under "Loans and Advances" and also filed share allotment and resolutions before the Assessing Officer.

4. During the course of assessment proceedings, the Assessing Officer noted that the assessee-company could not actually establish what is "operational cash flow in the normal course of business of the company" even though assessee company has (-) negative "Reserves and Surplus" during the year under consideration and earlier years, which indicates that the assessee company had given Loans and Advances from the borrowed funds to group companies viz., M/s United Steel Allied Ind Private Limited and M/s Kamineni Health Care Private Limited. Therefore, the nature and character of the amount in Balance Sheet will not change in the FY-2015-16 and it is undisputedly loans and advances given to its group concern, for which, interest has not been charged and on the other hand the assessee has paid huge finance cost of Rs.1,87,05,189/- on account of loans taken. Therefore, the Assessing Officer by relying upon the decision of Hon'ble Punjab and Haryana High Court in the case of CIT, Patiala vs., M/s Punjab Tractors, in ITA No.458 of 2015 (O&M) dated. 03.02.2017, noted that once it is established that the assessee had raised certain

loans for business purposes, on which interest liability is being incurred and on the other hand, the funds were advanced to sister concern for non-business purposes on interest free basis, then the interest payable by the assessee to financial institutions to that extent cannot be held to have been used for business purposes and no deduction accordingly can be permitted under section 36(1)(iii) of the I.T. Act and accordingly, the Assessing Officer disallowed the interest expenses [to the extent of 12% on Rs.7,57,56,451/- i.e., Rs.3,14,56,451/- + Rs.4,43,00,000/-] amounting to Rs.90,90,774/- and added the same to the income of the assessee-company vide order dated 04.12.2018 passed u/sec.143(3) of the Act.

5. On being aggrieved by the assessment order, the assessee-company, carried the matter in appeal before the learned CIT(A). Before the learned CIT(A), it was the submission of the assessee-company that, although, the assessee-company had given advance to M/s. United Steel Allied Ind Private Limited to the tune of Rs.3.77 crores on the last day of year, the Assessing Officer had computed the

interest for the whole year which is not in accordance with law. The learned CIT(A) after considering the submissions of the assessee, though upheld the disallowance in principle, however, partly allowed the claim of assessee-company and directed the Assessing Officer to recalculate interest disallowance from the day when advance was given to M/s. United Steel Allied Ind Private Limited till 31.03.2016. With respect to disallowance of interest on share application money given to M/s. Kamineni Health Care Pvt. Ltd., the learned CIT(A) observed that it is not the business of assessee company to give share application money to sister concern from borrowed funds and further, the assessee-company do not have any surplus to invest in shares of sister concern and entire investment has been funded through interest bearing borrowings and, therefore, sustained the order of the Assessing Officer on disallowance of finance cost of Rs.53,16,000/-.

6. Aggrieved by the order of the learned CIT(A), the assessee is now in appeal before the Tribunal.

7. Shri Sashank Dundu, Learned Counsel for the Assessee, submitted that, the learned CIT(A) has erred in sustaining the additions made by the Assessing Officer towards interest on loan given to M/s. Kamineni Health Care Pvt. Ltd., without appreciating the fact that the said loan is not a loan or advance, but, as investment in shares of other group company which is evident from the subsequent allotment of shares. Learned Counsel for the Assessee referring to various documents submitted that the appellant-company has received investment from two of its Directors viz., K. Suryanarayana and K. Indira amounting to Rs.4.03 crores and the same has been invested in another group company i.e., M/s. Kamineni Health Care Pvt. Ltd., and, therefore, the question of treating the said investment as loans and advances within the meaning of sec.36(1)(iii) of the Act does not arise. Learned Counsel for the Assessee further referring to the amounts given to M/s. United Steel Allied Ind Private Limited submitted that the said transaction is a normal current account between the group companies in the ordinary course of business and,

therefore, treating the same as loans and advances for the purpose of sec.36(1)(iii) of the Act is not correct. Although, the learned CIT(A) directed the Assessing Officer to compute the interest for actual period of loan i.e., one day, but, the learned CIT(A) has factually erred in considering the said advance as loans and advances to compute interest u/sec.36(1)(iii) of the Act. Therefore, he submitted that the addition made by the Assessing Officer and sustained by the learned CIT(A) should be deleted.

8. Shri Srinath Sadanala, Sr. AR for the Revenue, on the other hand, supporting the order of the learned CIT(A), submitted that, facts brought on record by the Assessing Officer clearly shows that assessee has given loan to M/s. Kamineni Health Care Pvt. Ltd. However, to circumvent the application of sec.36(1)(iii) of the Act, the appellant-company has filed relevant Board Resolution for allotment of equity shares in the subsequent financial year and, therefore, the entire transaction for the year under consideration remains loans and advances which attracts the provisions of sec.36(1)(iii) of the Act. Further, in respect

of loan given to M/s. United Steel Allied Ind Private Limited, although, the assessee claims that said advance was given in the ordinary course of business, but, failed to prove the business exigency or commercial expediency that the advance was given to group company. Therefore, the learned CIT(A) has rightly directed the Assessing Officer to compute interest for the actual period of loan i.e., for one day for the year under consideration and thus, the order of the learned CIT(A) should be upheld.

9. We have heard both the parties, perused the material on record and the orders of the authorities below. There is no dispute with regard to the fact that the appellant company and M/s. Kamineni Health Care Pvt. Ltd., are group companies having engaged in similar nature of business. The appellant-company had given Rs.4.43 crores loan to M/s. Kamineni Health Care Pvt. Ltd. The appellant-company claims that it is not a loan, but, share application money invested in other group company and subsequently, share allotment has been made by filing relevant return of allotment etc. We have gone through the relevant evidences

filed by the assessee and we find that, the appellant-company has received fresh investment from two of its Directors for the year under consideration and out of the said funds, they have invested in share capital of M/s. Kamineni Health Care Pvt. Ltd., On verification of relevant details filed by the appellant-company, we find that the investment with M/s. Kamineni Health Care Pvt. Ltd., and allotment of shares is taken place in the same financial year. To support this contention, the appellant-company has filed relevant ledger account and also copies of Board Resolution for allotment of shares to appellant-company. From the details filed by the assessee, it is undisputedly proved that, the impugned sum considered by the Assessing Officer as loan for the purpose of sec.36(1)(iii) of the Act is in fact, an investment in another group company, but, not a loan. Therefore, in our considered view, the Assessing Officer is erred in invoking the provisions of sec.36(1)(iii) of the Act for the amount invested in M/s. Kamineni Health Care Pvt. Ltd. Further, assuming for a moment it is a loan and advance for the purpose of sec.36(1)(iii) of the Act, but,

the fact remains that the assessee has given said loan and advance out of its own interest free funds available in the form of fresh investment received from two of its Directors. Further, no interest bearing funds have been used for the purpose of giving amount to M/s. Kamineni Health Care Pvt. Ltd. and, therefore, on this count also, the addition made by the Assessing Officer towards disallowance of interest u/sec.36(1)(iii) of the Act cannot be sustained. We, therefore, delete the addition made by the Assessing Officer towards interest on amount given to M/s. Kamineni Health Care Pvt. Ltd.

10. Coming back to loan and advances given to M/s. United Steel Allied Ind Private Limited. There is no dispute with regard to the fact that the appellant-company had given loan to above company on 31.03.2016. However, the Assessing Officer has computed interest for the whole year. Although, the learned CIT(A) has restricted the disallowance of interest for the actual period of loan i.e., for one day, but, uphold the reasons given by the Assessing Officer to treat the said transaction as loans and advances for the purpose

of sec.36(1)(iii) of the Act. Before us, Learned Counsel for the Assessee claims that it is not a loan or advance, but, a current account between the two group companies in the ordinary course of business. We find that, although, the Learned Counsel for the Assessee brings in the theory of business exigency or commercial exigency, but, failed to prove the theory of commercial exigency by bringing on record any evidence to prove that there is a business connection between the two companies. Further, although, the appellant-company claims that it is a holding company of appellant-company, but, in our considered view, except making a oral statement, no evidence has been placed on record to prove the claim that the transaction is between the holding company and subsidiary company in the ordinary course of business and such transactions are carried-out under commercial expediency. Since the appellant-company fails to prove commercial/business exigency in advances given to the other company, in our considered view, there is no error in the reasons given by the learned CIT(A) to treat the said advances as loans and advances within the

meaning of sec.36(1)(iii) of the Act. We, therefore, direct the Assessing Officer to levy interest for the actual period of loan. Thus, we uphold the reasons given by the learned CIT(A) on this issue.

11. To sum-up, we direct the Assessing Officer to delete addition made towards disallowance of interest on investment with M/s. Kamineni Health Care Pvt. Ltd. and sustain the addition made toward interest on loan given to M/s. United Steel Allied Ind Private Limited, but, restrict the interest disallowance as per the directions of the learned CIT(A).

12. In the result, appeal of the Assessee is partly allowed.

Order pronounced in the open Court on 24.04.2025

Sd/-  
[VIJAY PAL RAO]  
VICE PRESIDENT

Sd/-  
[MANJUNATHA G]  
ACCOUNTANT MEMBER

Hyderabad, Dated 24<sup>th</sup> April, 2025

VBP

Copy to

1.	Kamineni Health Services Private Limited, 4-1-1227, Bogulakunta, King Koti, Hyderabad – 500 001. Telangana.
2.	The ACIT, Circle-2(1), Signature Towers, Sy.No.6(P) of Kondapur, Sy.No.37(P) of Kothaguda, Opp. Botanical Gardens, Serilingampally (M) R R District, Hyderabad. PIN – 500 -084. Telangana.
3.	The Pr. CIT (Central), Hyderabad.
4.	The DR ITAT “A” Bench, Hyderabad.
5.	Guard File.

//By Order//

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