

*आयकर अपीलीय अधिकरण, हैदराबाद पीठ*  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'B' Bench, Hyderabad**

**श्री रविश सूद, न्यायिक सदस्य एवं**  
**श्री मधुसूदन सावडिया, लेखा सदस्य के समक्ष ।**  
**BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER AND**  
**SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER**

आ.अपी.सं / **ITA Nos.205 & 206/Hyd/2025**  
(निर्धारण वर्ष / Assessment Year: 2016-17 & 2017-18)

|   |            |   |
|---|------------|---|
| M/s. Kapil Foods and Structures Pvt. Ltd., Warangal.<br>PAN: AACCK2614F | <b>Vs.</b> | Dy. Commissioner of Income Tax, Circle-3(1), Hyderabad. |
| (Appellant)   |            | (Respondent)  |
| निर्धारिती द्वारा / Assessee by:  |            | Shri S. Rama Rao, Advocate                              |
| राजस्व द्वारा / Revenue by:   |            | Dr. Sachin Kumar, SR-DR                                 |
| सुनवाई की तारीख / Date of hearing:                                      |            | 02/09/2025  |
| घोषणा की तारीख / Pronouncement:   |            | 26/09/2025  |

**आदेश/ORDER**

**PER MADHUSUDAN SAWDIA, A.M.:**

These two appeals are filed by M/s. Kapil Foods and Structures Pvt. Ltd. (“the assessee”), feeling aggrieved by the separate orders passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (“Ld. CIT(A)”), both dated 09.12.2024 for the A.Ys. 2016-17 & 2017-18. Since the issues involved in both these appeals are identical and belong to the same assessee, one consolidated order is being passed for the sake of convenience and brevity.

**ITA No.205/Hyd/2025 for A.Y. 2016-17:**

2. The assessee has raised the following grounds of appeal :

*“1. The order of the learned Commissioner of Income-Tax (Appeals) is erroneous both on facts and in law.*

*2. The learned Commissioner of Income-Tax (Appeals) erred in confirming the addition of Rs. 20,47,628/- made by the Assessing officer towards disallowance of finance cost.*

*3. The learned Commissioner of Income-Tax (Appeals) ought to have considered the fact that the finance charges are related to the assessee’s business activity and are related to the earning of income.*

*4. The learned Commissioner of Income-Tax (Appeals) ought to have considered the fact that in similar cases of the group, the Hon’ble ITAT, Hyderabad allowed the claim.*

*5. Any other ground that may be urged at the time of hearing.”*

3. The brief facts of the case are that, the assessee is a company engaged in the business of real estate. It filed its return of income for AY 2016–17 on 13.10.2016 declaring total income of Rs.48,32,530/-. From the financials, the Learned Assessing Officer (“Ld. AO”) noticed that the assessee had interest-free funds of Rs.6,85,35,932/- and non-current investments of Rs.8,55,99,500/-. He held that interest bearing funds to the extent of Rs.1,70,63,568/- were diverted for non-business purposes. Accordingly, the case was reopened under section 147 of the Income Tax Act, 1961 (“the Act”) and notice under

section 148 of the Act was issued on 12.03.2021. The assessee did not file a fresh return in response but requested that the original return filed u/s 139 of the Act be treated as compliance. The assessee also submitted before the Ld. AO that identical issues for earlier years were pending before ITAT in ITA Nos.653 & 654/Hyd/2020 and requested the Ld. AO to keep proceedings in abeyance. The Ld. AO, however, rejected the request and completed the assessment u/s 147 r.w.s. 144 & 144B of the Act on 26.03.2022, making a disallowance of Rs.20,47,628/- u/s 36(1)(iii), thereby assessing the total income at Rs.68,80,158/-.

4. Aggrieved with the order of Ld. AO, the assessee filed appeal before the Ld. CIT(A). It was submitted before the Ld. CIT(A) that ITAT Hyderabad had already decided the issue in assessee's own case for AYs 2012-13 & 2013-14 in its favour. The Ld. CIT(A), however, noted that the ITAT allowed those appeals on legal grounds and not on merits. He therefore upheld the Ld. AO's order and dismissed the appeal.

5. Aggrieved with the order of Ld. CIT(A), the assessee is now in further appeal before this Tribunal. The Learned Authorised Representative (“Ld. AR”) submitted that the sole issue in the appeal of the assessee relates to disallowance of Rs.20,47,628/- u/s 36(1)(iii) of the Act. He contended that no adequate opportunity was granted by Ld. AO during the assesment proceedings. He also contended that, since identical matters for earlier years were pending before ITAT, the assessee had requested the Ld. AO to await Tribunal’s decision. However, without granting further opportunity or calling for supporting evidence, the Ld. AO completed assessment and made the disallowance of Rs.20,47,628/-.

6. The Ld. AR further submitted that, the assessee is filing various documents as additional evidence in support of its claim which could not be filed before the lower authorities. He also prayed before the bench for admission of additional evidence so filed. The Ld. AR also submitted that, the assessee is in the business of real estate and receives advances from customers for sale of properties. In the event of non-materialisation of the contract, such advances are refunded to the buyer with interest. Where the contract is materialised and are

registered, no interest is payable. In this regard, our attention was invited to page nos. 2 to 24 of the paper book showing details of such advances, where the contract is materialised and no interest was paid on the advances received. It was demonstrated that no interest was paid on advances of Rs.4,13,70,971/-. The Ld. AR also invited our attention to page no.7 of the paper book (shareholders' funds) showing interest free own funds on account of share capital and reserves of Rs.1,18,12,599/- and page no. 10 of the paper book (Note 5 of audited balance sheet) showing interest-free secured redeemable debentures of Rs.5,49,25,000/-. The Ld. AR submitted that, the assessee had total interest-free funds of Rs.10,81,08,570/- (Rs.4,13,70,971/- + Rs.1,18,12,599/- + Rs.5,49,25,000/-).

7. The Ld. AR also inviting our attention to Note no.10 of the audited financial statement of the assessee placed at page nos.10 and 11 of the paper book and demonstrated that the assessee has non-current investments were Rs.8,55,99,500/- only. Accordingly, the interest-free funds available with the assessee are more than the amount of investment in non-current assets. Therefore, no addition can be made under section 36(1)(iii) of the Act in the hands of the

assessee. In support of his claim, the assessee relied on the decision of Hon'ble Supreme Court in CIT v. Reliance Industries Ltd. (2019) 102 taxmann.com 52 (SC), wherein it was held that if interest-free funds are sufficient to cover investments, presumption is that investments are from such funds. The assessee also relied on the decision of Hon'ble Supreme Court in the case of South Indian Bank Ltd. v. CIT (2021) 438 ITR 1 (SC), wherein the same principle was reiterated. Accordingly, it was argued that no disallowance could be made u/s 36(1)(iii) of the Act.

8. Per contra, the Learned Department Representative (“Ld. DR”) strongly supported the orders of lower authorities. It was submitted that the assessee has paid interest on advances refunded on cancellation of properties, which were utilised for non-current investments. Therefore, disallowance made by the Ld. AO was justified. In support of his submission, the Ld. DR relied on the decision of Hon’ble Madras High Court in K. Somasundaram & Brothers v. CIT dated 03.08.1998 and Hon’ble Punjab & Haryana High Court in CIT v. Abhishek Industries Ltd. (2006) 286 ITR 1. It

was argued that the ratio of these judgments applies squarely to the case of the assessee and the appeal of the assessee deserves dismissal.

9. We have heard rival submissions and perused the material available on record. As far as the admission of additional evidence is concerned, the assessee has filed audited balance sheet extracts, details of customer advances and investment statements. These documents go to the root of the matter and were not before the Ld. AO/CIT(A). In the interest of justice, we admit the additional evidences filed by the assessee.

10. We have gone through the share holders funds of the audited financial statement of the assessee placed at page no.7 of the paper book which is to the following effect :

| <b>KAPIL FOODS AND STRUCTURES PRIVATE LIMITED</b> |       |                          |    |                          |    |
|---|-------|--------------------------|----|--------------------------|----|
| <b>CIN : U15499TG1992PTC014019</b>                |       |                          |    |                          |    |
| <b>Balance Sheet as at March 31, 2016</b>         |       |                          |    |                          |    |
|   | Notes | As at<br>31st March 2016 |    | As at<br>31st March 2015 |    |
|   |       | Rs                       | Ps | Rs                       | Ps |
| <b>EQUITY AND LIABILITIES</b>                     |       |                          |    |                          |    |
| <b>Shareholders' funds</b>                        |       |                          |    |                          |    |
| Share capital                                     | 3     | 30,00,000                | 00 | 30,00,000                | 00 |
| Reserves and surplus                              | 4     | 88,12,599                | 19 | 92,99,991                | 60 |
|   |       | <b>1,18,12,599.19</b>    |    | <b>1,22,99,991.60</b>    |    |
| <b>Non-current liabilities</b>                    |       |                          |    |                          |    |
| Long-term borrowings                              | 5     | 5,67,23,333              | 65 | 9,13,04,411              | 00 |
| Deferred tax liability (net)                      | 6     | (2,54,919)               | 00 | (1,20,404)               | 00 |
|   |       | <b>5,64,68,414.65</b>    |    | <b>9,11,84,007.00</b>    |    |
| <b>Current liabilities</b>                        |       |                          |    |                          |    |
| Short-term borrowings                             | 7     |                          |    |                          |    |
| Trade payables                                    | 8.1   | 65,64,73,055             | 42 | 43,71,01,768             | 00 |
| Other current liabilities                         | 8.2   | 1,77,14,068              | 80 | 1,57,87,532              | 80 |
| Short-term provisions                             | 8.3   | 39,99,264                | 00 | 36,10,740                | 00 |
|   |       | <b>67,81,86,388.22</b>   |    | <b>45,65,00,040.80</b>   |    |
| <b>Total equity and liabilities</b>               |       | <b>74,64,67,402.06</b>   |    | <b>55,99,84,039.40</b>   |    |

11. On perusal of above, we find that the shareholders' funds of the assessee is Rs.1,18,12,599/-. From page no.10 of the paper book, we note that the assessee has secured redeemable debentures of Rs.5,49,25,000/-, which are claimed to be interest free. Further, on perusal of details of advance for sale of plots placed at page nos.2 to 24, we find that the assessee has Customer advances (interest-free in respect of registered plots) amount to Rs.4,13,70,971/-. Thus, the assessee has total interest-free funds of Rs.10,81,08,570/- (Rs.4,13,70,971/- + Rs.1,18,12,599/- + Rs.5,49,25,000/-).

12. We have also gone through Note no.10 regarding non-current investments of the audited financial statements of the assessee placed at page nos.10 and 11 of the paper book which is to the following effect :

| <b>10 NON CURRENT INVESTMENTS</b>   |                |                |
|---|----------------|----------------|
| <b>Non-trade investments ( valued at cost unless stated otherwise )</b>                                     |                |                |
| 1. Knowledge Matrix ( India ) Pvt Ltd<br>( 1,02,000 Equity share of Rs 100 /- each fully paid )             | 1,02,00,000.00 | 1,02,00,000.00 |
| 2. Hyderabad Media House Limited<br>( 480,500 Equity share of Rs 100 /- each fully paid )                   | 4,80,50,000.00 | 4,80,50,000.00 |
| 3. Kapil Health Club Pvt Ltd<br>( 47,500 Equity share of Rs 10 /- each fully paid )                         | 4,75,000.00    | 4,75,000.00    |
| 4. Kapil Precast and Infra Pvt Ltd<br>( 4,800 Equity share of Rs 10 /- each fully paid )                    | 48,000.00      | 48,000.00      |
| 5. Bijay Finance and Investments Pvt Ltd<br>( 11,050 ( 10,850 ) Equity share of Rs 100 /- each fully paid ) | 11,05,000.00   | 10,65,000.00   |
| 6. BVM Energy and Residency Pvt Ltd<br>( 2,08,000 Equity share of Rs 100 /- each fully paid )               | 2,08,00,000.00 | -              |

| <b>KAPIL FOODS AND STRUCTURES PRIVATE LIMITED</b>   |                       |                       |
|---|-----------------------|-----------------------|
| <b>CIN : U15499TG1992PTC014019</b>  |                       |                       |
| 7. Dakshin Infrastructures Pvt Ltd<br>( 4,90,000 Equity share of Rs 10 /- each fully paid ) | 49,00,000.00          | -                     |
| 8. Kapil Foods and Beverages Pvt Ltd<br>( 1,500 Equity share of Rs 10 /- each fully paid )  | 15,000.00             | -                     |
| Indira Vikas Patra  | 5,000.00              | 5,000.00              |
| National savings certificates   | 1,500.00              | 1,500.00              |
| <b>Total Investments</b>  | <b>8,55,99,500.00</b> | <b>5,98,44,500.00</b> |

13. On perusal of above, we find that the assessee has invested in non-current investments amounting to Rs.8,55,99,500/-. We find that the assessee has total interest-free funds of Rs.10,81,08,570/- against invested in non-current investments of Rs.8,55,99,500/-. Accordingly, it is clear that the interest free funds available in the hands of the assessee are more than the amount of investment in non-current assets.

14. We also found that, the Hon'ble Supreme Court in Reliance Industries Ltd. (supra) and South Indian Bank Ltd. (supra) has held that if interest-free funds are more than investments, presumption is that investments are made out of interest-free funds. These judgments being of the Apex Court, prevail over High Court rulings relied upon by the Ld. DR. Therefore, prima facie, the assessee had sufficient interest-free funds. However, since these documents were not before the lower authorities, proper verification is required. Accordingly, we

set aside the matter to the file of the Ld. AO with the direction to verify the additional evidences. If, on verification, it is found that interest-free funds are more than the non-current investments, the disallowance made u/s 36(1)(iii) of the Act shall be deleted.

15. In the result, the appeal of the assessee in ITA No.205/Hyd/2025 is allowed for statistical purposes.

**ITA No.206/Hyd/2025 for A.Y. 2017-18:**

16. The Ld. AR submitted that the issue in dispute in the present appeal is identical to issue involved in ITA No.205/Hyd/2025 for AY 2016–17. It was further submitted that during the year under consideration there is no fresh investment in non-current assets. Hence, the findings of this Tribunal in ITA No.205/Hyd/2025 may mutatis mutandis apply to the present appeal also. Therefore, as the issue involved in the present appeal is identical to the issue involved in ITA No.205/Hyd/2025, we hold that our findings in ITA No.205/Hyd/2025 for AY 2016–17 shall mutatis mutandis apply here also. Accordingly, consistent with our observations therein, we set aside this issue to the file of the Ld. AO with a direction to verify the

additional evidences and, if on verification it is found that the assessee had sufficient interest-free funds to cover the investments in non-current assets, the disallowance made u/s 36(1)(iii) shall be deleted.

17. In the result, the appeal of the assessee in ITA No.206/Hyd/2025 is allowed for statistical purposes.

18. To sum up, both the appeals of the assessee are allowed for statistical purposes.

**Order pronounced in the open Court on 26th Sept., 2025.**

**Sd/-**

**(RAVISH SOOD)**  
JUDICIAL MEMBER

**Sd/-**

**(MADHUSUDAN SAWDIA)**  
ACCOUNTANT MEMBER

Hyderabad.

Dated: 26.09.2025.

*\* Reddy gp*

**Copy of the Order forwarded to :**

|    |   |
|----|---|
| 1. | M/s. Kapil Foods and Structures Pvt. Ltd., 2-5-760, Kapil House, Opp. District Collectorate Subedari, Hanamkonda=506001 |
| 2. | The DCIT, Circle 3(1), Hyderabad.   |
| 3. | Pr.CIT, Hyderabad.  |
| 4. | DR, ITAT, Hyderabad.  |
| 5. | Guard file.   |

BY ORDER,