

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “B” BENCH: NEW DELHI**

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.595/Del/2025

[Assessment Year : 2018-19]

DCIT Central Circle-1 A.R.T.O Complex Sector-33, Noida	vs	Bright Buildtech Pvt.Ltd. Flat No.14, Ground Floor DDA MIG, Suraj Apartment, Pul Pehlad Pur New Delhi-110044 PAN-AACCB7981J
APPELLANT		RESPONDENT
Revenue by	Shri Rajesh Chandra, CIT DR	
Assessee by	Shri Rohit Kapoor, Adv. & Shri Veersain Aggarwal, CA	
Date of Hearing	14.08.2025	
Date of Pronouncement	31.10.2025	

ORDER

PER MANISH AGARWAL, AM :

The captioned appeal is filed by Revenue against the order dated 20.11.2024 passed by Ld. Commissioner of Income Tax (A)-3, Noida [“Ld.CIT(A)”] in Appeal No.CIT (Appeal), NFAC/2017-18/10088227 u/s 250 of the Income Tax Act, 1961 [“the Act”] arising out of assessment order dated 01.06.2021 passed u/s 143(3) r.w.s 144B of the Act pertaining to assessment year 2018-19.

2. Brief facts of the case are that the assessee company is engaged in the business of a real estate developer primarily covering residential projects, identification and acquisition of land, to the planning, execution and marketing of the projects. It had filed its return of income on 30.10.2018, declaring total income of INR NIL. Thereafter, notice u/s 143(2) of the Act was issued on 23.09.2019 and served through e-filing account of the assessee on the registered e-mail id of the assessee. The case of the assessee company was selected for complete scrutiny on various issues which are, (i) claim of any other amount allowable as deduction in Schedule BP; (ii) stock valuation; (iii) investments/advances/loans; (iv) business loss; and (v) unsecured loans. Subsequently, notices u/s 142(1) were issued from time to time, in reply the assessee had filed its replies. After verification of the submissions made by assessee, the assessment order was passed u/s 143(3) r.w.s. 144B of the Act vide order dated 01.06.2021 wherein the total income of the assessee was assessed at INR 12,17,08,119/-.

3. Against the said order, assessee filed an appeal before Ld. CIT(A) who vide order dated 20.11.2024, partly allowed the appeal of the assessee.

4. Aggrieved by the order of Ld.CIT(A), Revenue is in appeal before the Tribunal by taking following grounds of appeal:-

1. *“Whether on facts and circumstance of the case and in law, Ld. CIT (A)-3, Noida has erred in deleting the addition of Rs.22,37,89,198/*

made on account of disallowances of interest u/s 36(1)(iii) of the Income Tax Act, 1961, without appreciating the facts brought on record by the Assessing Officer during the course of assessment proceedings.

2. *Whether on facts and circumstance of the case and in law, Ld.CIT (A)-3, Noida has erred in deleting the addition of Rs. 22,37,89,198/-, disregarding the facts that the assessee has advanced huge interest free loan to the sister concerns/private parties/individuals and despite being given proper opportunity during the course of assessment proceedings failed to prove that the said loans were given out of interest free funds. The commercial expediency in respect of these loan has also not been proved by the assessee; hence, the AO has rightly disallowed the interest of Rs. 22,37,89,198/ being 12% of interest bearing funds of Rs. 194,70,54,951/-worked out on day to day basis.*
3. *Whether on facts and circumstance of the case and in law, Ld.CIT (A)-3, Noida has erred in deleting the said addition, without appreciating the facts that the assessee during the course of assessment proceedings as well as appellate stage completely failed to furnish cogent documentary evidences regarding interest bearing and interest free fund available with it, which could establish that the assessee has utilized the interest free fund for advancing the loan.*
4. *Whether on facts and circumstance of the case and in law, Ld. CIT (A)-3, Noida has erred in deleting the addition by not considering the facts that the assessee failed to establish that there was direct nexus between the interest of Rs. 25,92,89,000/-debited in the Profit and Loss Account and income earned by the assessee on account of interest bearing fund raised by it.*
5. *That the appellant craves leave to add, alter or amend any ground or grounds on or before the date of hearing of appeal.”*

5. Before us, Ld.CIT DR for the Revenue submits that the case of the assessee was selected for complete scrutiny and during the course of assessment proceedings, AO found that the assessee has given interest free advances to various parties and claimed huge

amount of interest of INR 25,92,89,000/- in the P&L Account on the unsecured loans of INR 28,52,64,000/-. Ld. CIT DR submits that major source of the advances was the interest bearing funds available with the assessee and therefore, it is evidenced that the assessee has utilized interest bearing funds for making interest free advances to its sister concerns and other companies. Ld. CIT DR submits that the assessee has not received any interest on the advances/loans given however, paid interest on loans which was claimed as deduction in the P&L Account though there was a direct nexus between the borrowed funds and interest free loans given. Ld.CIT DR submits that assessee has failed to justify the business expediency of such interest free advances and therefore, the AO has invoked the provision of section 36(1)(iii) of the Act and computed the disallowance of INR 22,37,89,198/-however, the same was deleted by Ld.CIT(A) by not appreciating the fact that the assessee has failed to prove the nexus between the interest free funds and the interest free advances given and further failed to establish the commercial expediency in providing such loans therefore, Ld. CIT DR vehemently supports the order of AO and requested to confirm the order of AO.

6. On the other hand, Ld.AR for the assessee submits that during the year under appeal, assessee was having sufficient interest free funds/ low interest bearing funds in the shape of unsecured loans, own share capital and non-convertible debenture having coupon rate of interest of only 1% per annum. Ld.AR

submits that in compliance to Ind AS, assessee made debit and credit entries towards notional interest on advances given and received respectively, in the books of accounts and finally offered positive interest income as against the allegation of the AO of claiming interest expenses in the P&L A/c. Ld. AR further submits that assessee has also established the source of each interest free loans/advances given where date-wise trail was established before Ld.CIT(A). Ld. AR drew our attention to the computation of income wherein the debit entry of notional interest expenses as per Ind-AS adjustments and corresponding credit entry notional interest income as per Ind-AS adjustments were added back and reduced from the taxable income. According to computation of income, there was total interest payment of INR 10.39 crores as against which the AO observed that the assessee has paid total interest of INR 25.92 crores and disallowed interest expenses of INR 22.38 crores. Ld.AR further submits that assessee has made entries of notional interest on debentures and advances of INR 21.45 crores in the P&L Account which is evident from Schedule 20 to financial statements and further submits that after reducing the adjustments towards the amount of INR 14.5 crores in the computation of income, net income of INR 16.94 crores was offered for tax.

7. Ld. AR further submits that in the case of Solace Projects Pvt. Ltd., the assessee has given advances out of NCDs on which 1 % interest was paid, however, the interest so paid was capitalized to the value of the inventory and no expenses was claimed in the P&L

Account. He further submits that notional interest on the advances given to Solace Projects Pvt. Ltd. of INR 10.98 crores was credited in the P&L Account. He further submits that in Assessment year 2014-15 when the advances were made to M/s Solace Projects Pvt. Ltd., the reassessment order was passed u/s 147 of the Act vide order dated 21.05.2024 i.e. after passing the assessment under appeal before us, where no disallowance was made on this account. Ld.AR also submits that in the case of other companies to whom advances were given, they were either given out of interest free funds or the interest paid on the borrowed funds was capitalized and no expenditure was claimed in the P&L Account. He thus, submits that Ld. CIT(A) after considering these facts, deleted the additions made wherein Ld.CIT(A) has categorically held that the advances were given under commercial expediency and solely for the betterment and for the support of the business of the assessee thus, provisions of section 36(1)(iii) could not be invoked.

8. Ld.AR also placed reliance on the written submissions filed by the assessee which read as under:-

1. *“That the respondent ‘Bright Buidtech Private Limited’ is a real estate developer primarily covering residential projects covering the aspects of real estate development, from the identification and acquisition of land, to the planning and marketing of the projects.*

2. ***That the respondent has followed Ind AS for very first time during the FY 2017-18 and reinstated the financial statements for FY 2016-17. Please refer the submissions of the appellant reproduced by CIT(A) in para 3 and 3.1 page 9 of the CIT(A) Order.***

3. The respondent was issued a notice under Section 143(2) of the Income Tax Act, 1961 on 23rd September 2019, in respect of various issues flagged during the course of scrutiny. Subsequently, the assessment was completed under Section 143(3) read with Section 144B of the Act.

4. The A.O. noticed that the appellant has debited huge interest amounting to 25.92 Cr in P/L A/c, and has given interest free advances to outsiders and sister concerns. However, the A.O. failed to consider that the interest debited is primarily on account of application of IndAS. **Refer para 5.2 of page 22 of the Assessment Order at page 158 of the PB.**

5. In the impugned assessment order, the AO has made an addition of ₹22,37,89,198/- by invoking Section 36(1)(iii), alleging that the assessee had advanced funds to various parties without charging interest. The AO has computed a notional interest at the rate of 12% per annum on a day-to-day basis, thereby treating the same as disallowable interest expenditure (refer para 5.13 page 27-29 & para 6 page 29 of the Assessment Order at page 163-165 of the PB.).

S.No	Party	Subsidiary	Purpose of advance	Nature	133(6) issued by AO	Interest disallowed 36(1)(iii)
1	Ace Infracity Developers Pvt. Ltd.	NA	Business	Advance for development	Yes	2,15,40,822.00
2	Piyush IT Solutions Pvt. Ltd.	NA	Business	Recoverable for sale of 15 units of flats (Land)	Yes	9,81,304.00
3	Sona PolysterPvt. Ltd.	NA	Business	Advance for land	Yes	31,47,194.00
4	Doyen Town Planners Pvt. Ltd.	100%	Business	Advance for land	Yes	66,45,905.00
5	Solace Projects Pvt. Ltd	100%	Business	Advance for railway project	Yes	19,14,73,973.00
	Total					22,37,89,198.00

6. That the notional interest disallowance made by the AO is devoid of legal and factual justification, and the same has already been elaborately rebutted and found untenable by the CIT(A), as detailed in the preceding paragraphs and supported by documentary and judicial evidence.

7. That the AO has arbitrarily applied a notional interest rate of 12% per annum on a day-to-day basis in respect of the advances made by the assessee, solely on the ground that both business receipts and loan proceeds were deposited in the same bank account, without drawing any distinction between the two (**refer para 5.13 page 27 of the Assessment Order at page 163 of the PB**). The AO has failed to conduct any independent verification or analysis of the actual fund trail, and has not established any nexus between the interest-bearing borrowed funds and the advances in question. Mere deposit of funds in a common bank account cannot lead to an automatic presumption that the advances were made out of interest-bearing loans.

8. Such approach is contrary to settled judicial principles, wherein it has been consistently held that in the absence of a direct nexus, no disallowance of interest under Section 36(1)(iii) can be sustained merely because funds were pooled in a common bank account. The commercial expediency and availability of interest-free funds have already been demonstrated and accepted by the CIT(A). The findings of the CIT(A) is dealt at **page 38-54 of the CIT(A) order**.

9. That the CIT(A) has granted relief to the appellant after a comprehensive evaluation of all relevant aspects, including:-

- **The impact of notional interest both on income and expenditure,**
- **The actual source and trail of funds utilized for the advances made, and**
- **The existence of commercial and business expediency in relation to such advances.**

The CIT(A), after appreciating the detailed submissions and documentary evidence placed on record, rightly concluded that the disallowance of interest under Section 36(1)(iii) was uncalled for in the given circumstances. The findings are based on a factual matrix that clearly establishes that the advances were either made from interest-free funds or, where borrowed funds were used, the interest had been capitalised to inventory or not claimed at all in the computation of income.

10. **That the CIT(A) has held that the AO erroneously invoked the provisions of Section 36(1)(iii) of the Income Tax Act without appreciating that the provision is applicable only in cases where the assessee has actually claimed interest as an expenditure in the computation of income.** In the present case, the appellant has not claimed any deduction of interest in respect of the advances in question, as the interest has either been capitalized to inventory or appropriately

adjusted in the computation of income. The AO has overlooked these crucial facts and proceeded to make a notional disallowance under Section 36(1)(iii), which is legally unsustainable and contrary to the settled position of law that unless the interest is actually claimed as a deduction, there can be no question of disallowance.

Impact of notional interest both on income and expenditure			
S. No.	Particulars	In Cr	Remarks
I	Details of notional interest debited		a) That the total interest expenditure claimed in the Profit & Loss Account, after reducing the amount capitalised to inventory, stands at ₹25.92 crores. Out of the same, an amount of ₹15.51 crores has already been disallowed in the computation of income by the assessee. Please refer page 132 of the PB. b) The net interest expenditure claimed in the computation of income works out to ₹10.39 crores only. The A.O. failed to consider notional interest credited to P/L A/c. Refer page 39 of the CIT(A) Order.
	Notional interest debited in P/L	25.92	
	Less: Interest reduced by making adjustment in computation of income due to Ind AS effect	(15.51)	
	Total notional interest claimed in P/L	10.39	
II	Details of notional interest credited		a) Additionally, the assessee has credited a sum of ₹31.45 crores as notional interest income on debentures and other advances, which is reflected under Schedule 20 of the audited Profit & Loss Account. Please refer page 22 and 38 of the PB. b) Out of this amount, an adjustment of ₹14.51 crores has already been made in the computation of income. Accordingly, the net interest income credited, after considering the computation adjustments, stands at ₹16.94 crores. Refer page 132 of the PB. Refer page 40-41 of the CIT(A) Order.
	Notional interest credited in P/L	31.45	
	Less: Interest reduced by making adjustment in computation of income due to Ind AS effect	(14.51)	
	Total notional interest claimed in P/L	16.94	
III	Net notional interest income (II-I)	6.55	Thus, the assessee has effectively considered net interest income of ₹6.55 crores, after adjusting the notional interest income of ₹16.94 crores.

11. That the CIT(A) at **para no. 'a', page 38 of the CIT(A) Order** has discussed the issue of "notional interest income and notional interest expenditure" and finally concluded that the assessee has not claimed any interest but has considered for net interest income of ₹6.55 Cr after adjustment of interest income. That the Ld. CIT(A) at **page no. 41 of the CIT(A) Order** has held that the claim of the appellant regarding notional interest income is required to be considered is correct. That the CIT(A) further observed that addition cannot be made on a piecemeal basis and that both debit and credit entries must be considered before making any disallowance

12. The actual source and trail of funds utilized for the advances made:-

The Ld. CIT(A) has elaborately discussed the trail and application of borrowed funds vis-à-vis the advances extended by the respondent in **para 'b' page 41-52 of the CIT(A) Order**. The notional interest at the rate of 12%, as applied by the AO in **page 28-29 of the Assessment**

Order at page 164-165 of the PB, pertains to advances given to the following entities:

S.No.	Entity	Amount	Year of Advance	Source	Purpose	Treatment	Remarks
1.	Solace Projects Pvt. Ltd.	160 Cr	2013-14	Interest bearing funds	Business	Capitalized	<p>1. Your Honour's will appreciate that the appellant has already capitalized interest of 17.12 Cr in 'Inventory' as per schedule no. 22 of the Audited B/S (refer page 22 of the PB).</p> <p>2. The CIT(A)'s findings are at page 52, wherein it is concluded that no addition is warranted as the interest has been duly capitalized. Kindly refer to page 42 of the CIT(A) order, where the details of capitalization have been reproduced.</p> <p>3. The assessments for A.Y. 2014-15 and A.Y. 2016-17 were completed under section 147 (on 21.05.2024) and section 143(3) (on 30.12.2018) respectively. It is respectfully submitted that in both assessment years, no addition has been made on account of the business advance in question. Kindly refer to pages 103 to 114 of the PB for relevant details.</p> <p>4. The advance to Solace Projects Pvt. Ltd. was supported by a formal agreement (refer page 77-88 of the PB) and disclosed under the head "Advance to Related Parties." It was extended to the subsidiary for railway projects, with funds ultimately transferred to Parsvnath Rail Land Projects Pvt. Ltd. (PRLPPL), which made payments to the railway authorities. The matter went into litigation, and following a favourable ruling by the Hon'ble Delhi High Court, the amount was subsequently refunded. Thus, the transaction was wholly commercial and business-driven. Refer page 13 & 52 of the CIT(A) Order.</p> <p>5. The Assessing Officer confirmed the transaction by issuing a notice under section 133(6); however, no significance was to the outcome of the inquiry. Refer page 13 of the CIT(A) order.</p> <p>6. Without prejudice to above the AO has wrongly applied hypothetical rate of 12% irrespective of the fact that 1% was only paid on NCD's.</p>
2.	Doye n Town Planner Pvt. Ltd.	5Cr	2013-14	Non-interest bearing funds	Business	NA	<p>1. The amount was advanced out of interest-free funds available with the assessee in FY 2013-14. The fund trail is reproduced at page 16 of the CIT(A) order, and the final findings are at page 52. Accordingly, the question of disallowing interest is merely hypothetical.</p> <p>2. The amount was given for business, for purchase of land and the advance is appearing under the head 'Advances given for Land' in B/S filed for AY 2018-19. Refer page 35 of the PB and schedule 6 of the Audited Financial Statements.</p> <p>3. The assessments for A.Y. 2014-15 and A.Y. 2016-17 were completed under section 147 (on 21.05.2024) and section 143(3) (on 30.12.2018) respectively. It is respectfully submitted that in both assessment years, no addition has been made on account of the business advance in question. Kindly refer to pages 103 to 114 of the PB for relevant details.</p> <p>4. From the above facts and circumstances, the Hon'ble</p>

							<i>CIT(A) was justified in deleting the addition.</i>
3.	Piyush IT Solutions Pvt. Ltd.	82 lacs	Unsecured loan converted into advance due to sale of flats	Non-interest bearing funds	Business	NA	<p>1. That the interest free unsecured loan of Piyush IT Solutions Pvt. Ltd. was converted into advance in FY 2017-18.</p> <p>2. The amount recoverable 82 lacs was on account of 15 flats allotted which resulted into Debit balance. Moreover, no amount was advanced through bank, but the balance was arrived due to adjustment entry of flats. Refer page 14 of CIT(A) Order. The ledger A/c is placed at page 115 of the PB.</p> <p>3. Thus, the CIT(A) was justified in deleting the addition, as no interest bearing funds were used. Refer page 52 of the CIT(A) Order.</p>
4.	Sona Polysters Pvt. Ltd.	4.21 Cr	Unsecured loan converted into advance	Non-interest bearing funds	Business	NA	<p>1. The amount was advanced out of interest-free funds available with the assessee in FY 2017-18. Moreover, some business transaction regarding allotment of flats were also carried out. The fund trail is reproduced at page 44 of the CIT(A) order, and the final findings are at page 52. Accordingly, the question of disallowing interest is merely hypothetical.</p> <p>2. The amount was given for business, for purchase of land and the advance is appearing under the head 'Advances given for Land' in B/S filed for AY 2018-19. Refer page 35 of the PB and schedule 6 of the Audited Financial Statements.</p> <p>3. From the above facts and circumstances, the Hon'ble CIT(A) was justified in deleting the addition.</p>
5.	Ace Infracity Developers Pvt. Ltd.	18 Cr	2014-15	Interest bearing funds	Business	Capitalized	<p>1. Your Honour's will appreciate that the appellant has already capitalized interest of 17.12 Cr in 'Inventory' as per schedule no. 22 of the Audited B/S (refer page 22 of the PB). No expenses has been claimed in the P/L A/c. Findings of the CIT(A) are given at page 45 of the CIT(A) Order.</p> <p>2. The CIT(A)'s findings are at page 52, wherein it is concluded that no addition is warranted as the interest has been duly capitalized. Kindly refer to page 42 of the CIT(A) order, where the details of capitalization have been reproduced.</p> <p>3. The assessment for A.Y. 2016-17 was completed under section 143(3) (on 30.12.2018). It is respectfully submitted that no addition has been made on account of the business advance in question. Kindly refer to pages 103 to 111 of the PB for relevant details.</p> <p>4. The advance to Ace Infracity Developers Pvt. Ltd. was supported by a formal agreement (refer page 116-126 of the PB) and disclosed under the head "Advance given for supply of goods." It was extended for development work. Refer page 25 & 52 of the CIT(A) Order.</p> <p>5. The Assessing Officer confirmed the transaction by issuing a notice under section 133(6); however, no significance was to the outcome of the inquiry. Refer page 38 of the CIT(A) order.</p> <p>6. Without prejudice to above the AO has wrongly applied hypothetical rate of 12% irrespective of the fact that 1% was only paid on NCD's. Refer page 17 of the CIT(A) Order where trail of advance has been submitted.</p>

13. Lack of AO response despite multiple opportunities – Additions deleted by CIT(A)

*That the CIT(A) had provided an opportunity to the AO vide letter dated 23rd October 2024 and emails dated 2nd November 2024 and 12th November 2024 regarding the availability of industry funds. The submissions made by the assessee were also forwarded to the AO for comments; however, no response was received. Therefore, the CIT(A) was justified in deleting the addition. Kindly refer to **pages 46 and 47 of the CIT(A) Order.***

14. No Disallowance Warranted in case where amount advanced to subsidiaries were for business purpose

In this regard reliance is placed on the following case laws:

- a) [2020] 117 taxmann.com 124 (SC), SUPREME COURT OF INDIA, Principal Commissioner of Income Tax-9 v. E City Investments And Holdings Company (P.) Ltd.
- b) [2015] 63 taxmann.com 308 (SC), SUPREME COURT OF INDIA, Hero Cycles (P.) Ltd. v. Commissioner of Income-tax (Central), Ludhiana
- c) [2024] 161 taxmann.com 214 (Bombay), Principal commissioner of Income-tax. V. ESSEL Infra Projects Ltd
- d) [2021] 130 taxmann.com 456 (Bombay), Commissioner of Income-tax, Panaji v. V.S. Dempo Holding (P.) Ltd
- e) [2019] 111 taxmann.com 269 (Bombay), Principal Commissioner of Income Tax, Mumbai v. Concentrix Services (I) (P.) Ltd.
- f) [2018] 98 taxmann.com 413 (Delhi), HIGH COURT OF DELHI, Principal Commissioner of Income-tax v. Reebok India Company
- g) [2015] 55 taxmann.com 254 (Allahabad), HIGH COURT OF ALLAHABAD, J. K. Synthetics Ltd. v. Commissioner of Income-tax
- h) [2005] 145 TAXMAN 533 (ALL.), HIGH COURT OF ALLAHABAD, Commissioner of Income-tax v. Dhampur Sugar Mills Ltd
- i) 2005] 148 TAXMAN 321 (ALL.), HIGH COURT OF ALLAHABAD, Commissioner of Income-tax, Lucknow v. Dhampur Sugar Mills Ltd.

9. Heard the contentions of both the parties and perused the material available on record. In the instant case, AO by alleging that assessee has given interest free advances to various companies which includes two of its subsidiary companies and made the disallowance out of interest paid of INR 22,37,89,198/- by invoking

the provision of section 36(1)(iii) of the Act by taking the rate of interest of 12 % per annum. The claim of the assessee was that the company has followed Ind-AS according to which, entries for notional interest on advances received and paid were made in the books of accounts and in the computation of income final adjustment was given where ultimately, assessee has offered net interest income. The assessee further claimed that all such interest free advances were given under commercial expediency as assessee is engaged in the business of Real Estate where these advances were given for the development of projects and acquisition of lands for execution of the projects etc. thus, they were made under business expediency. It was further claimed that interest paid was never claimed as expenditure in the P&L Account. Assessee also filed Party-wise details of the funds given and corresponding source of the same and further explained the capitalization of interest in the written submissions which is reproduced herein above.

10. Ld.CIT(A) after considering the submissions of the assessee had deleted the disallowance by making categorical findings in this regard which are as under:-

FINDINGS, OBSERVATIONS & DECISION

6. In the light of the above submissions and documents filed by the AR during the course of appellate proceedings and findings of the AO in the assessment order, the various grounds of appeal are adjudicated as below:

6.1 Ground of Appeal No. 1 is general in nature, requiring no specific comments, in view of the detailed adjudication in the succeeding grounds.

6.2 Ground of Appeal No. 2 In this ground of appeal, the AR has contested the addition of Rs. 22,37,89,198 on account of charging of interest at the rate of 12 percent per annum on the debit balances of parties u/s 36(1)(iii) of the Income Tax Act, 1961. The AR has stated that the said disallowance is uncalled for whereas the AO has stated that there was no business exigency in giving these advances and the assessee was not able to establish any linkage between the funds advanced and the interest free funds available with the appellant.

The basic requirement while making addition u/s 36(1)(iii) is that the interest should have been claimed as an expense in the profit & loss account. The advances given by the assessee and the receipt/payment of interest, if any, need to be analyzed in detail. The interest free advances shall be broadly analyzed from following three angles:

- a. Effect of notional interest income and notional interest expenditure as per IND-AS
- b. The actual source/trail of money for the advances given.
- c. Business exigency, if any.

The above three issues are discussed in detail hereunder:

a. Notional Interest Income and Notional Interest Expenditure

Perusal of the assessment order and the submissions of the appellant reveal that the assessee has considered notional interest both on the debit and credit sides of profit & loss account. The total interest claimed as expense in profit & loss account after reducing the amount capitalized to inventory is to the tune

**Bright Buildtech Pvt Ltd, A.Y. 2018-19
CIT (Appeal), CIT (Appeal), NFAC/2017-18/10088227**

of Rs. 25.92 crores. The assessee has itself disallowed interest to the tune of Rs. 15.51 crores in the computation of income. The computation of income is scanned below for ready reference:

Name of Assessee	BRIGHT BUILDTECH PRIVATE LIMITED		
Address	FLAT NO 14 DDA MG SURAJ APARTMENT GPO Post Office, Sector 14, Phase 1, PWD, DELHI 110044		
State	Private Company(Domestic)	Assessment Year	2018-2019
Ward	WARD 5(2), DELHI 11	Year Filed	17/12/18
PAN	AACCB7981J	Incorporation Date	15/02/2016
Residential Status	Resident		
Nature of Business	REAL ESTATE AND RENTING SERVICE (Income from lease and letting of leased buildings(residential and non residential))		
Method of Accounting	Mercantile		
A.O. Code	DEL-W-033-04		
GSTR No	06AACCB7981J1ZC		
Filing Status	Original	Serial No.	278347/1311017
Last Year Return Filed On	31/10/2017	YES BANK, YES BANK, BASEMENT, GROUND FLOOR AND FIRST FLOOR, PLOT NO, 38, BLOCK H 1 A SFC 63, NEIDA,UTTAR PRADESH-201301, MCH, A/C NO.00148140000401, Type: Current, IFC Code: YESB0000014	
Bank Name	Mub:8588875506		
Title	Mob:8588875506		
Tele(Office):	Mob:8588875506		

165

Computation of Total Income

Income from Business or Profession (Chapter IV D)	-80289418
Profit as per Profit and Loss a/c	-86902000
<u>Add:</u>	
Depreciation Debited in P&L A/c	73000
INTEREST ON DELAY PAYMENT OF TDS	637524
INTEREST EXPENSES EFFECT AS PER INDAS	155186685
Total	68385209
<u>Less:</u>	
INTEREST INCOME EFFECT AS PER INDAS	146171000
INTEREST INCOME CONSIDERED SEPARATELY	3734657
Allowable depreciation is Rs. 51559/- but restricted to Rs. 0/- available profits.	
Disallowance u/s 40(a)(ia) Last Year, Allowed This Year	368970
	<u>140274627</u>
	<u>-80289418</u>
Income from Other Sources (Chapter IV F)	3734657
Interest on F.D.R.	3423502
Interest From Parties	6000
Interest From IT Refund	260155
Interest on Debentures	10000
	<u>3734657</u>
Gross Total Income	-76554761
Gross Total Income as -ve figure is not allowed in return form.	0
Total Income	0
Round off u/s 288 A	0

Thus, the total interest expenditure claimed by the assessee after giving effect to the computation of income is to the tune of Rs. 10.39 crores. The AO has disallowed the interest of Rs. 22.38 crores out of total interest claimed at Rs. 25.92 crores. It appears that the AO has failed to consider the adjustments made in the computation of income to the tune of Rs. 15.51 crores.



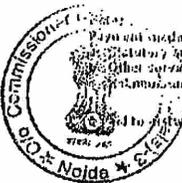
certified true copy

**Bright Buildtech Pvt Ltd, A.Y. 2018-19
CIT (Appeal), CIT (Appeal), NFAC/2017-18/10088227**

It is also noticed that the assessee has credited notional interest on debentures and other advances to the tune of Rs. 31.45 crores which is part of Rs. 31.82 crores as per Schedule-20 forming part of audited profit & loss account. The same is scanned below for ready reference:

BRIGHT BUILDTECH PRIVATE LIMITED
CIT (Appeal), CIT (Appeal), NFAC/2017-18/10088227
NOTES TO FINANCIAL STATEMENTS

	31.03.2019	31.03.2018
20. Other income		
a. Interest on deposits from banks on deposits from customers on delayed payments on debentures on other advances	34.24	46.22
b. Other income from customers	0.05	0.02
	<u>34.29</u>	<u>46.24</u>
21. Cost of land/ development rights		
a. Plot and land	530.77	1,109.24
b. Cost of sale of construction material	24.40	
	<u>555.17</u>	<u>1,109.24</u>
22. Finance costs		
a. Interest costs		
i. Interest on debenture	3,108.00	3,051.21
ii. Interest on borrowing	1,076.78	1,634.24
iii. Other finance cost	27.40	29.05
	<u>4,212.18</u>	<u>4,714.50</u>
Less: Finance cost transferred to inventory (see note below)	1,712.25	2,709.35
	<u>2,500.93</u>	<u>2,005.15</u>
Note: Interest allocable to Projects under progress transferred to Inventory - Construction under progress.		
23. Depreciation and amortization expenses		
a. Depreciation of property, plant and equipment	0.73	0.73
	<u>0.73</u>	<u>0.73</u>
24. Other expenses		
a. Rent and taxes	6.30	6.12
b. Travelling and conveyance	0.64	3.03
c. Legal and professional	4.14	2.31
d. Payments to auditors (see note below)	3.50	2.01
e. Sales commission		131.01
f. Business promotion	0.15	0.22
g. Bad trade and other receivables, loans and advances written off	1,169.07	
h. Miscellaneous expenses	2.17	1.50
	<u>1,188.25</u>	<u>1,40.20</u>
i. Payment made to authors/composers		
ii. Statutory audit fees	3.50	1.50
iii. Other services		0.50
iv. Amortization of expenses		0.01
v. Paid to outside auditors	3.50	2.01



**Bright Buildtech Pvt Ltd, A.Y. 2018-19
CIT (Appeal), CIT (Appeal), NFAC/2017-18/10088227**

Also, the assessee has made adjustment on interest received in the computation of income to the tune of Rs. 14.51 crores as can be seen from the computation sheet scanned above. Thus, the total interest credited after giving effect of computation of income works out to Rs. 16.94 crores.

Thus, the assessee has accounted for notional interest income to the tune of Rs. 6.55 crores after adjusting the notional interest credit of Rs. 16.94 crores against notional interest expenses to the tune of Rs. 10.39 crores. The submissions of the AR regarding the fact that the AO has failed to consider the notional interest income credited in the profit & loss account appear to be correct. It is a settled law that the addition cannot be made on piece meal basis and both debit & credit entries are required to be considered.

b. Trail of borrowed funds viz a viz the advances given

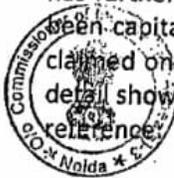
Without prejudice to the above discussion, the alleged interest free advances given to five entities are also being discussed below by going into detail regarding the trail/source of the funds.

i. Solace Projects Pvt. Ltd.

The assessee has given advance to the tune of Rs. 160 crores to its subsidiary namely Solace Projects Pvt. Ltd. The appellant submitted that the said advance was out of the 1% NCD funds received during FY 2013-14. The said fact has been acknowledged by the AO in the assessment order. The relevant trail of the funds received is reproduced below for ready reference:

Financial Year 13-14							
(A)	Interest Bearing Funds	In lacs		(A)	Payments From Interest Bearing Funds	In Lacs	In Lacs
(i)	1% NCD Rs 1 Crore Each 215 Nos from Clear Horizon Investments Pte Ltd	21,500.00		(i)	Solace Projects Pvt. Ltd.	16,000.00	
(ii)	Unsecured Business Loans from Related Party	-		(ii)	Development Rights-Through Holding Company Three C Town Planners Pvt Ltd	5,000.00	
(iii)	CF Funding from Yes Bank	-		(iii)	Construction & Other Expense	500.00	
		21,500.00	21,500.00			21,500.00	21,500.00

It is apparent from above that the advance given to M/s. Solace Projects Pvt. Ltd. is out of funds on which a rate of interest of 1% per annum was charged. It has further been submitted by the AR that the interest paid on the NCDs has been capitalized to the inventory meaning thereby that no expense has been claimed on account of said interest in the profit & loss account. The relevant detail showing the capitalization of NCD interest is reproduced below for ready reference.



**Bright Buildtech Pvt Ltd, A.Y. 2018-19
CIT (Appeal), CIT (Appeal), NFAC/2017-18/10088227**

AMOUNT CAPITALISED TO CWIP		
INTEREST ON CF FUNDING	1,036.14	
INTEREST ON NCDs	365.00	
IND AS ADJUSTMENTS- Notional Interest	281.63	
INTEREST TO CUSTOMER SUBVENTION	11.93	
DEBENTURE ISSUE EXPENSES	11.21	
OTHER BANK CHARGES	6.33	
TOTAL (B)		1,712.24

It is further observed that the notional interest of Rs. 10.98 crores from Solace Projects Pvt. Ltd. stands credited in the profit & loss account. It is also noticed that the assessment order u/s 147 dated 21.05.2024 has been passed by the AO for AY 2014-15 (i.e. the year during which the funds were received in the form of NCDs and advanced to Solace Projects Pvt. Ltd.) in which no addition has been made by the AO on the said issue.

The Hon'ble High Court of Delhi in the case of Principal Commissioner of Income-tax vs. N.S. Software reported at [2023] 153 taxmann.com 204 (Delhi) has held as under:

Where assessee-firm claimed deduction with respect to interest paid on bank loan and AO disallowed same on ground that assessee provided interest free advances to partners and was not able to demonstrate 'commercial expediency', since interest paid by assessee was allowed as expenditure for earlier assessment years, assessee was not required to demonstrate commercial expediency in each year and thus said interest was to be allowed

ii. **Doyen Town Planners Pvt. Ltd. Piyush IT Solutions Pvt. Ltd. and Sona Polyesters Pvt. Ltd.**

It has been submitted by the appellant that the funds were advanced to M/s. Doyen Town Planners Pvt. Ltd. during FY 2013-14 from interest free unsecured loans. The relevant trail is scanned below for ready reference:

FY 2013-14			
(B)	Non-Interest-Bearing Funds		(B) Utilization of Non-Interest-Bearing Funds
(i)	Unsecured Business Loans from Related Party	-	(i) Development Rights- Through Holding Company Three C Town Planners Pvt Ltd
			100.00
			100.00
			(ii) Investments in shares of subsidiaries
(ii)	Unsecured Business Loan from Other Party		Solace Projects Pvt. Ltd.
	Aachvis IT SEZ Private Limited.	200.00	1.00
	Arena Superstructures Pvt Ltd	1,400.00	Doyen Town Planners Pvt. Ltd.
	Neel Gagan Infrabuild Pvt Ltd	250.00	2.00
			3.00
			(iii) Construction & Other Expense
			4,327.00
			4,327.00

**Bright Buildtech Pvt Ltd, A.Y. 2018-19
CIT (Appeal), CIT (Appeal), NFAC/2017-18/10088227**

	Swapan mahal Builders Pvt Ltd	456.00		(iv)	Doyen Town Planners Pvt. Ltd.	500.00	500.00
	Three C Green Developers Pvt Ltd	200.00					
	Three C Projects Private Limited	800.00					
		3,306.00	3,306.00				
(iii)	Advances From Customers	2,101.02	2,101.02		Closing Balance		477.04
	Total		26,907.04		Total		26,907.04

It is apparent from above that the interest free funds have been utilized for advancing money to the above entity.

The funds advanced to M/s. Piyush IT Solutions Pvt. Ltd. during FY 2016-17 were out of interest free unsecured loans. The relevant trail is scanned below for ready reference:

FY 2016-17							
(B)	Non Interest Bearing Funds			(B)	Utilisation of Non Interest Bearing Funds		
(i)	Unsecured Business Loans From Related Party			(i)	Repayment of CF Funding From Yes Bank	4,089.64	4,089.64
	Arena Superstructures Pvt Ltd	170.00		(ii)	Related Parties		
	Lotus Greens Construction P Ltd	1,699.16			Three C Promoters & Developers P Ltd	40.00	
	Delight Outsourcing Pvt Ltd	1,161.67			Piyush It Solutions	7.00	
	SONA POLYESTERS PVT	973.80			(There was a credit balance of Rs 14 lakh and Rs 96 lakhs were debited on account of unit allotment resulting Rs 82 Lakhs as recoverable from Piyush IT)		
	Land Kart Builders P Ltd	200.00			WHITE LOTUS PROJECTS	4.00	
	THREE C PROPERTIES P Ltd	47.41			Moon Light Propbuld	115.00	
	Three C Universal Developers P Ltd	50.00				166.00	166.00

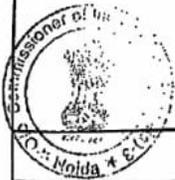
It is apparent from above that the interest free funds have been utilized for advancing money to the above entity.



Bright Buildtech Pvt Ltd, A.Y. 2018-19
CIT (Appeal), CIT (Appeal), NFAC/2017-18/10088227

The funds advanced to M/s. Sona Polyesters Pvt. Ltd. during FY 2017-18 were out of interest free unsecured loans. The relevant trail is scanned below for ready reference:

FY 2017-18						
Particulars	Details (In Lacs)	Amount (In Lacs)		Particulars	Details (in Lacs)	Amount (In Lacs)
Opening Balance	337.42	337.42				
Interest Bearing Funds			(A)	Payments From Interest Bearing Funds		-
1% NCD Rs 1 Crore Each 150 Nos From Clear Horizon Investments Pte Ltd	-					
Unsecured Business Loans From Related Party	-					
CF Funding From Yes Bank	-	-				
Non Interest Bearing Funds			(B)	Utilisation of Non Interest Bearing Funds		
Unsecured Business Loans From Related Party			(i)	Repayment of CF Funding From Yes Bank	4,789.10	4,789.10
Lotus Greens Developers Pvt Ltd	21.22		(ii)	Repayment of CF Funding From Yes Bank		
Apricot Buildcon Pvt Ltd	1,183.16			Arena Superstructures Pvt Ltd	170.00	
ATS Infrastructure Ltd	200.00			Lotus Greens Constr	200.36	
Three C Properties Pvt Ltd	1,897.34			Delight Outsourcing Pvt Ltd	1,397.00	
	3,301.72	3,301.72		Land Kart Builders P	200.00	
				SONA POLYESTERS PVT Ltd	485.60	
				(There was credit balance of Rs 512.20 Lakhs and allotment of Rs 934.00 lakhs done to SonaPolysters resulting Rs 421.80 Lakhs recoverable)		
				Three C Universal Developers	371.00	



**Bright Buildtech Pvt Ltd, A.Y. 2018-19
CIT (Appeal), CIT (Appeal), NFAC/2017-18/10088227**

It is apparent from above that the interest free funds have been utilized for advancing money to the above entity.

iii. ACE Infracity Developers Pvt. Ltd.

As per appellant, the advance of Rs. 18 crores given to the above entity was out of 1% NCD funds and the same was given during FY 2014-15. The relevant trail is scanned below for ready reference:

FY 2014-15							
	Particulars	Details (In Lacs)	Amount (In Lacs)		Particulars	Details (In Lacs)	Amount (In Lacs)
	Opening Balance	477.04	477.04				
(A)	Interest Bearing Funds			(A)	Payments From Interest Bearing Funds		
(i)	1% NCD Rs 1 Crore Each 150 Nos From Clear Horizon Investments Pte Ltd	15,000.00		(i)	Investments in NCD & OCD of Lotus Green Constructions Pvt Ltd of Rs 1 Crore each 130 Nos	13,000.00	
(ii)	Unsecured Business Loans From Related & Unrelated Party	-		(ii)	Ace Infracity Developers Pvt Ltd-EMD	1,800.00	
(iii)	CF Funding From Yes Bank	16,000.00		(iii)	Construction & Other Expenses	9,904.26	
		31,000.00	31,000.00	(iv)	Mob Adv Globus Construction Pvt Ltd	3,410.07	
				(v)	Development Rights-Through Holding Company Three C Town Planners Pvt Ltd	1,818.00	

It is apparent from above that the advance given to M/s. ACE Infracity Developers Pvt. Ltd. is out of funds on which a rate of interest of 1% per annum was charged. It has further been submitted that the interest paid on the NCDs has been capitalized to the inventory meaning thereby that no expense has been claimed on account of said interest in the profit & loss account during the year under consideration.

Opportunity to the AO

Perusal of the replies filed before the AO during the assessment order reveals that in reply dated 25.04.2021 in para 6.1, the assessee has made submissions with respect to interest free funds available with the appellant before the same were advanced to related parties. The para 6.1 of the reply filed before the AO is quoted below for ready reference:



Bright Buildtech Pvt Ltd, A.Y. 2018-19
CIT (Appeal), CIT (Appeal), NFAC/2017-18/10088227

"In this regard, it is submitted that from the perusal of audited accounts of the assessee Company for the relevant period, it can be seen that the Company had own funds of Rs. 10.11 crores (equity capital) as per note 12&13 of the accounts. Similarly, interest-free advances from customers, as per note 18 were to the tune of Rs. 140.55 crores. Thus interest-free funds of Rs. 151.66 crores (10.11+140.55) were available with the assessee company, which are much more than the interest-free advances given amounting to Rs. 120.6 crores. There is no need of giving date wise availability of interest-free funds particularly when the interest-free and interest-bearing funds are mixed and when interest-free funds are more than the interest-free advances given. In this regard, reliance is placed on the decision of the jurisdictional Delhi High Court in the case of Commissioner of Income tax vs Bharti Tele venture Ltd. (2011) 331 ITR 502(Del). In this case, the court also considered the decision of Orissa High Court in Indian Metals and Ferro Alloys Ltd. vs CIT (1992) 193 ITR 344 and of Hon'ble Supreme Court in S.A. Builders Ltd. (supra), both decisions relied upon by the AO. The Hon'ble Delhi High Court, upholding the decision of CIT(A) and ITAT, dismissed the Revenue's appeal with regard to disallowance of interest u/s 36(1) (iii) on borrowed funds used for giving interest-free advances to sister concerns including subsidiary companies."

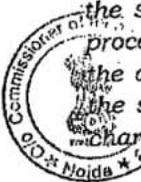
It appears from above that the appellant had submitted before the AO that interest free funds were available before the same were advanced to various concerns and hence, disallowance u/s 36(1)(iii) was uncalled for. During the course of appellate proceedings, enquiries were done with the appellant to bring clarity on the issue under consideration regarding the exact trail of the interest free funds. The appellant in continuation of the above contentions submitted clarificatory evidence giving the complete trail of the funds given to related parties. The said trail has already been reproduced in the submissions of the appellant quoted above. The said submissions of the appellant were forwarded to the AO in the interest of natural justice vide email dated 23.10.2024 wherein, it was directed as under:

"During the course of appellate proceedings, the AR has filed submissions. The copy of the same is attached for ready reference. It is directed to offer your comments only with respect to para 3.3 to para 12 and para 18 of the submissions."

*It is directed to offer your comments **on or before 05.11.2024** so that pending appeal can be disposed-off.*

Further, an email was sent to the AO vide this office email dated 02.11.2024, wherein, it was directed as under:

"During the course of appellate proceedings, the AR submitted copy of the submissions filed before the AO during the course of assessment proceedings dated 25.04.2021 where in the para 6.1 of the submissions the assessee submitted that it had interest free funds available before the same were advanced to various entities on which no interest was charged. During the course of appellate proceedings, the appellant



**Bright Buildtech Pvt Ltd, A.Y. 2018-19
CIT (Appeal), CIT (Appeal), NFAC/2017-18/10088227**

*again delved on the said issue vide submissions filed dated 23.10.2024. The copy of the said submissions is attached for ready reference. It is directed to provide your comments on the said submissions specifically with respect to para 14 & 18 of the said submissions. It is further directed to offer your comments **on or before 08.11.2024** so that the pending appeal could be disposed-off."*

Reminder was issued to the AO vide this office email dated 12.11.2024. No response has been received till the date of finalization of appeal.

Legal Pronouncements

The Hon'ble Supreme Court of India in the case of Commissioner of Income Tax v. Reliance Industries Ltd.*Dr. Dhananjaya Y. Chandrachud AND Hemant Gupta, JJ. Reported at [2019] 102 taxmann.com 52 (SC) has held as under:

"Section 36(1)(iii) of the Income-tax Act, 1961 - Interest on borrowed capital (Interest free loans to subsidiaries) - Assessment years 2003-04 to 2006-07 - In course of assessment, Assessing Officer rejected assessee's claim under section 36(1)(iii) taking a view that interest would not have been payable to banks if funds were not provided to subsidiaries - **Tribunal finding that interest free funds were available to assessee which were sufficient to meet its investment in subsidiaries, allowed assessee's claim** - High Court upheld order passed by Tribunal - Whether on facts, impugned order passed by High Court did not require any interference - Held, yes [Para 8] [In favour of assessee]"

Further, the Hon'ble Supreme Court of India in the case of Principal Commissioner of Income-tax vs. Shapoorji Pallonji and Co. Ltd. reported at [2022] 141 taxmann.com 509 (SC) has held as under:

"Section 36(1)(iii) of the Income-tax Act, 1961 - Interest on borrowed capital (Condition precedent) - Assessment year 2010-11 - Assessing Officer disallowed interest paid on borrowed capital on ground that assessee had advanced interest free funds - Commissioner deleted disallowance which was upheld by Tribunal - High Court by impugned order held that where assessee had not utilized interest bearing borrowed funds for making interest-free advances as assessee had its own interest-free fund far in excess of interest-free advance, interest on borrowed capital could not be disallowed - Whether SLP filed by revenue against said impugned order was to be dismissed - Held, yes [Para 1] [In favour of assessee]"

Further, the Hon'ble High Court of Allahabad in the case of Commissioner of Income-tax-1 vs. Kallash Automobiles reported at [2013] 37 taxmann.com 62 (Allahabad) has held as under:

"Where there was nothing on record that assessee had diverted its interest bearing funds to its sister concern without charging interest, interest could not be disallowed on borrowed capital"



**Bright Buildtech Pvt Ltd, A.Y. 2018-19
CIT (Appeal), CIT (Appeal), NFAC/2017-18/10088227**

Further, the Hon'ble High Court of Allahabad in the case of **Commissioner of Income-tax vs. Radico Khaitan Ltd.** reported at [2005] 142TAXMAN681 (ALL.) has held as under:

"Section 36(1)(iii) of the Income-tax Act, 1961 - Interest on borrowed capital - Assessment year 1990-91 - Assessee-company had advanced loan of Rs. 17.19 lakhs to its sister concern - It had borrowed huge sum from bank and financial institutions and claimed deduction on amount of interest paid on borrowed capital - Assessing Officer disallowed amount towards proportionate interest on said advances - Tribunal deleted disallowance of interest on ground that there was sufficient fund available with assessee-company in form of share capital reserve and surplus other than borrowed money for diverting a sum of Rs. 17.19 lakhs to its sister concern - Whether in view of findings recorded by Tribunal, assessee-company was entitled to full allowance of amount of interest paid by it on borrowed capital - Held, yes"

Further, the Hon'ble High Court of Madras in the case of **Commissioner of Income-tax vs. South India Corpn. (Agencies) Ltd.** reported at [2008] 166 Taxman 78 (Madras) has held as under:

"Section 36(1)(iii) of the Income-tax Act, 1961 - Interest on borrowed capital - Assessment year 1994-95 - Assessee-company advanced certain amounts to its subsidiary-company free of interest - Assessing Officer found that subsidiary company had made substantial profits during relevant assessment year and there was no reason for assessee to advance interest-free loans by borrowing funds from market incurring heavy outlay on interest and, accordingly, disallowed 12 per cent interest paid on borrowings - Tribunal, however, deleted disallowance on finding that no fresh loan was given by assessee to its sister concern during relevant assessment year and, moreover, similar claim of allowance of interest paid on borrowing as interest referable to advances given to its subsidiary company was allowed during earlier assessment years, which remained unchallenged till date - Whether finding given by Tribunal was based on valid material and, therefore, Tribunal was justified in deleting addition - Held, yes"

Further, the Hon'ble High Court of Punjab & Haryana in the case of **Commissioner of Income-tax, Jalandhar-1, Jalandhar v. Max India Ltd.** reported at [2017] 80 taxmann.com 98 (Punjab & Haryana) has held as under:

"Where assessee gave interest free loan to its subsidiaries out of surplus funds, impugned disallowance made by Assessing Officer under section 36(1)(iii) was to be deleted"

Further, the Hon'ble High Court of Delhi in the case of **Commissioner of Income-tax-II vs. Modi Rubber Ltd.** reported at [2017] 79 taxmann.com 366 (Delhi) has held as under:

Section 36(1)(iii) of the Income-tax Act, 1961 - Interest on borrowed capital - (Interest free loan) - Assessment year 2001-02 - Where assessee was having mixed pool of funds comprising own funds and loan funds, interest free loan given to sister concern would be considered as having come out of assessee's own funds [In favour of assessee]"

**Bright Buildtech Pvt Ltd, A.Y. 2018-19
CIT (Appeal), CIT (Appeal), NFAC/2017-18/10088227**

Further, the **Hon'ble High Court of Allahabad** in the case of **Commissioner of Income-tax- I vs. Prakash Agnihotri** reported at [2014] 46 taxmann.com 145 (Allahabad) has held as under:

Where Assessing Officer rejected assessee's claim for interest on borrowed capital taking a view that loan was taken for acquiring controlling interest in sister concern, in view of fact that interest free advance available with assessee was far in excess of investment made in purchasing shares of sister concern, it could be concluded that borrowed funds had been utilized for business purpose and, therefore, assessee's claim for deduction was to be allowed

Further, the **Hon'ble High Court of Gujarat** in the case of **Commissioner of Income-tax, Ahmedabad – III vs. R L Kalthia Engineering & Automobiles (P.) Ltd.*** reported at [2013] 33 taxmann.com 14 (Gujarat) has held as under:

Where Assessing Officer had disallowed interest paid on borrowed fund on ground that assessee had diverted interest bearing funds for purpose of investment in shares and loans to sister concern, since sufficient interest free funds were available with assessee, disallowance of interest expenditure was not permissible

Further, the **Hon'ble High Court of Andhra Pradesh** in the case of **Commissioner of Income-tax-2, Visakhapatnam vs. Seven Hills Hospitals (P.) Ltd.** reported at [2015] 54 taxmann.com 326 (Andhra Pradesh) has held as under:

"In absence of any finding to effect that amount borrowed by assessee from financial institutions was straight away passed on to sister concern without levying interest, interest on borrowed amount could not be disallowed"

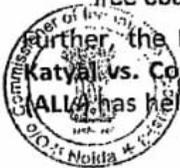
Further, the **Hon'ble High Court of Punjab & Haryana** in the case of **Beekons Industries Ltd. vs. Commissioner of Income-tax** reported at [2023] 149 taxmann.com 383 (Punjab & Haryana) has held as under:

Where assessee-company had given loan to a directors' relative without charging interest and it also claimed deduction under section 36(1)(iii) of interest paid on loan taken from bank, since loan to director's relative was financed by assessee from self-sources without any cost, disallowance of interest paid on loan taken on pro rata basis was not justified

Further, the **Hon'ble High Court of Punjab & Haryana** in the case of **Gurdas Garg vs. Commissioner of Income-tax (Appeals), Bathinda** reported at [2015] 63 taxmann.com 289 (Punjab & Haryana) has held as under:

Where interest free advances were made by an assessee, who had adequate free reserves, it was sufficient to establish that amounts advanced interest free could not be added to assessee's income

Further, the **Hon'ble High Court of Allahabad** in the case of **Smt. Chanchal Katya vs. Commissioner of Income-tax** reported at [2007] 165 TAXMAN 215 (Allahabad) has held as under:



**Bright Buildtech Pvt Ltd, A.Y. 2018-19
CIT (Appeal), CIT (Appeal), NFAC/2017-18/10088227**

"Whether where it was found that borrowed money on which assessee was liable to pay interest to its creditors had not been diverted towards interest-free loans by it to debtors, proportionate disallowance of interest paid by it on borrowed capital could be made - Held, no"

Further, the **Hon'ble High Court of Madras in the case of Commissioner of Income-tax vs. Hotel Savera** reported at [1999] 102 TAXMAN 247 (MAD.) has held as under:

"Section 36(1)(iii) of the Income-tax Act, 1961 - Interest on capital borrowed - Assessment year 1972-73 - Part of amount borrowed by assessee for purpose of business had been utilised for advancing interest-free loan to a hotel - ITO disallowed interest thereon holding same as not having been utilised for business purposes - Whether Tribunal having found that assessee-firm had its own funds as well as borrowed funds and that money borrowed had been inextricably mixed up with assessee's own funds, so that it was impossible to delineate which funds were advanced to hotel, its finding that no disallowance was called for, was a finding of fact, and therefore, no part of interest could be disallowed - Held, yes"

Further, the **Hon'ble High Court of Delhi in the case of Principal Commissioner of Income-tax vs. Basti Sugar Mills Co. Ltd.** reported at [2018] 98 taxmann.com 401 (Delhi) has held as under:

Where assessee had sufficient interest free funds to cover advances given to its subsidiary and no interest bearing fund was advanced to subsidiary, no interest expenditure was to be disallowed under section 36(1)(iii)

Further, the **Hon'ble High Court of Allahabad In the case of Commissioner of Income-tax*, Meerut vs. Prem Heavy Engg. Works (P.) Ltd.** reported at [2006] 150 TAXMAN 90 (ALL.) has held as under:

Section 36(1)(iii) of the Income-tax Act, 1961 - Interest on borrowed capital - Assessment year 1984-85 - Assessee-company had borrowed certain sum from a bank and had paid interest on same - Assessee had also advanced interest-free loan to its sister concern and claimed deduction of interest paid on sum borrowed from bank - Assessing Officer disallowed said claim on ground that assessee had made interest-free advances out of funds borrowed from bank on which interest had been paid - Whether since assessee had sufficient share capital, surplus and reserve available with it from which it had paid interest-free advances to its sister concern, disallowance of interest on borrowed fund could not be made - Held, yes

Further, the **Hon'ble High Court of Gujarat in the case of Commissioner of Income-tax vs. Raghuvir Synthetics Ltd.** reported at [2013] 36 taxmann.com 275 (Gujarat) has held as under:

Where huge funds were available without any interest liability with assessee and there was no evidence to hold that borrowed money was utilized for purpose of advance to sister concerns, no disallowance of interest was warranted



Bright Buildtech Pvt Ltd, A.Y. 2018-19
CIT (Appeal), CIT (Appeal), NFAC/2017-18/10088227

Further, the Hon'ble High Court of Gujarat in the case of Commissioner of Income-tax vs. Kajal Exports reported at [2014] 49 taxmann.com 217 (Gujarat) has held as under:

Where assessee utilized borrowed fund in business and gave interest free advances to partners, etc. from interest free fund, disallowance of interest on borrowed fund would not be justified

Further, the Ld. ITAT Bench of Jaipur in the case of Allen Career Institute vs. Joint Commissioner of Income-tax reported at [2023] 147 taxmann.com 390 (Jaipur - Trib.) has held as under:

Where assessee had mixed funds both in form of business receipts and borrowings in form of overdraft from bank, since interest free funds (business receipts) were larger than borrowed funds, there would be a presumption that investments made by assessee in mutual funds, etc. were made out of own interest free funds of assessee and not out of interest bearing fund/overdraft, and therefore, no interest expense could be disallowed

Further, the Ld. ITAT Bench of Ahmedabad in the case of Aaryavart Impex (P.) Ltd. vs. ACIT reported at [2023] 151 taxmann.com 22 (Ahmedabad -Trib.) has held as under:

"Where assessee-company gave interest free advances out of his own interest free funds, there could not be any disallowance of interest expenses"

Further, the Ld. ITAT Bench of Surat in the case of ACIT vs. Hareshbhai Mohanbhai Sakariya reported at [2023] 148 taxmann.com 115 (Surat-Trib.) has held as under:

Where assessee had given interest free loan to their group concern and claimed deduction of interest paid on borrowed fund in relevant assessment year since there was no nexus between interest bearing loans and loan advances by assessee and most of loan amounts were advanced before A.Y. 2010-11 and interest bearing loan was taken after that period and moreover, assessee had own capital which were in far excess and no such disallowance was made in earlier years, interest disallowance made by Assessing Officer was to be deleted

Further, the Ld. ITAT Bench of Amritsar in the case of PMS Diesels vs. Additional Commissioner of Income-tax reported at [2023] 147 taxmann.com 264 (Amritsar - Trib.) has held as under:

Where assessee paid interest on loans and also made interest-free advances to its sister concerns, no disallowance under section 36(1)(iii) would be warranted on opening balance of advances and if interest free funds of assessee were more than interest free advances, no disallowance under section 36(1)(iii) could be made

Further, the Ld. ITAT Bench of Chandigarh in the case of Deputy Commissioner of Income-tax vs. Amber Enterprises (India) (P.) Ltd. reported at [2023] 147 taxmann.com 439 (Chandigarh - Trib.) has held as under:



**Bright Buildtech Pvt Ltd, A.Y. 2018-19
CIT (Appeal), CIT (Appeal), NFAC/2017-18/10088227**

Where assessee-company had made investments in its sister concern out of its own funds and no borrowed funds were used for making said investment and moreover, said investments had not been made in year under consideration, Assessing Officer was not justified in making interest disallowance under section 36(I)(iii)

Further, the Ld. ITAT Bench of Kolkata in the case of Deputy Commissioner of Income-tax, Circle Kolkata vs. Texmaco Ltd. reported at [2017] 83 taxmann.com 5 (Kolkata - Trib.) has held as under:

Interest on borrowed capital (Interest free advances/loans) - Assessment years 2006-07 and 2007-08 - Where assessee had sufficient funds of its own to advance loan to sister concern, disallowance of interest expenditure could not be made [In favour of assessee]

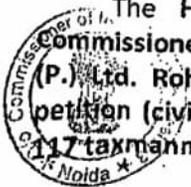
Conclusion

From the complete trail of interest free advances discussed above, it is noticed that the amount given to Doyen Town Planners Pvt. Ltd., Piyush IT Solutions Pvt. Ltd. and Sona polyesters Pvt. Ltd. were made out of interest free funds available with the assessee during FY 2013-14, FY 2016-17 and FY 2017-18 respectively. It is also apparent from above discussion that interest was paid only to the extent of 1% per annum on NCDs with respect to the funds further advanced to Solace Projects Pvt. Ltd. and ACE Infracity Developers Pvt. Ltd. but the said interest already stands capitalized to the inventory, so no interest with respect to the interest free advances given to the above entities has been charged to the Profit & Loss account during the year under consideration. In above circumstances, there is no interest directly relatable to the funds borrowed which have been further advanced to the said entities for the same to be disallowed u/s 36(1)(iii) of the Income Tax Act, 1961.

c. Business Exigency

The AO has stated that the assessee was not able to justify the business expediency of the advances given. Perusal of the balance sheet filed on year-to-year basis reveals that the advances given to these parties were categorized under the head advances given for 'supply of goods' and advances given for 'land'. The advance given to Solace Projects Pvt. Ltd. (Rs. 160 crores) was duly backed by the relevant agreement. The circumstances relating to the giving of advance and the litigation involved have already been noted in para (i) of the brief facts in the appellate order above. The said advance cannot be considered as an advance not for the purpose of the business.

The Hon'ble Supreme Court of India in the case of Principal Commissioner of Income Tax v. E City Investments and Holdings Company (P.) Ltd. Rohinton Fali Nariman AND S. RAVINDRA BHAT, JJ. special leave petition (civil) Diary NO. 858 of 2020 JANUARY 27, 2020 reported at [2020] 117 taxmann.com 124 (SC) has held as under:



**Bright Buildtech Pvt Ltd, A.Y. 2018-19
CIT (Appeal), CIT (Appeal), NFAC/2017-18/10088227**

Section 36(1)(iii) of the Income-tax Act, 1961 - Interest on borrowed capital (Loan given to sister concern) - Assessment year 2008-09 - During relevant year assessee claimed deduction of interest paid on borrowed funds - Assessing Officer noticed that assessee had also funded its sister concerns without charging interest - He therefore disallowed interest expenditure - Tribunal, however, allowed assessee's claim by taking a view that assessee's decision to give loan to its subsidiaries was derived by business exigency -"

Further, the Hon'ble Supreme Court of India in the case of **Hero Cycles (P.) Ltd. vs. Commissioner of Income-tax (Central), Ludhiana** reported at [2015] 63 taxmann.com 308 (SC) has held as under:

"Section 36(1)(iii) of the Income-tax Act, 1961 - Interest on borrowed capital (Interest free loans) - Assessment year 1988-89 - Whether once it is established that there is nexus between expenditure and purpose of business (which need not necessarily be business of assessee itself), revenue cannot justifiably claim to put itself in arm-chair of businessman or in position of Board of Directors and assume role to decide how much is reasonable expenditure having regard to circumstances of case - Held, yes - Assessee filed its return claiming deduction of interest paid on borrowed sums from Bank under section 36(1)(iii) - Assessing Officer finding that assessee had used borrowed funds for giving interest free loans to its subsidiary company and directors, rejected assessee's claim - High Court upheld order of Assessing Officer - It was noted that advance to subsidiary company became imperative as a business expediency in view of undertaking given to financial institutions by assessee to effect that it would provide additional margin to subsidiary company to meet working capital for meeting any cash losses - Insofar as loans to directors were concerned, said loans were granted out of assessee's own surplus funds - Whether in view of aforesaid, impugned order passed by High Court was to be set aside - Held, yes [In favour of assessee]"

Further, the jurisdictional Hon'ble High Court of Allahabad in the case of **J. K. Synthetics Ltd. v. Commissioner of Income-tax** reported at [2015] 55 taxmann.com 254 (Allahabad) has held as under:

Section 36(1)(iii) of the Income-tax Act, 1961 - Interest on borrowed capital (For purpose of business) - Assessee was guarantor to loans taken by its subsidiary company and it, for purpose of protecting its own business interest, had discharged its legal obligation by repaying instalments of loan to financial institutions - Whether assessee would be entitled to deduction of interest on such payments - Held, yes [Paras 12 & 13] [In favour of assessee]

Further, the Hon'ble High Court of Allahabad in the case of **Commissioner of Income-tax vs. Dhampur Sugar Mills Ltd.** reported at [2005] 145 TAXMAN 533 (ALL.) has held as under:

Section 36(1)(iii) of the Income-tax Act, 1961 - Interest on borrowed capital - Assessment year 1980-81 - ITO on finding that no interest had been charged on advance given by assessee-company to its subsidiary, disallowed proportionate amount of interest claimed by assessee and made addition of that amount - On appeal, Commissioner (Appeals) deleted addition - Tribunal on finding that assessee had foregone interest on debit balance of its subsidiary on account of its weak financial position and on commercial



**Bright Buildtech Pvt Ltd, A.Y. 2018-19
CIT (Appeal), CIT (Appeal), NFAC/2017-18/10088227**

expediency, upheld order of Commissioner (Appeals) - Whether Tribunal was justified, in law, in confirming deletion - Held, yes

Further, the **Hon'ble High Court of Allahabad in the case of Commissioner of Income-tax, Lucknow vs. Dhampur Sugar Mills Ltd. reported at [2005] 148 TAXMAN 321 (ALL.)** has held as under:

"Section 36(1)(iii) of the Income-tax Act, 1961 - Interest on borrowed capital - Assessment year 1982-83 - Assessing authority disallowed proportionate amount of interest payment claimed by assessee as deduction on ground that no interest was charged by assessee on advance given to its subsidiaries - Whether Tribunal was justified in deleting disallowance - Held, yes"

Further, the **Hon'ble High Court of Delhi in the case of Principal Commissioner of Income-tax v. Reebok India Company reported at [2018] 98 taxmann.com 413 (Delhi)** has held as under:

IT: Money borrowed by assessee even when advanced to its subsidiary for some business purpose would qualify for deduction of interest paid on such borrowings

In view of the detailed discussion carried out above, it is apparent that the notional interest credited to the profit & loss account is more than the notional interest debited, the funds given as advance to various entities have been sourced either from interest free unsecured loans or from 1% NCDs (the interest on which has been capitalized to inventory) and the advance, at least, to Solace Projects Pvt. Ltd. of Rs. 160 crores (out of total advance of Rs. 189 crore) is related to the business/commercial expediency. In view of the facts stated above and the clear judicial pronouncements on the issues under consideration, the disallowance u/s 36(1)(iii) is not sustainable and therefore deleted. Accordingly, this ground of appeal is allowed. 

11. Before us, the Revenue has failed to controvert the findings of the Ld.CIT(A). It is also a matter of fact that in the computation of income, assessee has ultimately offered excess interest income where the notional income credited of INR 16.94 crores as against notional interest expenditure claimed at INR 10.39 crores.

Accordingly, we find that the assessee has offered interest income of INR 6.55 crores thus, there is no occasion to hold that interest bearing funds were utilised for making interest free advances and no income was offered. This being so, we find no infirmity in the order of Ld. CIT(A) who while deleting the disallowances made by AO by invoking the provisions of section 36(1)(iii) of the Act has appreciated these facts. It is further seen that Ld.CIT(A) has not only followed the judicial pronouncements but also considered the facts and after due application of mind on the entries passed in the books of accounts towards notional interest received and paid and their adjustments in the computation of income, had deleted the disallowances. Thus we find no infirmity in the order of Ld. CIT(A) which is hereby upheld. All the grounds of appeal raised by the Revenue are dismissed.

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

Order pronounced in the open Court on 31.10.2025.

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Sd/-

(MANISH AGARWAL)
ACCOUNTANT MEMBER

Date:- 31.10.2025

Amit Kumar, Sr.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT
6. Guard File

ASSISTANT REGISTRAR
ITAT, NEW DELHI