

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

**SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER  
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No.6977/MUM/2014  
(Assessment Year:2011-2012)**

**Assistant Commissioner of Income Tax  
Central Circle – 29, Mumbai**

Room No.411, 4<sup>th</sup> Floor, Aayakar Bhavan,  
M.K.Road, Churchgate,  
Mumbai – 400001. Maharashtra

..... **Appellant**  
Vs

**Shoppers Stop Limited**

Hotel Bawa, International Nehru Road,  
Extn /Near Comestic Airport,  
Vile Parle (East), Mumbai - 400099  
Maharashtra.  
[PAN: AABCS4383A]

..... **Respondent**

**Appearance**

For the Appellant/Department : Shri Swapnil Choudhary  
For the Respondent/Assessee : Shri Madhur Agrawala &  
Shri Fenil Bhat & Shri Punit Shah

**Date**

Conclusion of hearing : 22.12.2025  
Pronouncement of order : 02.01.2026

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**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. The present appeal preferred by the Revenue is directed against the order, dated 07/08/2014, passed by the Commissioner of Income Tax (Appeals) – 40, Mumbai [hereinafter referred to as 'the **CIT(A)**'] whereby the Ld. CIT(A) had partly allowed the appeal against the Assessment Order, dated 31/12/2013, passed under Section 143(3) of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] for the Assessment Year 2011-2012. The present appeal was disposed off vide Order dated 23/12/2015 which was recalled vide Order, dated 07/02/2025, passed in MA No. 286/Mum/2017.

2. The relevant facts in brief are that the Assessee has filed e-Return of Income for the Assessment Year 2011-2012 on 28/09/2011. The Assessee filed a revised return on 26/03/2013 declaring income of INR.83,10,09,730/- after claiming certain deductions [*such as provision for service tax, depreciation of brand promotion expenses and unpaid service tax liability*] which were not claimed in the original return. The case of the Assessee was taken up for regular scrutiny and assessment was completed at total income of INR.1,06,31,23,300/- vide Assessment Order, dated 31/12/2013, passed under Section 143(3) of the Act after making following additions/disallowances:
- (a) The Assessing Officer made a disallowance of INR.3,53,14,668/- under Section 14A of Act read with Rule 8D of the Income Tax Rules, 1961
  - (b) The Assessing Officer also made an addition of INR.3,09,34,290/- being interest computed by the Assessing Officer at the rate of 13.5% on the funds provided by the Assessee to its subsidiary [i.e., Gateway Multichannel Retail (India) Ltd]
  - (c) Assessee's claim of deductions for market research expenses of INR.46,49,405/- and unpaid service tax liability of INR.16,28,56,000/- were also disallowed by the Assessing Officer
3. The Assessee, aggrieved by the order passed by the Assessing Officer, filed an appeal before the Learned CIT(A) challenging the disallowance of INR.3,53,14,668/- made under Section 14A of Act read with Rule 8D of the Income Tax Rules, 1961 of Act and the addition of interest income of INR.3,09,34,290/-. The Learned CIT(A) upheld the disallowance made by the Assessing Officer under Section 14A of the Act. However, the Learned CIT(A) deleted the addition of

interest income of INR.3,09,34.290/-.

4. Being aggrieved by the order passed by the Learned CIT(A), both, the Assessee as well as the Revenue preferred appeal before the Tribunal against the Order passed by the Learned CIT(A). The appeal preferred by the Revenue (ITA No. 6977/Mum/2014) was dismissed vide Order, dated 23/12/2015 giving the reasoning that the tax effect was below the prescribed threshold. However, subsequently, vide Order, dated 07/02/2025, passed in MA No. 286/Mum/2017, the aforesaid order was recalled observing the tax effect was above the prescribed threshold limit. In the aforesaid facts and circumstances, the present appeal has come up for hearing.
5. When the appeal was taken up for hearing the Learned Authorized Representative for the Assessee submitted that issue raised in the present appeal stood decided in favour of the Assessee in the previous as well as subsequent assessment years. Taking us through the common order, dated 27/12/2017, [*passed in ITA No.1361/Mum/2013, ITA No.3248/Mum/2013 and ITA No.6155/Mum/2014 for the Assessment Years 2009-2010, 2010-2011 and 2011-2012, respectively*] and common order, dated 14/02/2020, [*passed in ITA No.6549 & 6550/Mum/2017 and ITA No.6073 & 6072/Mum/2017 for the Assessment Year 2013-2014 and 2014-2015, respectively*], the Learned Authorized Representative for the Assessee submitted that identical disallowance made by the Assessing Officer was deleted by the Tribunal.
6. Per contra, the Learned Departmental Representative placed reliance upon the orders passed by the Assessing Officer.
7. We have perused the Common Order, dated 27/12/2017, passed by the Co-ordinate Bench of the Tribunal whereby, inter alia, ITA No. 1361/Mum/2013 & 3248/Mum/2013 preferred by the Assessee pertaining to the Assessment Year 2009-2010 & 2010-2011, respectively, were disposed off. We find that in the same facts and

circumstances, the Tribunal had deleted the addition made by the Assessing Officer by computing interest at the rate of 13.5% on the funds repayable to the Assessee by its subsidiary [i.e., Gateway Multichannel Retail (India) Ltd] holding as under:

"20. *We have heard the rival submissions and perused the relevant materials on record. We find that in the AY 2009-10, the assessee-company had not charged interest on inter-corporate deposit of Rs. 24,86,38,000/- given to its subsidiary for a period of three months.*

*We also find that the share capital and reserves and surplus (opening balance) in AY 2009-10 was Rs.296.70 cores.*

*In the AY 2010-11, the AO found that the subsidiary company had refunded part of the loan amounting to Rs.1,87,71,100/- and the balance amount receivable from the subsidiary as on 31.03.2010 was Rs.22,96,10,100/-. However, we find at the share capital and reserves and surplus (opening balance) AY 2010-11 was Rs.244.83 crores.*

*We observe that as per section 36(1)(iii), the amount of interest paid in respect of capital borrowed for the purpose of business or profession is allowed as deduction. As per the Hon'ble Supreme Court in case of Madhav Prasad Jatia v. CIT (1979) 118 ITR 200 (SC), for claiming deductions under this sub-clause, the basic requirements are:*

- (A) The money i.e. (capital) must have been borrowed by the assessee;*
- (B) It must have been borrowed by the assessee for his business, profession or vocation; and*
- (C) the assessee must have paid interest on the amount and claimed it as an allowance.*

20.1 *In the case of Reliance Utilities & Power Ltd. (supra), the Hon'ble Bombay High Court held:*

*"10. If there be interest-free funds available to an assessee sufficient to meet its investments and at the same time the assessee had raised a loan it can be presumed that the investments were from the interestfree funds available. In our opinion the Supreme Court in East India Pharmaceutical Works*

*Ltd. (supra) had the occasion to consider the decision of the Calcutta High Court in Woolcombers of India Ltd. (supra) where a similar issue had arisen. Before the Supreme Court it was argued that it should have been presumed that in essence and true character the taxes were paid out of the profits of the relevant year and not out of the overdraft account for the running of the business and in these circumstances the appellant was entitled to claim the deductions. The Supreme Court noted that the argument had considerable force, but considering the fact that the contention had not been advanced earlier it did not require to be answered. It then noted that in Woo/comber's case (supra) the Calcutta High Court had come to the conclusion that the profits were sufficient to meet the advance tax liability and the profits were deposited in the overdraft account of the assessee and in such a case it should be presumed that the taxes were paid out of the profits of the year and not out of the overdraft account for the running of the business. It noted that to raise the presumption, there was sufficient material and the assessee had urged the contention before the High Court. The principle therefore would be that if there are funds available both interest-free and overdraft and/or loans taken, then a presumption would arise that investments would be out of the interest-free fund generated or available with the company, if the interest-free funds were sufficient to meet the investments. In this case this presumption is established considering the finding of fact both by the CIT(A) and Tribunal."*

20.2 *In Excel Industries Ltd. 358 ITR 295 (SC), it has been held that to recognize income, it has to pass through three tests, namely, (a) whether the income accrued to the assessee is real or hypothetical; (b) whether there is a corresponding liability of the other party to pay the amount; and (c) probability or improbability of realization to be considered from a realistic and practical point of view.*

*We observe that Gateway has neither provided for interest in its books of accounts nor paid any interest till date. The other condition of improbability of realization is also applicable here. We hold that the addition cannot be made even u/s 5 of the Act.*

20.3 Respectfully following the above decisions, we delete the addition of Rs.83,91,532/- made by the AO in AY 2009-10 and Rs.3,22,04,906/- in AY 2010-11.” (Emphasis Supplied)

8. The above decision of the Tribunal was followed by the Co-ordinate Bench of the Tribunal for the Assessment Year 2012-2013 [ITA No.5999/Mum/2016, dated 27/11/2018].
9. Thus, the Co-ordinate Benches of the Tribunal have deleted identical addition of interest income made by the Assessing Officer for the preceding as well as the succeeding assessment years. Therefore, we do not find any infirmity in the order passed by the Learned CIT(A) deleting the identical addition of interest income of INR.3,09,34,290/- made by the Assessing Officer for the Assessment Year 2011-2012. Accordingly, respectfully following the above decisions of the Tribunal, we confirm the aforesaid action of the CIT(A). All the grounds raised by the Revenue are, therefore, dismissed.
10. In terms of paragraph 9 above, the present appeal preferred by the Revenue is dismissed.

Order pronounced on 02.01.2026

*Sd/-*  
**(Prabhash Shankar)**  
**Accountant Member**

*Sd/-*  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated :02.01.2026  
Milan, LDC

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण ,मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai