

**IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH "DB" SURAT**

**BEFORE SHRI SANDEEP GOSAIN (JUDICIAL MEMBER)
AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 1069/SRT/2024
Assessment Year: 2020-21**

Ms Kalamandir Jewellers Ltd.
Plot No – 124 Kalamandir House
Ghod Dod Road Near Indoor
Stadium, Athwa Sura, Gujarat-
395007

**PAN NO. AADCK 6700 F
Appellant**

The Asst. Commissioner Of
Income Tax- Circle 1(1)(1)
Vs. Aayakar Bhavan,
Majuragate, Surat- 395001

Respondent

Assessee by : Mr. Sapnesh Sheth, Adv
Revenue by : Mr. Ajay Uke, Sr-DR

Date of Hearing : 08/10/2025
Date of pronouncement : 23/12/2025

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 30.08.2024 passed by the Ld. Commissioner of Income-tax (Appeals)-National Faceless Appeal Centre- Delhi [in short 'the Ld.CIT'] for assessment year 2020-21, raising following grounds:-

"1. In the facts and circumstances of the case as well as in law, the Ld. Commissioner of Income Tax (Appeals) NFAC has erred in confirming addition amounting to Rs. 26,18,739/- u/s.36(1)(iii) of the Act on account of proportionate disallowance of interest at the rate of 10%.



2. In the facts and circumstances of the case as well as in law, the Ld. Commissioner of Income Tax (Appeals)-NFAC has erred in confirming the additions without considering the fact that appellant had interest free fund to advance. The same was proved before Ld. AO and Ld. CIT (A) with supporting evidence.

3. In the facts and circumstances of the case as well as in law, the Ld. Commissioner of Income Tax (Appeals)-NFAC has erred in rejecting the ground raised in relation to addition of Rs. 93,25,130/- as consequence to increase of income vide intimation order u/s 143(1) in Assessment Order, despite of the fact that Ld. Assessing officer while computing total income increased the income of the appellant on the basis of intimation order u/s 143(1). The appellant was not in receipt of any Show Cause Notice/intimation till passing of the order u/s 143(3) of the Act.

4. The appellant craves to leave, to add, to amend and/or to alter any of the ground of appeal, if need be.”

2. Briefly stated, the facts of the case are that the assessee company is engaged in the business of manufacture and retail sale of jewellery. For the year under consideration, the return of income filed by the assessee was selected for scrutiny. Statutory notices under the Income-tax Act, 1961 (hereinafter referred to as “the Act”) were duly issued and complied with.

2.1 During the course of scrutiny proceedings, the learned Assessing Officer noticed that the assessee had debited interest expenditure amounting to ₹8,23,97,819/- in its profit and loss account. The Assessing Officer further observed that the assessee had advanced interest-free loans aggregating to ₹8,45,15,239/-, comprising ₹6,85,42,499/- to M/s Vaipan Business Private Limited and ₹1,59,72,740/- to M/s Sidhdev Trading LLP. Being of the view that borrowed funds had been diverted for non-business purposes,



the Assessing Officer issued a show-cause notice calling upon the assessee to explain why proportionate interest expenditure should not be disallowed.

2.2 The explanation tendered by the assessee was not found to be satisfactory. Accordingly, the Assessing Officer, in the assessment order passed under section 143(3) of the Act dated 25.09.2022, disallowed proportionate interest at the rate of 10% per annum, resulting in a disallowance of ₹26,18,739/-.

3. Aggrieved, the assessee preferred an appeal before the learned Commissioner of Income-tax (Appeals), raising two principal grievances. First, the assessee challenged the disallowance of interest amounting to ₹26,18,739/- made out of the interest on borrowed funds under section 36(1)(iii) read with section 37 of the Act. Second, the assessee objected to the adjustment of ₹93,25,310/- made by the Centralised Processing Centre while processing the return under section 143(1) of the Act, contending that the Assessing Officer, while framing the assessment under section 143(3), mechanically adopted the income processed under section 143(1) without independently examining the validity of the said adjustment.

3.1 The learned CIT(A), however, rejected both contentions of the assessee and affirmed the order of the Assessing Officer. Aggrieved



by the said order, the assessee is in appeal before the Tribunal on the grounds reproduced hereinabove.

4. Before us, the learned counsel for the assessee placed on record a paper book comprising pages 1 to 43. Grounds Nos. 1 and 2 of the appeal relate to the disallowance of ₹26,18,739/- made by the Assessing Officer under section 36(1)(iii) of the Act by way of proportionate disallowance of interest at the rate of 10% per annum.

4.1 We have heard the rival submissions and carefully perused the material available on record. It is an undisputed position that during the year under consideration the assessee incurred interest expenditure amounting to ₹8,23,97,819/-, which was claimed as deduction on the ground that the borrowed funds were utilised for the purposes of its business. It was, however, noticed by the Assessing Officer that the assessee had advanced interest-free loans aggregating to ₹8,45,15,239/-, comprising ₹6,85,42,499/- to M/s Vaipan Business Private Limited and ₹1,59,72,740/- to M/s Sidhdev Trading LLP.

4.2 The explanation of the assessee was that the aforesaid advances were made for business purposes and that both the entities were service providers belonging to the same group, rendering services such as legal services, strategic business planning, Business management, Consultancy related to call



options for purchases and sales, taxation advisory and advisory in relation to proposed fund-raising activities etc.. It was further contended that the assessee had proposed to raise funds through the stock market, for which the services of the said entities were engaged; however, owing to the Covid-19 pandemic, the process was abandoned and, consequently, the services could not be availed. It was also submitted that the advances were subsequently repaid in the succeeding assessment years and that interest had been charged in earlier years, though not during the year under consideration on account of prevailing business conditions. The assessee further claimed that the advances were made out of its own interest-free funds, only constitute about 5% of owned fund and which were substantially in excess of the amounts advanced. In support of this contention, the assessee placed reliance on its financial statements showing owned funds aggregating to ₹162.92 crores, far exceeding the advances of ₹8.45 crores. The relevant details of funds deployment submitted by the assessee and reproduced by the AO is extracted as under:

Sr No.	Particulars	Amount
	Owned Fund	
	Share Capital (Brought by shareholders)	Rs. 1,25,52,630/-
	Reserve and Surplus (Accumulated Profit and Loss of account from the incorporation of company)	Rs. 161,66,73,241/-
	Total	Rs. 162,92,25,871/-

Loans Advances Given		
	M/s. Vaipan Business Pvt Ltd	Rs.6,85,42,499/-



	M/s. Sidhdev Trading LLP	Rs. 1,59,72,740/-
	Total	Rs.8,45,15,239/-

4.3 The assessee also explained before the Ld. CIT(A) by way of the bank statement that advances were out of own funds and no loan was taken for advancing the said loans.

4.4 In so far as M/s Sidhdev Trading LLP is concerned, the assessee specifically contended before the Ld. CIT(A) that interest amounting to ₹10,82,822/- at the rate of 10% per annum had, in fact, been charged and offered to tax during the year under consideration and, therefore, there cannot be a question of considering the said sums for again for disallowance u/s 36(1)(iii) of the Act.

4.5 It was also submitted that interest expenses had been incurred towards loan taken from the bank for business whereas the company has also not paid interest towards the unsecured loans taken by the directors and the shareholders.

4.6 The learned CIT(A), however, rejected the submissions of the assessee and confirmed the disallowance by largely reiterating the findings of the Assessing Officer. While the assessee relied upon the decisions of the Hon'ble Bombay High Court in Commissioner of Income-tax Vs. Reliance Utilities & Power Ltd. 178 taxman 135 (Bombay) and HDFC Bank Limited vs. DCIT (ITA No. 1763 of 2016).



The learned CIT(A) placed reliance on the decisions of the Hon'ble Punjab & Haryana High Court in the case of Commissioner Of Income Tax-I vs Abhishek Industries Ltd (P&H) 286 ITR and the Hon'ble Madras High Court in of K. Somasundaram and Brothers Vs. CIT 238 ITR 939 (Madras) dealing with cases of mixed funds.

5. Upon careful consideration, we are of the view that the assessee has failed to substantiate, by cogent documentary evidence, that the advances made to M/s Vaipan Business Private Limited were in the nature of business advances. The loans and advances were given in the earlier years and in those year assessee has already charged interest but in the year under consideration only assessee has not charged any interest. The contention of the assessee that advances were for rendering service in relation to proposed raising of the funds, but the assessee has not substantiate this claim by way of any documentary evidences. No material has been placed on record to demonstrate that any services were actually rendered by the said party during the year under consideration or that the advances were made in consideration thereof. The mere assertion that the recipient entities were engaged in providing certain services is insufficient to establish commercial expediency, particularly when no corresponding evidence of services availed is forthcoming.

5.1 However, with regard to M/s Sidhdev Trading LLP, the assessee has specifically claimed that interest of ₹10,82,822/- was duly



charged and offered to tax during the relevant year. If this claim is factually correct, then, to that extent, no further disallowance under section 36(1)(iii) of the Act can be sustained, as it would result in double disallowance. This aspect requires factual verification and if same is found to be correct then corresponding disallowance of Rs. 10,82,822/- is liable to deleted.

5.2 Further, the claim of the assessee that the advances were made entirely out of its own interest-free funds also requires verification with reference to the financial statements and fund flow, in the light of the settled legal position laid down by the Hon'ble Supreme Court in *Reliance Utilities & Power Ltd. (supra)* and reiterated in *HDFC Bank Ltd. (supra)*, that where interest-free funds are available in excess of the advances, a presumption arises that such advances are made out of own funds.

5.3 Accordingly, in the interests of justice, we restore the issue to the file of the Assessing Officer for the limited purpose of verifying: (i) whether interest of ₹10,82,822/- was in fact charged and offered to tax in respect of the advance to M/s Sidhdev Trading LLP; and (ii) whether the advances were made out of the assessee's own interest-free funds, in accordance with the aforesaid judicial principles.

5.4 If the claims of the assessee are found to be correct upon verification, the corresponding disallowance shall be deleted to that



extent. The Assessing Officer shall confine the enquiry strictly to the above limited aspects and decide the issue in accordance with law after affording reasonable opportunity of being heard to the assessee.

5.5 The ground No. 1 and 2 of the appeal of the assessee are allowed for statistical purpose.

6. Ground No. 3 of the appeal relates to the adjustment made under section 143(1) of the Act in respect of disallowance under section 43B thereof.

6.1 Before us, the learned counsel for the assessee submitted that while processing the return of income under section 143(1) of the Act, the Centralised Processing Centre (CPC) had made an adjustment of ₹93,25,310/- on the basis of Clause 26 of the Tax Audit Report furnished in Form No. 3CB. It was contended that the said amount represented statutory dues and taxes relating to employees' salaries, which had been paid on or before the due date of filing of return under section 139(1) of the Act, as extended up to 31.01.2021 for the relevant assessment year. It was further submitted that the amounts relating to Employees' State Insurance and Provident Fund were also paid within the due dates prescribed under the respective statutes. The details of such payments, as extracted by the Assessing Officer, are placed on record. For ready reference same is extracted as under:



Sr No.	Nature of Liability or	Amount	Actual Date of Payment	Due Date of Payment as per law	Amount of Payment
1.	CGST Payable	15,61,867	15.06.2020	31.01.2021 *	14,60,154
2.	Employees State Insurance Corporation	1,69,962	14.04.2020	15.07.2020 **	1,69,962
3.	Professional Tax	1,53,350	16.06.2020	31.01.2021	1,21,768
4.	Provident Fund	8,38,155	03.04.2020	15.05.2020 ***	8,38,155
5.	SGST Payable	30,05,789	15.06.2020	31.01.2021	29,04,076
6.	TDS Payable	35,96,187	29.04.2020	31.01.2021	35,82,318
	Total	93,25,310			90,76,433

6.2 The Ld. Counsel for the assessee submitted that in the said assessment year , the due date the filing of return u/s 139 of the Act was extended upto 31.01.2021 and therefore the payment of taxes u/s 43B of the Act was within the period of due date of filing of the return. Regarding the Employee State Insurance Corporation (ESIC) and Provident Fund (PF) was claimed that same were also paid within the prescribed due date relevant statues . The learned CIT(A), however, declined to adjudicate the issue on merits and rejected the ground primarily on the reasoning that the assessee ought to have sought rectification of the intimation issued under section 143(1) of the Act by filing an application under section 154 thereof. The relevant finding of ld CIT(A) is reproduced as under:

"The appellant assessee in its submissions have stated that "On perusal of intimation order, it is being seen that CPC had made addition / adjustment of Rs.93,25,310/- on account of amount debited to profit and loss account of the previous but disallowable u/s.43B of the Act. No intimation or show-cause had been received from the CPC with respect to said addition / adjustment to be made in the return of income filed by the Appellant company.



The appellant assessee itself stated that at first it did not get the Intimation order u/s 143(1) but after the grievance application the appellant assessee company got the order us/ 143(1).

This appellate authority in the view that is appellant assessee disagree with the adjustments made by the CPC/computerized system, then the appellant assessee can file an online rectification application under Section 154(1) to correct the errors in the Section 143(1).

The appellant assessee has also not provided any proof that appellant assessee has raised any objection to the JAO regarding the wrong adjustments made by the CPC/computerized system.

This appeal of the appellant assessee before this appellate authority is against the order u/s 143(3). dated 25.09.2022 but the appellant assessee is pressing this ground relation to addition of Rs 93,25,130/- as consequence of increase in income vide Intimation u/s 143(1). The correct approach for the appellant assessee was to file a rectification application u/s 154 of the income tax act 1961.

So, this ground of the appeal is hereby rejected however the appellant assessee is free to file an application u/s 154(1) of the IT Act 1961 subject to the provisions of the act.”

6.3 Having considered the matter, we are of the view that the approach adopted by the learned CIT(A) cannot be sustained. Once an assessment has been framed under section 143(3) of the Act, the correctness and legality of adjustments forming part of the assessed income, including those arising from the earlier intimation under section 143(1), should have been examined by the AO during scrutiny and if raised before the ld CIT(A), then fall within the appellate jurisdiction of the first appellate authority. The learned CIT(A) was, therefore, duty-bound to examine the claim of the assessee on merits, either by calling for a remand report from the



Assessing Officer or by independently adjudicating the allowability of the payments under section 43B of the Act.

6.4 In the present case, the learned CIT(A) has neither examined the factual claim of the assessee nor called for any verification from the Assessing Officer. In these circumstances, and in the interests of justice, we deem it appropriate to restore this issue to the file of the Assessing Officer for the limited purpose of verifying the claim of the assessee with regard to the allowability of the amounts under section 43B of the Act, in accordance with law, after affording due opportunity of being heard to the assessee.

6.5 Accordingly, the ground No.3 of the appeal of the assessee is allowed for statistical purpose.

7. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced by way display of result on notice board on 23/12/2025 under Rule 34(4) of ITAT Rules, 1963.

Sd/-

**(SANDEEP GOSAIN)
JUDICIAL MEMBER**

Sd/-

**(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Surat;
Dated: 23/12/2025
Disha Raut, Stenographer



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Surat
5. Guard file.

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Surat