IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES 'E': NEW DELHI.

BEFORE SHRIS.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

ITA No.468/Del/2024
(Assessment Year: 2016-17)

Techno Trexim (India) Private Limited, 806, Devika Tower, 6, Nehru Place, Delhi – 110 019.	vs.	ACIT, Circle 15(1), Delhi.

(PAN : AAACT4360K)

ITA No.582/Del/2024
(Assessment Year: 2016-17)

ACIT, Circle 15(1), Delhi.	vs.	Techno Trexim (India) Private Limited, 806, Devika Tower, 6, Nehru Place, Delhi – 110 019.
		(PAN : AAACT4360K)
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : Shri I.P. Bansal, Advocate
Shri Vivek Bansal, Advocate
REVENUE BY : Shri Abhijeet Kumar, Sr.DR

Date of Hearing : 09.01.2026
Date of Order : 29.01.2026

O R D E R

PER S. RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. The assessee and Revenue has filed cross appeal against the order of Learned Commissioner of Income Tax (Appeals)/National Faceless

Appeal Centre (NFAC), Delhi ["Ld. CIT(A)", for short] dated 11.12.2023 for the Assessment Year 2016-17.

2. First we take up Revenue's appeal and the Revenue has taken the following grounds of appeal :-

> "1. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) has erred in deleting the addition of Rs.8,54,250/- on account of commission expenses.
>
> 2. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) has erred in deleting the addition of Rs.6,24,72,099/- on account of interest expenditure.
>
> 3. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) has erred in deleting the addition of Rs.15,65,959/- on account of housekeeping and security expenses."

3. With regard to deletion of the addition of Rs.8,54,250/- on account of commission expenses, the assessee had disputed the disallowance of made by the AO on account of commission expenses. On perusal of the assessment order, it is noted that this issue has been discussed in Para-47 to 53 of the assessment order. The AO noted that the assessee who is engaged in the business of giving properties on rent had paid commission to a single party Knight Frank (India) Pvt. Ltd. for arranging a new tenant for the assessee's property, as the original tenant later vacated the premises and the new tenant Azcom Info Solutions started lease term from 05.05.2016 i.e., in the succeeding year. While the AO accepted that the commission paid is linked with the business of the assessee and incurred during the relevant F.Y., he held that since the income from

lease rent would accrue in the subsequent F.Y., the corresponding expense should also be accounted for in A.Y. 2017-18. In this regard, the AO placed reliance on the decision of Hon'ble Bombay High Court in the case of Tapariya Tools Ltd. – 260 ITR 102 (Bombay) (2003). Therefore, the expense of commission of Rs.8,54,250/- was disallowed by the A.O u/s 37 of the Act.

4. In appeal before the ld. CIT (A), the ld. CIT (A) has deleted the addition by observing asunder :-

> " The assessee had pointed out that the earlier registered lease deed dated 19.02.2013 with earlier tenant M/s. Posterscope Outdoor Advertising Pvt. Ltd. was expiring after 03 years and the tenant had vacated the premise at the end of relevant FY. Therefore, to avoid the gap of time the execution of agreement with the new tenant Azcom Info Solutions was made in advance during the relevant F.Y. after identifying the same. The assessee has pointed out that this is a regular business practice and earlier also the lease rent agreement was executed on 19.02.2013,while the lease was to start from 19.05.2013. In this regard, the assessee has also referred to the relevant clauses of the lease agreement dated 17/2/2016 with Azcom Info Solutions (India) (P) Ltd to highlight that as per para 1.2 of this agreement, the lessor has handed over peaceful and vacant physical possession of the subject premises to the lessee on 5th February 2016, as in where is basis (the "Handover date") and permitted a rent free period of 90 days to the lessee. Thus, it has been pointed out that the possession was handed over in the relevant FY itself and a rent-free period was for the purpose for bringing the demised premises into operation. Further, the assessee has pointed out that the reliance on the decision of Hon'ble Bombay High Court in the case of Taparia Tools Ltd. by the AO is misplaced, since the issue in the said case was regarding allow-ability of deferred interest on non-convertible debentures and the concept of matching principle was invoked in the specific facts of the case. The assessee has pointed out that the Hon'ble Bombay High Court in this case had itself observed that ordinarily revenue expenditure incurred only and exclusively for business purposes must be allowed in entirety in the year in which it is incurred. The Hon'ble High Court in the specific facts of the said case had held that the expenditure should be spread over the life of the debentures as allowing the entire expenditure in one year may give a distorted picture of profit of a particular year.

> The claims of the assessee are found to be correct in the given facts and circumstances of the case. There is no dispute that the assessee is engaged in the business of giving properties on rent and therefore, the commission paid during the relevant F.Y. for arranging a new tenant is an expenditure incurred for the purpose of business. The AO has also accepted that the said expenditure is linked with the business of the assessee and has been incurred for the purpose of said business. There is logic in the stand of the assessee that the new tenant needs to be identified in advance so that there is no gap in the letting out of property falling vacant and the revenue can be maximized. It is noted that similar practice was carried out earlier also by the assessee as claimed, and thus this is a regular / normal business practice in this line of business. Further, the assessee has handed over the possession of property during the relevant financial year and the rent free period given is as per prevalent business practice to enable the demised property to be ready as per the requirements of the lessee. It is further noted that the facts of the instant case are different to the facts of the decision of Hon'ble Bombay High Court in the case of Taparia Tools Pvt. Ltd. which has been relied upon by the AO. As pointed out by the assessee, the Hon'ble High Court has itself emphasized that ordinarily revenue expenditure incurred only and exclusively for business purposes must be allowed in entirety in the year in which it is incurred and the said decision relied upon by the AO was rendered in the specific facts of that case. Since, the claim of the assessee that the expenditure has been incurred wholly and exclusively for the purpose of business as required u/s 37 of the Act is found correct, the AO is directed to delete this disallowance of Rs. 8,54,250/- and accordingly ground of appeal No. 1 of appeal is allowed."

5. At the time of hearing, ld. DR of the Revenue submitted that he relies on the findings of AO in the assessment order.

6. On the other hand, ld. AR of the assessee submitted as under :-

a. This amount relates to commission paid in respect of services obtained by the assessee from Knight Frank(India) Pvt. Ltd. as per bill dated 08-03-2016 being a sum of Rs. 9,73,250/- (fee for services Rs.8,50,000/- (+) service tax Rs.1,19,000/- (+) swachh bharat cess Rs. 4,250/-) and assessee paid a sum of Rs.8,88,250/- after deducting TDS of 10% amounting to Rs.85,000/- out of total amount of Rs.9,73,250/-. Copy of service bill is placed at Pg. 177 of the paperbook.

b. The above mentioned services were obtained in respect of premises vacated by Posterscope Outdoor Advertising Pvt. Ltd as per lease deed dated 19-02-2013 which was for a period of three years, copy of lease deed is placed at Pg. 87-156

(87, 95, 103, 105) of the paperbook and this premises was rented to Azcom Info Solutions (India) Pvt. Ltd as per lease deed dated 17-02-2016 from Pg. 157-175(157, 158, 161).

c. The commission was disallowed by the AO on the ground that the expense do not relate to year under consideration. Services were obtained by the assessee to pay the commission to avoid the further loss of period of rent. The decision in the case of Taparia (Pg 179-202) was in respect of different contest and was rendered for matching principle and in the same decision it has been observed that in respect of revenue expenditures the expenditure are allowable in its entirety and reference can be made at Pg. 194-195 of the paper book where the relevant observations can be found.

d. The amount was paid by the assessee on 19-05-2016 as per copy of bank account placed at Pg. 178 of the paper book.

7. Considered the submissions of both the parties and material placed on record. We observed that the assessee had incurred commission expenses for services obtained for finding a suitable tenant for the property, which was likely to be vacated. The AO did agree that the expenditure was incurred for the above purpose but since the assessee started receiving the rent only in the subsequent year, he was of the view that it should be booked as and when the income is earned, like matching principle. After considering the detailed findings of the Ld CIT(A), it is fact that the assessee is engaged in the business of giving properties on rent and the relevant new tenant has to be identified well in advance to have certainty of continuity in the tenancy. Since it is one of the normal business activities of the assessee, the commission paid is genuine expenditure

which is not in dispute but only the timing of booking the expenditure. In our view, this business expenditure had to be considered on the basis of time relevant, not on the basis of revenue generation or recognition. After considering the reasonable finding of the Ld CIT(A), we do not see any reason to disturb the same. In the result, the ground raised by the Revenue is dismissed.

8. With regard to ground no.2 relating to disallowance of interest of Rs.6,24,72,099/- relevant facts are, the AO has dealt with this issue from Para 9 to 32 of the assessment order. The AO has pointed out that the assessee had claimed loss of Rs.45,80,54,000/- u/s 45(iii) of the I.T. Act on account of transfer of shares of United Machines Ltd. (UML) held by it as investment to Trading Engineers (International) Ltd. (TEIL) at NIL rate. The AO has referred to note-21 of accounts where this aspect has been discussed. The AO has pointed out that the assessee had claimed interest expenses of Rs.6,24,72,099/- on account of unsecured loans taken from Group Concern Trading Engineers Ltd. (TEL) amounting to Rs.37 Crore (Approximate). The unsecured loans had been taken in A.Y. 2015-16 as per details mentioned in the assessment order. The assessee had clarified that the purpose of such transfer at NIL rate was to consolidate the holdings of UM Group under a single entity in order to create a single vehicle for future fund raising/listing and to rationalize the disclosures

required for said listing. The assessee claimed that the said transfer is exempt u/s 47(iii) of the I.T. Act and relied on the opinion of PWC in this regard. The assessee further claimed before the AO that there was a favorable order in its case in earlier years and relied upon the decision of Ld. CIT(A) for A.Y. 2013-14, as per which the dis-allowance u/s 14A made by the AO was deleted and it was further pointed out that there was no dis-allowance made u/s 14A in A.Y. 2014-15 by the AO. The AO however pointed out that a disallowance of Rs.3.81 crore u/s 14A r.w.r. 8D has been made in the assessment order for A.Y. 2015-16 passed u/s 143(3) dated 20.12.2017 and also pointed out that additionally the interest payment of Rs.17,86,740/- has been disallowed on protective basis in this assessment order for A.Y. 2015-16 being relied upon by the AO. The AO further referred to the assessment records of A.Y. 2015-16 to point out that during the A.Y.2015-16, the assessee had invested in shares of UML by paying Rs.30.90 crore and it had already held an opening investment of Rs.14.09 crore at the beginning of this F.Y. 2014-15. Thus, the assessee held a total investment of Rs.45,80,54,000/- in shares of UML at the beginning of the year, which have been transferred to TEIL in A.Y. 2016-17 at NIL consideration for the alleged purpose of consolidating the holdings of UM group under a single entity. In Para-15, the AO held that the purpose of taking the unsecured loan from the past two years was a

planned consolidation of the shares holding with a specific purpose in mind and the shares were bought accordingly. The whole transaction was planned over a three years with the purpose of booking the finance cost as an expense in the hand of the assessee for the purpose of setting it off against its huge rental income. The AO further stated that the AO did not have necessary information while passing assessment for A.Y. 2014-15 and 2015-16 and could not decipher such planned tax evasion, as it could not see through the future. The AO has stated that scheme of transaction was visible in F.Y. 2015-16, and hence deletion of addition of u/s 14A in earlier years by CIT(A) was not relevant. The AO accordingly issued show cause notice dated 10.12.2018 to the assessee and has discussed the reply in the subsequent paragraphs. The assessee had claimed that there are no fresh unsecured loan and no fresh investment made during the relevant F.Y. and that the old investments were held out of old free reserves and surplus. The AO pointed out that the relevant question was regarding business nature of interest expenses paid by the assessee (out of unsecured loan taken from related parties) in the light of investment made by the assessee in previous two years which have been transferred for NIL consideration during the relevant F.Y. The AO stated that the investment in earlier years was not out of old free reserves and surplus as claimed and stated that the assessee’s capital, reserve and surplus is locked up in the

fixed assets and hence not available for making investment in shares of more than 45 crore in group companies. The AO referred to section 36(1)(iii) of the I.T. Act to point out that the amount of interest paid in respect of capital borrowed for the purpose of business or profession is the necessary requirement as per this section. The AO has pointed out that the purpose of borrowing of funds is not related to the business of the assessee which is renting business. The AO claimed that there is no direct or indirect nexus of the consolidation of shareholding of UML with the renting business of the assessee, and that any of the business interest of the assessee is not furthered from acquiring of such asset out of borrowed capital. The AO therefore stated that the interest claimed as business expenses are not allowable as there is no business connection and the borrowed funds have been utilized for non-business purpose. The AO reiterated that there is planned activity by the assessee to reduce the tax to be paid on rental income over the period of years and to book the interest expenses of an unrelated activity with the business on which tax is liable to be paid and relied upon the decision of Hon'ble Madras High Court in the case of CIT Vs R. Mohan (2011). The AO reiterated that the plea of previous assessment orders and disallowances made u/s 14A r.w.r.8D are not restrictive in view of the complete scheme of not visible. Therefore, the interest expenses of Rs.6,24,72,099/- paid during the relevant F.Y. were

disallowed u/s 36(1)(iii) of the Act on the grounds that such expenditure was not for the purpose of business. Further, the AO also referred to the provisions of section 37 of the Act and the decision of Hon'ble Supreme Court in the case of CIT Vs McDowells [1985 SCR (3)791] to hold that the impugned transaction was a scheme undertaken to evade the income tax and to color the transaction. Therefore, additionally and alternatively, the AO disallowed these interest expenses of Rs.6,24,72,099/- u/s 37 of the I.T. Act.

9. Aggrieved assessee raised the issue before the ld. CIT (A) and the ld. CIT (A) deleted the addition by holding as under :-

> " The assessee has not taken any fresh loan or made any fresh investment during the relevant F.Y. and that the utilization of borrowed funds and purpose thereof stands examined in the assessment proceedings and appellate proceedings of earlier year A.Y. 2015-16. The assessee has claimed that the genuineness of such loans have been accepted in the appellate proceedings and also accepted to be taken for business purpose in the earlier years proceedings and that the earlier appellate orders have attained finality. In this regard, the assessee has placed reliance on the decision of Ld. CIT(A) – 9 New Delhi, who vide order dated 11.04.2019 in appeal no. 10384/2017-18 has examined the issue of utilization of borrowed funds and the decision of Hon'ble ITAT for A.Y. 2015-16 vide order No. ITA No. 5889/DEL/2019 dated 05.09.2022. The assessee also relied on the decision of Ld. CIT(A) in earlier years A.Y. 2013-14 and 2014-15. The assessee has claimed that the revenue has not challenged the findings of appellate authority that the loan was taken by the assessee for business purpose specifically in A.Y. 2015-16. Since, no fresh loan was taken during the year nor any fresh investment made, during the relevant financial year, the findings of appellate authorities are required to be considered.;
>
> The assessee has pointed out that financial cost in A.Y. 2016-17 is similar to financial cost in A.Y. 2015-16 and the issue of allowability of financial cost was the central point of scrutiny in A.Y. 2015-16 and the assessment proceedings of A.Y. 2015-16 have attained finality. The assessee has claimed that the Department has been taking a consistent view that interest paid by the assessee on loans relating to investment in shares is dis-allowable

u/s 14A r.w.r.8D and section 36(1)(iii) of the Act was not invoked on similar facts earlier or later assessment proceedings of AY 2017-18 . The assessee has claimed that therefore as per principle of consistency, taking a contrary view this year on the ground of excess financial cost is unsustainable in law. The assessee has claimed that the commercial expediency need not be demonstrated in each year concerning a loan transaction which took place in earlier years, and has relied upon various decisions in this regard, as quoted above. The assessee has pointed out that the AO has wrongly stated in para 10 of the assessment order that as per the computation of income ,the assessee has claimed loss on transfer of investment of Rs 45,80,54,000/- , whereas no such loss has been claimed in the computation of income in which income has been offered to tax under Normal computation .

The assessee has claimed that the Ld. CIT(A) in A.Y. 2015-16 had categorically held that the borrowed funds by the assessee had been used for business purpose. The Ld. CIT(A) had pointed out that long-term investment in group companies for strategic control over it makes the interest expenditure as an allowable business deduction and had placed reliance on the decision of S.A. Builders [288 ITR 1(SC)] in this regard. The Assessee has further pointed out that in A.Y. 2015-16, the AO had also made a dis-allowance of interest amounting to Rs. 17,86,740/- being excess interest as loan had been taken at a higher rate for the purpose of investment. The assessee had claimed that there was commercial expediency involved in taking fresh loans and making investment in shares of group companies and Ld. CIT(A) has deleted this disallowance made by the AO by accepting the contentions of the assessee. The Department did not file further appeal before Hon'ble ITAT and has referred to decision of Hon'ble ITAT for A.Y. 2015-16 – ITA No. 5889/DEL/2019 dated 05.09.2022. Therefore, the assessee has claimed that the AO is incorrect in taking any contrary stand in this year.

The assessee has pointed out that in A.Y. 2015-16, it had explained that the source of investment of Rs. 45,80,54,000/- made in shares of group companies was sourced to the extent of Rs. 26,58,90,76/- out of its own capital (equity and free reserves) and this claim of the assessee was accepted by Ld. CIT(A) in A.Y. 2015-16. The assessee has quoted from the relevant paragraph of this order of Ld. CIT(A) dated 11.04.2019 in this regard. The assessee has therefore claimed that the assertion of the AO that entire investment have been sourced out of borrowed funds is against this finding of Ld. CIT(A). The assessee has further referred to the decision of Hon'ble Bombay High Court in the case of Reliance Utilities and Power Ltd. (2009) 313 ITR 340 (BOM), and claimed that the facts of the instant case are on similar footing. The assessee pointed out that the principle decided by the Hon'ble Court is that if there are funds available both interest free and borrowed funds, then a presumption would arise that the investment would be out of interest free funds generated/available with the company to the extent of such interest free funds. The assessee has claimed that this proposition of law has been confirmed by the Hon'ble Supreme Court in the case of CIT Vs. Reliance Industry Ltd. (2019) 410 ITR 466 (SC) dated 02.01.2019.;

The assessee has claimed that the decision of Hon'ble Supreme Court in the case of S.A. Builders is applicable to its case for the relevant financial year and that this decision as relied upon by Ld. CIT(A) in A.Y. 2015-16 in its own case to accept that the long-term investment in group concerns for strategic control is a business purpose. The assessee has further stated that the transfer of shares in UML to TEIL was a step ahead for the said objective of consolidation of holdings of UML into single entity and reorganizing the group structure for creating a holding company for UML shareholding proposed to be used as a vehicle for future or alternatively a step ahead for UML listing. The assessee claimed that there was commercial expediency involved in this transaction and the transaction of gift of shares was for business purposes. In this regard, the assessee has placed reliance on the decision of Hon'ble Supreme Court in the case of S.A. Builders Ltd 288 ITR 1 and has quoted from the said order to claim that when a nexus is established between expenditure and purpose of business, it is not necessary that the purpose is necessarily the business of the assessee itself. The assessee has also referred to the decision of Hon'ble Delhi High Court which is the jurisdictional High Court of the assessee in the case of PCIT Vs N.S. Software that once the assessee has demonstrated the commercial expediency in an earlier year, it is not required to demonstrate the same every year. The assessee claimed that the facts of its case are different from that of CIT Vs R. Mohan (Madras High Court), which had been relied upon by the AO. The assessee has thus argued that in such circumstances, the disallowance u/s 36(1)(iii) of the Act by the AO after holding that interest has not been incurred for the purpose of business is not correct as per law.;

With respect to alternate / additional disallowance u/s 37 of the Act of same amount of Rs.6,24,72,099/- made by the AO after relying on a decision of Hon'ble Supreme Court in McDowells case, the assessee has disputed the claim of the AO regarding adoption of colorable device. The assessee has submitted that the claims of the assessee had been accepted in earlier year proceedings of A.Y. 2015-16 and not further agitated. The assessee has placed reliance on the decision of Hon'ble Supreme Court in the case of Shiv Raj Gupta Vs. CIT (2020) 425 ITR 420 (SC), S.A. Builders Ltd. (2007) 288 ITR 1 (SC) in this regard.;

The assessee has further submitted that the order of Ld. CIT (A) for A.Y. 2015-16 was passed in April, 2019 and Hon'ble ITAT further decided on the appeal filed by the Department against this order on 05.09.2022. The assessee has claimed that if the Department had any grievance about non-genuineness of the entry or having adverse material against the assessee, they could have challenged the disallowance of Rs. 17,86,740/- before Hon'ble ITAT, before this appeal of the Department being disposed by Hon'ble ITAT in 2022, since both the orders of appellate authorities for AY 2015-16 have been passed subsequent to the passing of assessment order of AY 2016-17 and would have referred to the findings of AY 2016-17 in such appellate proceedings or would have taken relevant necessary action accordingly. The

assessee has claimed that in view of these facts, the additional and alternative disallowance u/s 37(1) of the Act is without basis, uncalled for in the facts and circumstances of the case and made only to strengthen the disallowance even though there existed no factor to apply the decision of Hon'ble Supreme Court in the case of CIT Vs. Mcdowells. No show cause was issued by the AO before holding the impugned transactions as a colourable device in the assessment order.

The Ld. A/R of the assessee reiterated the above claims as quoted above during the course of VC hearing conducted on 30/11/2023.

The contentions of the assessee have been perused. It is noted that subsequent to the passing of the assessment order for AY 2016-17, the appellate orders of Ld. CIT(A) and Hon'ble ITAT for the previous AY 2015-16 have been passed by these appellate authorities. There is merit in the stand of the assessee that Ld. CIT(A) in AY 2015-16 had clearly held in para 5.4 of his order (as quoted by the assessee /referred above) that obtaining of loan and its deployment for business purpose including long term investment in group companies for strategic control over it makes the interest expenditure an allowable business deduction. Also, it is noted that in AY 2016-17, the AO has not accepted the alternative claim of the assessee regarding the reserves and surplus held by it being a major source of making the impugned investments, whereas the Ld. CIT(A) in the subsequent appellate order passed for AY 2015-16 has clearly held that the reserves and surplus held by the assessee are to be considered as a major source of making these investments . This finding of Ld. CIT(A) thus becomes final, since there is no subsequent fresh loan taken or investments made during the relevant financial year and hence there is no change in the relevant facts as examined by appellate authorities in AY 2015-16. Hence the stand of the AO that the assessee is only engaged in rental business and such investments held are fully sourced from borrowed funds and further are not for business purpose is clearly against the decision of Ld. CIT(A) and Hon'ble ITAT in AY 2015-16. The assessee has rightly pointed out that the Department had not filed any appeal against this decision of Ld. CIT(A) on the issue of this addition of Rs 17,86,740/- (where it has been specifically held that investment in group concerns is a business purpose) before Hon'ble ITAT as only the issue of disallowance u/s 14A was raised before Hon'ble ITAT by the department, In para 15 and 16 of the assessment order ,the AO has held that the full scheme of coloring the transactions was not visible earlier as the AO could not see the future , and that the said pre-planned scheme of coloring the transactions to evade the taxes became visible only during the assessment proceedings of relevant AY 2016-17. Accordingly, the AO has not accepted the contentions of the assessee. In this regard, it is noted that the assessee has rightly pointed out that once the AO has taken such a stand in this order dated 28/12/2018 for AY 2016-17 and thus seeks to modify/revisit the findings of earlier years, then the relevant facts pointing towards alleged scheme to evade taxes could have been raised by the AO before Ld. CIT(A), since the appellate proceedings for AY 2015-16 were still pending at the time of passing of assessment order for AY 2016-17. However,

there is no reference made by the department to such assessment order of AY 2016-17 in these subsequent appellate proceedings of AY 2015-16 before Ld. CIT(A) and Hon'ble ITAT. Ld CIT(A) has rendered certain findings in AY 2015-16 vide his order dated 11/4/2019 and Hon'ble ITAT in its order dated 5/9/2022 has dismissed the departments appeal. Thus, the fact of investing in shares and dealing in shares of group concerns has been held to be a business purpose of the assessee in AY 2015-16 by Ld. CIT(A), which has become final. The AO has stated that the assessee has not satisfied the stipulated condition in section 36(1)(iii) of the Income Tax Act which requires that the capital should be borrowed for the purpose of business. The AO has stated that since the assessee is engaged in renting business, therefore there is no business connection in borrowing of capital for investment in shares and dealing in shares of group concerns which is not the business of the assessee. In this regard, it is noted that the assessee has referred to specific finding of the learned CIT(A) for A.Y. 2015-16 where it has been held that investment in shares of group concerns for which the money has been borrowed is a business purpose by relying on the decision of Hon'ble Supreme Court in the case of S.A. Builders Ltd. vs. CIT – 288 ITR 1. Therefore, there is no dispute in this regard that this decision of learned CIT(A) on this issue has not been contested before Hon'ble ITAT nor have any further step been taken to revisit the stand taken by the AO in A.Y. 201516, which includes pointing out such fresh details before the appellate authorities who were yet to finalize appeal for A.Y. 2015-16 . Therefore the various claims made by the assessee regarding consistency to be maintained by the department in its stand and relevant case laws cited by the assessee(as quoted above) are found to be correct.

The AO has held that the transfer of shares of UML by the assessee to TEIL at NIL consideration is a pre-planned activity and a colorable device to reduce taxes. The AO has also held that the transfer of shares of UML to TEIL can be business objective of the ultimate beneficiary, but not that of the assessee. In response to such stand of the AO, the assessee has stated that the transfer of shares of UML held by the assessee to TEIL by way of gift t is a step ahead for the said objective (as already accepted in AY 2015-16), which includes group reorganization for creating a holding company for UML Shareholding proposed to be used as a vehicle for future and in the alternative a step ahead for UML listing. The assessee has thus claimed that the said action of the assessee was for business purpose which included business expediency and has again relied upon the decision of Hon'ble Supreme Court in the case of S.A. Builders Ltd. vs. CIT – 288 ITR 1 – in this regard to claim that this decision is squarely applicable to the facts of the assessees case. It is noted that this decision was found applicable by learned CIT(A) in A.Y. 2015-16 to the facts of the assessee's case and the same has been perused. The relevant portion of the said decision is quoted below:

> *"We have considered the submission of the respective parties. The question involved in this case is only about the allowability of the interest on borrowed funds and hence we are dealing only with that*

question. In our opinion, the approach of the High Court as well as the authorities below on the aforesaid question was not correct.

In this connection we may refer to Section 36(1)(iii) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') which states that "the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession" has to be allowed as a deduction in computing the income tax under Section 28 of the Act.

In Madhav Prasad Jantia vs. Commissioner of Income Tax U.P. AIR 1979 SC 1291, this Court held that the expression "for the purpose of business" occurring under the provision is wider in scope than the expression "for the purpose of earning income, profits or gains", and this has been the consistent view of this Court.

In our opinion, the High Court in the impugned judgment, as well as the Tribunal and the Income Tax authorities have approached the matter from an erroneous angle. In the present case, the assessee borrowed the fund from the bank and lent some of it to its sister concern (a subsidiary) on interest free loan. The test, in our opinion, in such a case is really whether this was done as a measure of commercial expediency.

In our opinion, the decisions relating to Section 37 of the Act will also be applicable to Section 36(1)(iii) because in Section 37 also the expression used is "for the purpose of business". It has been consistently held in decisions relating to Section 37 that the expression "for the purpose of business" includes expenditure voluntarily incurred for commercial expediency, and it is immaterial if a third party also benefits thereby.

Thus in Atherton vs. British Insulated & Helsby Cables Ltd (1925)10 TC 155 (HL), it was held by the House of Lords that in order to claim a deduction, it is enough to show that the money is expended, not of necessity and with a view to direct and immediate benefit, but voluntarily and on grounds of commercial expediency and in order to indirectly to facilitate the carrying on the business. The above test in Atherton's case (supra) has been approved by this Court in several decisions e.g. Eastern Investments Ltd. vs. CIT (1951) 20 ITR 1, CIT vs. Chandulal Keshavlal & Co. (1960) 38 ITR 601 etc. In our opinion, the High Court as well as the Tribunal and other Income Tax authorities should have approached the question of allowability of interest on the borrowed funds from the above angle. In other words, the High Court and other authorities should have enquired as to whether the interest free loan was given to the sister company (which is a subsidiary of the assessee) as a measure of commercial expediency, and if it was, it should have been allowed.

> *The expression "commercial expediency" is an expression of wide import and includes such expenditure as a prudent businessman incurs for the purpose of business. The expenditure may not have been incurred under any legal obligation, but yet it is allowable as a business expenditure if it was incurred on grounds of commercial expediency.*
>
> *No doubt, as held in Madhav Prasad Jantia vs. CIT (supra), if the borrowed amount was donated for some sentimental or personal reasons and not on the ground of commercial expediency, the interest thereon could not have been allowed under Section 36(1)(iii) of the Act. In Madhav Prasad's case (supra), the borrowed amount was donated to a college with a view to commemorate the memory of the assessee's deceased husband after whom the college was to be named. It was held by this Court that the interest on the borrowed fund in such a case could not be allowed, as it could not be said that it was for commercial expediency.*
>
> *Thus, the ratio of Madhav Prasad Jantia's case (supra) is that the borrowed fund advanced to a third party should be for commercial expediency if it is sought to be allowed under Section 36(1)(iii) of the Act.*

In the present case, neither the High Court nor the Tribunal nor other authorities have examined whether the amount advanced to the sister concern was by way of commercial expediency.

It has been repeatedly held by this Court that the expression "for the purpose of business" is wider in scope than the expression " for the purpose of earning profits" vide CIT vs. Malayalam Plantations Ltd. (1964) 53 ITR 140, CIT vs. Birla Cotton Spinning & Weaving Mills Ltd (1971) 82 ITR 166 etc. The High Court and the other authorities should have examined the purpose for which the assessee advanced the money to its sister concern, and what the sister concern did with this money, in order to decide whether it was for commercial expediency, but that has not been done.

It is true that the borrowed amount in question was not utilized by the assessee in its own business, but had been advanced as interest free loan toits sister concern. However, in our opinion, that fact is not really relevant. What is relevant is whether the assessee advanced such amount to its sister concern as a measure of commercial expediency. Learned counsel for the Revenue relied on a Bombay High Court decision in Phaltan Sugar Works Ltd. Vs. Commissioner of Wealth-Tax (1994) 208 ITR 989 in which it was held that deduction under Section 36(1)(iii) can only be allowed on the interest if the assessee borrows capital for its own business. Hence, it was held that interest on the borrowed amount could not be allowed if such amount had been advanced to a subsidiary company of the assessee. With respect, we are of the opinion that the view taken by the Bombay High Court was not correct. The correct view in our opinion was whether the amount advanced to the

subsidiary or associated company or any other party was advanced as a measure of commercial expediency. We are of the opinion that the view taken by the Tribunal in Phaltan Sugar Works Ltd (supra) that the interest was deductible as the amount was advanced to the subsidiary company as a measure of commercial expediency is the correct view, and the view taken by the Bombay High Court which set aside the aforesaid decision is not correct.

Similarly, the view taken by the Bombay High Court in Phaltan Sugar Works Ltd. vs. Commissioner of Wealth-Tax (1995) 215 ITR 582 also does not appear to be correct.

We agree with the view taken by the Delhi High Court in CIT vs. Dalmia Cement (Bhart) Ltd. (2002) 254 ITR 377 that once it is established that there was nexus between the expenditure and the purpose of the business (which need not necessarily be the business of the assessee itself), the Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximize its profit. The income tax authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act. The authorities must not look at the matter from their own view point but that of a prudent businessman. As already stated above, we have to see the transfer of the borrowed funds to a sister concern from the point of view of commercial expediency and not from the point of view whether the amount was advanced for earning profits.

We wish to make it clear that it is not our opinion that in every case interest on borrowed loan has to be allowed if the assessee advances it to a sister concern. It all depends on the facts and circumstances of the respective case. For instance, if the Directors of the sister concern utilize the amount advanced to it by the assessee for their personal benefit, obviously it cannot be said that such money was advanced as a measure of commercial expediency. However, money can be said to be advanced to a sister concern for commercial expediency in many other circumstances (which need not be enumerated here). However, where it is obvious that a holding company has a deep interest in its subsidiary, and hence if the holding company advances borrowed money to a subsidiary and the same is used by the subsidiary for some business purposes, the assessee would, in our opinion, ordinarily be entitled to deduction of interest on its borrowed loans."

Thus, it is noted that Hon'ble Supreme Court (while deciding the issue of utilization of borrowed funds by the assessee for giving interest free advances to group concerns which had been claimed to be for business purpose) had laid down the principle of commercial expediency and laid down that what was to be enquired was as to whether the interest free loan was given to the sister company (which is a subsidiary of the assessee) as a measure of commercial expediency, and if it was, it should have been allowed. The expression "commercial expediency" as pointed out by the Hon'ble Court is an

expression of wide import and includes such expenditure as a prudent businessman incurs for the purpose of business. The Hon'ble Court held that expenditure may not have been incurred under any legal obligation, but yet it is allowable as a business expenditure if it was incurred on grounds of commercial expediency. In this regard, Hon'ble Court also referred to the decision of Hon'ble Delhi High Court in CIT vs. Dalmia Cement (Bhart) Ltd. (2002) 254 ITR 377 as per which once it is established that there was nexus between the expenditure and the purpose of the business (which need not necessarily be the business of the assessee itself), the Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case and further pointed out that no businessman can be compelled to maximize its profit. Therefore relying upon the decision of Hon'ble Supreme Court it is clear that even if the expenditure is incurred for the purpose of business of the group, and not necessarily of the assessee alone, then also the said expenditure is allowable on the grounds of commercial expediency, unless it is proved that such expenditure is incurred for personal purposes of the directors etc. The assessee has claimed that the investment in shares of group concerns and subsequent transfer was for the purpose of business, reorganization for creating a holding company for UML Shareholding proposed to be used as a vehicle for future and in the alternative a step ahead for UML listing. The assessee has also referred to the draft opinion of PWC where it has been stated that the assessee is contemplating the transfer of its investment in UML to group company TEIL with the objective of consolidation of holding of UML under a single entity and reorganizing a group structure. In the alternative, the management is also exploring the possibility of getting UML listed and have the entire shareholding of UML consolidated under a single company to rationalize the disclosures that may be required at the time of such listing. Therefore, the assessee has claimed that the transaction of dealing in shares of group concerns and transfer thereof is undertaken for commercial expediency as a prudent businessman for the purpose of business. The Assessing Officer has not pointed out any contrary evidence to counter such claims of the assessee. It is noted that in today's business world, transactions are regularly undertaken by a group of companies acting together through a network of holding, subsidiary and group companies acting with a common motive for acquisition of assets, running of businesses and arranging of finances and such plans are regularly undertaken through such planned interactions within the group. Further, the decision of Hon'ble Madras High Court in the case of CIT vs. R. Mohan was rendered on specific facts where it was established that borrowed money had been utilized for non-business purpose, whereas in the instant case the learned CIT(A) has already held in A.Y. 2015-16 that transactions in share of group concerns is a business activity. The AO has not highlighted any evidence to prove to the contrary. It is further noted that Hon'ble Supreme Court has discussed both Sections 36(1)(iii) and Section 37 of the Act in the case of S.A. Builders, the relevant portion of which has already been quoted above and the said decision is found to be applicable to the facts of the instant case. In such circumstances, the stated purpose of

creating a holding company, reorganization of group structure for obtaining funds through listing, creating a holding company to be used as a vehicle in future as claimed by the assessee are clearly in the nature of business purpose and for the purpose of commercial expediency as a prudent businessman.

The AO has invoked the decision of Hon'ble Supreme Court in the case of CIT vs. McDowells 1985 SCR (3) 791 and made alternate disallowance u/s 37 of the IT Act by stating that assessee has entered into a pre-planned activity or scheme to evade taxes . In this regard, it is noted that the AO had not issued any show cause notice before holding that the assessee had entered into a scheme to color the transactions to evade tax in a pre-planned manner and before invoking the decision of Hon'ble Supreme Court in the case of CIT vs. McDowells 1985 SCR (3) 791. The assessee has pointed out that the provisions of Section 47(iii) of the Income Tax Act are applicable with respect to transfer of shares of UML by way of gift. In this regard, it is noted that as per Section 47(iii) of the IT Act, certain transactions will not be regarded as transfer u/s.45 which includes any transfer of a capital asset under a gift or will or an irrevocable trust. Thus, the provisions of Section 47(iii) are found applicable in the instant case. The assessee has rightly pointed out that such loss on transfer of shares of Rs.45,80,54,000/- has not been claimed under normal computation of income, since the same has been added back under normal computation. As regards MAT computation, the AO has disallowed this loss and this issue is being dealt separately in the additional ground filed by the assessee. It is noted that the assessee has submitted share transfer certificate of shares of UML by the assessee dated 15.02.2016 and referred to copy of resolution dated 10.03.2016 by UML regarding such transfer of shares and also referred to PWC draft report dated August, 2016. These contemporaneous documents of relevant financial year point out that the action of the assessee cannot be called a pre-planned activity carried out with the purpose of tax evasion, as alleged by the AO, unless AO furnishes evidences to the contrary. Thus, it is noted that the AO has invoked the decision of Hon'ble Supreme Court in the case of CIT vs. McDowells in a general and cursory manner without proving the claims made in the assessment order with any supporting evidences, and thus the stand of the AO is based on surmises and conjectures. Further, once such a stand was taken by the AO in AY 2016-17 having a bearing / needing revisiting of findings of earlier assessment year, no further action which included pointing out such facts before the appellate authorities in A.Y. 2015-16 (before whom such proceedings were still pending) has been taken. It is noted that the decision of Hon'ble Supreme Court in the case of SA Builders referred above discussed the provisions of section 37 of the Act also in detail along with the provisions of section 36(1)(iii) of the Act.

Hon'ble Supreme Court has pointed out the following :-

> *"It has been consistently held in decisions relating to Section 37 that the expression "for the purpose of business" includes expenditure voluntarily incurred for commercial expediency, and it is immaterial if a third party also benefits thereby."*

Thus, the stand of the AO the consolidation of shareholding of a related concern by another related concern can be the business object of the ultimate beneficiary and not the assessee is not found correct as per this decision of Hon'ble Supreme Court. Therefore, the claim of the assessee that the said decision has been applied without proving the allegations of tax evasion by the AO is found correct.

Based on the above discussion, the addition made by the AO of Rs.6,24,72,099/- u/s 36(1)(iii) of the Act and alternatively u/s 37 of the Income Tax Act is not found to be correct and hence directed to be deleted. Hence Grounds of appeal No.2 & 3 are allowed."

10. At the time of hearing, ld. DR of the Revenue submitted that the interest expenses claimed by the assessee did not relate to the house property. The same cannot be allowed. In this regard, he heavily relied on the detailed finding of AO.

11. On the other hand, ld. AR of the assessee submitted that as under :-

a. No fresh unsecured loan has been taken during the year under consideration

i. Note no. 3 in audited financial at Pg. 60. Both loans are brought forward.

ii. Note no. 19 (Pg. 64) showing financial cost which was Rs. 7,26,57,354/- as against financial cost of Rs. 6,55,91,474/-.

iii. Reply of the assessee dated 28-11-2018 (Pg. 507-511) para 9 marked at Pg. 510.

iv. Assessment order for AY 2014-15 (Pg. 236-241) no disallowance of interest is made Pg. 237.

v. Assessment order AY 2015-16 (Pg. 203-212) disallowance made u/s 14A read with rule 8D of a sum of Rs. 3,81,71,231/- (Pg. 210) and addition of Rs.

17,86,740/- being difference of rate of interest. No disallowance u/s 36(1)(iii) was made.

vi. Order of CIT(A) dated 11-04-2019 (Pg. 213-231) disallowance made u/s 14A deleted in absence of any exempted income (para 4.6 at Pg. 229) and addition of Rs. 17,86,740/- on account of excess rate of interest deleted as per para 5.2 to 5.6 at Pg. 230-231 and it has been held by CIT(A) that it is undisputed fact that the money/loan whether secured or unsecured obtained by the assessee is used for business purposes at Pg. 230. Ld. CIT(A) also held that there was commercial expediency which was found to be applicable in view of decision of Hon'ble Supreme Court in the case of S.A Builders.

vii. ITAT order dated 05-09-2022 (at Pg. 232-235) in AY 2015-16 the Department did not challenge the finding of CIT(A) that the money/loans whether secured or unsecured obtained by the assessee are utilised for business purposes and expenditure of interest were governed by commercial expediency. The only agitated point was disallowance of section 14A and appeal of the Department was dismissed.

viii. No disallowance is made in the assessment order dated 31-12-2019 for AY 2017-18 u/s 36(1)(iii) or section 37 of the Act.

b. The view taken by the AO during the year under consideration is against the principles of consistency. Even when the impugned assessment order was passed on 28-12-2018 that was never relied upon either before the CIT(A) in respect of AY 2015-16 when CIT(A) passed order dated 11-04-2019, even before Hon'ble ITAT this issue was not raised when the departmental appeal in respect of AY 2015-16 was decided on 05-09-2022.

c. It has been held by Hon'ble Delhi High Court in a recent decision dated 10-07-2023 where it has been observed that commercial expediency is required to be held when the loan was first taken and assessee is not required once again to demonstrate commercial expediency in each year and reference in this regard is made to the decision in the case of N.S Software Vs PCIT at Pg. 628-631 (para 16 Pg 631). Reference in this regard is also made to the decisions in the case of S.A Builders (Pg. 242-247, para 16 & 20 at Pg. 245-246); J.K Charitable Trust (Pg. 248-253 para 8 at Pg. 250) Radhasoami Satsang (Pg. 254-261 para 14 at

Pg.260)ARJ Security Printers (Pg. 262-265 para 6 at Pg. 264)Neo Poly Pack P. Ltd. (Pg. 266-267 para 5 at Pg. 267)Dalmia Promoters Developers (Pg. 268-275 para 9 &12 at Pg. 273-274) Prem Kumar Chopra (Pg. 276-287 para 1,8 & 10 Pg. 276-277, 285-286)Reliance Utilities & Power Ltd (Pg. 288-290 para 6-10 Pg. 289-290)Reliance Industries Ltd (Pg. 291-294 para 6-7 Pg. 292). Reference to all these decisions and relevant extract therefrom has been made in the written submissions before CIT(A) at Pgs. 19-33 and reference may be made to all these submissions while adjudicating this ground.

12. Considered the rival submissions and material placed on record. We observed from the record that the assessee had continued with the loans acquired by it in the previous assessment years and the revenue had accepted the same loans in the past. In the immediate previous year, the assessee had invested in the non-current investments, the relevant interest claimed by the assessee was allowed. The above claim of the assessee was allowed by the first appellate authority and ratified by the ITAT in AY 2015-16. Further the assessee had made investment out of interest free funds available in the business.

13. The next issue raised by the AO is that the transfer of investment to the other sister concern with Nil sale consideration, whether the same be considered towards business expediency, we observed that the assessee had planned the restructuring of the group concern with the concept of holding company in order to consolidate the resources, with this purpose, it had transferred the investment of the group entities to the single entity

namely UML in order to shares of UML be listed, the entire shareholding of UML consolidated to rationalize the creation of holding company, which was planned for the better control and management of the group concern. We observed that the activities carried on by the assessee are planned within the four corners of the law and consolidation of the shareholding falls within the ambit of business expediency as held in the case of S. A Builders (supra). After considering the financial statement, nothing has changed during the year under consideration in comparison to the previous year, is only the transfer of non-current investment, which was out of own reserves and surplus and the relevant loss of transfer of such shares to the holding company as adjusted only in the reserves and surplus. The relevant reserves and surplus statement indicate that the reserves have become negative. In income tax computation also, the assessee had not claimed the above transaction as loss. Therefore, after considering the detailed findings of the Ld CIT(A), we do not see any reason to disturb the same. In the result, ground raised by the Revenue is dismissed.

14. With regard to disallowance of Rs.15,65,959 on account of housekeeping and security expenses, relevant facts are, the assessee has disputed the addition / disallowance of a sum of Rs.15,65,959/- on account of excess of housekeeping and security expenses. The submissions filed by the

assessee in this regard have been quoted above. The AO has dealt with this issue in Para- 2 to 7 of the assessment order. The AO has pointed out that there was disproportionate increase in the 'housekeeping and security expenses 'incurred by the assessee with respect to properties given on rent to related party M/s. United Machines Ltd as compared to earlier F.Y. 2014-15. The assessee submitted the relevant details before the AO and claimed that as per lease deed with the tenant M/s. United Machines Ltd, the expenses of housekeeping and security had to be borne by the lessor i.e. the assessee itself. In earlier year, the tenant had agreed to bear the expenditure till F.Y. 2014-15, but enforced the terms during the relevant F.Y. The AO asked the assessee to substantiate the claims by submitting copies of minutes of the meetings / correspondences etc. regarding the decision taken by the management to bear such expenses in this year, which the assessee failed to submit. The AO pointed out that decision making was lying with the common management and claim of the assessee that the tenant had enforced the contract this year seemed untenable. Accordingly, the AO allowed 10% upward revision on the expenses claimed by the assessee under this head in earlier F.Y. 2014-15, and thereafter disallowed the balance expenses by considering the same as disproportionate and not related to the business, as they are borne by

the assessee on behalf of related party i.e. UML and not for its own business .

15. Aggrieved assessee has raised this issue before the ld. CIT (A) and the ld. CIT (A) deleted the addition by observing as under :-

> " The assessee in its submission before NFAC (as quoted above) has pointed out that the assessee has received substantial rent receipts of Rs. 10.63 crore approx. and substantial maintenance charges of Rs. 83.14 Lakhs during the relevant F.Y. The rent received from UML was Rs. 44 Lakhs per month and maintenance charges of Rs. 2 Lakh per month were also received from UML, as per the terms of the lease deed with this concern dated 25.03.2014 which is a registered document applicable for a period of 03 years. The assessee has quoted from clause 4 of this lease deed and has stated that the tenants decided to enforce the terms in the said lease deed which provided that the security and maintenance expenses has to be borne by the lessor, and therefore refused to bear such charges themselves in the relevant FY . The assessee has claimed that substantial rent has been received from UML besides maintenance charges, and therefore it was required to provide the relevant security and housekeeping facilities as a lessor since this was its legal obligations and contractual liability as per the terms of the registered lease deed. The assessee has claimed that there was a nexus between expenditure and purpose of business and the expenses were actually incurred, incurred wholly and exclusively for the purpose of business and backed by documentary evidences and as required by the lease deed. The assessee claimed that applying estimate was not correct on the part of the AO and relied upon the decisions of Hon'ble Supreme Court and Hon'ble Delhi High Court in this regard as quoted above.
>
> i. On perusal of the relevant details, it is noted that the AO has nowhere disputed the claim that these expenditures were actually incurred, but not accepted the claims of the assessee since in the earlier year the tenant (related party) had incurred these expenses themselves. The AO has also not rebutted the claim of the assessee that the relevant clauses in the lease deed required that such maintenance and security expenses shall be borne by the lessor i.e. the assessee. In such circumstances, it cannot be said that only because the transaction is with a related party, the terms of the lease agreement duly registered and legally enforceable can be relaxed in favor of the assessee, if the same were relaxed by the tenant in the previous year by itself bearing the legal liability of the assessee . The assessee has received substantial rental income and maintenance charges from the tenant/ lessee and is under contractual obligation to provide the necessary services as can be seen

> from the terms of the deed as quoted by the assessee. Therefore the assessee has borne these expenses as a part of its contractual liability as a lessor, and has also received rental income and maintenance income as per the terms of the lease deed. The claim of the assessee that these expenses have been incurred wholly and exclusively for the purpose of business as required u/s 37 of the Act has not been rebutted with any factual evidence and hence the dis-allowance made by the AO on estimate basis after allowing only 10% upward revision to expenses of previous year is not found correct. Therefore, this addition of Rs.15,65,959/- made by the AO u/s 37 of the Act is directed to be deleted. Therefore, ground no. 4 of appeal is treated as allowed."

16. At the time of hearing, ld. DR of the Revenue relied on the detailed findings of AO.

17. On the other hand, ld. AR of the assessee submitted as under :-

a. The claim of the assessee regarding "housekeeping and security expenses" during the year under consideration is a sum of Rs. 34,04,978/- (comprising of Rs. 17,64,464/- on account of housekeeping and Rs. 16,40,514/- on account of security expenses). For the earlier year being AY 2015-16, the claim was Rs. 16,71,836/- (comprising of Rs. 9,17,438/- on account of housekeeping and Rs. 7,54,398/- on account of security expenses). The disallowance was made being disproportionate. The AO added 10% to the amount of Rs. 16,71,836/- and allowed a sum of Rs. 18,39,019/- out of Rs. 34,04,978/- and in this manner disallowance of Rs. 15,65,959/- has been made.

b. CIT(A) has granted the relief on the ground that in assessment order AO has no where disputed the claim that these expenditures were actually incurred and also has not rebutted the claimed of the assessee that according to relevant clauses of lease deed the maintenance and security expenses are to be borne by the assessee. The lease agreements are duly registered and legally enforceable. The assessee has received substantial rental income and maintenance charges from the tenants and under contractual obligations the assessee has to provide necessary services. Thus, the entire expenses were to be allowed as having been incurred

wholly and exclusively for the purpose of the business. Without rebutting the claim with any factual evidence the estimated disallowance made by the AO is incorrect and addition is deleted. This discussion is made by the CIT(A) in para 5.3 to 5.3.2 at internal Pgs. 85-87 of the order.

c. It is brought to the notice of Ld. CIT(A) that in earlier year in respect of lease to Unitech Machine Ltd. the tenant agreed to bear the expenditure till FY 2014-15 but enforced the terms during year under consideration. It was submitted that the rental receipts of the assessee are Rs. 10.63 Crores (ledger of rent receipt from Pg. 294-299) and Rs. 83.14 Lakh as maintenance charges (ledger from Pg. 300-303). Relevant vouchers of receiving rent and maintenance charges from Unitech Machines Ltd. at Pg. 305-306 and Pg. 333-334, 349-350 showing that maintenance of Rs. 2,00,000/- was being charged by the assessee apart from rent of Rs. 44,00,000/-. The accounts of the assessee are audited and no defect whatsoever has been pointed out by the AO in maintenance of books of account. Therefore, the addition is rightly deleted by Ld. CIT.

18. Considered the rival submissions and material placed on record. We observed that the AO had observed that there is substantial increase in the expenditures incurred by the assessee in comparison to the previous year. He proceeded to disallow the additional expenses after allowing the 10% upward increase. On perusal of the terms of agreement with the tenant, even though the sister concern, the assessee lessor had to bear the security and house keeping expenses. It is fact on record that the AO did not dispute the genuineness of the expenses, he objected to bearing of the above said expenses by the assessee during the year under consideration as oppose to the previous wherein the sister concern itself borne the

expenses. However, they have insisted to follow the relevant clause in agreement as per which the assessee had to bear the expenses. Considering the fact that the assessee receives substantial rent and as per the agreement, the assessee i.e., the lessor had to bear the above said expenses and the same was enforced the lessee, even though sister concern, it does not make any difference, the lessee will enforce the relevant clause. Therefore, we do not see any reason to disturb the findings of Ld CIT(A). In the result, ground raised by the Revenue is dismissed.

19. In the result, appeal filed by the Revenue is dismissed.

20. Now we take up assessee's appeal wherein following grounds of appeal are raised :-

> "1. That under the facts and circumstances of the case, Ld AO and CIT(A) have erred in law as much as in fact in disallowing carry forward of capital gain loss of Rs.2,92,89,516 claimed in the computation of income. The disallowance has been made without appreciating the facts and evidences submitted and the disallowance has been made on the grounds unsustainable in law, Therefore, is liable to be deleted.
>
> 2. That under the fact and circumstances of the case the Ld CIT(A) has failed to appreciate that the position of law in respect of transfer of capital asset is different in the Income Tax Act 1961 as compared to the general law where owner of a property is considered in different manner and also for the purpose of section 54 of the Act the registered transfer deed is not a condition precedent. The denial of carry forward of capital loss is contrary to the facts and position explained before the AO and CIT(A) and therefore is liable to be accepted and the ground raised is allowable."

21. With regard to above grounds on account of disallowance of carry forward of capital gain loss of Rs.2,92,89,5l6/-, the relevant facts are, in Additional ground of appeal no. 1, the assessee has disputed the disallowance of long term capital loss of Rs.2,92,89,516/- and carry forward thereof. On perusal of the assessment order, it is noted that this issue has been dealt with by the AO in Para-62 to 80 of the assessment order. The assessee had claimed long term capital loss on transfer of capital assets in Piyush Property No. 46 and Piyush Property No. 47, and the AO raised various queries as discussed in the assessment order. The facts of the case as highlighted by the AO have been perused. The assessee had relied upon agreement to sale in May 2009 for purchase of impugned immovable properties from Mr. Susant Chabra and Mrs. Bala Chabra. The AO has pointed out that these documents were made on non-judicial stamp paper of Rs.50 /- without any signature of witnesses. Further, these properties are claimed to be sold during the relevant F.Y. as per MOU dated 02.02.2016 by the assessee and therefore long-term capital loss has been claimed on transfer of impugned long-term capital assets during the relevant F.Y. These properties were part of Piyush Global -1 project at Faridabad being office spaces, which were never delivered to the assessee by M/s. Piyush developers till date as per the Income Tax Inspector report as discussed in the assessment order. The

AO has pointed out that it was gathered as a result of inquiry that there were various legal complaints and suits pending against the builder and that the project has not been completed and no final sale or transfer of property has taken place. The AO has pointed out that the assessee has claimed sale consideration receipt during the relevant F.Y. of Rs. 2,49,46,128/- and Rs. 2,33,59,728/- and after claiming indexed cost of acquisition, the assessee has claimed to have incurred a long-term capital loss of Rs. 2,92,89,516/- which has been claimed as carry forward in the ITR filed for the relevant A.Y. The AO has quoted from this MOU dated 02.02.2016 (on Rs.100 E-Stamp Paper) – Page-1 –

> "*However the Agreement to sell dated 1.05.2009 could not culminate into a sale deed with respect to the shop and therefore the parties have now decided to terminate/rescind the agreement dated 1.05.2009. ".*

Further, the AO has pointed out that on Page 2 of MoU, para 6, it has been stated that :-*"The parties thus, have decided to cancel the agreement to sell dated 01.05.2009 which even otherwise was never executed."*Therefore, the AO has pointed out that the claim of the assessee regarding transfer of capital assets get defeated in the light of covenants recorded in the MoU itself which itself states that the agreement to sale dated 01.05.2009 was never executed and stands cancelled. The AO also pointed out that the impugned property was never

transferred to the assessee in 2009, as it was only an agreement to sale without any registration and without any witnesses. The AO further pointed out that these transactions were non-genuine since the properties were claimed to be sold to related parties Mr. Susant Chabra and Mrs. Bala Chabra, no sale deed had been submitted, no payment has been received and land has also not been transferred. The AO noted that the buying and selling price of the investment is almost the same and loss has arisen primarily due to indexation. The AO did not accept the claim of the assessee that the agreement to sale and MOU provided by the assessee were having sufficient legal basis to treat this transaction as 'capital transfer' and that the sale consideration had been adjusted against loan taken from the purchaser. Therefore, the AO disallowed the long-term capital loss of Rs.2,92,89,516/- and did not allowed its carry forward. The submission filed by the assessee have been perused and the same have been quoted above. The assessee has claimed that the impugned properties which have been sold to Mr. Susant Chabra and Mrs. Bala Chabra were appearing in its accounts as 'advance against property 'in the balance sheet of F.Y. 2014-15 relevant to A.Y. 2015-16. The assessee has claimed that the assessee had paid these amounts as advance in F.Y. 2009-10 and that further payments had been made upto F.Y. 2011-12 against purchase of these properties, which were shown in the balance

sheet as ‘advance against property’. Therefore, the assessee had made payment towards purchase of capital assets through banks and thus acquired interest in the impugned properties. While the builder could not develop these assets, it cannot be said that the asset was not with the assessee and that the assessee did not have any right to dispose the same, after having acquired it and after paying the installments which would be adjusted at the time of final sale deed. Thus, the assessee has claimed that it was having undisputed rights in the assets and corresponding entries are duly accounted for in its books of accounts. The assessee has claimed that the buyers as per MOU dated 02.02.2016 have agreed to pay the price, and the said receivables in the name of Mrs. Bala Chabra and Mr. Susant Chabra are being shown in its accounts. Therefore, the assessee claimed that even though the property had not been transferred in the name of assessee through registered sale deed, the definition of capital asset is vast enough to cover rights of the assessee in the impugned property and further the assessee exercises right over the said assets in the capacity of owner of the said asset and relied upon certain decisions in this regard as quoted above in the assessee submission. The assessee has further relied upon certain decisions to claim that for applicability of section 54 of the Act, registration of documents is not imperative. The assessee, therefore, justify its claim of long-term capital loss. During the course of VC

hearing, the assessee highlighted the relevant entries in its books of accounts to claim that property transactions had been duly reflected in its books of accounts. The submission of the assessee have been perused but not found satisfactory. Firstly, there is no dispute that the impugned properties were not registered in the name of the assessee and the assessee did not obtain possession of the impugned properties in its own name. The agreement to sale itself was not registered as required by law and there was no witness in the said agreement to sale. On perusal of this MOU dated 02.02.2016 (page 533-534 of paper book) as submitted by the assessee, it is noted that it refers to the agreement to sale dated 24.04.2009 signed by the assessee (purchaser) through its authorized representative Mr. Verinder Kumar Chhabra from Ms Bala Chhabra (Vendor) who happens to be wife of Mr. Verinder Kumar Chhabra. It has been categorically mentioned in this MOU that this agreement to sale could not culminate into a sale deed with respect to the impugned properties and therefore the parties have decided to terminate/rescind the agreement dated 01.05.2009 on the given terms and conditions wherein the vendor i.e., Ms. Bala Chhabra will pay Rs.2,33,59,728/- for the reversal of agreement to sale dated 01.05.2009 which would include the amount of payments made by the purchaser to the vendor at the time of signing this agreement or at a later date. It has been categorically

mentioned that the parties has decided to cancel the agreement to sale dated 01.05.2009 and it has also been clearly mentioned that this agreement even otherwise was never executed. This agreement shall become null and void and not enforceable for all intents and purposes and the purchaser i.e., the assessee shall be left with no rights with respect to these impugned properties. Further , it is clear from the perusal of this MOU and other documents relied upon by the assessee itself that even in this MOU dated 02.02.2016, the assessee has been mentioned as a purchaser and not as a seller, even though the assessee has relied upon this document as a proof of transfer of capital assets by the assessee. This MOU itself negates the existence/enforceability of this agreement to sale dated 01.05.2009 by acknowledging that 'which even otherwise was never executed'. Thus, the impugned transaction with related party dated 01.05.2009 stands reversed and the assessee who is a purchaser has got refund from the vendor. In such circumstances, it cannot be said that the assessee was the owner of the impugned property at any point of time, since the impugned agreement to sale was unregistered document without any witnesses and was not a legally enforceable document which admittedly was never executed. Therefore, the case laws relied upon the assessee regarding claim of ownership of impugned property, holding rights in the impugned property and claimed that registration of document

is not imperative are not applicable in the instant case, as the facts of this case are entirely different. In our case, the purchase and possession of property by the assessee has not been established and the original vendor, who is a related party Ms. Bala Chhabra has cancelled the agreement to sale dated 01.05.2009 (which has been acknowledged to be never executed) and refunded the payments received from the assessee (purchaser). Therefore, there is no transfer of capital assets as the assessee was not having ownership or possession thereof in the first place. Further, no rights in the impugned property can arise in absence of a legally enforceable document since the agreement to sale dated 01.05.2009 was not registered, not signed by witness and never executed in the first place. Therefore, the claims made by the assessee are not found correct and accordingly, additional ground no. 1 filed by the assessee is dismissed.

22. At the time of hearing, ld. AR of the assessee submitted as under :-

a. Addition of Rs.2,92,89,516/-, this issue has been discussed by the AO from Pgs. 19-25 in para 62-80. Whereby the AO has disallowed the claim regarding carry forward of long-term capital loss of Rs.2,92,89,516/-.

b. That the long-term capital loss has been computed in respect of Unit No. 46 and Unit No. 47 in Piyush Global-1, Faridabad. Unit No. 46 was sold to Sushant Chhabra having PAN ABOPC3487A and Unit No. 47 was sold to Bala Chhabra having PAN ABAPC9580A. Unit No. 46 & 47 were being shown as "ADVANCE AGAINST PROPERTY" (pgs. 61 & 58) in the balance sheet of F.Y 2014-15 relevant to A.Y. 2015-16. Computation of long-term capital loss at Pg. 55(Rs. 1,49,43,850/- in respect of property no. 46 Rs. 1,43,45,666/- in respect of property no. 47 being total amount of Rs. 2,92,89,516/-).

c. The ledger of property no. 46 which was sold to Ms. Sushant Chhabra in the books of account of the assessee from 01-04-2009 to 31-03-2016 is placed at Pg. 527 of the paperbook. The ledger of property no. 47 which was sold to Mrs. Bala Chhabra in the books of account of the assessee from 01-04-2009 to 31-03-2016 is placed at Pg. 528 of the paperbook.

d. To support the above cost audited financials from FY 2009-10 to FY 2011-12 are enclosed at Pg. 535-570 (FY 2009-10 Pg. 540-542; FY 2010-11 Pg. 552-554 and FY 2011-12 Pg. 563-565). Reference is made to Pg. 540 where under the head "Current Assets, Loans and Advances" a sum of Rs. 4,34,50,028/- is mentioned and at Pg. 542 the details are given wherein a sum of Rs.2,88,00,000/- has been shown as "Advance against Property" which comprises of Rs.1,44,00,000/- each in respect of Sh. Sushant Chhabra and Mrs. Bala Chhabra. Thus, the property was purchased by the assessee which amount was credited to the accounts of Sh. Sushant Chhabra and Mrs. Bala Chhabra. For the rest of the period reference can be made to consolidated ledger accounts of Sh. Sushant Chhabra and Mrs. Bala Chhabra for which the reference is made to the Pgs. 527-528 which gives the date-wise details of cost in the hands of the assessee from FY 2009-10 to FY 2015-16.

e. The sale by the assessee in respect of property no. 46 which is sale to Mr. Sushant Chhabra is evidenced by MOU dated 02-03-2016 (copy placed at Pg. 529-531 of the paperbook). The sale by the assessee in respect of property no. 47 which is sale to Mrs. Bala Chhabra is evidenced by MOU dated 02-03-2016 (copy placed at Pg. 532-534 of the paperbook).

f. Reference is also made to Pg. 61 to note no. 10 of audited financials where a sum of Rs. 5,64,32,574/- is shown as receivable from Mr. Sushant Chhabra and a sum of Rs. 4,52,94,393/- is shown as receivable from Mrs. Bala Chhabra. The respective ledgers of these two persons namely Sh. Sushant Chhabra is at Pgs. 575-578 and for Mrs. Bala Chhabra is at Pgs. 571-574.

g. The adjudication by the CIT(A) of this ground is in para 5.6.2 at Pg. 89-90 of his order whereby he has dismissed the claim of the assessee.

h. The assessee is relying on the submissions made before the CIT(A) in para 27-37(pgs. 41 to 48) and also decision relied upon in the cases of CIT vs. Podar Cement P. Ltd. (at Pgs. 592-613, para 52-53 at Pg. 612); Mysore Minerals Ltd vs. CIT (at Pg. 614-621 para 14); Balraj vs CIT (at Pg.622-624, para 3 at Pg. 623) in this case it has been held that for the purpose of attracting section 54 it is not necessary that assessee should become the owner of the property; CIT vs. T.N. Arvinda Reddy (at Pg. 625-627, para 3 at Pg. 626).

In the aforementioned facts and circumstances and in law explained above, it is prayed that the ground of the assessee may be allowed."

23. On the other hand, ld. DR of the revenue submitted that the relevant documents claimed to have executed are not genuine and also the MOU signed by the parties are not notarized. Therefore, there are no sale nor

purchase of the unit no 46 and 47. He relied on the detailed finding of lower authorities.

24. Considered the rival submissions and material placed on record. We observed that the assessee had claimed long term capital loss on sale of Unit no 46 and Unit no 47 in Piyush Global – 1 Faridabad to Mr Sishant Chabra and Mrs Bala Chabra on the basis of indexed cost of acquisition and also claimed the same as carry forward loss, which was denied by the AO. We observed from the record that the assessee had executed the agreement to sell on 24.04.2009 signed by Mr. Virendra Kumar Chhabra on behalf of the assessee, who happened to be husband of Mrs Bala Chhabra. Subsequently, the above-mentioned agreement was cancelled on 01.05.2009. Further we observed that the agreement to sale does not contain any witness and also it was not registered. Further, during the year under consideration, the assessee had entered MOU dated 02.02.2016, it was mentioned in the above MOU that the agreement to sale could not culminate into a sale deed with respect to the impugned properties, accordingly decided to terminate/rescind the agreement dated 01.05.2009.

25. Further, from the record, we observed that the assessee had recorded in its books that the funds from Mrs Bala Chhabra as advance against the property in the balance sheet dated 31.03.2014. It clearly indicate that the

original agreement to sale was not acted upon by both the parties and whatever the funds received by the assessee from Mrs Bala Chhabra and other, were not related to this transaction, since the agreement to sale was not acted upon as confirmed by the MOU signed by the respective parties. Further, the transactions are between related parties without there being any proper documentations to substantiate the claim of the assessee. They may have entered into an oral agreement, without their being legally enforceable documents, the same cannot be considered as the assessee held the right over the property. Therefore, we do not see any reason to disturb the detailed findings of Ld CIT(A), we are inclined to dismiss the grounds raised by the assessee.

26. In the result, appeal filed by the assessee is dismissed.

27. Finally, both the appeals preferred by the Revenue as well as assessee are dismissed.

Order pronounced in the open court on this 29th day of January, 2025.

Sd/-	**sd/-**
(YOGESH KUMAR U.S.)	**(S.RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 29.01.2026
TS

Copy forwarded to:

1. Assessee
2. Assessee
3. CIT
4. CIT(Appeals).
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI