

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "A": HYDERABAD  
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA Nos. 1745/H/2016 and 1120, 1121 & 1663/H/2017 AY.: 2010-11, 2011-12, 2013-14 & 2014-15		
Dy. Commissioner of Income-tax, Circle - 2(1), Hyderabad.	Vs.	KSK Energy Company Pvt. Ltd., Hyderabad.  PAN - AACCK9414B
(Appellant)		(Respondent)
Revenue by:		Smt. Nivedita Biswas
Assessee by:		Shri S. Rama Rao
Date of hearing:		24/02/2021
Date of pronouncement:		30/08/2021

**ORDER**

**PER L.P. SAHU, A.M.:**

All these appeals filed by the Revenue are directed against separate orders of CIT(A) for the AYs mentioned at Cause title involving proceedings u/s 143(3) of the Income- Tax Act, 1961; in short "the Act". As identical issues are involved in these appeals, they

were clubbed and heard together and therefore a common order is passed for the sake of convenience.

2. We notice at the outset that Revenue's instant appeals in ITA No. 1745/Hyd/2016 suffers from 235 days delay, ITA No. 1120 & 1121/Hyd/2017 suffer from 23 days delay respectively in filing. To this effect, the Id. DR filed an affidavit, wherein, inter-alia, averred that due to late receipt of the authorization letter from the Office of the Pr. CIT - 2, Hyderabad was caused the impugned delay in filing of the instant appeals. Case law Collector Land Acquisition vs Mst. Katiji & Ors, 1987 AIR 1353 (SC) and University of Delhi Vs. Union of India, Civil Appeal No. 9488 & 9489/2019 dated 17 December, 2019, hold that such a delay; supported by cogent reasons, deserves to be condoned so as to make way for the cause of substantial justice. We accordingly hold that Revenue's impugned delay in filing these appeals is neither intentional nor deliberate but due to the circumstances beyond its control. The same stands condoned. Cases are now taken up for adjudication on merits.

3. As the grounds are common in all these appeals, but the financial results are different in all the above assessment years. For the sake and brevity of the case, we refer to the facts in ITA No. 1120/Hyd/2017 for AY 2011-12 and the decision taken in the said appeal shall apply mutatis-mutandis to other appeals as well. The

grounds raised by the revenue in this appeal, which are common in all the appeals under consideration, are as under:

*"1. "Whether, on the facts and circumstances of the case and in law, the CIT(A) is correct in holding that the financial charges be allowed as business expenditure even though there was no business expediency?"*

*2. "Whether, on the facts and circumstances of the case and in law, the CIT(A) is correct in deleting the addition when the Assessing Officer concluded in his assessment order that the money borrowed on which interest was paid was actually not for business purposes of the assessee?"*

*3. "Whether, on the facts and circumstances of the case and in law, the CIT(A) is correct in deleting the addition when there was absolutely no nexus between the expenditure claimed by assessee and the business of assessee?"*

*4. "Whether, on the facts and circumstances of the case and in law, the CIT(A) is correct in applying S.A. Builders case, where the facts are totally opposite and Assessing Officer clearly distinguished this case while disallowing the expenditure?"*

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

4. Brief facts as taken in AY 2011-12 are that the assessee company is engaged in the business of setting up infrastructure facilities for power plants filed its return of income for the A Y 2011-12 on 28.09.2011 claiming loss of Rs. 19,40,95,019/-. The case was taken up for scrutiny and the assessment order u/s 143(3) was passed on 21.03.2014 disallowing financial charges of Rs.19,54,03,339/- resulting in positive income of Rs.13,08,320/-.

Finally, the total income was determined at Rs Nil after adjusting the brought forward loss by the AO observing as under after considering the submissions of the assessee:

4.1 The main intention of the assessee is that investing in equity, also advances loans/ICDs ( with or without interest) to meet the particular financial requirements of the SPVs. The financial support is not only fund based but also includes non-fund based support such as bank / Corporate guarantees etc. In order to meet the financial requirements, the assessee company raised funds through issue of equity / preference shares and also through loans from banks / financial institutions as well as unsecured loans from sister concerns.

4.2 A plain reading of P&L account shows that the assessee admitted the following income under the head "other income"

<i>(i) Interest on deposits</i>	<i>Rs. 2,34,59,730</i>
<i>(ii) Dividend received</i>	<i>Rs. 1,12,620</i>
<i>(iii) Profit on sale of investment</i>	<i>Rs. 65,70,252</i>
<i>(iv) Liabilities no longer required</i>	
<i>Written back</i>	<i><u>Rs. 1,046</u></i>
	<i>Rs. 3,01,43,648</i>
	<i>=====</i>

4.3 Against which, the assessee claimed huge financial charges amounting to Rs.21,88,63,069. It is evident that interest bearing funds borrowed by the assessee were not utilized for the said

purpose and earned other income as shown in P&L a/c. In this regard, the authorized representative of assessee asked to furnish the details regarding the loans obtained from the banks that are used for the purpose of business entity and income derived from such business. In this regard, the A.R submitted a letter dt. 11.11.2013 wherein a note on business activity was given. On verification, it was noticed that the main intention of the assessee that not only earns income for services rendered but also earns income by way of dividend, capital gains, interest on deposits / ICDs etc

4.4. As could be seen from the balance sheet, the assessee made investments in equity shares at Rs. 189.28 crores and the loans advances was shown at Rs.187.70 crores. Thus, it is clear that the funds borrowed from bank were utilized for the purpose of investment in equity shares and interest free loans and advances. As held in the case of CIT Vs Amritaben R.Shah (Bom) 238 ITR 777, the interest paid on borrowed capital for purchase of shares is not allowable. Thus, it is clear that the assessee invested the monies borrowed from banks to earn exempt income by investing in equity shares. However, the A.R submitted that the interest was earned on the deposits pledged for business purpose hence if the financial charges are disallowed the interest income earned on deposits may be set off given. Accordingly, the financial charges debited to P&L a/c

were not allowable and it was proposed to disallow the same from the loss returned.

5. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A) and contended inter-alia, that in the immediately preceding AY 2010-11, the CIT(A) allowed assessee's claim and in AY 2012-13, the AO also allowed the assessee's claim. Complete submissions of the Assessee, were extracted by the CIT(A) at pages 4 to 11.

6. After considering the submissions of the assessee, the CIT(A) deleted the disallowance of Rs. 19,54,03,339/- claimed by the assessee on account of financial charges including interest expenditure, by observing as under:

*"5.2. I have gone through the AO's observations and AR's contentions. It is seen that the AO has disallowed financial charges including the interest expenditure of RS.19,54,03,339/- claimed by the assessee u/s.37(1) of the Act stating that the loan funds are utilized for the purpose of investment in equity shares, Interest free loans and advances and not for the purpose of assessee's business. It is seen from the facts that the assessee company is formed with objective of developing /supporting power projects in India. It also undertakes a variety of development activities such as feasibility studies, fuel assessment, tie-up and monitoring etc. and in turn enjoys development fees. The assessee also invests in equity, advances loans with or without interest, to meet the particular financial requirements of the Special Purpose Vehicles (SPV). It earns income for services*

*rendered but also earns income by way of dividend, interest on deposits etc. The assessee has filed the details of such income earned right from AY.2008-09 to AY 2015-16. The income earned was mainly management consultancy fees and interest income for these years ranging from Rs.1.22 crore (AY 2008-09) to Rs.49.35 crore (AY.201516), which were admitted as business income. However, the assessee did not earn any 'Management consultancy fees' for the A.Y.2010-11 and AY 2011-12 out of the above 8 years. The non-earning of this income prompted the AO to disallow interest expenditure of Rs.15.33 crore for A.Y.2010-11 on the ground that this interest expenditure was not incurred for the assessee's business purpose and that no business income was earned during the year. The assessee appealed before the CIT(A) who has allowed assessee's plea for that AY 2010-11 after elaborate discussion on the issue involved.*

*5.3. It could be further seen that the AO proposed to disallow interest expenditure of Rs.50.94 crore for the A.Y.2012-13 during the course of scrutiny proceedings. After thoroughly considering the facts of the case and the business model of the assessee, allowed it as a deduction as claimed without making any disallowance. However in this AY.2012-13, the assessee earned 'Management consultancy fee' of Rs.28 crore and interest income of Rs.6.56 crore. Just as in the case of AY.2010-11, the assessee did not earn any 'Management fee' for the year under appeal i.e., A.Y.2011-12 also. The fact of accepting assessee's explanation for the A.Y.2012-13 and not accepting its explanation for AY 2010-11 and also for relevant AY 2011-12 clearly shows that the sole reason for non-acceptance seems to be nonearning of 'Management fee' for these assessment years.*

*5.4. As it can be seen from the facts for the year under appeal i.e., A.Y 2011-12, the assessee did not earn any management consultancy fees but earned interest income of Rs.2.34 crore and admitted it as business income. According to the AD, the assessee has not shown any business income and that interest income of*

*Rs.2.34 crore was shown under 'other sources.' The AD was of the view that the borrowed funds are utilised for purchase of shares and not for the purpose of business and applying the case of Amritaben's case (supra), observed that interest paid on 'borrowed capital' for purchase of shares is not allowable and therefore disallowed the entire interest expenditure of Rs.19,54,03,339/-. The assessee has clarified that firstly that in the facts of the case, interest income earned is also business income and therefore such income admitted for the relevant year was Rs.2.34 crore. The assessee explained for not earning any 'Management consultancy fee' during the relevant year that such 'Management consultancy fees' depends on actual power generation supported and achieved and therefore there could be lead lag between the incurrance of expenditure, provision of services and revenue realisation against such services. And that out of 8 years, only in 2 years such lead lag happened and that relates to A.Y.2009-10 ( Management consultancy fee earned Rs.1.21 crore), the Management consultancy fees earned for AY 2012-13 went upto Rs.28 crore. As far as the reference to Amritaben's case is concerned, the assessee contends that the assessee did not claim the deduction u/s 57(iii) of the Act but claimed it u/s 37(1) of the Act and therefore the ratio laid down in Amritaben's case does not apply to its case. As far as the AD's reasoning that since no income was earned, the corresponding expenditure cannot be allowed as a deduction is concerned. In this regard, I find there is force in AR's argument that law does not stipulate that the expenditure incurred should result in some income. It is held in the case of Rajendra Prasad Moodys case (supra), that earning of income is not a precondition to decide the allowability of expenditure incurred either u/s 57(iii) or u/s 37(1) of the Act. Therefore, I am of the considered view that not earning income from managerial services for a particular year such as this, cannot render the related expenditure disallowable u/s 37(1) of the Act.*



5.5. *It is clear from the above that the ratio laid down by the Hon'ble Apex court in SA Builder's case (supra) clearly applies to the facts of the assessee's case, in which case, there is no case for any disallowance of interest expenditure.*

5.6. *Further, it is relevant to mention here that my predecessor allowed the assessee's appeal for AY.2010-11 on the same issue and deleted the addition of interest expenditure of Rs.15.33 crore brought to tax by the AO. After having gone through the same, I am in agreement with my predecessor's finding for the A.Y 2010-11 which is extracted as under.*

*"5.3. It was held by the Supreme Court in the case of SA Builders (supra) that a loan extended without being under a legal obligation to do so cannot always be seen as a diversion of business funds or application of borrowed funds for non-business purposes. If such outflows can be explained in terms of commercial expediency, they have to be seen as admissible business expenditure. In addition to the decision of the Supreme Court in the case of Rajendra Prasad Moody (supra) that earning of income is not a precondition to decide the allowability of expenditure incurred U/S 57(iii) or 37(1), the above cited decision in the case of SA Builders settles the matter in assessee's favour. The assessee-company has explained these investments with reference to objectives of securing managing control and with reference to a business model of investing in SPVs. It is not the case of the Assessing Officer that these loans were extended to the Directors for their individual assets or any such comparable deployment. In fact it is seen from Schedule-6 to the Balance Sheet as at 31.3.2010 that the new/incremental investments for the year are in the equity/preference shares of KSK Mineral Resources Pvt. Ltd., KSK Investment Advisor Pvt. Ltd., KSK Cargo Movers Pvt. Ltd. and SN Nirman Infra Projects Pvt. Ltd. All the above companies are shown in the Balance Sheet to be subsidiaries*

*of the assessee-company. There is nothing in the record to suggest that investment in these subsidiaries is not calculated to sub serve the larger commercial Interests of the ass esse-company. In the circumstances, the addition of Rs.15,33,30,839/- is not well founded. The assessing officer is, therefore, directed to delete the same. Ground no.1 is allowed, and ground no.2 being general in nature does not call for adjudication. "*

*5.7. As the issue involved is similar, the ratio laid down by the Hon'ble Supreme Court in the case of SA Builders (2007) 288 ITR 0001 (SC), is squarely applicable to the facts of the assessee's case. Therefore, I am of the considered view that the expenditure incurred including interest expenditure of Rs.19.54 crore was laid out wholly and exclusively for the purpose of business u/s 37(1) of the Act, considering the business model of the assessee. Accordingly, the action of the AO in making the disallowance of Rs.19,54,03,339/- is hereby deleted. As a result, the grounds raised are allowed."*

7. Aggrieved by the order of CIT(A), the revenue is in appeal before the ITAT.

8. Before us, the ld. DR relied on the order of the Assessing Officer and filed written submissions in support of revenue's case, which are as under:

*"1. As admitted in the return of income, the appellant is into manufacturing industry (Power & Energy) (Code 0114) and is not an investment company. The issue in appeal is on disallowance of interest on borrowed funds utilized for investment in subsidiaries to the tune of about Rs 15 Cr (including a minor portion of*

*interest paid on pledged FDs). It is submitted that the claim of the appellant that the investments are part of its business to protect its interests is not maintainable in light of the decision of the Hon'ble Supreme Court in the case of Max opp Investment Ltd [2018] 91 taxmann.com 154 {sq. In the said case at para 34 of the decision, the Supreme Court held that "We are of the opinion that the dominant purpose for which the investment into shares is made by an assessee may not be relevant. No doubt, the assessee like Maxopp Investment Limited may have made the investment in order to gain control of the investee company. However, that does not appear to be a relevant factor in determining the issue at hand. Fact remains that such dividend income is non-taxable. In this scenario, if expenditure is incurred on earning the dividend income, that much of the expenditure which is attributable to the dividend income has to be disallowed and cannot be treated as business expenditure". Therefore, it is submitted that disallowance is called for even in cases where investments are made to maintain dominant interest or for protection of interest.*

*2. It is humbly submitted that the appellant obtained working capital loan of about Rs 100.9 Cr from Bank of India, Mumbai and short term loan of about Rs 76.67 Cr from India Infoline Investment Services Ltd. The appellant also availed unsecured loans to the extent of about Rs 7.29 Cr from Bank of India and UCO Bank. The said loans **were not utilized for making investments** and advances to Group Concerns. In F.Y: 2009-10, the investments were to the tune of Rs 256.25 Cr as compared to Rs 128.59 Cr in F.Y: 2008-09. The funds for making the investments were clearly drawn from the loans taken from banks and financial institutions on which substantial interest is paid.*

*3. It is also submitted that during the year, the appellant incurred a long term capital loss of about Rs 2.35 Cr on sale of investments in Kasargod Power Corporation Ltd and RVK Energy Pvt Ltd. Also, the appellant earned dividend income of Rs 1,96,722. Therefore, there is a clear nexus between exempt loss/income and the*

*interest paid on borrowed funds. Advances to Group Concerns and Advances for investments are also about Rs 30.07 Cr and 32.75 Cr respectively. The interest paid on borrowed funds deployed for the advances is not allowable u/s 36(1)(iii) or 37 because the borrowed funds are not utilized for the business of the appellant. Therefore, both on borrowed funds utilized for exempt investments as well as advances to group concerns and investments, the interest paid has to be disallowed. In light of the above, it is humbly submitted that the disallowance may kindly be sustained by the Hon'ble ITAT."*

7.1. In addition to the above written submissions, besides relying on the order of the AO, vehemently contended during the course of hearing that the CIT(A) has erred in law and on facts in deleting the impugned disallowance u/s.36(1) (iii) since the assessee was failed to prove the element of commercial expediency qua the interest bearing fund utilized for its sister concern and others . He further submitted that the assessee has no any Fixed Assets in the assessment year 2013-14 & 2014-15 but how the assessee can earn crores of Income from consultancy services from its subsidiary and others , the Salary payment is also less than Rs. 16.00 Lakhs. What types are consultancy services was rendered by the assessee, it is also a matter of question. He contended that the assessee also could not justify the commercial expediency as argued by the AR and it has just invested the borrowed funds for non-business purposes.

8. The Id. AR, on the other hand, relied on the order of CIT(A) and reiterated the submissions made before the CIT(A). Further, he

submitted that the appellant-company was formed with the objective of developing/supporting the development of power projects throughout India. The appellant-company provides Management Consultancy and undertakes a variety of development activities including undertaking necessary feasibility studies, fuel assessment, tie-up and monitoring, logistic support and various services required by the power plants and in turn enjoys development fees in line with actual power generation supported and achieved. A lead lag could exist between incurrence of expenditure, providing the necessary service and revenue realisation against such services. Also, exploiting the business opportunity provided by the government policy of encouraging the Special Purpose Vehicle (SPV) route particularly in the power sector, the appellant-company invests in the SPVs which construct and operate infrastructure facilities that support power generation.

8.1 The Ld. AR submitted that the appellant-company apart from investing in equity, also advances loans/ICDs to meet the particular financial requirements of SPVs. In order to meet the financial requirements of SPVs, the appellant-company raises funds through issue of equity/preference shares and also through loans from banks/financial institutions as well as unsecured loans from sister concerns. The banks after considering the business model and the financial viability of the company, advances the required funds.' The

appellant company not only earns such income for services rendered but also earns income by way of dividend, capital gains, interest on deposits/ICDs etc. The Ld. AR furnished the details of Management Consultancy Fees earned from AY 2008-09 to 2015-16 and stated that the Management Consultancy Fee is earned. and accrued upon achieving certain agreed performance parameters and milestones by the appellant-company for the services it is engaged by the power companies. It was submitted that no such income is earned when such an achievement is not complete as it happened with the appellant for AYs 2010-11 and 2011-12. The Ld. AR contended that not fulfilling agreed milestones and not earning resultant income in one period from one source under the head 'Profits and gains from. Business or Profession' does not render the entire expenditure disallowable.

8.2 Dealing with the question whether expenditure can be allowed in a case where no income was earned under the relevant head of income, the Ld. AR relied on the decision of the Hon'ble Apex Court in the case of CIT vs Rajendra Prasad Moody (1978) 115 ITR 519(SC). He contended that from the rule laid down by the Hon'ble Supreme Court in the above case it is clear that earning of income is not a precondition to decide the allowability of expenditure incurred either u/s 57(iii) or u/s 37(1) and accordingly, he pleaded that non-earning of income from managerial services should not render the related expenditure disallowable u/s 37(1).

8.3 It was submitted that the interest income earned has been claimed by the appellant under the head 'Profit and gains of business or profession', keeping in view, the business model of the appellant-company i.e., apart from investing in equity, the appellant also advances loans/ICDs to meet the particular financial needs of the SPVs as the business interests of the SPVs is eminently the business interest of the appellant. While dealing with the issue of allowability of interest on borrowed funds which were advanced to sister concerns free of interest, the Ld.AR relied on the decision of Hon'ble Apex Court in the case of SA Builders (2007) 288 ITR 1(SC) where it was held that for the allowability of interest, what is relevant is whether the interest-free loan given to the sister concern is on account of commercial expediency. The AR of the appellant contended that in view of the rule laid down by the Apex Court, the expenditure incurred by the appellant deserves to be treated as expenditure laid out wholly and exclusively for the purpose of business u/s 37(1).

8.4 The Ld.AR submitted that for AY 2012-13, similar interest expenditure to the tune of RS.50.94 crores was claimed as a debit in the Profit and Loss account which was accepted by the Assessing Officer and he did not resort to disallowance of interest in the assessment order u/s 143(3) dt.27-3-2015.

9. In the re-joinder, the ld. DR submitted that the case law relied by the AR is not applicable to the case of the assessee because the facts are different in those case laws. He therefore, contended that the disallowances deleted by the CIT(A) without examining the cases in depth with case law relied by the AR of the assessee with the present facts in the impugned assessment years is unjustified and he requested that matter may be sent back to AO for further depth examination.

10. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. The facts of the case and submissions of the appellant have been carefully considered. The Assessing Officer proceeded on the premise that the purchase of investment in shares and giving advances could not have been in the line of its business because there was no income relatable thereto and secondly, because of the assessee's submissions that the primary objective of such investment is for management control in subsidiaries. We also observe that the assessee company is a subsidiary of KSK Energy Ltd., ST James Court, Suit 308, St. Denis Street, Port Lo, Republic of Mauritius and 100% shares of the assessee company held by its holding company. We observe from the income-tax returns filed by the assessee in the holding status, it has quoted Code No. 04. The main objects of the company has been set out in the Memorandum of Association, which are as under:



*“1. To generate, harness, develop, accumulate, distribute and supply electricity by setting up power plants either by hydro, thermal, gas, and diesel oil or through renewable energy sources such as solar. photovoltaic, windmill, biomass and or other means by use of liquid gaseous or solid fuels for the purpose of light, heat, motive, power and for all other purposes for which electrical energy can be employed and transmit, distribute, supply and sell such power either directly or through transmission lines or facilities of central/state governments or any other licensee, other consumers of electricity including for captive consumption for any industrial projects, joint venture companies or otherwise and generally to develop, generate accumulate power at any other place or places and to transmit, distribute, sell and supply such power.*

*2. To construct, establish, operate, manage power station, boiler houses, steam turbine. switch yard, sub-station. transmission lines, accumulators, workshops, and all such works necessary for generating, accumulating. distributing and supply of electricity. To construct. lay down. establish, fix, erect equipment and maintain power generating machinery, and all other type of plant and machinery, electric equipment and cables, computer and control equipment, transmission lines, accumulators, fittings and apparatus in the capacity of principals, constructors or otherwise.*

*3, To establish captive power plants on stand alone or co-operative basis for an individual identity or a group of industrial and other consumers and supply power to the participants in the co-operative effort either directly or through the transmission lines of Electricity Boards or any other authorities by entering into appropriate arrangements.*

*4. To purchase. lease acquire, sublease. act as agents, sell, license any mine. mining •. rights. mines and lands in India or elsewhere*

*believed to contain coal and lignite and to prospect, explore, excavate, open and work mines, drill and sink shafts or wells in connection with carrying on the business of the company.”*

10.1 In all these years under consideration, there is only one issue involved regarding disallowance of interest. The AO observed that the assessee has utilized the borrowed funds other than the purpose for which it was taken. Considering the arguments from both the sides, we observe from the financial statements of the assessee that it has given loans and advances and invested in shares of the related parties and to others from its own funds as well as from the borrowed funds. From the entire arguments of the Id. AR of the assessee, we find that it was unable to quantify the amount of borrowed funds which have been utilized for other than the business purposes of the assessee. Further, the Id. AR could not controvert the submissions/observations of the Id. DR in regard to both the issues i.e. commercial expediency and to meet the particular financial requirements of SPVs. Further, he was also unable to controvert the regarding revenue receipts, which are extraordinary receipts compared to the expenditure incurred by the assessee. The AR of the assessee has been relied on the judgment of the Hon'ble Supreme Court in the case of S.A. Builders quoted supra for “commercial expediency” for the sake of convenience, we reproduce the judgement, which is as under :

*4. During the course of the proceeding, for the relevant assessment*

*year(s), the Assessing Officer under the Income-tax Act observed that the assessee had transferred a huge amount of Rs. 82 lakhs to its subsidiary company M/s. SAB Credits Limited out of the cash credit account of the assessee in which there was a huge debit balance. He, therefore, held that since the assessee had diverted its borrowed funds to a sister concern without charging any interest, proportionate interest relating to the said amount out of the total interest paid to the bank deserved to be disallowed. Accordingly, he disallowed a sum of Rs. 5,66,729.*

*5. The assessee preferred an appeal to the Commissioner of Income-tax (Appeals) Chandigarh [for short hereinafter referred to as the CIT(A)], who vide his order dated 15-4-1993 partially accepted the claim of the assessee. According to the CIT(A), out of the total amount of Rs. 82 lakhs advanced by the assessee in the relevant assessment year to M/s. SAB Credit Limited, only a sum of Rs. 18 lakhs had a clear nexus with the borrowed funds, as the balance amount had been paid out of the receipts from other parties to whom no interest had been paid. Accordingly, the CIT(A) directed the Assessing Officer to calculate disallowance of interest only relating to the sum of Rs. 18 lakhs, and the disallowance was reduced accordingly.*

*6. Both the assessee as well as the revenue filed appeals before the Income-tax Appellate Tribunal (hereinafter referred to as the 'Tribunal'). The Tribunal by its order dated 20-6-2002 allowed the appeal of the revenue, and held that the entire amount of Rs. 82 lakhs had been advanced by the assessee by utilizing the overdraft account, and hence it was of the view that disallowance made by the Assessing Officer was justified. Accordingly, the appeal filed by the revenue was allowed and the appeal filed by the assessee was dismissed.*

*7. Against the order of the Tribunal, the assessee filed appeals in the High Court which were dismissed by the impugned judgment.*

*8. In the assessment year 1991-92, the Assessing Officer noticed that in addition to the sum of Rs. 82 lakhs advanced in the assessment year 1990-91, a further sum of Rs. 37,85,000 had been advanced to M/s. SAB Credits Ltd. which also had a clear nexus with the amounts borrowed by the assessee on payment of interest. Accordingly, the Assessing Officer*

*disallowed proportionate interest relatable to these amounts amounting to Rs. 20,08,836.*

**9.** *On appeal by the assessee, the CIT(A) upheld the finding of the Assessing Officer that the sum of Rs. 37,85,000 advanced during assessment year 1990-91, was relatable to the borrowed funds. However, in view of the findings of her predecessor in assessment year 1990-91, that out of Rs. 82 lakhs advanced during that year, advance of Rs. 64 lakhs had no nexus with the borrowed funds, she reduced the disallowance from Rs. 20,08,836 to Rs. 10,03,538 vide her order dated 28-7-1994. The assessee was granted further relief of Rs. 1,48,464 by the CIT(A) vide order dated 6-9-1995 under section 154 of the Act. On the cross-appeals filed by the assessee as well as the revenue, the Tribunal following its order for assessment year 1990-91, upheld the disallowance as made by the Assessing Officer. Accordingly, the appeal of the revenue on this issue was allowed and that of the assessee dismissed.*

**10.** *Against this decision also, the assessee filed an appeal before the High Court.*

**11.** *In the impugned judgment dated 13-5-2004, the High Court held that the Tribunal had recorded a categorical finding of fact that the amount advanced by the assessee to M/s. SAB Credits Limited by utilizing the overdraft account and that on the date on which the amount was advanced there was no credit balance in the bank account of the assessee. The Tribunal further observed that the assessee has not been able to explain the purpose for which the amount had been advanced to its sister concern without charging any interest and there was no material on record to show that the assessee had derived any business benefit by advancing the interest free amounts to its sister concern.*

**12.** *The High Court held that since it stands established that the amount of Rs. 82 lakhs and Rs. 37.85 lakhs had been advanced by the assessee to its sister concern from out of the overdraft account with the bank in which there was already a debit balance, the order of the Tribunal does not suffer from any factual or legal infirmity. Accordingly, the High Court dismissed the appeal.*

**13.** *Learned counsel for the appellant-assessee submitted that the High*

*Court has erred in failing to consider the fact that the appellant had made the advances to its sister concern by withdrawals from its bank accounts in which there was sufficient credit balance as the appellant had received payments from its clients. It is an admitted fact that the appellant had received these payments from its clients and had deposited these in the account out of which advances were subsequently made to the sister concern. These deposits/payments/advances of Rs. 82 lakhs as and when received and made by the appellant to its sister concern, namely, SAB Credits Ltd. in the assessment year 1990-91 are reproduced hereunder in a tabular form :*

<i>Date</i>	<i>Ch. No.</i>	<i>Amount</i>	<i>Name of Bank</i>	<i>Course of funds</i>
16-9-1989	683366	24.00 lakhs	State Bank of Patiala, CC Account	Amount received from R.C.I., Hyderabad, a client
25-9-1989	684404	18.00 lakhs	-do-	From cash credit account (Debit balance account)
27-12-1989	676546	20.00 lakhs	-do-	From Indian Acrylics Ltd., a client
12-1-1990	476582	20.00 lakhs	-do-	-do-
		Rs. 82.00 lakhs		

**14.** *Learned counsel for the appellant submitted that a perusal of the above tabular statement makes it apparent that such payments as claimed were in fact received and deposited. Thus, there is no direct nexus between the amount borrowed by the appellant-assessee from the bank and the loans advanced by the appellant-assessee to its sister concern, as no amount was so advanced by raising an interest bearing loan.*

**15.** *Learned counsel submitted that the High Court has erred in not considering the categorical finding of the CIT(A) in this regard. He further stated that the CIT(A) in its order dated 15-4-1993 had given a clear finding of fact that except a sum of Rs. 18 lacs there was no clear nexus between the amount received on interest and the interest free advance made to M/s. SAB Credits Limited. He further stated that the amount of Rs. 24 lacs, 20 lakhs and 20 lakhs respectively, were not paid out of the cash credit account but were paid out of the receipts from other parties to whom no interest had been paid. The amount of Rs. 18 lakhs was paid out*

*of the cash credit account because there was a debit balance of Rs. 18 lakhs on that date and, therefore, a clear nexus is proved in respect of the amount of Rs. 18 lakhs in the interest bearing loans and interest free advances. On this view, the CIT(A) held that the Assessing Officer should have only disallowed interest relatable to Rs. 18 lakhs and not the entire amount of Rs. 82 lakhs.*

**16.** *Learned counsel for the appellant submitted that even this disallowance of Rs. 18 lakhs by the CIT(A) was erroneous and the entire sum of Rs. 82 lakhs should have been allowed.*

**17.** *In paragraph 35-41 of its order the Tribunal has considered in detail the question of allowability of the interest amount on the borrowed funds. The Tribunal was of the view that the assessee had given an advance of Rs. 82 lakhs to its sister concern without charging any interest. The Tribunal further observed that there was no "material on record to show that the assessee derived any business advantage by advancing an interest free amount of Rs. 82 lakhs to its sister concern. It referred to several decisions in support of the view which it took.*

**18.** *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.*

**19.** *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.*

**20.** *In Madhav Prasad Jatia v. CIT 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.*

**21.** *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.*

**22.** *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.*

**23.** *Thus in Atherton v. British Insulated & Helsby Cables Ltd. [1925] 10 TC 155, 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. v. CIT [1951] 20 ITR 1, CIT v. Chandulal Keshavlal & Co. [1960] 38 ITR 601 etc.*

**24.** *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.*

**25.** *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.*

**26.** *No doubt as held in Madhav Prasad Jatia's case (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 Jatia'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.*

**27.** *Thus, the ratio of Madhav Prasad Jatia'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.*

**28.** *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.*

**29.** *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 v. Malayalam Plantations Ltd. [\[1964\] 53 ITR 140](#), CIT v. Birla Cotton Spg. & Wvg. Mills Ltd. [\[1971\] 82 ITR 166](#) etc.*

**30.** *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.*

**31.** *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 to its 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.*

**32.** *Learned counsel for the Revenue relied on a Bombay High Court decision in Phaltan Sugar Works Ltd. v. CWT [\[1994\] 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.'s case (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.*

**33.** *Similarly, the view taken by the Bombay High Court in Phaltan Sugar Works Ltd. v. CIT [1995] 215 ITR 585 also does not appear to be correct.*

**34.** *We agree with the view taken by the Delhi High Court in CIT v. Dalmia Cement (Bharat) 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.*

**35.** *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.*

It is clear from the above judgement that the interest free loans/advances was given to its sister concern only out of debit balance from over draft account as per para no. 12. Further, we find that in the said judgement at para No. 13, the entire interest free loan was not given from the interest bearing account. Whereas, in the case on hand, the assessee has given interest free loans/advances from interest bearing account which was not a debit balance i.e. loan funds have been utilized for advancing to its subsidiary, fellow subsidiary ultimate holding co. and to others. Therefore, facts of the case of the said judgement do not apply to the facts of the case under consideration. In regard to commercial expediency, we find that as per para 35 of the said judgment, the assessee should have deep interest in its subsidiary company, whereas, in the case under consideration, such deep interest in its subsidiary company has not been established by the assessee before us. Further, in this connection, we rely on the decision of the coordinate bench in the case of Mangalam Publications (India) (P.) Ltd., **[2020]** 116 taxmann.com 731 (Cochin – Trib), has held as under:

*“6. We have heard the rival submissions and perused the record. In the present case, the assessee had advanced funds to the sister concerns to the tune of Rs. 1,25,22,538/-. At the same time, the assessee incurred bank interest charges at Rs.71,54,557/-. The Assessing Officer computed the proportionate interest on the*

*amount advance to the sister concerns at Rs. 11,48,683/- and disallowed the same. Though the issue was decided by the Tribunal in favour of the assessee on earlier occasion, the issue travelled to the High Court and the High Court remitted the issue back to the file of the Assessing Officer in CIT v. Mangalam Publications India (P) Ltd. [2010] 190 taxmann.com 38 (Ker.) dated with the following observation:*

*"2. Even though the Tribunal has followed the decision of the Supreme Court in S.A. BUILDERS LTD. v. COMMISSIONER OF INCOME-TAX, APPEALS & ANOTHER [2007] 288 ITR 1) we notice that the Tribunal has just accepted arguments without referring to the facts. In the first place, the assumption of the Tribunal is that the advances were made out of own funds because assessee had a huge profit. However, we notice that the interest-free advances made every year is Rs. 2 crores when the assessee had substantial borrowings. The argument of the assessee is logically unacceptable because if assessee had huge profits and own funds, we do not know why the assessee should depend on borrowed funds. In any case if at a given point of time assessee has own funds and they have advanced it as interest-free loans to sister concerns for meeting their business needs in which assessee also has an interest, then such advances should not lead to disallowance of interest paid on subsequent borrowings. In other words, unless the assessee establishes with cash flow statements about availability of its own funds at the time of making the interest-free advances, the finding of the Tribunal cannot stand. Besides this, going by the decision of the Supreme Court, unless the assessee establishes the benefit it derives from each sister concern to which loans were advanced and the financial plight of such business concerns deserving interest-free advances, we do not know how the test of business expediency is satisfied. The Tribunal has just accepted the argument of the assessee that the sister concerns were in financial difficulties and the cheques issued by them could be honoured only with the interest-free advances made by the assessee. We have to*

*necessarily accept the argument of the Standing Counsel that the Tribunal has decided the case without verifying facts available on record and by assuming arguments as true facts. The settled law is that interest on borrowed funds can be allowed under section 36(1) (iii) of the Income-tax Act only if it is for business purposes. Admittedly the funds borrowed were not used directly for the business of the assessee and the only question is whether interest-free advances made to sister concerns is also a business purpose. The Supreme Court has held that if loan is justified by applying the principle of commercial expediency, then claim can be allowed. We are of the view that it is for the assessee to establish the interest it has in the sister concern, the business carried on by it, the financial position of the sister concern and the interest derived by the assessee to prove commercial expediency for justifying interest-free advances made from out of borrowed funds. We notice that the decision of the Supreme Court relied on by the Tribunal also was not available when the assessment was made. We, therefore, allow the appeals vacating the orders of the Tribunal and by remanding the cases to the Assessing Officer for the assessee to produce cash flow statements showing availability of own funds for advances made to sister concerns, constitution, assessee's interest, etc., in the sister concerns and the documents showing nature of assessee's business interest and financial position of such business concerns at the time of making the advances for the officer to consider eligibility for deduction of interest on borrowed capital. In order to avoid further contest, we direct the Assessing Officer to examine the details furnished by the assessee, issue a written pre-assessment notice containing proposals for disallowance of interest, if any, and the reasons thereof so that the assessee gets an opportunity to file written objection and that ~ the assessment completed after giving sufficient opportunity to the assessee."*

*6.1 In the course of passing consequential order by the lower authorities, the assessee has not led any evidence to show the commercial expediency to advance funds to the sister concerns. In*

*addition to this, the assessee failed to file the cash flow statement to show that own funds were advanced to the sister concerns. Hence, the issue was decided against the assessee by the lower authorities. Though the assessee made an oral plea that the money had been advanced to the sister concerns on account of commercial expediency, the assessee failed to place any evidence to suggest whether funds advanced by the assessee to the sister concerns was in the nature of interest free own funds or the funds were advanced on account of commercial expediency. The interest paid by the assessee on such account cannot be allowed. The only plea of the assessee is that the assessee had mortgaged its property to avail bank loans for the sister concerns and if the sister concerns failed in their business, it will effect the profitability of the assessee. However, the assessee has not produced an iota of evidence to prove that it has mortgaged its property, and on its classification of funds as NPA, it would affect the assessee's profitability. Being so, we are not in a position to uphold the argument of the Ld. AR on this issue. Further, the judgment of the Supreme Court relied on by the Ld. AR in the case of Munjal Sales Corpn. (supra) cannot be applied to the facts of the assessee's case. In that case, the issue was with regard to allowability of interest u/s. 36(1 ) (iii) subject to provisions of section 40(b )(iv) of the I. 1. Act. Hence, this ground of appeal of the assessee is rejected."*

10.2 We observe from the financial statements that the assessee company itself is a subsidiary company and it has given advances to its subsidiaries, fellow subsidiaries, ultimate holding company and to others and invested in shares also. The AR of the assessee was unable to establish the use of the funds for business purposes as per the decision relied on by the Ld. AR of the assessee. He also unable to establish the commercial expediency as observed supra, in all the

years the assessee has not received any dividend or interest income and has not produced any agreements between / amongst the companies to whom the loans and advances were made and what was the purpose for giving loans and advances. The assessee failed to produce documentary evidences, the end use of funds invested in subsidiary, fellow subsidiary, ultimate holding company and to others. We also do not find any weightage on the submission of the ld. AR of the assessee that assessee had sufficient own funds for giving loans and advances and invested in shares and further, could not produce the availability of own funds on the date investments in shares and giving loans and advances on the particular date of investments . The contention of the assessee stated supra at “para no. 8” is also not acceptable in regard to “commercial expediency” that the money was given to SPVS for their business purpose and assessee company is receiving consultancy charges from various services rendered without holding any fixed assets, instruments, intellectual property and man power as claimed by the assessee. Further, on considering the submissions of the ld. DR, in regard to the financial statements of the assessee, we observe from the revenue account that the assessee has received crores of rupees income from consultancy services whereas the corresponding expenditures like professional service expenditures and/or salary paid is very low and there is no any building appearing in the balance sheet as well as no rental expenses debited into the P&L Account to establish that wherefrom

the assessee is operating its business operations and no fixed assets are appearing in the balance sheet for the AY 2013-14 & 2014-15. All these factors cannot be brushed aside. We further observe that the assessee has shown capital work in progress(including capital advances) of Rs. 25,11,50,000/- and Rs. 25,50,00,000/- in AY 2010-11 & 2011-12 respectively, but, subsequently, no fixed assets were materialized, which is clear from the following financial statements:

Description	31 <sup>st</sup> March 2011	31 <sup>st</sup> March 2010
Sources of funds		
Shareholder's funds		
Share capital	516,689,940	500,000,000
Share application money	2,843,521,450	535,920
Reserves and surplus	1,087,802,986	979,318,376
Loan funds:		
Secured loans	1,248,326,593	1,84,661,310
Deferred tax liability	35,012	26,763
	<u>5,659,375,981</u>	<u>3,328,542,369</u>
Application of funds:		
Fixed Assets:		
Gross Block	855,337	855,337
Less: Depreciation	<u>183,440</u>	<u>102,579</u>
Net Block	671,897	752,758
Capital work in progress (including capital advances)	255,000,000	251,150,000
	<u>255,671,897</u>	<u>251,902,758</u>
Investments	1,892,896,949	2,562,552,301
Current Assets, loans and advances:		
Cash and bank balances	1,229,581,791	69,099,181
Other current assets	25,568,330	2,134,638
Loans and advances	<u>1,877,003,467</u>	<u>700,200,296</u>
Less: Current liabilities and		

provisions		
Current Liabilities	475,008,273	458,757,840
Net current assets	2,657,145,315	312,676,275
Profit & loss account	890,661,820	201,411,035
	5,696,375,981	3,328,542,369

## Schedules to the profit &amp; loss account

Description	31 <sup>st</sup> March 2011	31 <sup>st</sup> March 2010
<b>Other income:</b>		
Interest on deposits (gross) (Tax deducted at source Rs. 277,714; March 2010 - Rs. 600,180)	23,459,730	3,526,633
Dividend received	112,620	196,722
Profit on sale of investments	6,570,252	5,587,615
Liabilities no longer required written back	1,046	1,937,703
	30,143,648	11,248,673
<b>Administration and other expenses:</b>		
Rates and taxes	655,250	8,371
Repairs and maintenance - others	41,407	18,014
Consultancy and other professional charges	235,805	254,447
Communication expenses	1,082	642
Travelling and conveyance	2,816	987
Provision for diminution in value of current investment	498,142,461	37,314,898
Auditor's remuneration		
- Audit fees	8,273	6,030
- Certification fees	13,760	13,790
Miscellaneous expenses	1,341,400	60,957
	500,442,254	37,678,136
<b>Finance Charges:</b>		
Interest on fixed loans	140,840,722	134,337,075
Interest - others	77,032,165	18,993,764
Bank/other finance charges	990,182	3,713,487
	218,863,069	157,044,326



Description	31 <sup>st</sup> March 2014	31 <sup>st</sup> March 2013
<b>1. Equity and Liabilities</b>		
(1) Shareholder's funds		
(a) share capital	1,187,812,750	1,187,812,750
(b) Reserves and surplus	<u>2,586,377,446</u>	<u>3,635,554,448</u>
	3,774,190,196	4,823,367,198
(2) Non-current Liabilities		
(a) Long term borrowings	7,167,477,124	7,871,645,828
(b) Deferred tax liabilities	43,215	43,215
(c) Long term provisions	142,026	153,981
(d) Other long term liabilities		
	<u>1,202,640,490</u>	<u>2,582,640,490</u>
	8,370,302,855	10,454,483,514
(3) Current liabilities		
(a) Short-term borrowings	1,256,270,000	2,489,482,575
(b) Trade payables	1,405,711	1,058,283
(c) Other current liabilities	6,722,455,286	2,021,766,775
(d) Short-term provisions	<u>740</u>	<u>605</u>
	7,980,131,737	4,512,308,238
<b>Total</b>	<b>20,124,624,788</b>	<b>19,790,158,950</b>
<b>II Assets</b>		
(1) Non-current assets		
(a) Non-current Investments		
(b) Long term loans and advances	16,311,646,713	12,445,153,781
	<u>2,941,278,284</u>	<u>6,540,303,329</u>
	19,252,924,997	18,985,457,110
(2) Current assets		
(a) Trade receivables	2,49,313,793	1,389,828,
(b) Cash and bank Balances	5,928,388	9,133,781
(c) Short term loans and advances	616,178,852	793,493,886
	<u>278,758</u>	<u>684,345</u>
(d) Other current assets	871,699,791	804,701,840
<b>Total</b>	<b>20,124,624,788</b>	<b>19,790,158,950</b>

Revenue from operations	31 <sup>st</sup> March 2014	31 <sup>st</sup> March
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		2013
Management consultancy fees	479,688,466	386,056,025
	479,688,466	386,056,025
<b>Other Income:</b>		
Interest income	3,342,009	10,683,454
Net gain on sale/restatement of investments	-	751,597
Liabilities/provision no longer required written back	11,820	156,537
	3,353,829	11,591,588
<b>,Employee benefits expense:</b>		
Salaries and wages	1,511,517	1,581,126
Staff welfare	41,768	62,938
	1,553,285	1,644,064
<b>Other expenses:</b>		
Rates and taxes	1,946,545	1,962,602
Consultancy and other professional charges	536,376	1,184,790
Auditor remuneration as auditor	7,500	8,427
Other services	15,927	19,303
Travel and conveyance	5,363	15,783
Miscellaneous expenses	61,344	93,411
	2,573,055	3,284,316
<b>Finance Costs:</b>		
Interest expense on fixed period loans	1,351,317,135	938,331,124
On others	172,102,214	213,133,590
Other borrowing costs	4,673,608	2,762,377
	1,528,092,957	1,154,227,091

10.4 In view of the above observations, the disallowance of interest made by the AO is justified and accordingly, we set aside the order of the CIT(A) and restore the order of AO in all the appeals under consideration. Thus, the grounds raised by the revenue in all the appeals, on this issue are allowed.

11. In the result, all the appeals of revenue are allowed. A copy of this common order be placed in the respective files.

12. We lastly acknowledge that although the instant appeals are being decided after a period of 90 days from the date of hearing as per Rule 34(5) of the IT(AT) Rules 1963, the same however, does not apply in the covid lockdown situation as per hon'ble apex court's recent directions dated 27-04-2021 in M.A.No.665/2021 in SM(W)C No.3/2020 'In Re Cognizance for extension of limitation' making it clear that in such cases where the limitation period (including that prescribed for institution as well as termination) shall stand excluded from 14th of March, 2021 till further orders.

Pronounced in the open court on 30<sup>th</sup> August, 2021.

**Sd/-**  
**(S.S. GODARA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(L. P. SAHU)**  
**ACCOUNTANT MEMBER**

Hyderabad, Dated: 30<sup>th</sup> August, 2021.

*kv*

Copy to :

1	<i>DCIT, Circle – 2(1), 5<sup>th</sup> Floor, Room No. 514, Signature Towers, Kondapur, Hyderabad.</i>
2	<i>M/s KSK Energy Company Pvt. Ltd., H.No. 8-2-293/82/A/431/A, Road No. 22, Jubilee Hills, Hyderabad.</i>
3	<i>CIT(A) – 9, Hyderabad.</i>
4	<i>Pr. CIT – 2, Hyderabad.</i>
5	<i>ITAT, DR, Hyderabad.</i>
6	<i>Guard File.</i>

S.No.	Details	Date
1	Draft dictated on	
2	Draft placed before author	
3	Draft proposed & placed before the Second Member	
4	Draft discussed/approved by Second Member	
5	Approved Draft comes to the Sr. PS/PS	
6	Kept for pronouncement	
7	File sent to Bench Clerk	
8	Date on which the file goes to Head Clerk	
9	Date on which file goes to A.R.	
10	Date of Dispatch of order	