

**आयकर अपीलीय अधिकरण, कोलकाता पीठ "सी", कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH: KOLKATA**  
श्री राजेश कुमार, लेखा सटस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष  
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

**I.T.A. Nos. 94 & 1000/Kol/2025**  
**Assessment Years: 2021-22 & 2022-23**

DCIT, Circle-11(1), Kolkata	Vs.	South City Projects (Kolkata) Ltd.  (PAN: AAACD 8933 A)
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	02.04.2026
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	18.05.2026
For the Appellant/ निर्धारिती की ओर से	Shri Akkal Dudhwewala, CA
For the Respondent/ राजस्व की ओर से	Shri Praveen Kishore, CITDR

**ORDER / आदेश**

**Per Rajesh Kumar, AM:**

These are appeals filed by the Revenue against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as "the Ld. CIT(A)"), vide order u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") dated 25.07.2024 and 10.12.2024 for the AYs 2021-22 & 2022-23. As the facts and circumstances are similar in all the appeals, hence, we will take ITA No.94/KOL/2025 for AY 2021-22 as lead case and decide the issue accordingly.

2. The issue raised in Ground Nos. 1 to 3 & 5 of the appeal is against the order of the Id. CIT(A) restricting the ALP fee rate of corporate guarantee [in short 'CG'] issued by the assessee to its AE, M/s Indocean Developers Pvt Ltd [in short 'IDPL'] to 0.25% instead of 0.5% as determined by the TPO.

3. The facts in brief are that, the assessee along with its subsidiary, M/s AA Infraproperties Pvt Ltd [in short 'AAIPL'] had extended corporate guarantee to IDPL, Sri Lanka in relation to the loans availed by the AE from Banks / FIs. The appellant had benchmarked the ALP fee rate of corporate guarantee at NIL, on the ground that it was a shareholder activity and the financial condition of IDPL had deteriorated significantly and therefore realizability of the CG fee was in doubt. The Id. TPO however disagreed with this plea of the assessee and benchmarked the arm's length fees of the corporate guarantee issued to IDPL, Sri Lanka at 0.5% by using the interest savings approach, and accordingly computed the TP adjustment at Rs.1,40,46,577/-.

4. In the appellate proceedings, the Id. CIT(A) following the decisions rendered by the Hon'ble Bombay High Court and Madras High Court in the cases of CIT Vs Everest Kanto Cylinder Ltd reported in 58 taxmann.com 254&Pr.CIT Vs Redington (India) Ltd(430 ITR 298) rejected the assessee's plea that, the CG was a shareholder activity and held that adjustment was required to be made for guarantee commission. The Id. CIT(A) after perusing the corporate guarantee agreement noted that the said guarantee was extended jointly by the assessee and its subsidiary, AAIPL and therefore held that the ALP fee worked out by the Id. TPO was required to be jointly shared by both of them. The Id. CIT(A) therefore held that, the CG fee attributable to the assessee was 0.25%. The relevant observations of the Id. CIT(A) were as under:-

*"5.4.3 In view of the above finding, the next issue for adjudication is the quantum of guarantee commission to be charged from the AEs for providing this corporate guarantee to IDPL, Sri Lanka. Having perused the findings of the Id. TPO in light of submissions of the appellant, the computation of ALP corporate guarantee commission at 0.5% is found to be fair and reasonable. However, on perusal of the corporate guarantee agreement, it is noted that the*

*said guarantee was extended jointly by the appellant and its subsidiary, AAIPL. I am therefore in agreement with the appellant that the ALP opportunity savings worked out by way of corporate guarantee fee would also have to be jointly shared between the appellant and AAIPL. Hence, I therefore hold that the appropriate CG fee in this regard ought to be 0.25% [50% of 0.5%]. As a consequence, the transfer pricing adjustment to the extent of Rs.70,23,288/- stands confirmed and the balance sum of Rs.70,23,287/- directed to be deleted...”*

5. The Id. DR appearing for the Revenue vehemently supported the findings of the Id. TPO. According to him, the Id. TPO had fairly worked out the CG fee at 0.5% and that, no further adjustment or reduction was warranted on this account. Per contra, the Id. AR for the assessee supported the order of the Id. CIT(A).

6. After hearing the rival contentions and perusing the material on record, the undisputed facts of the case are that, the corporate guarantee was extended jointly by the assessee and its subsidiary to the Banks / FIs of the foreign AE, IDPL Sri Lanka. Accordingly, both the assessee and the subsidiary were faced with the inherent risk involved in providing guarantees. In our opinion therefore, the Id. CIT(A) has rightly observed that, the arm's length CG fee rate worked out by the Id. TPO applying the interest savings approach was to be jointly shared by the assessee and the subsidiary. Thus, we are in complete agreement with the above findings of the Id. CIT(A) in Para 5.4.3, as extracted above, holding that 50% of the ALP CG fee i.e. 0.25% was attributable to the assessee. We thus are not inclined to interfere with the order of the Id. CIT(A) on this issue and consequently, dismiss the ground nos. 1 to 3 & 5 of the Revenue's appeal.

7. The issue raised in Ground No. 4 of the appeal is against the order of the Id. CIT(A) deleting the proportionate disallowance of interest paid on loans totalling to Rs.67,87,32,949/- in relation to non-interest bearing loans & advances given to subsidiaries / associates viz., M/s AAIPL and M/s South City Anmol Infra Park LLP [in short 'SCA LLP'].

8. We first take up the issue relating to the proportionate interest disallowance of Rs.65,23,89,517/- in relation to the loans advanced to AA IPL. The facts as noted in brief are that, the assessee had formed a subsidiary AA IPL for conducting real estate businesses in Sri Lanka and Dubai. The assessee had advanced loans to AA IPL, which in turn had advanced loans to foreign step-down subsidiaries IDPL, Sri Lanka and AA IML, Dubai. These loans carried interest ranging between 11% to 13.5% which were also serviced by AA IPL until FY 2018-19. Due to litigation between the shareholders, financial constraints, COVID-19 impact, delay in completion and other regulatory hurdles, the projects at Sri Lanka and Dubai got stalled and were faced with extraordinary financial crisis and therefore the Board of Directors had resolved not to charge interest on loans advanced to AA IPL from AY 2019-20 and onwards, until its financial health and overall situation improved. Likewise, the subsidiary, AA IPL also did not charge interest from the foreign subsidiaries. The assessee had accordingly claimed that the loans were granted to subsidiary in the course of business and the decision not to charge interest was a commercially prudent one and thus the corresponding interest paid on borrowings which were advanced to AA IPL was allowable u/s 36(1)(iii) of the Act. The AO however was not agreeable to this explanation offered by the assessee and, following the same line of reasoning as adopted by his predecessor in AY 2020-21, disallowed the impugned amount. The AO is found to have inter alia also observed that, though this identical disallowance made in AY 2020-21 had been deleted in appeal by the Id. CIT(A), but since the Department had preferred appeal in AY 2020-21 before this Tribunal, the Id. AO retained the impugned disallowance.

9. In the appellate proceedings, the Id. CIT(A) following the order passed by his predecessor for the earlier AY 2020-21 deleted the interest disallowance in relation to the loans advanced to AA IPL.

10. The ld. DR appearing for the Revenue supported the order of the ld. AO. Per contra, ld. AR brought to our notice that, the coordinate Bench of this Tribunal in assessee's case for AY 2020-21 in ITA No.1096/Kol/2023 dated 24.10.2024 had dismissed the appeal of the Revenue and held that the non-interest-bearing loans of AAIPL was advanced for the purposes of business and therefore corresponding interest paid on borrowings was allowable business expenditure u/s 36(1)(iii) of the Act. The ld. AR further submitted that, the Revenue has not preferred any further appeal in AY 2020-21 and therefore he claimed that the view expressed by the coordinate Bench had attained finality. He also relied on the decision of Supreme Court in case of Sharp Business System Vs CIT (408 ITR 509) wherein on similar facts, the interest expended on borrowed funds utilized to make investment in subsidiary and give interest free-advances to sister concern was held to be allowable u/s 36(1)(iii) of the Act on the principles of commercial expediency. He thus does not want us to interfere with the order of ld. CIT(A).

11. We have heard the rival submissions and perused the material placed on record. It is seen that the impugned issue is no longer res integra. We find that the coordinate Bench in assessee's own case for AY 2020-21 (supra) has held that the assessee was able to demonstrate that the loans were advanced to AAIPL for business purposes and therefore, even if these loans did not yield any interest income, yet the interest paid on borrowings was an admissible deduction u/s 36(1)(iii) of the Act. The relevant findings of this Tribunal were as under:-

*"5. The assessee challenged the said order before the Ld. CIT(A) who allowed the appeal of the assessee and inter alia directed the AO to delete the disallowance of interest of Rs. 46,27,18,547/-. The relevant portion read as under:*

*"6.3.4. I have considered the facts of the case and the submissions placed on record. It is noted that the assessee is engaged in the business of development of real estate. The facts show that in order to expand its footprint in the real estate business overseas, the appellant had formed a Special Purpose Vehicle (SPV) by way of a subsidiary, AAIPL. In turn, AAIPL had undertaken real estate project in Sri Lanka, under the aegis of its subsidiary, IDPL. The facts on record show that IDPL was undertaking a substantially large real estate project in Sri Lanka. Being a foreign investment project, the Banks/financial Institutions had required the Indian Promoters of IDPL to also infuse funds in order to finance this real estate project. The appellant being the parent company had therefore*

sourced monies from both own surplus funds and borrowed funds to advance loan to AA IPL which was specifically meant for the project being undertaken in Sri Lanka. AA IPL, had in turn advanced loans to IDPL, in compliance with the RBIFEMA guidelines. The facts on record show that the loan advanced by the assessee was interest bearing and in FYs 2014-15 to 2018-19, the assessee had charged interest from AA IPL in the range of 11% - 13.5%. It is therefore not the case that the loan advanced to AA IPL was interest free. Rather, it carried commercial rate of interest. During the relevant FY 2019-20, several disputes/ litigation arose in the management of AA IPL and IDPL, copies of which were also uploaded along with the written submissions. Perusal of the same shows that certain mis-deeds were committed by one of the directors of AA IPL, both in the management of AA IPL as well as IDPL, due to which several legal cases/ suits were filed in India as well as in Sri Lanka. It is noted that these disputes took substantial time to resolve in as much as the matter had travelled upto the Supreme Court and later on the disputes were resolved pursuant to arbitration in the year 2021-22. Consequent thereto, the real estate project being Undertaken at Sri Lanka got embroiled in controversy and litigation leading to delayed completion of the project. Moreover, due to the onset of COVID 19 in the month of January 2020, the global economy was faced with a significant downturn and the one of the worst affected sectors was the real estate sector leading to a slump in the prices as well as in the sales. To add to the woes, IDPL was also saddled with financial liabilities related to the loans availed from banks which had also become unserviceable. In view of the aforesaid financial crisis and having regard to the extra ordinary COVID situation, and taking note of the fact that IDPL did not have revenues to service the loan availed from AA IPL, the management of the appellant considered it prudent to not charge interest from AA IPL until the financial health and situation of IDPL improved. I, therefore, note that the appellant had indeed substantiated the financial hardship and disputes being faced by AA IPL & IDPL which lead the appellant, being the parent company, to offer financial support in the form of waiver of interest payable on the loan so advanced.

6.3.5 With regard to the observation of the AO that, since AA IPL had received interest income from IDPL, there was no commercial rationale for the appellant to have waived the interest, it is noted from the facts that this observation was factually erroneous. From the financials of AA IPL placed on record, it is noted that AA IPL had simply credited interest income on the loan advanced to AA IPL by way of book entry against which an equivalent amount of provision for bad and doubtful debt was also created in the books of accounts. AA IPL is noted to have not actually received any interest from IDPL and, therefore, the observation of the AO that AA IPL was in receipt of interest income on the loan it had advanced to IDPL is found to be untenable. As far as the tax treatment meted out to these entries in the books of AA IPL is concerned. I am in agreement with the appellant that the same is independent of the appellant and whether or not the same is brought to tax or not in the hands of AA IPL, is irrelevant to decide the issue impugned before me.

6.3.6 In order to claim deduction u/s 36(1)(iii) of the Act, it is well settled in law that it is not necessary for an assessee to prove that the deployment of borrowed capital has produced matching or corresponding income. The interest paid is to be allowed, irrespective of whether the assessee has been able to generate or produce any income or not, by utilizing borrowed capital. It is now a settled judicial position that the expression "used for the purposes of business" is much wider in its scope and connotation. From the facts as discussed above, it is clear that under the aegis of AA IPL. the appellant was conducting a real estate project in Sri Lanka, in furtherance of its real estate business. The loan advanced by the appellant to its subsidiary engaged in the same line of business was prompted on the principle of commercial expediency because the appellant had both

*strategic and economic interest in the financial well-being of the same. I, therefore, find merit in the submission of the appellant that the loan was advanced to AAIPL for business purposes". The issue for consideration is whether the fact that the appellant did not charge interest on the loan advanced to subsidiary in the course of business could be reason enough to disallow the interest expense incurred in relation thereto.*

6.3.7 It is noted that similar issue had come up for consideration before the Hon'ble Supreme Court in the case of [S A Builders Ltd vs. CIT](#) (288 ITR 1). In the instant case, the assessee had borrowed capital on which interest was paid. The assessee had granted interest free loans to its subsidiaries and associate concerns. The Tribunal as well as the High Court held that part of the interest paid was liable for disallowance since the assessee had diverted its borrowed capital to the subsidiary and associate concerns from which no income was realized. On appeal by way of Special Leave Petition, the Supreme Court however held that the authorities below had approached the matter from an erroneous angle. According to the Apex Court, both for the purposes of section 37 as well as 36(1)(ii) of the Act, the expression "for the purposes of business" had to be considered and interpreted from the view point of "commercial expediency" and for that purpose it was wholly immaterial if a third party also benefitted. The relevant findings of the Supreme Court are reproduced below:

*"That the borrowed money is not utilized by the assessee in its own business but had been advanced as interest free loan to its sister concern is not relevant. What is relevant is whether the amount was advanced as a measure of commercial expediency and not from the point of view whether the amount was advanced for earning profits.*

*Once it is established that there was nexus between the expenditure and 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 his profits."*

6.3.8 Similar issue is noted to have been examined again by the Hon'ble Apex Court in the case of [Hero Cycles \(P\) Ltd Vs CIT](#) (236 Taxman 447). In the instant case, the assessee had advanced a sum of Rs. 116 lacs to its subsidiary company known as M/s. Hero Fibers Limited and this advance did not carry any interest. According to the AO, the assessee had borrowed the money from banks and paid interest thereupon which was utilized to advance interest free monies to subsidiary, and therefore the AO disallowed the interest holding that it was not for business purposes. On appeal, the Hon'ble Supreme Court taking note of its above judgment (supra) held that the advance to M/s. Hero Fibres Limited became imperative as a business expediency in view of the undertaking given to the financial institutions by the assessee to the effect that it would provide additional margin to M/s. Hero Fibres Limited to meet the working capital requirements for meeting any cash losses and accordingly, allowed the deduction so claimed u/s 36(1)(iii) of the Act. The relevant findings of the Hon'ble Apex Court are as follows:

*"13. In the process, the Court also agreed that the view taken by the Delhi High Court in [CIT v. Dalmia Cement \(P.\) Ltd.](#) /20021 121 Taxman 706 wherein the High Court had held that once it is established that there is nexus between the expenditure and the purpose of 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. It further held that no*

*businessman can be compelled to maximize his profit and that 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.*

*14. Applying the aforesaid ratio to the facts of this case as already noted above, it is manifest that the advance to M/s. Hero Fibres Limited became imperative as a business expediency in view of the undertaking given to the financial institutions by the assessee to the effect that it would provide additional margin to M/s. Hero Fibres Limited to meet the working capital for meeting any cash losses.*

*15. It would also be significant to mention at this stage that, subsequently, the assessee company had off-loaded its shareholding in the said M/s. Hero Fibres Limited to various companies of Oswal Group and at that time, the assessee company not only refunded back the entire loan given to M/s. Hero Fibres Limited by the assessee but this was refunded with interest. In the year in which the aforesaid interest was received, same was shown as income and offered for tax.*

*16. Insofar as the loans to Directors are concerned, it could not be disputed by the Revenue that the assessee had a credit balance in the Bank account when the said advance of Rs. 34 lakhs was given. Remarkably, as observed by the CIT (Appeal) in his order, the company had reserve/surplus to the tune of almost 15 crores and, therefore, the assessee company could in any case, utilise those funds for giving advance to its Directors.*

*17. On the basis of aforesaid discussion, the present appeal is allowed, thereby setting aside the order of the High Court and restoring that of the Income Tax Appellate Tribunal."*

*6.3.9 Following the judgment of the Hon'ble Apex Court in the case of [S.A. Builders Ltd](#) (supra), it is noted that similar view has been expressed by the Hon'ble Madras High Court in the case of [CIT Vs RPG Transmissions Ltd](#) (359 ITR 673). In the decided case also the assessee had raised borrowings to acquire stake in electricity business by purchase of shares of CESC Limited. The AO, had disallowed the expenditure on account of interest relatable to the borrowings holding that it was in the capital field as it was invested for purchase of shares of CESC Ltd. On appeal the Hon'ble High Court upheld the orders of the lower appellate authorities wherein it was held that there was a nexus between the nature of business carried out, i.e., generation and distribution of electricity, power transmission, etc., and, therefore, it was held that the investments were made for the purpose of the business and, accordingly, irrespective of whether it resulted in matching income or not, no part of the interest expenditure could be disallowed. The relevant findings of the Hon'ble Madras High Court is as follows:*

*"Section 36(1)(iii) contemplates that, firstly, the money should have been borrowed by the assessee, secondly, it must have been borrowed for the purpose of business and, thirdly, the assessee must have paid interest on the said amount. Furthermore, section 36(1)(iii) does not contemplate any test that the amounts so invested should be wholly and exclusively for making or earning such income. On a plain reading of section 36(1)(iii), there is no such requirement mandated in the section to confine such expense. Furthermore, the section also does not place any embargo on investments to be made in group concerns and subsidiary concerns. The investment made in shares by the assessee by utilizing borrowed capital was for strategic business purposes because the companies were promoted as special purpose companies to strengthen and promote its existing business by combining different business segments."*

6.3.10 Similar issue came up for consideration before the Hon'ble Gujarat High Court in the case of [B Nanji & Co. Vs DCIT](#) (124 taxmann.com 357). In the decided case also the assessee which was engaged in the business of real estate had acquired a housing finance company viz., IFHC, by way of acquisition of equity stake. The said acquisition was funded by interest bearing borrowings. The AO disallowed the interest paid thereon holding it to be in the capital field.

On appeal, the Hon'ble High Court noted that the assessee had acquired the said finance company so as to make funds readily available when required for development of a housing project or to fund any acquisition of real estate, and therefore it held that the investments were for expansion of the assessee's existing real estate business. The Hon'ble Gujarat High Court thus upheld the orders of the lower authorities, allowing the deduction for interest u/s 36(1)(iii) of the Act.

6.3.11 It is noted that similar facts and circumstances were also involved in the decision rendered by the Hon'ble ITAT, Kolkata in the case of *S.P. Jaiswal Estates (P.) Ltd.* (140 ITD19). In the instant case also, the assessee had advanced interest free loans to its subsidiary company which was to undertake real estate project in Goa. According to the assessee, the loan was advanced in furtherance of existing business of real estate and therefore, on the principles of commercial expediency, the interest paid on the loans borrowed to fund the subsidiary was allowable u/s 36(1)(ii) of the Act. The AO, however, rejected the contention on the premise that the subsidiary was only holding the plot of land at Goa but then, since no construction on this plot was possible, it could not be said that advance given to the said subsidiary was commercially expedient. On appeal, however, the Hon'ble Tribunal following the decision of the Hon'ble Apex Court in the case of [S.A. Builders](#) (supra) deleted the disallowance. The relevant findings of the Tribunal are noted to be as follows:

*"The approach adopted by the Assessing Officer, however, overlooks the factual aspect that the restrictions on constructions were placed by the directions of Goa Costa! Zone Management Authority which were under legal challenge by the assessee, and thus these restrictions had not achieved finality. What is material is that the assessee being one hundred per cent holding company of 'H' Ltd., had a deep interest in the subsidiary and that the advances given to the subsidiary company were for the purposes of business. When an assessee gives an interest free advance to a one hundred per cent owned subsidiary for its business purposes, it cannot but ordinarily be said to be commercially expedient. Of course, there has to be some material to show that the funds advanced to the subsidiary company were used for some business purposes, but then the Assessing Officer did not probe this aspect of the matter but simply rejected the commercial expediency of the interest free advance on the ground that construction was not possible on the plot owned by the subsidiary company. The objection taken by the Assessing Officer was devoid of any legally sustainable merits, but then the Commissioner (Appeals) did not even deal with this issue at all. When there are no findings by the Commissioner (Appeals) on this aspect, the point of difference, to this extent, cannot be adjudicated upon."*

6.3.12 Similar view is noted to have been expressed by another coordinate Bench of Hon'ble ITAT, Kolkata in the case of *Divakar Solar System Ltd.* (88 taxmann.com 770) wherein also the assessee had borrowed which was forwarded to its subsidiary interest-free, keeping in view the strategic business purposes to strengthen and promote its existing business. The interest paid on such loan was disallowed by the AO u/s 36(1)(iii) of the Act. On appeal, the Hon'ble Tribunal, while relying on the Supreme Court decisions in the case of [S.A. Builders Ltd vs CIT\(A\)](#) (supra) and *Hero Cycles (P.) Ltd vs CIT* (supra), and the decision of the Hon'ble Madras High Court in the case of [RPG Transmissions Ltd](#) (supra),

*held that the test of commercial expediency was proven in the instant case beyond doubt and, hence, the interest paid on borrowed capital was to be allowed.*

*6.3.13 In the given facts of the present case also, it is observed that the appellant had advanced loans to AAIPL in the course of and for the purposes of business and it has demonstrated that the loans so advanced and the interest waiver given were based on commercial prudence. Hence, following the judicial precedents (supra), it is held that the interest expense incurred on the borrowings which were used in relation to the advancement of loans to the subsidiary was for the purposes of business and therefore allowable as deduction u/s 36(1)(iii) of the Act. The disallowance of Rs.46,27,18,547/- made by the AO is, therefore, held to be unsustainable, both on facts and in law, and is thus deleted. Ground Nos. 2 to 7 are therefore allowed."*

*Aggrieved by the above order of the Ld. CIT(A), the Revenue is now in appeal before us.*

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*13. After hearing the rival contentions and perusing the material on record, we note that, the issue before us for adjudication is whether the decision of the assessee to not charge interest from its subsidiary, AAIPL on the loan advanced out of borrowed capital is out of business consideration and commercial expediency and whether the Ld. CIT(A) was justified in deleting the disallowance of proportionate interest on borrowings utilized for advancing such loans to AAIPL, which according to AO, were for non-business purposes. From the facts on record, we observe that, the assessee is engaged in the business of real estate development and in furtherance of its business, it had set-up an Indian subsidiary in the name of AAIPL in which it held 87.5% along with one Mr. JH who held 12.5% for undertaking real estate projects abroad. It is further observed that AAIPL had accordingly set-up subsidiaries in Sri Lanka & Dubai which were undertaking real estate projects in the respective countries. We further note that the monies advanced by the assessee to AAIPL to further fund the step-down subsidiaries abroad was in the course and for the purposes of its business.*

*13.1. We note that, IDPL in Sri Lanka had undertaken a project worth Rs.2000 crores for which the assessee and AAIPL had obtained approvals from RBI & President of Sri Lanka. In order to undertake the project, IDPL had obtained loans from Banks/FIs, which were guaranteed by the assessee. Further, as a part of assessee's agreed commitment to the Banks/FIs to bring in promoter's contribution, the assessee had infused funds in IDPL through AAIPL by way of loan. The assessee accordingly advanced loans of Rs.472.92 crores carrying interest to AAIPL, which in turn, advanced loan to IDPL from AYs 2014-15 to 2018-19. These loans were being regularly serviced by the foreign subsidiaries and correspondingly AAIPL was servicing the interest to the assessee until AY 2018-19. However, during the relevant AY 2019-20 the assessee did not charge any interest on loans advanced to AAIPL due to which the AO disallowed corresponding proportionate interest paid on borrowings in relation to such loans. We observe from the facts and material placed before us that the principal reason for not charging interest from AAIPL was cropping up of serious litigation between the assessee which held 87.5% in AAIPL with the other shareholder Mr. JH who held 12.5%. The assessee is noted to have taken legal steps to protect its interest in its subsidiaries and the details of litigation are available at Pages 187 to 271 of the paper book. Having gone through the same, it is noted that, during the financial year 2019- 20, the litigations had not been resolved which continued till financial year 2021-22 and during the intervening period Mr. JH was in control of both the foreign subsidiaries as on 31.03.2020 due to which neither the assessee nor AAIPL had access to their books of accounts or control over them. We also note that appropriate disclosures in this regard were also made by the assessee in its Note Nos. 38 to 41 of the audited financial statements a copy of which is available at Page 67 of Paper*

*Book. Having considered these facts and circumstances, we find merit in the Ld. CIT(A)'s findings that, on the given facts, it was commercial prudence that, the AA IPL would not be able to realize interest from the foreign subsidiaries and thus the assessee will also not be able to realize interest due on the loans advanced to AA IPL.*

*14. We note from the financials of IDPL that, its financial position had also considerably deteriorated. IDPL has accumulated losses in excess of Rs.341 crores, negative cash flow from operating activities of Rs.438.93 crores with a meagre revenue of Rs.91 lacs during the year corroborating the fact that the revenues of IDPL was declining due to slump in real estate market of Sri Lanka. The initial estimated project completion date was July 2017 which due to several reasons stood extended to March 2022. The Ld. AR also took us through the news articles available in public domain, copies of which are available at Pages 274 to 284 of paper book, from which we note that, the project was stalled due to cost overruns and that the President of Sri Lanka had to intervene to restart the project. It is also undisputed that there was a global economic downturn on account of Covid situation at the fag-end of FY 2019-20 which further aggravated the stringent financial situation of IDPL. The Ld. AR also showed us that, the monies which were being advanced by the assessee to IDPL during the later years was to meet its financial repayment obligations to Banks/FIs and prevent the account from being NPA. It is only due to these factors, the board of directors of the assessee have passed a board resolution deciding not to charge any interest from AA IPL in financial year 2019-20 until the situation becomes better. Having regard to these facts, we find that the Ld. CIT(A) had rightly observed that, the assessee's decision not to charge the interest from AA IPL on the loans advanced was out of business consideration and commercial expediency.*

*15. Coming to the argument of Ld. DR that AA IPL was solvent and since the AA IPL had received interest income from IDPL there was no commercial rationale for the assessee to waive off the interest. We find that, this has been controverted by the Ld. CIT(A) at Para 6.3.5 of the order, wherein after examining the records and financials of AA IPL, he has recorded a finding of fact that, AA IPL did not actually received any interest from subsidiaries and that it had accounted for and credited interest income by way of book entry against which the equivalent amount of provision for bad and doubtful debts was also created in the books of accounts.*

*16. On the next argument of Ld. DR proposing to tax interest income receivable from AA IPL, if the deletion of interest disallowance is upheld, we agree with the Ld. AR that, this was not the case of the AO himself. The undisputed facts, as discussed above, are that, the assessee did not charge interest from AA IPL. The AO had accordingly disallowed proportionate interest corresponding to such non-interest bearing loans given to AA IPL and no addition was made on account of interest income. Hence, we do not find any merit in the Ld. DR's contention in trying to make out a completely new case which is not the issue before us. For the above reasons, we thus uphold the Ld. CIT(A)'s finding that, the loan was advanced by assessee to AA IPL for business purpose and that the action of not charging interest during the relevant year was driven by commercial and business considerations. In light of these findings, the next issue to be answered is whether since the assessee did not charge interest on loans given to subsidiary for business purposes, the corresponding proportionate interest paid on borrowings is to be disallowed. In this regard, it is noted that the provisions of Section 36(1)(iii) of the Act allows deduction of the interest paid in respect of the capital borrowed for the purpose of business or profession. The Hon'ble Supreme Court in the case of [Madhav Prasad Jatia vs CIT](#) (supra) has noted that the expression "for the purpose of his business" is wider in scope than the expression "for the purpose of earning income, profits or gains". In the case of [Indian Bank Limited vs CIT](#) (56 ITR77), the Hon'ble Supreme Court held that, what is to be examined is if the interest expenditure had been incurred for business purpose, and that it is not necessary to show as to whether it resulted into any income or not. We also refer to the case of [SA Builders Ltd. Vs CIT](#) (supra) wherein the AO had disallowed portion*

of the interest paid on the premise that the assessee had diverted to its borrowed capital to the subsidiary and associate concerns from which no income was realized, which was confirmed by the High Court. On appeal by way of Special Leave Petition, the Hon'ble Apex Court however held that, the authorities below had approached the matter from an erroneous angle. The Hon'ble Apex Court held that, for both the purposes for Section 37 as well as Section 36(1)(iii) of the Act the expression 'for the purpose of business' had to be considered and interpreted from the view point of commercial expediency and for that purpose it was wholly immaterial if a third party also benefitted from the same. The Hon'ble Apex Court held that, what is relevant is whether the amount was advanced as a measure of commercial expediency and not from the point of view whether the amount was advanced for earning profits. The Hon'ble Apex Court held that once it is established that there was nexus between the expenditure and 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.

17. We also refer to the case of Hero Cycles (P.) [Ltd vs CIT](#) (supra) relied upon by the Ld. CIT(A) for deleting the interest disallowance impugned before us. In this case also, the assessee had borrowed money from the banks out of which loans were advanced by the assessee to its subsidiary company on which no interest was charged. The AO had disallowed the corresponding interest expenditure u/s 36(1)(iii) of the Act. On appeal, the Hon'ble Apex Court observed that, the advance to subsidiary company had become imperative as a business expediency in view of the undertaking given to the financial institutions by the assessee to the effect that it would provide additional margin to subsidiary company to meet the working capital for meeting any cash losses. The Hon'ble Apex Court accordingly held that, once it is established that there is nexus between the expenditure incurred and the purpose of business (which need not necessarily be the business of the assessee itself), the tax authorities 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. The Hon'ble [Court further held](#) that no businessman can be compelled to maximize his profit and that the revenue authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act. The Hon'ble Apex Court accordingly held that, the deduction of interest expenditure is allowable u/s 36(1)(iii) of the Act, even if the loan was ultimately advanced to its subsidiary company without charging any interest on the same.

18. We have also perused all other decisions relied by the Counsel for the assessee inter alia including the cases of [CIT vs. RPG Transmissions Ltd.](#) (supra) (Mad HC), [B. Nanji & Co vs. DCIT](#) (supra) (Guj HC), [S. P. Jaiswal Estates Pvt. Ltd. vs. ACIT](#) (140 ITD 19) and we find that the view which percolates in all these decisions is that, once it is proved that the money advanced out of borrowed capital is for the purpose of business, then no disallowance can be made u/s 36(1)(iii) of the Act, irrespective whether such business purposes yielded income or gain to the assessee or not.

19. In the instant case before us, the assessee is in the real estate business and so was its subsidiary AA IPL and step down foreign subsidiaries. The loans were infused into the step down foreign subsidiaries through the aegis of AA IPL for the reason that the Banks required the promoter to infuse funds as their commitment to the real estate project, which sufficiently proved that the funds were advanced for the business purposes. These loans originally carried interest which were serviced as well. However, for the reasons discussed above viz., serious litigation between partners and financial distress in foreign subsidiary, the assessee decided not to charge interest from this year in order to protect its overall business interests as well as principal loan amount. As has been discussed above, it is not necessary to show that the

*said deployment of borrowing always results in income to the assessee. The assessee have sufficiently established that the loans were advanced to AA IPL for the business purposes and therefore, even if the loans did not yield interest income during the year, yet the interest paid on borrowings has to be considered to be admissible for the purpose of Section 36(1)(iii) of the Act. Considering the facts of the case and [ratio laid down in](#) the above decisions, we do not find any infirmity in the order of Ld. CIT(A). Therefore, we are inclined to uphold the same by dismissing the appeal of the Revenue.”*

12. We also observe that the above view expressed by the coordinate Bench is also supported by the decision of the Hon’ble Supreme Court in the case of Sharp Business System (supra) as well. In the decided case also, the assessee had utilized interest bearing borrowings to advance interest free loans to sister concern and make investments in subsidiary, which the AO disallowed u/s 36(1)(iii) of the Act. On appeal, the Hon’ble Supreme Court following their earlier judgment in SA Builders Ltd. (supra) held that, the purpose for which the advances were made to the sister concern would be covered by the principle of commercial expediency and thus affirmed the order of the Tribunal allowing the claim of interest u/s 36(1)(iii) of the Act.

13. Respectfully following the above decisions (supra), we are not inclined to interfere with the order of Id. CIT(A) deleting the interest disallowance made in relation to the loans advanced to AA IPL.

14. Next, we come to the issue involving proportionate interest disallowance of Rs.2,63,43,432/- in relation to the non-interest bearing advances given to SCA LLP. The facts as noted are that, SCA LLP was incorporated in 2010 to undertake business of real estate development. It is observed that, the assessee along with other co-owners had entered into a Development Agreement with SCA LLP in 2019, in terms of which, the assessee and other land owners had contributed their respective land parcels for the project in lieu of 29.79% share of revenues (of which 14.82% belonged to the assessee) and balance 70.21% constituted the share of the developer i.e. SCA LLP. In connection with this real estate venture, the assessee had separately advanced loans to SCA LLP in 2019, which at that material time, carried interest. During the relevant AY 2021-22, the assessee, who until then, was only involved in the project only as a land owner, offered

to become a majority partner in SCA LLP. It is seen that, a supplementary LLP agreement was executed on 01.03.2021 pursuant to which, the assessee was entitled to profit share of 69% of the LLP. It was brought to our notice that, the overall share of the assessee in the revenues of the project stood increased from 14.82% to 63.26% [14.82% + (69% of 70.21%)]. Having become the majority partner of SCA LLP and upon exercising control and management over the real estate project, the assessee stopped charging interest on the loans advanced to its sister concern, SCA LLP. According to the assessee, the rationale was that, the project had suffered delays due to COVID impact and a commercial decision was taken not to unnecessarily burden the LLP with financial costs which was yet to yield any revenues. The AO however was of the view that, there was no business expediency for not charging interest on loans advanced to SCA LLP and therefore disallowed the proportionate interest cost borne by the assessee to the tune of Rs.2,63,43,432/-.

15. In the appellate proceedings the Ld. CIT(A) deleted the above disallowance, by observing as under:-

*“5.3.4 Now I take up the disallowance of proportionate interest of Rs.2,63,43,432/- in relation to the non-interest bearing advances to M/s SCA LLP. Qua, M/s SCA LLP, it is noted that, the said LLP was formed with the intent and purpose of undertaking real estate project. In the immediately preceding AY 2020-21, the appellant, which is also engaged in the business of real estate, is noted to have entered into a Development Agreement with SCA LLP, in terms of which the appellant along with other co-owners had contributed its land parcels, for which it was entitled to 14.82% share in the revenues, and the share of the Developer, SCA LLP was 70.21%. At that material time, the appellant is noted to have separately advanced loans to the Developer, SCA LLP, for which it was charging interest. During the relevant AY 2021-22, the appellant has pointed out that, it was optimistic about the prospects of the real estate project being undertaken by SCA LLP and therefore had obtained majority stake in SCA LLP vide supplementary LLP agreement along with other partners, M/s Bantala Properties (P) Ltd and M/s Monarch Shelter (P) Ltd dated 01.03.2021. Having perused the same, it is noted that the appellant had indeed become the majority partner in SCA LLP in the relevant FY 2020-21 and the appellant was entitled to profit share of 69%. Overall therefore, the appellant is noted to be entitled to partner's share of 48.44% (69% of 70.21%) in revenues and further revenues of 14.82% in the capacity of land owner, taking its overall revenue's share to 63.26%. These material facts are noted to show that, there was a material change in factual position from the earlier AY 2020-21 viz., from being a land owner in a Development Agreement with the LLP, the appellant had become majority partner in the LLP in AY 2021-22 in as much as it had*

*become entitled to majority share of revenues in the said project being undertaken by the LLP. On these facts, I thus find myself in agreement with the appellant's submission that, the advances given to LLP had partaken the nature of advances which were in the course and for the purposes of business and out of commercially expedient reasons.*

*5.3.5 Now on the issue of not charging interest, the appellant has shown that, the said decision was influenced by several factors, one of them being the then prevailing precarious COVID-19 situation. The appellant also pointed out that the real estate projects are capital intensive and the revenues/profits from such venture begins much later i.e. after 3-5 years. Hence, the decision of the appellant, having become the majority partner, was to not unnecessary burden the LLP with financial costs. This decision is noted to be based on sound commercial prudence, as the interest payout would also have to be ultimately financed by the appellant. I also find sufficient merit in the appellant's contention that, the charging of interest was revenue neutral as the interest chargeable, if any, would be cost to LLP, which would in turn reduce the profitability due to the appellant. Coming to the allegation of the AO that, by not charging interest, the appellant had avoided tax. The appellant has shown that, by not charging interest, the tax on interest income of 25.17% was negated by the higher tax of 33.99% payable by the LLP due to the opportunity cost savings in interest cost. Hence, it is noted that, the appellant and the LLP considered together had effectively increased their overall tax base. Accordingly, it is not a case of tax avoidance as is being alleged by the AO.*

*5.3.6 Having regard to the above therefore, in my considered view, the advances to SCA LLP, in which the appellant was a majority partner and through whose aegis it was undertaking real estate project, was given in the course and for the purposes of business. It is settled by now that, it is not necessary for an assessee to prove that the deployment of borrowed capital has produced matching or corresponding income. The expression "used for the purposes of business" has been held to be much wider in its scope and connotation, by the Hon'ble Supreme Court in the case of DCIT v. Core Health Care Ltd. (298 ITR 194). The Hon'ble Court has explained that, the expression 'for the purpose of business' occurring in section 36(1)(iii) indicates that once the test of 'for the purpose of business' is satisfied in respect of the capital borrowed, the assessee would be entitled to deduction under section 36(1)(iii) of the Act. On the given facts of the present case, the advances given to SCA LLP are noted to have been advanced for the purposes of business and therefore the proportionate interest cost, if any, relating to such advances was allowable u/s 36(1)(iii) of the Act. In this regard, I find that the ratio decidendi laid down by the Ld. CIT(A), NFAC in appellant's own case for earlier AY 2020-21 (supra) while deleting the disallowance of proportionate interest relating to non-interest bearing loans given to AAIPL, is squarely applicable in the context of SCA LLP as well. Hence, the AO's action of disallowing proportionate interest in relation to loans advanced to SCA LLP is held to be unjustified as well."*

16. The Id. DR appearing for the Revenue submitted that, there was no logical explanation given by the assessee for not charging interest on loans to SCA LLP during

the year, when it was charging interest in the earlier years. According to him, the interest was not charged to avoid tax.

17. Per contra, the ld. AR of the assessee explained the entire background facts relating to SCA LLP and the change of circumstances which led the assessee to halt the charge of interest. The ld. AR submitted that, until FY 2019-20, the interest of the assessee in SCA LLP was in the capacity of land owner who had entered into a development agreement with SCA LLP in connection therewith. According to him, therefore the loans advanced by the assessee to SCA LLP was an unrelated party independent transaction in FY 2019-20 and thus the assessee had rightly charged interest until the earlier years. Taking us through the details of the supplementary LLP agreement dated 01.03.2021, the ld. AR explained that, subsequent to execution of the Development Agreement, the assessee was optimistic about the prospects and outcome of the said project and since the assessee was in the same line of business, having experience, acumen and infrastructure to undertake this development, it intended to develop and manage the project itself. Accordingly, the assessee acquired majority stake in SCA LLP and it become 69% partner in the LLP, by virtue of which SCA LLP became its group associate LLP involved in the same line of business. The ld. AR thus explained that, the decision not to charge interest from FY 2020-21 onwards was influenced by commercial factors as the project was delayed due to COVID-19 and in absence of any revenues, the assessee did not want to burden the LLP with financial costs which it could not possibly service.

18. Assailing the allegation of the ld. DR that the decision not to charge tax was solely influenced by tax considerations, the ld. AR explained that, by not charging interest, though the tax savings to the assessee company was 25.17%, but the additional tax cost to SCA LLP in the form of opportunity cost savings in interest was 33.99%. He thus contended that, the act of not charging interest effectively increased the group's overall tax liability. The ld. AR accordingly urged us to uphold the order of ld. CIT(A).

19. Having heard both the parties and perusing the material placed before us, it is observed that, admittedly both the assessee and SCA LLP were in the same line of business i.e. real estate development. The assessee had originally entered into a development agreement with SCA LLP for development of an industrial park in Howrah on land parcels co-owned along with other land owners, in terms of which the assessee was entitled to 14.82% share of revenues. The undisputed fact is that, the assessee had subsequently acquired the majority stake in SCA LLP viz., 69% thereby making the LLP its sister/group concern and taking the overall revenue share of the assessee upto 63.26%. We find that, upon becoming the majority partner and exercising control over the management of the LLP, the assessee who had earlier advanced loans to the LLP stopped charging interest since the project was faced with delays and the fixed interest costs would severely affect the financial health of the LLP. Moreover, it is observed that, the assessee was directly entitled to share of revenues as well as profits of the LLP and therefore the opportunity cost of foregone interest was corresponding offset by increased share of revenues/profits from the LLP. The case of the assessee is found to be ably supported by the decisions of Hon'ble Supreme Court in the cases of SA Builders Ltd (supra), Sharp Business Systems (supra) & Hero Cycles (supra) and we find that, the view which percolates in all these decisions is that, once it is proved that the money advanced out of borrowed capital is for the purpose of business, then no disallowance can be made u/s 36(1)(iii) of the Act, irrespective whether such business purposes yielded income or gain to the assessee or not. According to us therefore, the Id. CIT(A) had rightly held at Paras 5.3.4 to 5.3.7 of his appellate order that the advances given to SCA LLP was meant for business purposes and therefore the proportionate interest cost, if any, relating to such advances was allowable u/s 36(1)(iii) of the Act, and we are not inclined to interfere with the same.

20. In so far as the contention of the Id. DR that, the interest was not charged with the sole intent to save taxes is concerned, we find this claim to be no longer tenable, as the assessee has demonstrated above the commercial factors which influenced its decision not to charge interest. Also, the Id. CIT(A) at Para 5.3.5 in particular, already

extracted above, is found to have analysed the overall scenario and rightly held that there was no effective tax savings to the assessee group by not charging interest from its sister concern.

21. Considering the facts of the case and ratio laid down in the decisions relied upon by the Id. CIT(A), we do not find any infirmity in the order of Ld. CIT(A). Therefore, we are inclined to uphold the same. Overall therefore, we dismiss Ground No. 4 of the Revenue.

22. Now we shall take other Revenue's appeal in ITA No.1000/Kol/2025 for AY 2022-23. It is seen that the issue involved in Ground Nos. 1 to 3 of this appeal is against the order of the Id. CIT(A) deleting the proportionate disallowance of interest paid on loans in relation to non-interest bearing loans & advances advanced to AAIPL & SCA LLP. Since we have decided the similar issue in Ground No. 4 of ITA No.94/Kol/2025 for AY 2021-22 in favour of the assessee, therefore our findings/decision would, mutatis mutandis, apply to this appeal as well. Consequently, these grounds are dismissed.

23. In the result, both the appeals of the Revenue are dismissed.

Order is pronounced in the open court on 18<sup>th</sup> May, 2026

Sd/-

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)  
Judicial Member/न्यायिक सदस्य

Sd/-

(Rajesh Kumar/राजेश कुमार)  
Accountant Member/लेखा सदस्य

Dated: 18<sup>th</sup> May, 2026

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- DCIT, Circle-11(1), Kolkata
2. Respondent – South City Projects (Kolkata) Ltd, South City Business Park,  
Unit-711-770, Anandpur, East Kolkata Township, Kolkata-700107
3. Ld. CIT(A)- 22, Kolkata
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata