

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No. 217/Ahd/2016
With C.O. No. 35/Ahd/2016
(Assessment Year: 2012-13)

Deputy Commissioner of Income Tax, Circle-1(1)(2), Ahmedabad	Vs.	M/s. Designmate (India) Pvt. Ltd., “Horizon” 2 nd Floor, Swati Society Road, Darpan Circle, Narangpura, Ahmedabad-380014
[PAN No.AABCD7408F]		
(Appellant/Respondent)	..	(Respondent/Cross Objector)

I.T.A. No. 1188/Ahd/2018
With C.O. No. 92/Ahd/2019
(Assessment Year: 2013-14)

Joint Commissioner of Income Tax(OSD), Circle-1(1)(2), Ahmedabad	Vs.	M/s. Designmate (India) Pvt. Ltd., “Horizon” 2 nd Floor, Swati Society Road, Darpan Circle, Narangpura, Ahmedabad-380014
[PAN No.AABCD7408F]		
(Appellant/Respondent)	..	(Respondent/Cross Objector)

Appellant by :	Ms. Kinjal Shah, C.A.
Respondent by:	Shri Sushil Kumar Katiar, Sr. D.R.

Date of Hearing	17.10.2023
Date of Pronouncement	20.10.2023

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

The appeal has been filed by the Department and Cross Objection filed by the assessee against the orders passed by the Ld. Commissioner of Income Tax (Appeals)-10 & 1 (in short “Ld. CIT(A)”), Ahmedabad vide orders dated

12.11.2015 & 28.02.2018 passed for the Assessment Years 2012-13 & 2013-14.

We shall first deal with Department's appeal for A.Y. 2012-13 (ITA No. 217/Ahd/2016 and Assessee's Cross Objection to the same (C.O. No. 35/Ahd/2016)

2. The Department has taken the following grounds of appeal:-

“1. The ld. CIT(A) has erred in law and on facts in deleting the disallowance of Rs.43,42,468/- made u/s 40(a)(ia) of the I.T. Act.

2. The ld. CIT(A) has erred in law and on facts in deleting the disallowance of compensation claim of Rs.60,50,000/- made by the AO, when there was no such valid agreement with the parties for payment of compensation by the assessee company.

3. The ld. CIT(A) has erred In law and on facts in deleting the addition of Rs.1,50,00,000/- being “income received but no accrued” and not shown in the current accounting period.

4. The ld. CIT(A) has erred in law and on facts in deleting the interest disallowance of Rs.48,25,919/- made u/s 36(10)(iii) of the Act, on account of interest-free advances.

On the facts and in the circumstances of the case and in law, the CIT(A) ought to have upheld the order of the Assessing Officer to the extent mentioned above since the assessee has failed to disclose his true income/book profit.

The appellant prays that the order of CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored to the above extent. The appellant craves, to leave, to amend or alter any ground or add a new ground which may be necessary.”

3. The assessee has raised the following grounds of appeal in Cross Objection:-

“1. The Ld. CIT(A) has rightly held in his Detailed and Speaking Order that both on facts of the case and provisions of Law Compensation paid of Rs.58,37,500/- was fully allowable in computing Total Income it being incurred for purpose of business, during course of business and in fulfillment of commercial expediency.

2. The Ld. CIT(A) has rightly held in his Detailed & Speaking Order that both on Facts of the case and Provisions of Law that Interest of Rs.19,39,350/- was rightly allowable Business Expenditure both on facts of the case and as provisions of Law specially and that no disallowance u/s. 36(1)(iii) was called for since Respondent had proved that he had Interest Free Funds available and AO had not proved any nexus between Interest Free Advance from Interest bearing Loans.

It is therefore submitted that the Grounds of Appeal filed by the Department be dismissed and order of Ld. CIT(A) be upheld.

It is therefore submitted that relief claimed above be allowed and the order of the Ld.CIT(A) be upheld and that Appeal filed by Income Tax Department be dismissed.

Your Respondent reserves right to add, alter, amend to withdraw any or all Ground of Appeal.”

Ground No.1:- Disallowance under Section 40(a)(ia) of the Act.

(Rs. 43,42,468/-)

4. The brief facts in relation to this ground of appeal are that during the course of assessment, the Assessing Officer observed that the assessee had made payments to various overseas entities for translating its products into foreign language (other than English) for sale in foreign countries. The Assessing Officer made a disallowance of the aforesaid expenses amounting to Rs. 43,42,468/- under Section 40(a)(ia) of the Act on the ground that the assessee was required to deduct taxes on the aforesaid payments under Section 195 of the Act, which has not been done by the assessee. Further, the

Assessing Officer held that the assessee had also not furnished Forms 15CA and 15CB for necessary verification.

5. In appeal, Ld. CIT(A) allowed the appeal of the assessee while observing that the assessee had made payments to various parties located outside India, who did not have permanent establishment in India. Accordingly, the assessee was not required to deduct TDS at the time of making the aforesaid payment. While allowing the relief to the assessee the Ld. CIT(A) made the following observations:-

“3.3. I have carefully considered the facts on records and submission of the Ld. Authorized Representative. The contention of the Authorized Representative of the appellant is that during the year under consideration, the appellant paid translation charges for translating its products into foreign languages for sale in foreign countries seems to be correct, as the entities located outside India and have no permanent place of establishment in India. The Assessing Officer's action of disallowing the payment made towards translation charges on the ground that the provision of section 195 of the Income Tax Act, 1961 have not been complied with by the appellant are far from the real facts in as much as there is some contrary discussion particularly the Authorized Representative of the appellant has furnished complete Justification in the form of technical analysis in respect of the provisions in details in its submission during the course of appeal proceedings. The Authorized Representative of the appellant has also submitted complete justification regarding the applicability of provisions of section 195(2) which also focus on the conclusion that the same are not applicable in the case of the appellant. In view thereof the Authorized Representative of the appellant contended that the disallowance of the amount of Rs.43,42,468/- as made by the Assessing Officer during the course of finalization of assessment for the year under appeal is not at all justified and deserves to be deleted suo moto.”

6. Department is in appeal before us against the aforesaid order passed by Ld. CIT(A) deciding the issue in favour of the assessee.

7. On going through the contents of order passed by Ld. CIT(A), we observe that Ld. CIT(A) has not given any justification while allowing the appeal of the assessee on this issue. The Ld. CIT(A) has made no observation whatsoever regarding the applicability of Tax Treaty provisions to the aforesaid payment, neither as he made any observations as to why such payments do not qualify as “fee for technical services” under the Income Tax Act, nor as he made any observations as to why Section 195 of the Act is not applicable to the aforesaid payments and further, Ld. CIT(A) has also not given any comments on whether Form No. 15CA & 15CB were furnished before him for necessary verification. Accordingly, we observe that from the contents of the order passed by Ld. CIT(A), it is not clear as to on what basis relief was afforded to the assessee on this issue. Further, in this case it is observed that the assessee had made payments to both companies as well as individuals residing outside of India in respect of the aforesaid services availed by him. However, the Ld. CIT(A) has not made any observations with respect to the aforesaid payments and the relevant Tax Treaty provisions as may be applicable to the various countries of which the recipients were residents viz. Netherlands, France, Dubai, South Korea, Vietnam, Indonesia, Beijing PR, China etc. Accordingly, in the interest of justice the matter is restored to the file of Ld. CIT(A) to pass a detailed / speaking order giving reasons for allowing relief to the assessee on this issue.

8. In the result, Ground No. 1 of the Department’s appeal is allowed for statistical purposes.

**Ground No.2 of Department's Appeal and C.O. No.1 of Assessee's
Appeal:- Compensation claim on Termination of Marketing Rights
(Rs. 60,50,000/-)**

9. During the course of assessment, the Assessing Officer observed that assessee had debited an amount of Rs. 60,50,000/-, being compensation paid on Termination of Marketing Rights. On being enquired, the assessee submitted that the aforesaid amount was paid by the assessee for termination of Marketing Rights of various dealers / distributors of the company. The assessee submitted that during the year under consideration, the assessee got a lucrative offer from M/s. Educomp Solution Ltd. for sale of marketing rights of company's software to various private schools and M/s. Educomp Solution Ltd. agreed to provide advance money to the assessee for purchasing the long-term marketing rights of the assessee company's software. During the course of assessment, it was submitted that M/s. Educomp Solution Ltd. agreed to pay sum of Rs. 15 crores towards the marketing rights for a period of 10 years of the assessee company software to which the assessee agreed. Accordingly, the assessee had to terminate the existing marketing rights which had been given to various parties and for which the assessee had to give a total compensation of Rs. 60.50 lakhs during the impugned assessment year under consideration (which was 1/10th of the total compensation paid by the assessee for termination of marketing rights to various parties). However, the Assessing Officer rejected the submissions of the assessee by observing that the assessee failed to furnish any Agreement granting marketing rights to those parties to whom the compensation was paid. Further, the assessee also failed to furnish copy of termination agreement based on which the assessee stated to have made compensation of Rs. 60.50 lakhs to the aforesaid parties. Further, the

Assessing Officer observed that one of the persons to whom majority of the compensation towards termination of marketing rights was paid was a Director of the assessee company and was entrusted with the responsibility of looking after marketing of the products of the assessee company. Accordingly, the Assessing Officer held that in absence of any agreement furnished by the assessee for granting the marketing rights to various parties or termination of the said marketing agreement, the genuineness of the aforesaid expenditure cannot be accepted. Accordingly, the Assessing Officer disallowed the sum of Rs. 60.50 lakhs and added the same to the income of the assessee.

10. In appeal, CIT(A) allowed the appeal of the assessee on this issue with the following observations:-

“4.3. I have carefully considered the facts on records and submission of the Ld. Authorized Representative. The contention of the appellant in regard to disallowance of compensation paid for termination of Marketing Rights of Rs.60,50,000/- has been analyzed in details in the submission so made during the course of appeal hearing. The action of the Assessing Officer of making this addition is based on the ground that the agreements entered to with the parties as listed in the submission to whom the compensation was paid were not provided by the appellant.

The appellant company who was operative through various dealers network got very good opportunity for sale of the e contents through one master dealer and terminated the existing contract of erstwhile dealers and had paid compensation, the payment of compensation is purely for the development of the business and hence entitle for amortization over a period of time in the same manner in which advance revenue received charged to profit and loss account.

The contention of the appellant that the Company has paid Rs.60,50,000 being Termination of Marketing Rights has benefited the company since after termination of said Marketing Rights the company has sold its Marketing Rights to Educomp for Rs.15,25,00,000 in other words the Total payment of Rs.3,75,00,000 has yielded profit to the company and the

commission payment has been reduced substantially in subsequent assessment years.

*In view of detailed submissions referred above, facts of the case and case law relied it is established that payment made by the appellant company is during course of business was for purpose of business and it was thus in the nature of "commercial expediency". For this expression the reliance placed by the Authorized Representative of the appellant in the case of honorable Supreme Court judgment in the case of **S.A. Builders Ltd. vs. CIT(A)** reported in ITR page 1 is favorable to the appellant.*

Further the Hon'ble Supreme court held that:

"We agree with the view taken by the Delhi High Court in CIT vs. Dalmia Cement (Bhart) Ltd. (2002) 254 ITR page 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."

Inviting reference to Sec. 37 of the IT Act it is claimed that expenditure of Rs.60,50,000 being paid for Termination of Marketing Rights to various agents is not expenditure of capital nature or personal expenditure and that Company has benefited by making this payment and therefore expenditure is allowable in computing profit and gain of Business.

It was on account of the payment for termination of Marketing rights it become possible for the appellant to give Marketing Rights to Educom Solutions Ltd. as per Agreement with them dated 28-07-2007 which has resulted into receiving a very large sum of Rs.15,00,00,000/- which has a direct nexus and connection with getting Marketing Rights with old Agents Terminated.

It is worthwhile note that on payment of Termination of Marketing Rights, the existing asset was recovered and the appellant got an opportunity of earning more income by exploiting the said Marketing Rights and it is proved by facts of the case that the appellant received Rs.15,00,00,000/- on giving Marketing Rights to Educom Solutions Ltd., 1/10th of which i.e. Rs.1,50,00,000/- is declared as Income which is accepted by the A.O. as Business Income of the appellant.

The payment for Termination of Marketing Rights claimed at Rs.60,50,000/-which is as per the Accountancy practice of the Appellant and accepted by the A.O. is backed by sound accountancy policy and duly supported under provisions of Income-tax Act.

*In view of the given matrix, the action of the Assessing Officer of making disallowance of Rs. 60,50,000/- on account of compensation paid for termination of marketing rights is not found justified and accordingly the said addition of Rs. 60,50,000/- is directed to be deleted. This ground of appeal is **allowed.***

11. The Department is in appeal before us against the aforesaid order passed by Ld. CIT(A) allowing the appeal of the assessee on this issue.

12. On going through the contents of the order passed by Ld. CIT(A), it is observed that the Ld. CIT(A) passed a non-speaking order while allowing the appeal of the assessee on this issue. The Ld. CIT(A) in the appellate order has not controverted any of the findings made by the Ld. AO at the time of making the aforesaid disallowance, we observe that neither has been the initial agreement towards granting of marketing rights to various parties was furnished before Ld. CIT(A) and neither was be subsequent termination agreement furnished before Ld. CIT(A). Further, we observe that the assessee has sought to produce a termination agreement before us for our perusal, but apparently the other party too of the parties to the agreement has not signed the same. Accordingly, in our considered view, the Ld. CIT(A) has not given any justification in allowing the appeal of the assessee on this issue. It was

submitted before us that it was due to the marketing offers of the concerned persons to whom the compensation towards marketing rights was paid that there was a substantial increase in the sales / turnover of the assessee companies. However, Ld. CIT(A) in our view has passed a non-speaking order while allowing the appeal of the assessee on this issue.

13. Accordingly, in the interest of justice the matter is being restored to the file of Ld. CIT(A) to carry out necessary verification into the genuineness of the claim of the assessee and is directed to pass a detailed speaking order while dealing with this issue.

14. In the result, Ground No. 2 of the Department's appeal is allowed for statistical purposes and since Ground No. 1 of the assessee's Cross Objection is only supporting the order passed by the Ld. CIT(A), the same is accordingly dismissed.

Ground No.3:- Income received but not accrued(Rs.1,50,00,000/-)

15. During the course of assessment, the Assessing Officer observed that on verification of Balance Sheet, it is seen that the assessee had shown an amount of Rs. 1,50,00,000/- as income received but not accrued from M/s. Educomp Solutions Pvt. Ltd. under the head "current liabilities". The assessee was required to explain as to why this amount was not offered to tax since the income had already accrued and received.

16. During the course of assessment, the assessee submitted that as per the accounting policies, though this amount was received during the current year, it had accrued only in the subsequent year and has been offered to tax as

income in the subsequent year only. Accordingly, as per the accounting policy of the assessee company, the aforesaid amount was treated as current liability and shown under the head “income received but not accrued”. However, the Assessing Officer observed that the assessee had received an amount of Rs. 15 crores from M/s. Educom Solution Pvt. Ltd. for surrendering its marketing right in it’s favour for a period of 10 years and the assessee as a prudent accounting practice decided to charge the minimum amount of Rs. 1.50 crores being 1/10th of initial amount received upfront for the year under consideration. However, on perusal of the Profit & Loss Account AO noticed that the assessee had not shown 1/10th of the aforesaid amount of Rs. 15 crores as its income in the P&L Account for the impugned Assessment Year. The Assessing Officer was of the view that assessee failed to provide the accounting standard / accounting policy under which the assessee company was not required to disclose the above income which had already accrued and received. The Assessing Officer observed that the assessee had already received an amount of Rs. 15 crores from Educom Solution Pvt. Ltd. for granting its marketing rights for a period of 10 years. Accordingly, in view of the above facts, the Assessing Officer added a sum of Rs. 1.5 crores as income of the assessee.

17. In appeal, Ld. CIT(A) allowed the appeal of the assessee with the following observations:-

“5.3. I have carefully considered the facts on records and submission of the Ld. Authorized Representative. It is a fact that the company had entered in to long term agreement with M/s. Educomp India Private Limited for a period of 10 years and sale of 10000 licenses which-ever is earlier and based on this, the company to follow the prudent accounting practice decided to charge minimum of Rs.150.00 Lac being one tenth of initial amount of Rs 1500.00 Lac received from M/s Edu Comp India Private Limited to the profit and loss

account and every year the company followed this practice and charged minimum of Rs.150.00 Lac as revenue out of lump sum received from the above referred company over and above when-ever there is an additional sale or up-gradation of software then it is charged to profit and loss account. The income was offered by the appellant for taxation in next financial year along with income earned on account of additional license sale.

During the year under reference there was a change in the presentation of the Balance Sheet and new revised guideline with the name of Revised Schedule Six was issued and implemented with effect from 1/04/2012 and with the introduction of revised guidelines all the accounts were categorized under two heads i.e. Current and Non-Current Assets/Liabilities and for better presentation all the accounts were shown above categories and while doing so, the amount receivable in next year was treated as current liability and shown under the head Amount Income Received and Not Accrued, which clearly indicates that Income though received but not accrued as per the prevailing accounting practice to add to this the same is also shown in accounting policies of the company in view of the above the amount is not income of the company and the same is charged to income in the subsequent year and income once taxed cannot taxed twice.

Considering the above facts and cited case laws it is held that the addition of Rs.1,50,00,000/- made by the Assessing Officer are not justified and deserves to be deleted. This ground of appeal is allowed."

18. The Department is in appeal before us against the aforesaid order passed by Ld. CIT(A), allowing the appeal of the assessee on this issue.
19. On going through the contents of the order passed by Ld. CIT(A), it is observed that Ld. CIT(A) has simply accepted the version of the assessee and allowed the appeal of the assessee primarily on the ground that the aforesaid income was offered to tax by the assessee in the subsequent assessment year. However, while allowing the appeal of the assessee, the Ld. CIT(A) has given no concrete finding or any basis for holding that as to why the aforesaid income, which was received by the assessee during the year under consideration, did not accrue to the assessee and on the basis on which

accounting practice, the recognition of Revenue was deferred to the succeeding assessment year. Accordingly, in the interest of justice, the matter is being restored to the file of Ld. CIT(A) to give a detailed and reasoned findings as to why the aforesaid income did not accrue to the assessee during the year under consideration.

20. In the result, Ground No. 3 of the Department's appeal is allowed for statistical purposes.

Ground No.4 of Department's appeal & Ground No.2 of Assessee's Cross Objection:- Interest disallowed under Section 36(1)(iii) (Rs.48,25,919/-)

21. During the course of assessment, the Assessing Officer observed that the assessee had given interest free advances to various parties amounting to Rs. 1,77,69,418/-. On going through the details filed by the assessee the Assessing Officer held that the assessee suo moto admitted that an amount of Rs. 44 lakhs was given for non-business purposes. Further, even with regard to the balance amount, the Assessing Officer was of the view that the assessee was not able to give justification for giving interest free advances and accordingly, he added a sum of Rs. 48,25,919/- under Section 36(1)(iii) of the Act to the income of the assessee.

22. In appeal Ld. CIT(A) allowed the appeal of the assessee with the following observations:-

“6.2. During the course of appellate proceedings, Shri Dinesh Jain, CA, the Authorized Representative of the appellant attended and furnished the

detailed written submission dated 12.10.2015. The relevant portion of the written submission of Ld. Authorized Representative is reproduced as under:-
XVII. “The fourth ground of appeal is pertaining to addition on account of disallowance of interest expense of Rs.48,25,919/- which was reduced to a disallowance of Rs.15,32,324/- by an order of rectification u/s 154 of the Act. The Ld. AO added 12% interest on notional basis on the following advances given:-

Sr. No.	PARTICULARS	AMOUNT
1.	Nageshwari Traders	3400000.00
2.	Nipa Madhusudan	600000.00
3.	Niru Mahendra Patel	400000.00
4.	Iqbal Ahmed Dubai Office	4298940.00
5.	Kanwalijitsingh Arora	500000.00
6.	KJS Brar	807556.00
7.	Kunal Impex Pvt. Ltd.	500000.00
8.	Upper India Sales Agency	500000.00
9.	Virtual Education Pvt. Ltd.	500000.00
10.	Khodiyar CAD Centre Pvt. Ltd.	274040.00
11.	Lt. Col. IA Siddique	988882.00
	TOTAL	12769418.00

The detailed chart showing the details for which the advances were made to various parties were provided to the Ld. AO during the course of assessment proceedings. The Ld. AO did not bother to check the same properly and added interest on a notional basis while passing the order. This goes on to prove that Ld. A.O had passed the order with a prejudiced mind.

Out of the following advances, the company has shown loans and advances to various parties out of which certain amounts were given as advance for building which was added to the building block in the subsequent years and other amounts are for the business purpose the detail of which is as under.-

Name of party	Amount	Purpose
Iqbal Ahmed Dubai Office	42989040	Amount paid for the branch office at Dubai for which no interest is required to be charged
Kanwalijitsingh Arora	500000	Advance against expenses

KJS Brar	807556	One of the director and amount is given against advances for expenses
Kunal Impex Pvt. Ltd.	500000	Advance for purchase of software
Upper India Sales Agency	500000	Advance for purchase of software
Virtual Education Pvt. Ltd.	500000	Advance for purchase of software
Khodiyar CAD Centre Pvt. Ltd.	274040	Advance for CAD designing
Lt. Col. A Siddique	988882	Office in charge of Dubai Operations

It can be seen from the above the advances made to the parties were for the purpose of business only and not otherwise. And as per the provisions of Income tax Act, 1961, expenditure incurred for the purposes of business is allowable as deduction during the year.

It is pertinent mention here that the majority of the advances are given in earlier years only. Chart showing details of year wise advance given is enclosed. From the chart your honor will observe that only to khodiar Cad and Iqbal Siddique the advance were made during the year. The amount given to Iqbal Siddique is for Dubai Office advance and the said amount will not attract interest u/s. 36(1)(iii). The advance given to khodiar CAD is against the advance for CAD designing.

With regard to advance given to Mr. Kanwaljeet is concerned appellant wish to state that confirming ledger of Mr. Kanwaljeet is provided along with PAN and address. The advance given is in routine course of business. Moreover the advance was given in earlier years and out of the own funds of the company.

XVIII. The Assessing Officer has erred both in Law and in fact in to resorting Sec. 36(1)(iii) of the Act and thereby making huge addition of Rs.14234723/- out of total interest paid by your Appellant Company. As a matter of fact your Appellant submits that the advances made to following referred parties are from own funds of the Appellant and that it is not a case that the Appellant has taken loan from Bank or other institution on payment of interest and made advance of funds without charging interest. We invite your Honours kind attention to the following chart and submit that your Appellant has enough and sufficient funds of its own and therefore no disallowance from Interest are called for.

Sr. No.	PARTICULARS	AMOUNT IN Asst. Year 11-12	AMOUNT IN AY 12-13
1.	Capital	100000.00	100000.00

2.	Reserves & Surplus	59603852.00	87910370.06
3.	Sundry Creditors (non-interest bearing)	228409027.00	228409027.00
4.	Interest free funds with company(1+2+3)	288112879.00	288112879.00
5.	Bank Loan as per Balance Sheet	57144267.00	55369217.12

Your Appellant relies on very recent judgement of Ahmedabad Tribunal in the case of Belgium Glass & Ceramics P. Ltd. vs. ACIT, Cir.1(1), ITA No 296/Ahd/2012 for A.Y.2002-03 dated 18-5-2012 Ahmedabad 'D' Bench per Hon. G.C. Gupta Vice President extract of which reads as under:

Para 2. The ground no.1 of the assessee's appeal reads as under:

"1. The Id. CIT(A) has erred in law and in facts in upholding the action of the AO in confirming the addition of Rs.5,39,462/- out of interest expenses claimed by the Appellant company alleging that the appellant company has diverted borrowed funds for interest free advance/loans given to associate concerns and directors of the appellant company. The impugned addition of Rs.5,39,462/- being erroneous in law and in fact is prayed to be deleted."

...not otherwise and as per the provisions of Income tax Act, 1961, expenditure incurred for the purposes of business is allowable as deduction during the year.

It is pertinent to mention here that the majority of the advances had given in earlier years only. The appellant has also furnished Chart showing year wise details of advance given. From the chart it is evident that only in the case of khodiar Cad and Iqbal Siddique the advance were made during the year. The amount given to Iqbal Siddique is for Dubai Office advance and the said amount will not attract interest u/s. 36(l)(iii). The advance given to khodiar CAD is against the advance for CAD designing.

As far as the advance given to Mr. Kanwaljeet is concerned, the appellant has furnished confirming ledger of Mr. Kanwaljeet along with PAN and address. The advance given is in routine course of business, which was given in earlier years and out of the own funds of the company. As a matter of fact the Appellant submission that the advances made to various parties were from own funds of the Appellant and that it is not a case that the Appellant has taken loan from Bank or other financial institution on payment of interest and made advance of funds without charging interest. The appellant also

invited attention to the chart giving; comparison of sufficient amount available with company during the A.Y. 2011-12 and 2012-13.

*Also the recent judgment of Ahmedabad Tribunal in the case of **Belgium & Ceramics P. Ltd. vs. ACIT, Cir.1(1), ITA No 296/Ahd/2012** for A.Y.2002-03 dated 18-5-2012 Ahmedabad 'D' Bench supports the contention of the appellant.*

*Further the fact that the own funds available without interest with the assessee, were much more than the advance made to the sister concern, and therefore, no case of disallowance of interest could be made by the Assessing Officer. Further the issue also finds support from the decision delivered in the case of honorable IT AT, Ahmedabad Bench in the case of **Torrent Financiers vs. ACIT, 73 TTJ(ahd) 624** and also by the decision of the Hon'ble jurisdictional High Court in the case of **CIT Vs. Raghuvir Synthetics Ltd., Tax Appeal No.829 of 2007 dated 5-12-2011.***

In view of the given facts, it is held that the addition of Rs.48,25,919/- made by the Assessing Officer are not justified and deserves to be deleted, therefore, these are deleted. This ground of appeal is allowed.

7. *In the result, the appeal of the assessee is allowed.*”

23. The Department is in appeal against the order passed by Ld. CIT(A) granting relief to the assessee on this issue.

24. On going through the contents of the order passed by the Ld. CIT(A), we observe that Ld. CIT(A) gave relief to the assessee and the ground that the assessee was having substantial interest free funds available with it. Accordingly, once it is found that the assessee is having substantial interest free funds available with it in the form of capital, reserves and surplus and non-interest bearing sundry creditors, then it has to be presumed that the interest free advances had been given by the assessee from its own interest free funds available with it. Secondly, Ld. CIT(A) also observed that majority of the advances had been given by the assessee in previous years only. Further, it was also observed by Ld. CIT(A) while granting relief to the assessee that in

respect of most of the advances, it is seen that the provisions of Section 36(1)(iii) of the Act was not attracted since the advances were given for business purposes of the assessee in the course of business. Accordingly, in our considered view, looking into the facts of the instant case and observations made by Ld. CIT(A) while allowing the appeal of the assessee on this issue, we are of the considered view that Ld. CIT(A) has not erred in facts and law while allowing the appeal of the assessee.

25. In the result, Ground No. 4 of the Department's appeal is dismissed and Ground No. 2 of the assessee's Cross Objection is allowed.

ITA No. 1188/Ahd/2018 (A.Y. 2013-14) & C.O. No. 92/Ahd/2019
(A.Y. 2013-14):-

26. The Department has raised the following grounds of appeal:-

“(1) That the ld.CIT(A) erred in law and on facts in deleting the disallowance of Rs.1,21,87,424/- made under section 40(a)(ia) of the IT Act, 1961.

(2) That the ld.CIT(A) erred in law and on facts in deleting the addition made on account of compensation paid for termination of marketing rights of Rs.62,50,000/-.

(3) That the ld.CIT(A) erred in law and on facts in ignoring that the assessee had failed to prove the claim before the AO with evidences.

(4) That the ld.CIT(A) erred in law and on facts in allowing the assessee to amortize the payment over a period of time ignoring the provisions of the Act.

(5) That the ld.CIT(A) erred in law and on facts in deleting the disallowance of interest of Rs.18,63,744/- made under section 36(1)(iii) of the IT Act.

(6) *The appellant craves, to leave, to mane and/or to alter any ground or add a new ground which may be necessary.”*

27. The assessee has raised the following grounds of appeal in Cross Objection:-

“1. *The Ld. CIT(A) in his well Discussed and Speaking Order have considered provisions of Sec.40(a)(1) of the Act and considering the Law and Facts of the case has rightly deleted addition of Rs. 1,21,87,424/- and therefore his order be upheld and Appeal filed by the Department be dismissed.*

2. *The Ld. CIT(A) in his well Discussed and Speaking Order have considered provisions of the Act, Facts of the case and various Case Law and righty deleted Compensation for Termination of marketing Rights and have deleted of addition Rs.62,50,000/- and therefore his order be upheld and Appeal filed by the Department be dismissed.*

3. *The Ld. CIT(A) has fully considered the facts of the case and had not ignored that Responded had placed enough evidence and proof before Assessing Officer both on point of Law and on point of Fact and after that only had Ld.CIT(A), deleted the disallowance.*

4. *The Ld. CIT(A) has rightly allowed Amortisation of Expenses u/s.35D over period of time on principals of accountancy and backed by legal decision as well as in view of Accounting Standard No.26 issued by Institute of Chartered Accountant of India and as per past practice followed and accepted both by the Respondent and the Department.*

5. *The Ld.CIT(A) has on facts of the case and principle of law rightly deleted addition of Rs. 18,63,744/- made by the A.O. u/s.36(l)(iii) and more particularly the Interest Free Funds available with the Respondent have for more than Interest Free Advances & therefore the Appeal filed by the Department be dismissed.*

6. *It is therefore submitted that relief claimed above be allowed and the order of the Learned CIT(A) be upheld. Your Respondent reserves right to add, alter, amend to withdraw any or all Ground of Appeal.”*

28. In light of our observations for A.Y. 2012-13 Ground Nos. 1 & 2 of the Department's appeal are allowed for statistical purposes and Ground No. 5 of the Department's appeal is dismissed.

29. In light of our observations for A.Y. 2012-13, assessee's Cross Objections Nos. 1 & 2 are dismissed and assessee's Cross Objection No. 5 is allowed.

30. The other grounds of appeal and cross objections raised by the Department and the Assessee are general in nature and hence does not require any specific adjudication.

31. In the combined result, both the appeals of the Department are partly allowed for statistical purposes and the Cross Objections of the assessee are partly allowed.

This Order pronounced in Open Court on

20/10/2023

Sd/-

**(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Ahmedabad; Dated 20/10/2023

TANMAY, Sr. PS

TRUE COPY

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad