

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 2428/DEL/2014 (A.Y 2008-09)

Sindhu Trade Links Ltd. 129, Transport Centre, New Rohtak Road Punjabi Bagh New Delhi AAACS0447A (APPELLANT)	Vs	Addl. CIT(A) Range-8 New Delhi (RESPONDENT)
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ITA No. 2652/DEL/2014 (A.Y 2008-09)

DCIT Central Circle-21 New Delhi (APPELLANT)	Vs	Sindhu Trade Links Ltd. 129, Transport Centre, New Rohtak Road Punjabi Bagh New Delhi AAACS0447A (RESPONDENT)
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ITA No. 2429/DEL/2014 (A.Y 2009-10)

Sindhu Trade Links Ltd. 129, Transport Centre, New Rohtak Road Punjabi Bagh New Delhi AAACS0447A (APPELLANT)	Vs	DCIT Circle-8(1) New Delhi (RESPONDENT)
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Appellant by	Sh. Salil Kapoor, Adv
Respondent by	Sh. Saras Kumar, Sr. DR

Date of Hearing	16.07.2020
Date of Pronouncement	11.09.2020

ORDER**PER SUCHITRA KAMBLE, JM**

These three appeal are filed by the Revenue and the assessee against the orders dated 21/2/2014 for Assessment Year 2008-09 & 2009-10 respectively passed by CIT(A)'s-XI, New Delhi.

2. The grounds of appeal are as under:-

ITA No. 2428/Del/2014 (A.Y. 2008-09)

“1. That the Ld. CIT(A) has erred on facts and in law in confirming the disallowance made by the AO of Rs. 12,87,839/- representing 18% notional interest calculation on Advance of Rs. 637.00 Lac given against property in the Real Estate business of Appellant Company holding that the same is not earning any interest income without appreciating that the Assessee Company is available with Interest free shareholder funds of Rs. 3422.25 Lac.

2. That the Ld. CIT(A) has erred on facts in stating that no agreement or receipt etc was furnished to evidence the advance against property.

3. That the Ld. AO has erred in law in making addition of Rs. 10.59 Lac u/s 14A r.w.s. Rule 8D without establishing the proximate cause between exempt income and expenses incurred to earn such income.

4. That the explanations filed and the material available on record has not been properly considered and legally interpreted. The addition made cannot be justified by any material on record.

5. That in view of the facts and circumstances of the case the observations made are illegal, bad in law and unwarranted and cannot be justified by any

material on record.”

ADDITIONAL GROUNDS

Ground 7: That in view of the facts and circumstances of the case, the disallowance made by the Assessing Officer u/s 14A read with Rule 8D is illegal, bad in law and without jurisdiction and is also highly excessive. The Commissioner of Income Tax (Appeals) has erred on facts and in law in upholding the same.

Ground 8: That in view of the facts and circumstances of the case, no satisfaction has been recorded by the Assessing Officer for making disallowance u/s 14A read with Rule 8D and therefore, the same is without jurisdiction.

ITA No. 2652/Del/2014 (2008-09)

“1. Commissioner of Income Tax (Appeals) erred in law and on facts of the case in deleting the addition of Rs.1,57,01,866/- made by A.O u/s 2(22) (e) of the I.T Act.

2. Commissioner of Income Tax (Appeals) erred in law and on facts of the case in deleting the addition of Rs. 3,60,000/- made by A.O. as notional interest advance given to M/s Global Estates Pvt. Ltd.

3. That the Commissioner of Income Tax (Appeals) erred in law and on facts of the case in deleting the addition of Rs. 25,84,841/- made by A.O. on a/c of interest income on accrual basis.

4. That the Commissioner of Income Tax (Appeals) erred in law and on facts of the case in deleting the disallowance of interest to Rs. 12,87,839/-.

5. That the Commissioner of Income Tax (Appeals) erred in law and on facts of the case in deleting the addition of Rs. 28,44,800/- made by A.O. on a/c of unexplained investment in land u/s 69 of the I.T. Act.

6.

(a) The order of the CIT (A) is erroneous and not tenable in law and on facts.

(b) *The appellant craves leave to add, alter or amend any/ all of the grounds of appeal before or during the course of the hearing of the appeal.*

ITA No. 2429/Del/2014 (2009-10)

1. *That the Ld. AO has erred in law in making addition of Rs. 9.97 Lac u/s 14A r.w.s. Rule 8D without establishing the proximate cause between exempt income and expenses incurred to earn such income.*
2. *That the Ld. CIT(A) has erred on facts and in law in confirming the disallowance made by the AO of Rs. 3.60 lac representing 18% notional interest calculation on Advance of Rs. Lac given against property in the Real Estate business of Appellant Company holding that the same is not earning any interest income without appreciating that the Assessee Company is available with Interest free shareholder funds of Rs. 3412.09 Lac.*
3. *That the Ld. CIT(A) has erred on facts in stating that no agreement or receipt etc was furnished to evidence the advance against property.*
4. *That the explanations filed and the material available on record has not been properly considered and legally interpreted. The addition made cannot be justified by any material on record.*
5. *That in view of the facts and circumstances of the case the observations made are illegal, bad in law and unwarranted and cannot be justified by any material on record.”*

ADDITIONAL GROUNDS

Ground 7: That in view of the facts and circumstances of the case, the disallowance made by the Assessing Officer u/s 14A read with Rule 8D is illegal, bad in law and without jurisdiction and is also highly excessive. The

Commissioner of Income Tax (Appeals) has erred on facts and in law in upholding the same.

Ground 8: That in view of the facts and circumstances of the case, no satisfaction has been recorded by the Assessing Officer for making disallowance u/s 14A read with Rule 8D and therefore, the same is without jurisdiction.

3. Firstly, we are taking up the Assessee's appeal being ITA No. 2428/Del/2014 for Assessment Year 2008-09. The assessee is a Non-Banking Financial Company (NBFC) and is registered with the Reserve Bank of India (RBI). The assessee filed its return of income on 30/09/2008 declaring total income of Rs.2,88,57,381/-. The assessee further revised return of income on 24/7/2009 declaring total income at Rs.2,88,62,090/-. The Assessing Officer assessed the total income of the assessee at Rs. 6,28,78,523/- by making the following additions/disallowances:

- i. Addition on account of deemed dividend u/s 2(22)(e) of the Act – Rs. 1,57,01,866/-
- ii. Interest on share application money investment made in M/s Global Estate Developers Pvt. Ltd. – Rs. 3,60,000/-
- iii. Addition on account of interest income on accrual basis – Rs.25,84,841/-
- iv. Disallowance of interest on advance made towards purchase of property – Rs.1,14,66,000/-
- v. Addition on account of unexplained investment in property – Rs. 28,44,800/-
- vi. Disallowance u/s 14A r.w. Rule 8D – Rs. 10,58,926/-

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. As regards to Ground Nos. 1 and 2 of the Assessee's appeal relating to sustaining disallowance of interest on advance made towards purchase of property to the extent of Rs.12,87,839/-, the Ld. AR submitted that the assessee company had advanced Rs. 6.37 Cr. towards purchase of property out of which Rs. 17 lacs had been paid in A.Y. 2007-08. These advances were received back in subsequent assessment years (A.Y. 2009-10 and A.Y. 2010-11) as the deal could not materialize and hence the amount advanced towards it was received back. The Assessing Officer disallowed interest amounting to Rs. 1,14,66,000/- calculated at the rate of 18%, observing that the aforesaid amount was not advanced by the Assessee during the ordinary course of its business. In appeal before the CIT(A), the CIT(A) rejected the contention of the Assessee that the aforesaid sum was advanced towards the purchase of property during its ordinary course of business, however it restricted the disallowance to Rs. 12,87,839/- by computing the proportionate interest as per the number of days for which the said amount was advanced to the parties. The Ld. AR submitted that the assessee is a NBFC which is registered with the RBI in category of Loan Investment Company and is also engaged in the business of Real Estate Activity and therefore the sum in question was advanced towards purchase of property. However, as the deal could not materialize, the said amount was subsequently received back by the Assessee. Therefore, the stand of the Assessing Officer as well as that of the CIT(A) that the said sum was not advanced during the ordinary course of business is without any basis. Furthermore, the Assessing Officer as well as the CIT(A) have erred on facts and in law in not appreciating that the assessee had sufficient interest free fund available with it and therefore, no disallowance of interest can be made as the presumption would be that the money was advanced out of the said interest free funds. This fact was mentioned by the CIT(A) in para 10.3 in the order. The Ld. AR relied upon the following decisions:

- a. CIT vs. Reliance Utilities & Power Ltd. (2009) 178 Taxman 135 (Bom HC)

b. CIT vs. Reliance Industries Ltd. (2019) 410 ITR 466 (SC)

6. The Ld. DR submitted that the assessee on one hand was paying interest to the tune of Rs.1,46,26,712/- on the loan raised by it in conducting the business, at the same time, it had advanced funds to the tune of Rs. 6.37 crores without charging any interest on such huge amount. Before the Assessing Officer, the Assessee claimed that the assessee company had advanced this amount against the property. Before the Assessing Officer the assessee could not provide any evidence that these amounts were really meant for the purchase of property and therefore, the Assessing Officer rejected the contention of the assessee that these advances were given in the ordinary course of business. Another contention of the assessee that being a Non-Banking Financial Company, it was engaged in the activities of sale of shares, financing loans etc., but it failed to substantiate as to whether the money advanced in the garb of advance against land had resulted in any income at all. As per the Assessing Officer, since the assessee failed to discharge its onus establishing that the advance was given for business purposes, the Assessing Officer rightly computed the proportionate interest @ 18% on such advance and disallowed the amount of Rs. 1,14,66,000/- from the total interest paid by the assessee. As is evident from the assessee's submissions before the CIT(A), the assessee failed to substantiate its claim that the loan/advance was meant for real estate business i.e. for purchasing the property. Neither any agreement to purchase nor any receipt showing that the advance was meant for buying the property, has been furnished by the assessee. Even at the end of such a loan, in none of the cases, the purchase of property got materialized. The CIT(A) observed that the money advanced to four persons but in none of the cases, a single deal could materialize and the entire amount (except Rs. 20 lac in the case of Shri Shiv Dayal) was got refunded to the assessee. Therefore, the Assessing Officer's action in holding that the advance was not meant for business purpose was justified. As regards having sufficient interest free funds, the assessee was making investments from common pool of funds from where

it has already made huge investments in its NBFC business, in its acquiring of fixed assets and giving share application money. Therefore, the presumption of the assessee that such advance of Rs. 6.37 crores was out of available interest free funds. The Ld. DR further relied upon the Assessment Order.

7. We have heard both the parties and perused the material available on record. The CIT(A) observed that the assessee failed to substantiate its claim that the loan/advance was meant for real estate business i.e. purchasing the property. On record there is no agreement to purchase nor any receipt showing that the advance was meant for buying the property. In fact, in none of the cases, the purchase of property got materialized. The Ld. AR submitted that the assessee company had advanced Rs. 6.37 crores towards purchase of property out of which Rs. 17 lacs had been paid in A.Y. 2007-08. These advances were received back in the subsequent assessment years (A.Y. 2009-10 and 2010-11) as the deal could not be materialized and the amount advanced towards it was received back. This aspect was not looked into by the Assessing Officer as well as the CIT(A) and needs to be looked into in its entirety. Therefore, it will be appropriate to remand back this issue to the file of the Assessing Officer for proper adjudication. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Ground Nos. 1 and 2 are partly allowed for statistical purpose.

8. As regards to Ground Nos. 3 as well as additional grounds no. 7 & 8 of assessee's appeal relating to disallowance u/s 14A r.w. Rule 8D amounting to Rs. 10,58,926/-, the Ld. AR submitted that during the year under consideration, the assessee company received dividend amounting to Rs. 2,86,370/-. The Assessing Officer has straightway, without recording any satisfaction or reasoning in the assessment order, made disallowance u/s 14A read with Rule 8D(ii) & 8D(iii) amounting to Rs. 10,58,926/-, which is also highly excessive. The CIT(A) upheld the entire disallowance made by the Assessing Officer u/s 14A and rejected the contention of the Assessee that the

assessee had sufficient interest free funds to make the investment and also that there is no direct nexus between the exempt income earned and the disallowance made by the Assessing Officer. The Ld. AR submitted that while making the disallowance u/s 14A, the Assessing Officer has not recorded any satisfaction wherein in terms of provisions of Section 14A of the Act, it is a legal mandate for the Assessing Officer to record satisfaction before making any disallowance u/s 14A. The Ld. AR relied upon the following decisions:

a. Godrej & Boyce Manufacturing Company vs. DCIT 2017 (394) ITR 449 (SC)

b. Pr. CIT vs. M/s Hindustan Clean Energy Ltd. – ITA 268/2018 (Del. HC)

There is no proximate nexus between the expenditure incurred and the exempt income earned and therefore, the Assessing Officer has wrongly applied and computed disallowance u/s 14A of the Act. Even otherwise the disallowance is wrongly computed as for the purpose of making disallowance u/s 14A, only those investments from which exempt income is derived are to be considered. The investment in the present case from which the exempt income is derived is only Rs. 36,77,947/- whereas while making the disallowance u/s 14A, the Assessing Officer has taken the amount of total investments. The Ld. AR relied upon the following decisions:

a. ACB India Ltd. vs. ACIT (2015) 374 ITR 108 (Del. HC)

b. ACIT vs. Vireet Investment (P.) Ltd. (2017) 58 ITR (T) 313 (Del. Tri.)(SB)

c. PCIT vs. Caraf Builders & Construction (P.) Ltd. (2019) 414 ITR 122 (Del.)

d. PCIT vs. Caraf Builders & Construction (P.) Ltd. (2019) 112 taxmann.com 322 (SC)

Furthermore, the Assessing Officer as well as the CIT(A) have failed to appreciate that the assessee had sufficient interest free fund to make the investment and therefore, no disallowance u/s 14A could have been made. The Ld. AR relied upon the following decisions:

a. Pr. CIT vs. Ashok Apparels (P.) Ltd. (2019) 106 taxmann.com 63 (Bom. HC)

b. CIT vs. Reliance Utilities & Power Ltd., (2009) 178 Taxman 135 (Bom.)

c. CIT vs. Reliance Industries Ltd. (2019) 410 ITR 640 (SC)

Without prejudice, the disallowance made by the Assessing Officer is high/excessive as the assessee has only earned exempt income to the tune of Rs. 2,86,370/- whereas the Assessing Officer has made disallowance amounting to Rs. 10,58,926/-. It is trite law that the disallowance u/s 14A cannot exceed the amount of exempt income earned. The Ld. AR relied upon the following decisions:

- a. Cheminvest Ltd. vs. CIT (2015) 378 ITR 33 (Del. HC)
- b. Maxopp Investment Ltd. vs. CIT (2018) 402 ITR 640 (SC)

9. The Ld. DR submitted that the assessee earned dividend income of Rs. 2,86,370/- during the year and no expenditure pertaining to earning of such exempt income has been disclosed by the assessee in his accounts. The Assessing Officer after considering all the relevant aspects of the case concluded that the assessee's case is fit for the share capital funds as well as interest bearing funds as mentioned in para 13.3 of CIT(A)'s order. Besides utilizing the capital funds in creation of fixed assets, the assessee has invested it in interest free funds also which has been claimed as share application money or advance given by the company for alleged business purposes. The assessee admitted that being an NBFC company, it has deployed funds to the tune of Rs. 26.44 crores for generating the interest income. Thus, it cannot be ruled out that interest bearing funds were utilized for making investments in shares which yielded dividend income. The quantum of investment has been claimed by the assessee company only at a restricted figure of Rs. 36,77,947/- and the assessee has excluded those investments which could not generate dividend income during the year but these investments definitely have a potential of generating dividend income in future and some expenditure in respect of such investments has incurred in the assessee's case. The Assessing Officer observed that the opening investment shown by the assessee itself was at Rs. 1,99,71,495/- while the closing investment was to the tune of Rs. 4,24,71,495/-. Therefore, the

assessee's claim that investment attributable to dividend was from small portion of total shareholder fund is misconceived and rightly rejected by the Assessing Officer as well as by the CIT(A). The assessee failed to establish that no interest bearing funds was ever invested in investments which yielded or shall yield tax free dividend income. Since the statute have provided a scientific method of making disallowance under Rule 8D of the Income Tax Rule, 1962. Thus, the Assessing Officer was right in making a disallowance under Rule 8D(2)(ii) and 8D(2)(iii) of the Rules.

10. We have heard both the parties and perused the material available on record. The Ld. AR submitted that the assessee has earned exempt income to the tune of Rs. 2,86,370/- whereas the Assessing Officer has made disallowance amounting to Rs. 10,58,926/-. The CIT(A) as well as Assessing Officer has not looked into the aspect of actual exempt income and the investment at large. Therefore, this issue also needs to be verified in its entirety. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Ground Nos. 3 as well as additional grounds no. 7 & 8 are partly allowed for statistical purpose.

11. As regards to Revenue's appeal, the Ld. DR submitted that the assessee company has taken secured loans of Rs. 4,70,49,253/- and unsecured loans of Rs. 5,86,86,639/- totaling Rs. 10,57,35,892/- and has debited an interest of Rs. 1,46,26,712/- excluding bank charges of Rs. 1,25,682/-. As per details filed by the assessee, it has given loans and advances Rs. 23.39 crores out of which the assessee has given loans and advances under the nomenclature of share application money to its associates companies namely Global State Developers Pvt. Ltd. (Rs. 20 lakhs), Shanra India Pvt. Ltd. (Rs. 77 lakhs), and Garuda Resorts Pvt. Ltd. (Rs. 80,01,866/-). The assessee company has not proved that it has been issued share certificates. It has failed to file copies of the share certificates from these companies. The Assessee company was asked

to explain as to why not Section 2(22)(e) be invoked in those associate companies and Proportionate interest be disallowed on the amount of advances given to the non-associates companies where as it has claimed interest on borrowed funds in the P & L account. In so far as amounts remaining as advance are concerned, the fall into the category of Trade Advances or advances taken during the normal course of business which in any way assessee may have to enter into such obligation. But the advances given by the assessee company in the garb of share application money, is nothing but loan and advances only and which is part and parcel of schedule 7 "B" and the assessee company itself has shown under the head loans and advances given in the balance sheet. In so far as Shanra India Pvt. Ltd. and Garuda Resorts Pvt. Ltd. are concerned, as per the details filed by assessee company vide forwarding letter dated 05.05.2010 they are the companies in which the director of the assessee company Shri Rudra Sen Sindhu is Director / shareholders and are also covered within the meaning of section 40A(2)(b) of the Income Tax Act, 1961. Onus was cast on assessee to prove that the amount given as loans and advances to Shanra India Pvt. Ltd. and Garuda Resorts Pvt. Ltd. were investment on which the assessee company was going to get gainful income which could be taxable in its hand. This onus of the assessee company has not been discharged. The assessee company was also put on notice that in case of failure of which Rs. 77,00,000/- and Rs. 80,01,866/- will become taxable within the scope of section 2(22)(e) of the Act. Thus, the Assessing Officer rightly observed that the assessee company has diverted its taxable income / profit to its Group Associates company and to the extent of Rs. 77 lakhs and Rs. 80,01,866/- totaling Rs. 1,57,01,866/- and this diversion of profit is in the nature of loans and advances to Shanra India Pvt. Ltd. and Garuda Resorts Pvt. Ltd.

12. The Ld. AR submitted in respect of Ground No. 1 of the Revenue's appeal relating to deletion of addition on account of deemed dividend u/s 2(22)(e) of the Act amounting to Rs. 1,57,01,866/- that the assessee company had given

share application money amounting to Rs. 1,57,01,866/- to two companies namely M/s Shanara India Pvt. Ltd. (Rs. 77Lac) and M/s Garuda Resorts Pvt. Ltd. (Rs. 80.01 Lac), who happened to be the associate companies of the assessee. The Assessing Officer issued a show cause notice to the assessee to state as to why addition u/s 2(22)(e) of the act should not be made by treating the said payment as deemed dividend under the provisions of the Act. In response thereto the Assessee submitted detailed contentions stating that provisions of Section 2(22)(e) cannot be invoked in the facts of the present case, however, the same were summarily rejected by the Assessing Officer and the Assessing Officer made addition amounting to Rs. 1,57,01,866/- u/s 2(22)(e) of the Act. The CIT(A) deleted the said addition holding that the Assessing Officer's case is based on presumption that the share application money was a misnomer and the same was given in the shape of loan or advance, however the said contention is not supported by any evidence on record and also accepted the contention of the Assessee that the provisions of Section 2(22)(e) are not applicable in the facts of the present case. The Ld. AR submitted that in view of the facts of the present case, provisions of Section 2(22)(e) cannot be applied as in the present case, the assessee has given the money in question and not received the share application money, therefore provisions of Section 2(22)(e) cannot be applied. Section 2(22)(e) of the Act is attracted only when a shareholder having shares not less than 10% receives any advance or loan from a company or any concern, any advance or loan from that company in which such shareholder has substantial interest, i.e. 20% shareholding. Apart from the fact that the assessee is the payer in the present case, the Ld. AR submitted that the assessee is not holding any shares in the companies to which it has given share application money. Neither the assessee is shareholder in these companies nor are the companies shareholders of the assessee company. Section 2(22)(e) of the Act is not applicable in cases of companies in which public are substantially interested and the assessee company is a Public Limited Company and therefore, provisions of Section 2(22)(e) cannot be applied. Admittedly, the assessee company is registered with

stock exchange and fulfill all the conditions of Section 2(18) which is definition of “company in which public is substantially interested.” Section 2(22)(e) of the Act is not applicable in cases of share application money and as rightly held by the CIT(A), the Assessing Officer has failed to substantiate as to how the amount in question is in the shape of a loan/advance received by the assessee company. The assessee is a NBFC and is as such covered by the exclusion clause provided under provision of Section 2(22)(e) of the Act. The amounts in question have not been paid during the year under consideration. The assessee company had given the share application money in years prior to assessment year 2008-09. The case of the assessee is covered in its favour by the following decisions:

- a. DCIT vs. Sindhu Realtors Pvt. Ltd.
- b. DCIT vs. Sindhu Holdings Ltd.

13. We have heard both the parties and perused all the relevant material available on record. From the perusal of records it can be seen that the assessee has given the money in question and not received the share application money, therefore provisions of Section 2(22)(e) cannot be applied. Section 2(22)(e) of the Act is attracted only when a shareholder having shares not less than 10% receives any advance or loan from a company or any concern, any advance or loan from that company in which such shareholder has substantial interest, i.e. 20% shareholding. The assessee is the payer in the present case and not holding any shares in the companies to which it has given share application money. Neither the assessee is shareholder in these companies nor are the companies shareholders of the assessee company. Thus, Section 2(22)(e) of the Act is not applicable in cases of companies in which public are substantially interested and the assessee company is a Public Limited Company and therefore, provisions of Section 2(22)(e) cannot be applied. Admittedly, the assessee company is registered with stock exchange and fulfill all the conditions of Section 2(18) which is definition of “company in which public is substantially interested.” Thus, the submissions of the Ld. AR

are acceptable and are supported by the decisions of the Tribunal in cases of DCIT vs. M/s Sindu Realtors Pvt. Ltd. (ITA No. 2768/Del/2012 order dated 11.12.2015). In this case also Section 2(22)(e) of the Act is not applicable and as rightly deleted the addition by the CIT(A). Further, the Assessing Officer has also failed to substantiate as to how the amount in question is in the shape of a loan/advance received by the assessee company. Ground No. 1 of the Revenue's appeal is dismissed.

14. As regards to Ground No. 2 of the Revenue's appeal relating to deletion of interest disallowance on share application money investment made in M/s Global Estate Developers Pvt. Ltd. amounting to Rs. 3,60,000/-, the Ld. DR submitted that as per the details filed by the assessee company, it has been found that the assessee company has given loans and advances to the tune of Rs. 23,39,02,212/- out of which an amount of Rs. 20,00,000/- has been expressly shown as loans and advances in the balance sheet, although in the later details the assessee has shown it in the garb of share application money, but the assessee failed to discharge its onus that these advances were in the ordinary course of business of the assessee company which is an NBFC company and exceptions will be applicable in this case. Further so far, the assessee has not proved that the money which it advanced in the form of /in the garb of share application money were actually allotted to the assessee company. The assessee also failed to demonstrate that whether these money advanced was in the ordinary course of business i.e. financing activities. This transaction is directly in the nature of loans and advances and the assessee company has not shown any return of income / interest on these amount. Further as per the P & L account the assessee has debited an amount of Rs. 1,46,26,217/- as interest on loans and Rs. 1,25,682/- as bank charges. The fact that assessee has taken interest bearing loan, itself is testimony that the assessee had no surplus fund in so far as giving of non-interest bearing fund to other company / persons. Thus, the Assessing Officer has rightly disallowed the interest @ 18% per annum amounting to Rs. 3,60,000/-.

15. The Ld. AR submitted that the assessee company had given share application money amounting to Rs. 20,00,000/- to M/s Global Estate Developers Pvt. Ltd. The Assessing Officer issued a show cause notice to the assessee to state as to why proportionate interest should not be disallowed in the case of share application money paid to non associate companies. In response thereto the Assessee submitted that in view of sufficient interest free funds, no disallowance of interest should be made, however, the contention of the assessee was rejected by the Assessing Officer and the Assessing Officer disallowed proportionate interest amounting to Rs. 3,60,000/- alleging that the assessee had given interest free loan/advance to the said company under the garb of share application money. The CIT(A) deleted the said disallowance by holding that making investments in the shape of share application money was a normal business activity of the assessee and therefore, it cannot be held that it was not for business purposes. Furthermore, it was observed by the CIT(A) that given share application money to the same company in A.Y. 2006-07 also, but no notional disallowance was made by the Assessing Officer in that assessment year. The Ld. AR submitted that in view of the fact that the assessee company had sufficient interest free fund, no disallowance of interest can be made as the presumption would be that the money was advanced out of the said interest free funds. The Ld. AR relied upon the following decisions:

- a. CIT vs. Reliance Utilities & Power Ltd. (2009) 178 Taxman 135 (Bom. HC)
- b. CIT vs. Reliance Industries Ltd. (2019) 410 ITR 466 (SC)

Furthermore, it is incorrect to say that the amount given is not share application money as the CIT(A) has rightly held that money has been given by the assessee in the ordinary course of its business and therefore, no notional interest thereupon can be disallowed. Admittedly, this investment in share application money was done in the last assessment year and no disallowance has been made by the Assessing Officer in the last year when the assessment for the said assessment year was completed by the same Assessing Officer who has done the assessment for the assessment year under consideration. The Ld.

AR relied upon the decision of CIT vs. Sridev Enterprises, (1991) 192 ITR 165 (Karn.) The Ld. AR submitted that similar share application money was given in earlier assessment year and no such disallowance of interest has been made therein. Therefore, when there is no change in the facts of the present case, then no disallowance in the present assessment year can be made. The Ld. AR relied upon the decision of Neo Poly Pack 245 ITR 492 (Del. HC).

16. We have heard both the parties and perused all the relevant material available on record. The assessee company had given share application money amounting to Rs. 20,00,000/- to M/s Global Estate Developers Pvt. Ltd. The CIT(A) deleted the said disallowance by holding that making investments in the shape of share application money was a normal business activity of the assessee and therefore, it cannot be held that it was not for business purposes. Furthermore, it was observed by the CIT(A) that given share application money to the same company in A.Y. 2006-07 also, but no notional disallowance was made by the Assessing Officer in that assessment year. The CIT(A) was right in deleting the said addition as similar share application money was given in earlier assessment year and no such disallowance of interest has been made therein. The Revenue cannot without any reasonable cause change its stand for the present assessment year. Therefore, when there is no change in the facts of the present case, then no disallowance in the present assessment year can be made. Ground No. 2 of the Revenue's appeal is dismissed.

17. As regards to Ground No. 3 of the Revenue's appeal relating to deletion of interest income on accrual basis amounting to Rs. 25,84,841/-, the Ld. DR submitted that the assessee was given a show cause in respect of certain advances amounting to Rs.11,09,14,347/- out of which certain amounts were reduced. The same are as under:

- a) Un-matured interest charges – Rs. 24,22,575/-
- b) Un-matured interest charges – NPA – Rs. 1,62,266/-

The Assessing Officer observed that these amount is nothing but amount of

interest which undisputedly the assessee was supposed to charge from its trade debtors and receive the same. Not with standing with the fact that the claim of the assessee company is that these were un-matured interest charges. Therefore, the assessee company was bound to credit this amount in the P & L account on the accrual basis which it has not done. Thus, the Assessing Officer rightly made addition of Rs. 25,84,841/- as interest income on accrual basis.

18. The Ld. AR submitted that the Assessing Officer made an addition of Rs. 25,84,841/- in respect of un-matured interest charges treating the same as interest income for the year under consideration. The CIT(A) deleted the said addition holding that the said addition was made by the Assessing Officer without properly appreciating the facts of the present case and accounting principles adopted by the assessee. The Ld. AR submitted that the un-matured interest represent the amount of income pertaining to the next financial years included in the amount of trading advance. The Ld. AR relied upon the decision of the Hon'ble Apex Court in case of CIT vs. Excel Industries Ltd. (2013) 38 taxmann.com 100 (SC).

19. We have heard both the parties and perused all the relevant material available on record. It is seen that the Assessing Officer made an addition of Rs. 25,84,841/- in respect of un-matured interest charges treating the same as interest income for the year under consideration. The CIT(A) deleted the said addition holding that the said addition was made by the Assessing Officer without properly appreciating the facts of the present case and accounting principles adopted by the assessee. But the CIT(A) has not looked into the material on record which needs to be verified. Therefore, this issue needs to be verified by the Assessing Officer in its entirety. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Ground No. 3 of Revenue's appeal is partly allowed for statistical purpose.

20. As regards to Ground No. 4 of the revenue's appeal relating to deletion of

interest disallowance on advance made towards purchase of property to the extent of Rs. 1,01,78,161/-, the Ld. AR submitted that Ground No. 1 and 2 of the assessee's appeal be taken into consideration.

21. The Ld. DR submitted that the contentions taken in assessee's appeal for Ground No. 1 and 2 be taken into account. The Ld. DR relied upon the Assessment Order.

22. We have heard both the parties and perused all the relevant material available on record. The Ground Nos. 1 and 2 of assessee's appeal is challenging the remaining amount which was confirmed by the CIT(A), hence the same reasoning which we have given for Ground Nos. 1 and 2 will apply herein. Hence Ground No. 4 of Revenue's appeal is partly allowed for statistical purpose.

23. As regards to Ground No. 5 of the Revenue's appeal relating to deletion of addition made on account of unexplained investment in property amounting to Rs. 28,44,800/-, the Ld. DR submitted that as per the observations of the Assessing Officer there are certain purchases of land /properties where in the assessee company have shown lesser amount of purchase consideration than the possible / probable market value of the land. In fact the amount has been shown much below the stamp duty amount. The Assessing Officer held that as per the registered documents the market value of land is higher and stamp duty has been paid on the higher value which proves the rate of land in that are at the relevant period. Even in the normal practice, land is purchased on a consideration higher than the rate fixed by the Government authorities. Under the circumstances the value of land is taken as per circle rate fixed by the government and the difference of amount is being added back. Accordingly, the Assessing Officer rightly made addition of Rs. 28,44,800/- and treated it as unexplained investment u/s 69 of the Act.

24. The Ld. AR submitted that the assessee company had purchased land at Tifra Bilaspur for Rs. 55,44,800/- including stamp duty and registration charges of Rs. 7,06,705/-. The Assessing Officer issued a show cause notice to the assessee to state as to why the difference between value of land declared and that adopted for payment of stamp duty should not be added as unexplained investment. In response thereto the assessee submitted a detailed reply, however, the same was rejected by the Assessing Officer and the Assessing Officer made addition on account of unexplained investment in property amounting to Rs. 28,44,800/- on the basis of difference between value of land declared and that adopted for payment of stamp duty. The Assessing Officer has followed his own order of earlier years. The CIT(A) deleted the said addition by holding that similar additions were made in the earlier assessment years and the same have been decided in favour of the assessee by the CIT(A) in the earlier assessment years, i.e., A.Y. 2004-05, 2005-06 and 2007-08. The Ld. AR submitted that the case of the assessee is covered in its favour by the orders of the Tribunal in assessee's own case for earlier assessment years which are as under:

- a. DCIT vs. Sindhu Trade Links Ltd. ITA No. 1268/Del/2014 A.Y. 2004-05
- b. DCIT vs. Sindhu Trade Links Ltd. ITA No. 1452/Del/2014 A.Y. 2007-08

The Ld. AR submitted that the Assessing Officer has not brought out any evidence to substantiate that any amount more than what has been recorded in the sale deed was paid by the assessee and in the absence of any such evidence, no addition can be made merely on the basis of presumption. The onus is on the revenue to prove the same. The Ld. AR relied upon the following decisions:

- a. ITO vs. Venue Proteins Industries (2010) 195 Taxman 14 (Ahmd.)
- b. Paramjit Singh vs. ITO (2010) 323 ITR 588 (P & H HC)

25. We have heard both the parties and perused all the relevant material available on record. It can be seen that the assessee company had purchased land at Tifra Bilaspur for Rs. 55,44,800/- including stamp duty and registration charges of Rs. 7,06,705/-. The Ld. DR submitted that as per the observations of the Assessing Officer there are certain purchases of land /properties where in the assessee company have shown lesser amount of purchase consideration than the possible / probable market value of the land. In fact the amount has been shown much below the stamp duty amount. The Assessing Officer held that as per the registered documents the market value of land is higher and stamp duty has been paid on the higher value which proves the rate of land in that are at the relevant period. But from the perusal of the Assessment order it cannot be seen that the Assessing Officer has brought out any evidence to substantiate that any amount more than what has been recorded in the sale deed was paid by the assessee and in the absence of any such evidence, no addition can be made merely on the basis of presumption. Thus, the CIT(A) rightly deleted this addition and there is no need to interfere with the findings of the CIT(A). Hence, Ground No. 5 is dismissed.

26. As regards to ITA No. 2429/Del/2014 filed by the assessee for A.Y. 2009-10, in respect of Ground No. 1 well as additional Ground Nos. 7 and 8, the Ld. AR submitted that the submissions with respect to ground No. 3 as well as additional Ground Nos. 7 and 8 of A.Y. 2008-09 may be taken into account as the grounds are identical. The Ld. DR submitted that the Ground No. 1 is similar to that of appeal filed by the assessee for A.Y. 2008-09, therefore, same contentions of the Revenue be taken into account for deciding this year as well.

27. We have heard both the parties and perused all the relevant material available on record. As regards Ground Nos. 1 well as additional Ground Nos. 7 and 8 for A.Y. 2009-10 is identical to that of Ground No. 3 well as additional Ground Nos. 7 and 8 of A.Y. 2008-09, we have already given the findings to that respect. This issue is remanded back to the file of the Assessing Officer for

proper adjudication. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Hence, Ground No. 1 well as additional Ground Nos. 7 and 8 are partly allowed for statistical purpose.

28. As regards to Ground Nos. 2, 3 and 4 for A.Y. 2009-10 is concerned the same is relating to interest free shareholder funds and is similar to Ground No. 1 of the appeal of assessee for A.Y. 2008-09.

29. We have heard both the parties and perused all the relevant material available on record. The advances were received back in the present assessment years A.Y. 2009-10 and in subsequent Assessment Year i.e. 2010-11 as the deal could not be materialized and the amount advanced towards it was received back. This aspect was not looked into by the Assessing Officer as well as the CIT(A) and needs to be looked into in its entirety. Therefore, it will be appropriate to remand back this issue to the file of the Assessing Officer for proper adjudication. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Ground Nos. 2, 3 and 4 are partly allowed for statistical purpose.

30. In result, all the appeals are partly allowed for statistical purpose.

Order pronounced in the Open Court on this 11th Day of September, 2020.

**Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 11/09/2020

R. Naheed

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT

4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	11/09/2020
Date on which the typed draft is placed before the dictating Member	11/09/2020
Date on which the typed draft is placed before the Other Member	11/09/2020
Date on which the approved draft comes to the Sr. PS/PS	11/09/2020
Date on which the fair order is placed before the Dictating Member for pronouncement	11/09/2020
Date on which the fair order comes back to the Sr. PS/PS	11/09/2020
Date on which the final order is uploaded on the website of ITAT	11/09/2020
Date on which the file goes to the Bench Clerk	11/09/2020
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	