

**IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI**

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

ITA No. 1389/MUM/2025

&

ITA No.1396/MUM/2025

(Assessment Year: 2013-2014 & 2014-2015)

Assistant Commissioner of Income Tax -6(1)(2), Mumbai

Room No. 506, 5th Floor, Aaykar Bhavan,
MK Road, Churchgate – 400020.

..... **Appellant**

Vs

**J M Financial Properties and Holdings
Limited**

7th Floor, Cnergy, Appasaheb Marathe Marg,
Prabhadevi, Mumbai – 400025.
[PAN: AACCJ4533E]

..... **Respondent**

Appearance

For the Appellant/Department : Ms. Kavita P. Kaushik

For the Respondent/Assessee : Shri Dr.K. Shivaram Sr.Advocate
Shashi Bekal

Date

Conclusion of hearing : 17.04.2025

Pronouncement of order : 28.05.2025

ORDER

Per Rahul Chaudhary, Judicial Member:

1. These are two appeals preferred by the Revenue pertaining to Assessment Years 2013-2014 and 2014-2015 challenging two separate Orders, each dated 10/12/2024, passed by the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the '**CIT(A)**'], under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as '**the Act**'] whereby the appeal preferred by the Assessee was allowed. Since identical

grounds were raised in all the two appeals, the same were heard together and are, therefore, being disposed off by way of a common order.

ITA No. 1389/MUM/2025 [Assessment Year 2013-2014]

2. We would first take up appeal preferred by the Revenue for the Assessment Year 2013-2014 which is directed against the Order, dated 10/12/2024, passed by the CIT(A) whereby appeal preferred by the Assessee against the Assessment Order, dated 25/02/2016, passed under Section 143(3) of the Act was allowed.
3. The Revenue has raised the following grounds of appeal:
 - "1. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that the Assessee has created an artificial transaction to claim interest expenditure in the books of account amounting to Rs.3,83,55,493/-.*
 2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) failed to appreciate the fact that the AO has rightly invoked the provisions of Section 36(1)(ii) and made disallowance of interest expenditure whereas the said expenditure claimed to have been incurred is not a prudent transaction."*
4. The relevant facts in brief are that the Assessee, a company engaged in the business of acquiring, developing, leasing etc. of moveable/immovable property, filed return of income for the Assessment Year 2014-2015 declaring total loss of INR.2,74,57,590/- as per the normal provisions of the Act which was picked up for regular scrutiny. During the assessment proceedings, the Assessing Officer noted that the Assessee had taken office premises in Cenergy Building, at Prabhadevi Mumbai, [hereinafter referred to as 'the **Premises**'] on leave and license basis from Sheth Developers Pvt. Ltd. [for short '**SDPL**'] and thereafter, given the same on leave and license

basis to its own group companies. Assessing Officer noted that for taking the premises on lease the Assessee gave interest free security deposit of INR.170 Crore to SDPL which was 5.78 times the deposits received by the Assessee from group concerns. In response to query raised by the Assessing Officer in relation to the source of funds utilised to give security deposit to SDPL, the Assessee explained that the security deposit was funded partly from share capital and partly from the Inter Corporate Deposits (**ICDs**) take by the Assessee for its business. The Assessing Officer noted that the Assessee had claimed deduction of INR, 3,83,55,493/- in respect of interest on ICDs. Since the ICDs were utilised for granting interest free security deposit, the Assessing Officer made disallowance of INR.3,83,55,493/- invoking the provisions contained in Section 36(1)(iii) of the Act. The aforesaid disallowance was deleted by the CIT(A), leading to the filing of the present appeal by the Revenue on the grounds reproduced in paragraph 2 above.

5. We have heard both the sides, perused the material on record and given thoughtful consideration to the submission advanced.
6. There is no dispute as to the facts of the case. Admittedly the interest bearing ICDs were utilised for granting interest free deposit to SDPL for taking the Premises on leave & License basis. The Assessing Officer has disallowed interest expenses invoking the provisions contained in Section 36(1)(iii) of the Act which reads as under:

"Other deductions

Section 36. (1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28

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the amount of the interest paid in respect of capita borrowed for the purposes of the business or profession :

Provided that any amount of the interest paid, in respect of capital borrowed for acquisition of an asset for extension of existing business or profession (whether capitalised in the books of account or not); for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, shall not be allowed as deduction."

7. On perusal of the Assessment Order, we find that the Assessing Officer has provided following reasoning for making the disallowance under Section 36(1)(iii) of the Act:

"5.1 Disallowance of Interest claimed Rs.3,83,55,493/- u/s 36(1)(iii):

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In response to this, the assessee submitted its reply vide letter dated 18.02.2016, which is placed on record. The reply submitted perused carefully but found not to be acceptable. Assessee itself admitted that the Market price of the property was Rs.200 Crore against which assessee paid interest free refundable security deposit of Rs.170 crore which itself depicts unreasonable transaction. Also it is pertinent to note that in order to finance this transaction assessee obtained Inter Corporate Deposit bearing interest cost and thereby reducing profit by artificially creating non genuine transaction by suppressing facts and to disturb financial position of the assessee company.

It is also noted that the security Deposit given to Sheth Developers Pvt Ltd is 5.78 times the security deposit received from the related parties. Also it is hard to believe that person of normal prudence would pay the interest free security deposit of Rs.170 crores for a property worth Rs.200 crores and also pays the Rent, when he can easily purchase the said property and own the property and would have saved the amount spent on rent. From the above facts and detailed discussion, it is established that all these transaction are undertaken just to avoid tax liability to claim unreasonable interest cost to the assessee profit & Loss account. Therefore, in view of the above discussion Rs.3,83,55,493/- is being disallowed u/s 36(1)(iii) and added back to the assessee total income. (Addition: Rs.3,83,55,493/-)"

8. From the above it is clear that the Assessing Officer has neither doubted that fact that the funds were borrowed for the purpose of business of the Assessee nor the rate on which interest was paid/payable on ICDs. The bedrock of the conclusion drawn by the Assessing Officer is that the Assessee had not acted in a prudent manner and had entered into an unreasonable transaction. The Assessee had given security deposit of INR.170 Crores to take the Premises on Leave & License when the market value of the said Premises was INR.200 Crores. For the aforesaid reason the Assessing Officer doubted the genuineness of the transaction and concluded that the Assessee had suppressed facts and disturbed the financial position by artificially reducing profits.
9. In appeal before the CIT(A), the Assessee explained that the basic ingredient for the allowability of interest under Section 36(1)(iii) of the Act were satisfied in the case of the Assessee. The Assessing Officer has not doubted that the interest was paid in respect of capital borrowed for the purposes of the business. The ICDs were used to make payment towards security deposit for taking the Premises on rent for further sub-letting. Though deposit was given to SDPL on 25/10/2012, rent was payable to SDPL from January, 2013 and the Assessee also stated receiving rental income from January, 2013. The net rental income was offered to tax and this has also not been disputed by the Assessing Officer. SDPL was not a related party. The Assessee had agreed to pay interest free security deposit of INR.170 Crores to secure comparatively lower rental and obtaining a pre-emptive right to purchase the Premises. The aforesaid submissions found favour with the CIT(A) who deleted the disallowance made by the Assessing Officer under Section 36(1)(iii) holding as under:

"I have gone through the submission and same has been perused carefully. It is pertinent to note that the appellant furnished the details of security deposit given and security deposit taken and also the details of rent received and rent paid along with notional interest on security deposit. It is also noted that the Appellant Company had given interest free security deposit to M/s Sheth Developers Pvt. Ltd. amounting to Rs.170 crores for taking commercial premises on rent. In order to fund this security deposit, the Appellant Company had borrowed funds and paid interest on the same. Further, the Appellant Company had received interest free security deposit of Rs.30.01 crores from its group companies for sub-letting the said commercial premises taken on rent from Sheth Developers Pvt. Ltd. As the security deposit given to M/s Sheth Developers Pvt. Ltd. was not only out of borrowed funds but also out of its own share capital, for calculating notional interest, appellant had only considered borrowed funds.

In view of the above circumstances, it is noted that the Assessing officer could not decide how the appellant carried on its business or how much deposit or rent should have been paid or whether the property should have been rented or bought. These decisions are outside the domain of the AO. The AO could only decide whether the expenses are for the purposes of business. It may be appreciated that the AO has allowed the rent paid by the appellant to M/s Sheth Developers Pvt Ltd. It is also noted that the appellant and M/s Sheth Developers Pvt Ltd are neither connected with each other nor are related parties. Accordingly, there was no purpose other than business purpose to give the deposit to M/s Sheth Developers Pvt Ltd. Further, the AO has not found the entire transaction to be dubious or not for the purpose of business.

In view of the above discussion and sincerely following the Hon'ble judiciary decision, in my considered opinion, the moneys borrowed were for the purpose of business. The facts that interest free advances were given to M/s Sheth Developers Pvt Ltd would not be disqualification as the security deposit was given to take premises on rent from them for further sub-letting it. In fact, the Appellant has received net rent in the process. If the Appellant would not have given security deposit or lower security deposit, they would have to pay higher rent which would have reduced the net rental income of the Appellant. Hence, the interest payment was connected with the business and accordingly the interest is allowance as a deduction. The contention of the appellant is found tenable. Hence, the ground is allowed."

10. The CIT(A) had clearly held that ICDs were utilised for the purpose of business. The Assessee had funded part of the security deposit given to SDPL for ICDs. The Premises were

taken by the Assessee on rent for sub-letting and thereby, earn rental income. The net rental income was offered to tax by the Assessee and has been accepted by the Assessing Officer. SDPL was an unrelated party and that prudence of the transaction undertaken by the Assessee with SDPL could not have been doubted by the Assessing Officer. During the appellate proceedings before the Tribunal the Revenue failed to point out any perversity in the findings returned by the CIT(A). We find that the Assessee had placed before the CIT(A) following details and documents in support of its contentions:

- (a) *Details of deposit and rent received (Page 41 of paper-book)*
- (b) *Leave and License Agreement dated 25/10/2012 with Sheth Developers Pvt. Ltd. (Pages 42 to 62 of paper-book), Leave and License Agreement, dated 25/10/012 with Sheth Developers Pvt. Ltd. (Pages 63 to 80 of paper-book), Leave and License Agreement, dated 25/10/2012 with Sheth Developers Pvt. Ltd. (Pages 81 to 117 of paper-book) and Leave and License agreement dated 25/10/2012 with Sheth Developers Pvt. Ltd. (Pages 118 to 136 of paper-book)*
- (c) *Permitted Use Agreement, dated 09/01/2013 between J.M Financial Properties and Holdings Ltd and JM Financial Products Ltd (Pages 137 to 145 of paper-book)*
- (d) *Letter, dated 28/1/2016, - Note on Security Deposit (Pages 39 and 40 of paper-book)*

11. There is nothing on record to doubt the veracity of the documents furnished by the Assessee or to doubt the genuineness of the transaction. We note that the Assessee had explained that the higher amount of security deposit ensured comparatively lower rental expenses. Further, the Assessee was also able to secure a pre-emptive right to purchase the Premises [refer to Clause 4(e) of the leave and license agreement at page 51, 71, 89 & 127 of the paper-book]. The Assessee is stated to have acquired the Premises in Financial Year 2014-15 relevant to the

Assessment Year 2015-16 for a consideration of INR.178.67 Crores and had capitalized a sum of INR.188.39 Crores including development charges, stamp duty, registration and other charges in the books of accounts. Since, the Assessee had been able to establish commercial expediency for giving interest free security deposit for taking the Premises on leave & license basis, no disallowance was warranted under Section 36(1)(iii) of the Act. Accordingly, we decline to interfere with the order passed by the CIT(A). As a result Ground No.1 and 2 raised by the Revenue are dismissed.

12. In result, the appeal preferred by the Revenue for the Assessment Year 2013-2014 is dismissed.

ITA No. 1396/MUM/2025 [Assessment Year 2014-2015]

13. Now we would take up the appeal preferred by the Assessee for the Assessment Year 2014-2015 which is directed against the order, dated 10/12/2024, passed by the CIT(A) whereby appeal preferred by the Assessee against the Assessment Order, dated 06/12/2016, passed under Section 143(3) of the Act.
14. In identical facts and circumstances, the Revenue has challenged the order passed by CIT(A) deleting disallowance of interest of INR.8,90,54,214/- made by the Assessing Officer under Section 36(1)(iii) of the Act on the following grounds:

- "1. *On the facts and circumstances of the case and in law, the Id.CIT(A) has erred in not appreciating the fact that the assessee has created an artificial transaction to claim interest expenditure in the books of account amounting to Rs.8,90,54,214/-.*
2. *On the facts and in the circumstances of the case and in law, the Id.CIT(A) failed to appreciate the fact that the AO has rightly invoked the provisions of section 36(1)(iii) and made disallowance of interest expenditure whereas the*

said expenditure claimed to have been incurred is not a prudent transaction. "

15. During the course of hearing both the sides had agreed that our findings/adjudication in relation to appeal for the Assessment Year 2013-2014 shall apply mutatis mutandis to the appeal for the Assessment Year 2014-2015. Accordingly, keeping in view identical facts and circumstances, and adopting the reasoning given while adjudicating the appeal preferred by the Revenue for the Assessment Year 2013-2004, Ground No. 1 to 2 raised by the Revenue are dismissed.
16. In result, the appeal preferred by the Revenue for the Assessment Year 2014-2015 is dismissed.
17. In conclusion, both the appeals preferred by the Revenue are dismissed.

Order pronounced on 28.05.2025.

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 28.05.2025
Milan, LDC

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त/ The CIT
4. प्रधान आयकर आयुक्त/ Pr.CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

उप/सहायकपंजीकार /(Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai