

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “B” BENCH

**Before: DR. BRR Kumar, Vice President
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No: 1436/Ahd/2025
Assessment Year: 2017-18**

Nimbeshwar Gudadram Desai D-102, Ganesh Meridian, Nr. New High Court, Sola, Ahmedabad-380060 PAN: AHOPD1908K (Appellant)	Vs	The DY.CIT Circle-3(1)(1), (Previously Cir.3(3), Ahmedabad (Respondent)
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**Assessee Represented: Shri Kunal T Sanghavi, A.R.
Revenue Represented: Shri Abhijit, Sr.D.R.**

Date of hearing : 15-09-2025
Date of pronouncement : 01-10-2025

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the appellate order dated 20.06.2025 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as “CIT(A)”), arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) relating to the Assessment Year 2017-18.

2. The assessee has raised the following Grounds of Appeal:

[1] The Ld. A. O. has grievously erred in making the disallowance u/s. 40(a)(ia) of Rs. 12,36,316/- which is not correct and legal.

The appellant has produced the interest certificate from management of NBFC that proves that the interest is considered as their income and if already considered in income than u/s 40(a)(ia) not to disallow.

[2] The Ld. A. O. has grievously erred in making the disallowance of 10% expense Rs. 8,05,97,443/- i.e. 80,59,744/- which is not correct and legal.

In the submissions all necessary ledgers, specimen vouchers, Audited financial statements, cash book and bank books are provided which shows the genuineness of the claim. It is not correct that Ld. A.O. has stated the bills and vouchers are not furnished.

[3] The appellant submits that he has paid the interest and penalties for the Provident Fund and so the appellant can get the benefit if the actual payment is made before the return is filed. On the basis of various judgments it is held that the amount is paid on or before due date of filing of return of income, the same is allowable. The late PF of Rs. 8,95,536/- is not to be added.

[4] The Ld. A. O. has grievously erred in making the disallowance of interest u/s 36(1) (iii) of Rs. 20,55,512 which is not correct and legal. The loans and advances are the advance given for payment of expenses and therefore it is not a loan and so no question of interest arises.

[5] The appellant therefore requests your good self to kindly delete the above mentioned addition made by the Ld. A. O. looking to the merits of the case.

[6] The appellant reserves the right to add, amend, alter or modify any of the grounds stated herein above either before or at the time of hearing.

3. The brief facts of the case are that the assessee, Shri Nimbeshwar Gudadram Desai, filed his return of income for A.Y. 2017-18 declaring income of Rs. 77,29,340. During the course of

assessment proceedings, on verification of records, the Assessing Officer made four separate additions to the income of the assessee. The first addition relates to disallowance under section 40(a)(ia) of the Act. The Assessing Officer noticed that the assessee had paid interest of Rs. 41,21,055/- to various Non-Banking Finance Companies such as Cholamandalam, Harison, Hinduja and Tata Motors Finance Ltd., without deducting tax at source under section 194A. In response to notice, the assessee admitted that TDS had not been deducted on such payments, on the ground that he was under the belief that TDS was not applicable in the case of NBFCs. The Assessing Officer held that the failure to deduct tax attracted disallowance of 30% of the expenditure under section 40(a)(ia) of the Act, and accordingly disallowed Rs. 12,36,316/- and added the same to the total income of the assessee. The second addition pertains to disallowance out of certain expenses incurred by the assessee. The assessee had claimed diesel expenses, transportation expenses, labour and miscellaneous expenses, travelling expenses and vehicle repair expenses amounting in total to Rs. 8,05,97,443/-. During the assessment proceedings, the assessee was asked to furnish supporting evidence in the form of bills and vouchers. On perusal, the Assessing Officer found that the supporting evidence was incomplete and certain payments were made in cash, making the claims unverifiable. The Assessing Officer, therefore, disallowed 10% of such unverifiable expenses, amounting to Rs. 80,59,744/-, and added the same to the income. The third addition was on account of delayed payment of employees' contribution towards provident fund and ESIC. The Assessing Officer noted from the working provided by the assessee

that a sum of Rs. 8,95,536/- representing employees' contribution was not paid within the stipulated due date. The assessee submitted that the contribution had been paid before the due date for filing return under section 139(1) of the Act. However, the Assessing Officer held that as per section 36(1)(va) read with section 2(24)(x), employees' contribution must be paid within the prescribed due date, and late payment cannot be allowed as deduction. Following the decision of the Hon'ble Gujarat High Court in CIT v. Gujarat State Road Transport Corporation (ITA No. 637 of 2013), the Assessing Officer disallowed the said sum of Rs. 8,95,536/- and added it to the total income. The fourth addition was made under section 36(1)(iii) of the Act on account of interest. The Assessing Officer observed that the assessee had secured loans of Rs. 12.61 crores on which interest expenditure of Rs. 1,41,97,129/- was claimed. At the same time, the assessee had advanced Rs. 1,71,29,268/- as loans and advances on which no interest was charged. The Assessing Officer held that there was diversion of interest-bearing funds for non-business purposes. Applying an interest rate of 12%, the Assessing Officer disallowed a sum of Rs. 20,55,512/- as interest attributable to non-business advances and added the same to the income of the assessee. After making the above additions, the total income of the assessee was recomputed at Rs. 1,99,76,448/- as against the returned income of Rs. 77,29,340/-.

4. In appeal before CIT(Appeals), on the first issue relating to disallowance under section 40(a)(ia) of the Act, since the fact of non-deduction of TDS was admitted by the assessee, CIT(Appeals)

held that this ground of appeal had no merit and upheld the addition. On the second issue relating to disallowance of 10% of certain expenses, the assessee contended that ledgers, audited financials, and specimen vouchers were submitted, and further argued that uploading constraints prevented filing all details in one go. The CIT(Appeals) observed that the assessee could have uploaded the documents in multiple batches but had not done so, and since full details were not produced, the findings of the Assessing Officer could not be disturbed. This ground was accordingly dismissed. On the third issue concerning disallowance of employees' contribution to PF/ESIC, the Assessing Officer had disallowed Rs. 8,95,536/- for non-payment within the due date as prescribed under section 36(1)(va). The assessee argued that the payment was made before filing the return under section 139(1) and therefore allowable. CIT(Appeals), however, agreed with the Assessing Officer, noting that specific provisions of section 36(1)(va) prevailed over section 43B, and also relied on the judgment of the Hon'ble Gujarat High Court in CIT vs. Gujarat State Road Transport Corporation. Accordingly, the disallowance was confirmed and the ground was dismissed. On the fourth issue of disallowance of interest under section 36(1)(iii) of the Act, the assessee submitted that the advances were for business purposes and, in one case, funds were misused by a third party. The CIT(Appeals) held that the assessee had failed to substantiate the business purpose of such advances and had not disproved the AO's finding that interest bearing funds were diverted for non-business use. Hence, the disallowance was confirmed. Accordingly,

CIT(Appeals) dismissed the appeal of the assessee and upheld the additions made by the Assessing Officer.

5. The assessee is in appeal before us against the order passed by CIT(Appeals) dismissing the appeal of the assessee. We have heard the rival contentions and perused the material on record. On the **first issue** regarding disallowance u/s 40(a)(ia) of the Act on interest paid to NBFC, in the case of **Vivek Bhole Architects (P.) Ltd. vs. Deputy Commissioner of Income-tax [2023] 151 taxmann.com 490 (Mumbai - Trib.)**, ITAT held that where assessee paid interest to four non-banking financial companies (NBFCs) on account of loan availed from them without deduction of tax at source and Assessing Officer disallowed interest payment under section 40(a)(ia) since, assessee by way of additional evidence produced a copy of Form No. 26A, wherein it had been certified that a NBFC had taken into account sum received as interest from assessee while computing its taxable income, issue was to be remanded to Assessing Officer for de novo adjudication. Accordingly, on the first, the matter is directed to be restored to the file of the Assessing Officer for carrying out necessary verification and give relief to the assessee after carrying out due verification. On the **second issue**, relating to disallowance of 10% of certain expenses, in the interests of justice, the matter is hereby restored to the file of the Assessing Officer with liberty to the assessee to produce documents in support of its case. On the **third issue** regarding concerning disallowance of employees' contribution to PF/ESIC, we are of the considered view that the issue is directly covered against the assessee on the issue in the case of Checkmate

Services (P.) Ltd. vs. Commissioner of Income-tax-1 [2022] 143 taxmann.com 178 (SC)/[2023] 290 Taxman 19 (SC)/[2022] 448 ITR 518 (SC) and accordingly, we find no reason to interfere in therefore order of CIT(Appeals) on this issue. This Ground of the assessee is therefore dismissed. On the **fourth issue** regarding of disallowance of interest under section 36(1)(iii) of the Act, the assessee submitted that the advances were for business purposes and, in one case, funds were misused by a third party. Before us, the Counsel for the assessee submitted that the assessee, vide submission dated 12 December 2019, produced a detailed list of such loans and advances and clarified that there was no advance given other than for business purposes. It was explained that the amounts shown were only advance payments made towards transportation expenses and that the parties in question were actually creditors. Therefore, the assessee contended that the observation of the Assessing Officer that interest-bearing funds had been diverted for non-business purposes was not valid, since all advances were in the nature of business-related payments. On going through the submissions of the Counsel for the assessee, we hereby restore the matter to the file of the Assessing Officer to verify the claim of the assessee that all advances have been made to creditors towards purchase of petrol/ diesel. The Counsel for the assessee submitted before us that the assessee is operating 80 trucks and loans had been taken by the assessee towards purchase of trucks and advance had been given by the assessee to creditors towards petrol/ diesel expenditure towards running of those trucks. Accordingly, the Counsel for the assessee submitted that these arguments were never considered by Revenue Authorities.

Accordingly, the matter is hereby restored to the file of the Assessing Officer to verify the claim of the assessee and give relief in accordance with law.

6. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 01 -10-2025

Sd/-
(DR. BRR KUMAR)
VICE PRESIDENT

Ahmedabad : Dated 01/10/2025

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद