

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES, JAIPUR

श्री आर.पी.तोलानी, न्यायिक सदस्य एवं श्री टी.आर.मीना, लेखा सदस्य के समक्ष  
BEFORE: SHRI R.P. TOLANI, JM & SHRI T.R. MEENA, AM

आयकर अपील सं./ITA Nos. 718 & 719/JP/2014  
निर्धारण वर्ष/Assessment Year : 2010-11 & 2011-12

M/s. Sharma East India Hospitals & Medical Research Ltd. , H-1, Chitranjan Ltd. C-Scheme, Jaipur	बनाम Vs.	The DCIT Central Circle- 1 Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCS 9729 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA Nos. 803 & 804/JP/2014  
निर्धारण वर्ष/Assessment Year : 2010-11 & 2011-12

The ACIT Central Circle- 1 Jaipur	बनाम Vs.	M/s. Sharma East India Hospitals & Medical Research Ltd. , H-1, Chitranjan Ltd. C-Scheme, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCS 9729 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : S/Shri O.P. Agarwal,  
Manish Agarwal, C.A.  
& Javed Khan, Advocate  
राजस्व की ओर से / Revenue by : Smt. Rolee Agarwal, CIT-DR

सुनवाई की तारीख / Date of Hearing : 21/04/2015  
घोषणा की तारीख / Date of Pronouncement : 5 /06/2015

आदेश / ORDER

PER R.P. TOLANI, JM

This is a set of cross appeals by assessee and revenue for AYs 2010-11 & 2011-12 against two different orders of the ld. CIT(A)-Central, Jaipur dated 12-09-2014. Respective grounds raised are as under:-

2.1 The concise common grounds raised by assessee in its both the appeals i.e. ITA No. 718 & 719/JP/2014 for the assessment year 2010-11 & 2011-12 are as under:-

*“The ld. CIT(A) has erred in upholding the disallowance of purchase of consumable goods i.e. Cotton, Gauge and Bandage etc. amounting to Rs. 27,28,014 for the assessment year 2010-11 and Rs. 30,13,125/- for the assessment year 2011-12 by holding:*

*(i) entire purchases of consumable goods from M/s. Krishna Surgicals were not genuine.*

*(ii) ignoring the undisputed fact that all the payments against these purchases made from M/s. Krishna Surgicals were through account payee cheques. There is no evidence that any incriminating evidence was found during the course of search indicating the receiving back of any amount in this behalf as alleged.*

*(iii) Relying on statement of Shri Jayant Khandelwal, Prop. M/s. Krishna Surgicals without appreciating the fact that the copy of the statement or cross-examination thereof was not accorded to the assessee; thereby the addition has been sustained in utter violation of principles of natural justice.*

*(iv) The addition can be made solely on the basis of uncorroborated statement of the Managing Director who is not entitled to make such admissions binding the other directors and company.’’*

2.2 The Revenue has raised common grounds in its both the appeal i.e. ITA No. 803 & 804/JP/2014 for the assessment year 2010-11 & 2011-12 are as under:-

*“1. On the facts and in the circumstances of the case, ld. CIT(A) is not justified in deleting the disallowance of interest amounting to Rs. 31,10,640/ for the assessment year 2010-11 and Rs. 26,81,520/ for the assessment year 2011-12 made by the AO u/s 36(1)(iii) of the I.T. Act.*

*Ground No. 2. of the Revenue is only for the assessment year 2010-11 wherein the Revenue is aggrieved that ld. CIT(A) is not justified by ignoring the fact that assessee has failed to prove that advances given and investments made in immovable properties are for the purpose of the business of the assessee’’*

3.1 Brief facts are the assessee is a public limited company running a Hospital under the name & style as “Jaipur Hospital” situated at LalKothi, Tonk Road, Jaipur mainly in the fields of orthopedic and cardiac care. Assessee had filed its returns of income u/s 139(1) of Income Tax Act, 1961 respectively declaring total income of Rs. 24,92,280/- & Rs. 29,38,980/-. On 08.06.2011, search operations u/s 132

of the Income Tax Act, 1961 were carried out at the business premises and also at the residence of its directors and associate doctors. During the course of search some loose papers and documents were found and seized from the possession of directors and the statements of directors and their family members were also recorded. Thereafter in response to notices u/s 153A, returns of income were filed by assessee on 24.07.2012 at same total income which was declared by assessee in its regular returns filed u/s 139(1) of Income Tax Act, 1961. The assessments were completed u/s 143(3) r.w.s. 153A on 21-3-14 at total income of Rs. 83,30,930/- for AY 10-11 and Rs. 86,33,680/- for AY 11-12 by making the additions in respect of bogus purchases and disallowance of interest alleged to be attributable to diversion of interest bearing funds. The figures are mentioned above in respective grounds.

3.2 Aggrieved assessee preferred first appeals; Ld. CIT(A) by detailed orders allowed part relief sustaining the additions qua alleged unverifiable purchases of consumable goods and deleted the disallowance of interest u/s 36(1)(iii) qua diversion of interest bearing funds held by AO for non business purposes. Aggrieved on the orders of ld. CIT(A), the assessee as well as the department both are before us.

3.3 Ld. Counsel for the assessee contends that during the course of search proceedings the statement of Dr. Shailendra Sharma, MD of the assessee company department obtained an admission that part of the purchases of cotton gauge made from a firm namely M/s Shri Krishna Surgicals (SKS for short) were not genuine and the amount of the bills raised were received back in cash after deduction of 6% towards VAT (5%) and expenses (1%). No incriminating material was found during the search to corroborate this state of affairs. Ld. AO treated the entire purchases of Rs. 27,28,014/- & Rs. 30,13,175/- for AY 10-11 & 11-12 from SKK as unverifiable. Ld. AO also referred to the statement of one Shri Tara Prakash Sharma, accountant of assessee company admitting these purchases as non-genuine. Reliance was made on statement of one Shri Jayant Khandelwal Prop. of SKS who also is alleged to have admitted these facts. Without there being any incriminating material and without verifying the extent of consumption of cotton gauge and merely on the basis of these statements, the entire purchases made from SKS were held as unverifiable and added to income. For an orthopedic and cardiac care hospital consumption of copious quantity of cotton and gauge is undeniable. Without appreciating crucial aspects and merely on the basis of statements the purchases as made from SKS cannot be held as

unverifiable and disallowed. If the consumption is viewed on the scale of normal medical practice and compared with the company's own consumption of cotton and gauge in preceding years, it would be found reasonable and comparable. Thus even if a reasonable estimate of consumption of consumables cotton gauge is made, it will leave no room for any disallowance. Assessee being a public limited Co., maintains regular books of accounts along with full record and vouchers not only from income tax angle but also as per medical requirements about the patients. None of which has been doubted by ld. AO, so much so the Net Profit declared by assessee has been accepted as it is. Unless books of accounts are rejected or disturbed, no addition on account of alleged unverifiable purchases is justifiable. Thus, the additions in this behalf have been sustained solely on the basis of 132(4) statement of MD who being a medical professional was not at all well versed with the accounting and other financial aspects of the company. It is an admitted fact that, during the course of treatment in outdoor as well as in-door patients for surgery the operation theatre usage of medical cotton, gauge and dressing bandage are one of the major consumable items without which dressing and surgery is not possible more specifically in the case of assessee hospital where major orthopedic surgeries are performed on day

to day basis in large number. These consumable materials were purchased locally from various vendors and they are duly recorded; thereafter they are issued to the respective department for consumption, record whereof is also duly maintained. Same has neither been disputed nor doubted by the department. M/s Shree Krishna Surgical is one of the vendor out of many who supply consumable goods to the assessee. The search u/s 132 was initiated at the business and residential premises at around 7.00 A.M. and on 8<sup>th</sup> June, 2011 which went on upto midnight of 10-6-11. The statements were recorded after passage of almost 42 hours in the midnight of 9<sup>th</sup> and 10<sup>th</sup> June, 2011. The statements of Dr. Shailendra Sharma were taken at various times firstly at the time of starting of the search on 08.06.2011 and lastly in the late midnight of 10.06.2011 after physical search and verification of the entire house and business places i.e. at the time of conclusion of the search. All the goods received from M/s Shree Krishna Surgical were duly recorded in the books of accounts which have not been doubted at all and the payments were made through payees account cheque through banking channels. The allegation of the Ld. AO that the payment made through cheque was returned back in cash is completely baseless in as much as neither any incriminating material in this behalf nor a rupee of excess cash was found during the course of

search. It was explained that consumable expenses claimed in these years were in parity with similar expenses allowed in preceding years when there were no purchases from SKS. Even of the compulsory requirement of consumable material is allowed on an estimate looking at the more no of surgeries, consumption of items like cotton, bandage, gauge etc. is reasonable, thus on the estimate basis also expenditure was allowable. It is common knowledge that in orthopedic treatment and surgery, the use of cotton and bandages is maximum; a single plaster requires a lot of cotton and a full roll of bandage; in surgeries and dressings also, abundant consumption of cotton and gauge is a must. Ld. AO also has not disputed the following relevant details furnished by the assessee:

A.Y.	Gross receipt	G.P.	G.P. Rate	Net Profit	%	Consumption of consumables	% of Consumption vis-à-vis receipts
2009-10	7,47,95,610.00	2,76,21,455.00	37.67	6,19,239.00	0.82%	1,37,73,742.00	18.42%
2010-11	9,10,98,673.00	3,66,59,452.00	41.59	21,86,034.00	2.40%	1,55,15,163.00	17.03%
2011-12	11,20,12,997.00	4,56,28,730.00	43.48	40,73,135.00	3.64%	1,92,42,278.00	17.18%

It is evident from the perusal of the table above that the despite better receipts and results the % of consumables has decreased which demonstrates that on estimate also the expenditure in this behalf cannot be disallowed; more so when these details are not controverted by the Ld. AO. Without prejudice to these submissions, in the alternative it is submitted that Ld. AO has not questioned the consumption and held the



purchases made from SKS as unverifiable: cheques have gone from assessee's books in this situation entire amount of purchases cannot be disallowed and an appropriate NP rate on unverifiable purchases may be added. This Hon'ble Bench by a consolidated order in the cases of Sh. Anuj Kumar Varshney and ors. Vs. ITO, ITA No. 187/JP/2012 has restricted the disallowance made out of unverifiable purchases of semi precious stones @ 15% thereof by holding the same as reasonable estimate. In these cases also facts reflect that the suppliers admitted having given accommodation bills. Therefore, if the assessee's other pleas on merits are rejected then disallowance out of unverifiable purchases may be restricted to 15%, following this judgment.

3.4 Ld CIT(DR) Ms Rolee Agrawal relied on the orders of lower authorities on this issue. It is contended that the statement about unverifiable purchases and plough back of the cheque amount has been admitted by way of statements of MD, accountant and proprietor of SKS. These statements are admissible piece of evidence and no effective rebuttal thereof has been offered by assessee. Apropos pressure or coercion it is contended that the MD has disclosed the amounts as disclosed in the statement, therefore, it cannot be held that for part statement there was pressure and for other part there was no pressure.

3.5 Ld. Counsel for the assessee contends that statement of Shri Jayant Khandelwal was recorded behind its back, neither copy thereof nor cross examination was provided consequently this statement has no evidentiary value.

3.6 Adverting to revenue appeals Ld. CIT(DR) contends that assessee was having following borrowings and liabilities in respective years:-

AY 2010-11: Total loan liability of Rs. 8,46,22,663/- (vehicles loan of Rs. 8,69,749/- and demand loan from Banks of Rs. 8,37,52,914/-) appearing as “Secured loans” on which total interest of Rs. 89,38,568/- was paid by assessee.

AY 2011-12: Total loan liability of Rs. 9,69,94,357/- (vehicles loan of Rs. 4,94,449/- and demand loan from Banks of Rs. 9,65,02,908/-) as “Secured loans” on which total interest of Rs. 98,22,845/- was paid by assessee

Interest so incurred was claimed by assessee as deduction u/s 36(1)(iii), these funds are claimed to be borrowed by assessee solely for the business purpose. AO found that some interest bearing advances were used for non business purposes. After reducing the interest free funds available with the assessee i.e. share capital Rs. 415.75 lacs and reserves and surplus of Rs. 47.91 lacs, applied interest rate of 12% on the balance amount resulting into disallowances as worked out by AO.

Ld. CIT(A) deleted the disallowances by following observations (observations of AY 2010-11 are reproduced as for AY 2011-12 only figures will change):-

*“4.3 I have carefully perused the order of the AO and submissions of the AR of the appellant and concur with the submissions of the AR. It has been submitted and verified from the return filed by the appellant that it had funds to the extent of Rs. 3,96,54,321/- as current liabilities which amount has not been*

*considered by the AO while calculating the amount of interest bearing funds given as interest free advances.*

*On perusal of the details of current liability it is seen that there were advances from patients and expenses which were in the nature of working capital of the appellant company but there was also a substantial amount of Rs. 3 Cr. From Modest Builders Ltd. on enquiry it was submitted that the appellant had executed an agreement with a company M/s Modest Builders Ltd. As per this agreement, the assessee had received an amount of Rs. 3 Cr. As security deposit vide cheques between 11.9.2008 to 7.7.2009 as follows:-*

<b>Mode of payment</b>	<b>Cheque No.</b>	<b>Dated</b>	<b>Amount (Rs.)</b>	<b>Bank</b>
<i>Cheque</i>	<i>517403</i>	<i>11.09.2008</i>	<i>1,75,00,000</i>	<i>Axis Bank Ltd.</i>
<i>Cheque</i>	<i>517417</i>	<i>28.11.2008</i>	<i>75,00,000</i>	<i>Axis Bank Ltd.</i>
<i>Cheque</i>	<i>517421</i>	<i>30.12.2008</i>	<i>20,00,000</i>	<i>Axis Bank Ltd.</i>
<i>Cheque</i>	<i>517442</i>	<i>11.5.2009</i>	<i>10,00,000</i>	<i>Axis Bank Ltd.</i>
<i>Cheque</i>	<i>517443</i>	<i>21.5.2009</i>	<i>5,00,000</i>	<i>Axis Bank Ltd.</i>
<i>Cheque</i>	<i>517444</i>	<i>21.5.2009</i>	<i>5,00,000</i>	<i>Axis Bank Ltd.</i>
<i>Cheque</i>	<i>517445</i>	<i>31.5.2009</i>	<i>5,00,000</i>	<i>Axis Bank Ltd.</i>
<i>Cheque</i>	<i>517453</i>	<i>7.7.2009</i>	<i>5,00,000</i>	<i>Axis Bank Ltd.</i>
<b>Total</b>			<b>3,00,00,000</b>	

*As per this contract the developer was required to develop a composite project on the property of the appellant located at village Gokulpura at Kalwar Road, Jaipur. The amount of Rs. 3 Cr. Was to be refunded to the developer after completion of the project. It was further informed that this amount was returned in A.Y. 2013-14 since M/s Modest Builder failed to complete the project as per this agreement.*

*Given the above facts it is seen that the appellant had with him an amount of Rs. 300.00 lakh as interest free funds available with it grouped under current liabilities. Thus, the appellant had sufficient non-interest bearing cash balance to have made interest free advances of Rs. 259.22 lakhs.*

*Moreover, the advances of Rs. 3,17,24,035/- and Rs. 4,46,041/- to Sharma Memorial Hospital Research Institute were in the nature of business transactions and were given for commercial expediency in so far that it was obtaining trained staff from this institute without making any payment to them. Given these facts the interest disallowance @ 12 % u/s 36(1)(iii) of Rs. 31,10,640/- is deleted.”*

3.7 Ld. CIT(DR) contends that assessee is a hospital and huge land bank has been invested in, it failed to explain how the land was related to activities of its medical business. Substantial amounts have been advanced to sister concerns as interest free advances and the interest has been borne by the assessee. Since the impugned interest free advances are not demonstrated to be for business purpose the corresponding claim u/s 36(1)(iii) has been rightly disallowed. Reliance is placed on AO's order.

3.8 Ld. Counsel for the assessee contends that ld. AO has firstly failed to appreciate the real nature of impugned investment / advances and secondly failed to appreciate the crucial facts that, the assessee was having at its disposal sufficient amount in the shape of interest free funds. They have not been taken into consideration by ld. AO while making the disallowances. Ld. AO has failed to prove any sort of nexus whatsoever between borrowed funds and the alleged interest free advances and

investments made by the assessee. The advances as alleged are as under  
(tabulated at page 12 of assessment order):

<b>S.No.</b>	<b>Particulars</b>	<b>Amount</b>
1.	Investment in lands	1,55,45,014.00
2.	Advance to Ganpatiplastifab Ltd.	15,00,000.00
3.	Shrey Associates	20,00,000.00
4.	BLS Projects P Ltd	11,90,000.00
5.	Silvering Roadways	6,50,000.00
6.	Sharma Nursing home and Bome Hos P Ltd.	2,69,890.00
7.	Sharma Memorial Hospital Research Institute	3,17,24,035.00
8.	Sharma Memorial Hospital Research Institute	4,46,041.00
9.	Sharma Hospital P Ltd.	1,33,431.00
10.	Noncurrent investments in quoted / unquoted shares of various companies	31,46,490.00
11.	Noncurrent investments in immovable properties	1,56,84,000.00
	<b>Total</b>	<b>7,22,88,901.00</b>

It is contended that for AY 2010-11, Ld. AO has treated a sum of Rs. 259.22 lacs out of total 722.88 lacs [after reducing the interest free funds available share capital of Rs. 415.75 lacs and reserves and surplus of Rs. 47.91 lacs] as having been made out of borrowed funds. Similarly for AY 2011-12 Ld. AO has treated a sum of Rs. 223.46 lacs out of total 723.19 lacs [after reducing the interest free funds available share capital of Rs. 415.75 lacs and reserves and surplus of Rs. 83.98 lacs] as having been made out of borrowed funds. Ld. AO failed to appreciate the effect of availability of share capital; reserves and other interest free funds which were applied in the acquisition of assets which are necessarily connected with its business and in making interest free advances. It was

demonstrated to Id. CIT(A) that before drawing any adverse inference in this behalf, Id. AO did not even whisper any such proposal. Ld. AO grossly ignored that assessee's financial statements reflected sufficient interest free funds appearing under the head 'Current Liabilities' which have been utilized in making the above advances / investments.

Following submission are made in respect of each year:

*For AY 2010-11, while considering the amount of Rs. 463.66 lacs as interest free funds available with assessee for making concerned advances / investment Ld. AO has committed a gross error of leaving out / skipping other interest free funds available with the assessee to meet out these advances / investments which are grouped under the head "Current Liabilities" totaling to Rs. 3,96,54,321/-, detail of which is as under:-*

<b>Particulars</b>	<b>Amount</b>
<i>Sundry Creditors for goods and expenses</i>	<i>14,23,464.00</i>
<i>Advances from patients</i>	<i>13,46,954.00</i>
<i>Other Current Liabilities</i>	<i>11,21,452.00</i>
<i>Outstanding Liabilities Expenses</i>	<i>50,64,887.00</i>
<i>Staff Security Deposit</i>	<i>3,02,399.00</i>
<b><i>Modest Builders Ltd.</i></b>	<b><i>3,00,00,000.00</i></b>
<i>Pharmed Ltd.</i>	<i>25,000.00</i>
<i>Okay Diagnostic Centre</i>	<i>3,63,915.00</i>
<i>Rajendra Sharma</i>	<i>6,250.00</i>
<b>Total</b>	<b><i>3,96,54,321.00</i></b>

*For AY 2011-12, while considering the amount of Rs. 499.73 lacs as interest free funds available with assessee for making concerned advances / investment Ld. AO has committed a gross error of leaving out / skipping other interest funds available with the assessee to meet out these advances / investments which are*

*grouped under the head “Current Liabilities” totaling to Rs. 4,16,91,596/-, detail of which is as under ):-*

<b>Particulars</b>	<b>Amount</b>
Sundry Creditors for goods and expenses	8,09,377.00
Advances from patients	16,93,168.00
Other Current Liabilities	12,37,820.00
Outstanding Liabilities Expenses	68,65,226.00
Staff Security Deposit	3,28,931.00
<b>Modest Builders Ltd.</b>	<b>3,00,00,000.00</b>
Pharmed Ltd.	25,000.00
Duties & Taxes	7,25,824.00
Rajendra Sharma	6,250.00
<b>Total</b>	<b>4,16,91,596.00</b>

The above list includes a sum of Rs. 3.00 crores received from M/s Modest Builders Ltd. as interest free security on account of a joint venture agreement entered into by the assessee company in respect to a piece of land at Kalwar Road owned by assessee company and appearing in its balance sheet wherein total investment of Rs. 1,56,84,000/- was made and incidentally this amount is also included by Ld. AO in the list of alleged non-business advances / asset / investments while making disallowance. If the amount of Rs. 3.00 Crores is further added to the other interest free funds available with the assessee and as allowed by Ld. AO i.e. Rs. 463.66 lacs, the total interest free funds available with the assessee come to Rs. 763.66 lacs which is more than the total alleged non-business advances / assets / investments of Rs. 722.88 lacs. Thus

there is no question of application of interest bearing funds in non-business advances / assets / investments. It was further submitted to Ld. CIT(A) that the total alleged non-business advances / assets / investments includes a sum of Rs. 3,17,24,035/- which were made to a sister concern namely M/s Sharma Memorial Hospital and Research Institute which is solely and exclusively for the purpose of business and in consideration of the commercial relations between assessee and the said concern i.e. Sharma Memorial Hospital Research Institute. It is pertinent to note that, Sharma Memorial Hospital Research Institute is a public charitable trust duly registered u/s 12AA of Income Tax Act, 1961 having registered office at H-1, Chitranjan Marg, C-scheme, Jaipur. This trust is running a Nursing College and physiotherapy training center. The trust has also obtained approval from the Government of Rajasthan, Indian Nursing Council, and Rajasthan University of Health Science. The assessee is a private limited company running hospitals where multiple medical services are provided in various fields for day-to-day running of a hospital requires human resources including the nursing staff and other trained assistants to attend the patients. As Sharma Memorial Hospital Research Institute runs a Nursing College and physiotherapy training centre. As per the understanding between the assessee company and this



associated institution, their students were provided to assessee hospital. This arrangement is based on a quid pro quo as their services were obtained without incurring any expenditure. Thus the appellant hospital provided the impugned advances to the trust as a prudent business decision and for economically smooth medical facilities; this arrangement is clearly commercial and made for the business interests of assessee. In this regard reliance is placed on the decision of Hon'ble Madras High Court has upheld the aforementioned contentions of assessee in CIT Vs. M/s. Sambandham Spinning Mills reported in 298 ITR 306, wherein addressing to the question of 'commercial expediency', the court held as under:

*"...That apart, the case of the assessee was that the advances were given primarily for the reason that the employees of the assessee company and their family members are being given concessional treatment at SPMM hospital and the said arrangement is a permanent one and all the employees of the assessee company are benefited by the same. If that be so, it cannot be disputed that the amounts advanced by the assessee are nothing but a measure of commercial expediency..."*

Further reliance is also placed on the following:

(1) 298 ITR 298 Munjal Sales Corporation Vs. CIT & Others (SC)  
*Held also, that since the opening balance of the profits of the assessee firm as on April 1, 1994, was Rs. 1.91 crores, and the profits were sufficient to cover the loan given to a sister concern of Rs. 5 lacs only, the*

*Appellate Tribunal ought to have held that the loan given was from the assessee's own funds.*

(2) CIT Vs. Hotel Savera 239 ITR 795 (Mad.): *Whether the interest free advances are made out of own funds or out of funds borrowed, presumption arises that the money advanced came out of its own funds.*

(3) 142 TAXMAN 681 (ALL.) CIT VS. RADICO KHAITAN LTD.  
(HIGH COURT OF ALLAHABAD)

*Section 36(1)(iii) of the Income-tax Act, 1961 - Interest on borrowed capital - Assessment year 1990-91 - Assessee-company had advanced loan of Rs. 17.19 lakhs to its sister concern - It had borrowed huge sum from bank and financial institutions and claimed deduction on amount of interest paid on borrowed capital - Assessing Officer disallowed amount towards proportionate interest on said advances - Tribunal deleted disallowance of interest on ground that there was sufficient fund available with assessee-company in form of share capital reserve and surplus other than borrowed money for diverting a sum of Rs. 17.19 lakhs to its sister concern - Whether in view of findings recorded by Tribunal, assessee-company was entitled to full allowance of amount of interest paid by it on borrowed capital - Held, yes*

(4) 114 TTJ 124 Comet Handicrafts Vs. ACIT (ITAT, Delhi Bench)  
*Business expenditure – Interest on borrowed capital – Interest free loans for non business purposes – Loans and advances of Rs. 9.85 lacs were given to friends and relatives out of partners' own capital of Rs. 3.05 crores which was free of interest – Credit facilities were sanctioned for the purpose of assessee's export business and the borrowed funds were utilized in the course of business itself – Thus, no part of interest paid to the bank could be disallowed.*

(5) 313 ITR 340 CIT Vs. Reliance Utilities & Power Ltd. (Bom.)  
*Interest on borrowed capital – Investments by assessee – Finding that investments were from interest free funds available with assessee – Borrowed capital used for purposes of business – Interest deductible – Income Tax Act, 1961, s. 36(1)(iii).*

It is submitted that the observations and conclusion of Ld. CIT(A) on this issue being well reasoned, based on proper appreciation of facts / details / evidences and in consonance of established principles of law; they deserve to be upheld.

3.9 We have heard the rival contentions and peruse the material available on record. First we shall take up the assessee's appeals which raise the sole issue of addition on account of unverifiable purchase. Authorities below have relied on the statements of MD, Accountant and prop. of SKS Shri Jayant Khandelwal. Statement of Shri Khandelwal was neither supplied nor the cross examination was given to the assessee, consequently the statement of Shri Khandelwal may not be held as reliable evidence against assessee. However the statements of the MD and accountant have neither been retracted nor effectively controverted, consequently they remain valid piece of evidence in this behalf. Assessee has endeavored to demonstrate that the copious consumption of cotton gauge, bandages etc. has not been disputed; Books of accounts are properly maintained and not rejected by lower authorities. As compared to AY 2009-10 assessee's gross receipts, GP and NP % have gone up and at the same time % consumption of cotton has gone down; this data also has not been disputed in any manner by revenue, assessee claims that no

cotton was purchased from SKS in 2009-10. In this circumstance an alternate plea is advanced that a suitable estimate of disallowance be adopted instead of total disallowance. Reliance is placed on our consolidated order in the case of Anuj Kumar Varshney and ors (supra); in this case the addition qua unverifiable purchases of semi precious stones has been held to be at 15% of such unverifiable purchases. Looking at the entirety of facts and circumstances i.e. the books of accounts being not rejected & consumption of cotton having comparatively decreased, we are inclined to follow our judgment in the case of Anuj Kumar Varshney (supra) and direct to restrict the disallowance to 15% of purchases from SKS. Thus assessee's appeals are partly allowed.

3.10 Apropos revenue appeals about relief in respect of claim of interest u/s 36(1)(iii); from the financial statements and assessee's submission following facts clearly emerge from the record:-

- i. The assessee had at its disposal sufficient available funds in the form of share capital, reserves and other interest free funds etc. which are more than alleged advances/investments.
- ii. The nature of such advances/investments as explained and considered by Ld. CIT(A) leave no room for any doubt that

the alleged advances/investments were for the purposes of assessee's hospital activities and medical professions.

3.11 In view of the above findings and observations, no disallowance of interest u/s 36(1)(iii) is justified. We uphold the orders of Ld. CIT(A) on this issue, revenue grounds in this behalf are dismissed.

4.0 In the result assessee's appeals are partly allowed and revenue appeals are dismissed.

Order pronounced in the open court on 5/06/2015.

(टी.आर.मीना) (T.R. Meena) लेखा सदस्य / Accountant Member	(आर.पी.तोलानी) (R.P.Tolani) न्यायिक सदस्य / Judicial Member
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जयपुर / Jaipur

दिनांक / Dated:- 5 /06/ 2015

\*Mishra

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s. Sharma East India Hospitals & Medical Research Ltd., Jaipur
2. प्रत्यर्थी / The Respondent- The DCIT, Central Circle- 1/ ACIT , Central Circle- 1, Jaipur
3. आयकर आयुक्त(अपील ) / CIT(A), Jaipur
4. आयकर आयुक्त / CIT, Jaipur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.718/JP/2014)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar