IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

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

I.T.A. No.2065/Ahd/2025
(Assessment Year: 2021-22)

Kiri Industries Ltd., 7th Floor,Hasubhai Chambers, Nr. Town Hall, Ellisbridge S.O., Ahmedabad-380006	Vs.	Deputy Commissioner of Income Tax, Circle-2(1)(1), Ahmedabad
[PAN No.AAACK9025C]		
(Appellant)	..	**(Respondent)**

Appellant by :	Shri Tushar Hemani, Sr. Adv.
Respondent by:	Shri Rameshwar P Meena, Sr. DR

Date of Hearing	01.04.2026
Date of Pronouncement	22.04.2026

O R D E R

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short "Ld. CIT(A)"), National Faceless Appeal Centre (in short "NFAC"), Delhi vide order dated 13.08.2025 passed for A.Y. 2021-22.

2. The assessee has raised the following grounds of appeal:

"1. The Ld. CIT(A) and Ld. AO has erred in law and on facts in disallowing expenses claimed as commission paid on exports of-Rs.88,61,356 u/s 40(a)(i) of the Act, on account of non-deduction of tax at source.

2. The Ld. CIT(A) and Ld. AO has erred in law and on facts in disallowing interest expenses of Rs.2,70,98,027 u/s36(1)(iii) of the Act.

3. The Ld. CIT(A) and Ld. AO has erred in law and on facts in disallowing employees contribution towards Provident Fund and Employee State Insurance Scheme of Rs.7,11,142 u/s 36(1)(va) of the Act.

4. Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. This

action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.

5. The Ld. CIT(A) has erred in law and on facts of the case in confirming action of the Ld. AO in levying interest u/s. 234B and 234C of the Act wherever applicable.

6. The learned AO has erred in law and on facts in initiating penalty proceedings under Section 270A of the Act.

7. The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal."

3. The brief facts of the case are that the assessee is a company engaged in business activities and its return of income for A.Y. 2021–22 was subjected to scrutiny assessment under section 143(3) read with section 144B of the Income-tax Act ("the Act"), 1961. During the course of assessment proceedings, the Assessing Officer firstly disallowed commission expenditure of ₹88,61,356/- paid to non-resident agents by invoking section 40(a)(i) of the Act on the ground that the assessee failed to deduct tax at source under section 195 of the Act. The Assessing Officer held that although the agents rendered services abroad in procuring export orders, the right to receive commission arose in India upon execution of such orders and therefore the income was deemed to accrue or arise in India under section 9(1)(i) of the Act. The Assessing Officer further observed that the assessee had not made an application under section 195(2) of the Act to determine taxability and had unilaterally assumed that the payments were not chargeable to tax. Secondly, the Assessing Officer disallowed interest expenditure of ₹2,70,98,027/- under section 36(1)(iii) of the Act by holding that borrowed funds were utilized for capital work-in-progress and therefore proportionate interest ought to have been capitalized till such assets were put to use. The Assessing Officer noted that the assessee had mixed funds and failed to demonstrate direct nexus

of borrowings with business operations, and accordingly computed proportionate disallowance based on average borrowed funds and CWIP. Thirdly, the Assessing Officer made an addition of ₹7,11,142/- under section 36(1)(va) read with section 2(24)(x) of the Act on account of delayed deposit of employees' contribution towards PF and ESI beyond the due dates prescribed under the respective statutes. Though the assessee had suo motu disallowed a substantial portion, the balance amount was treated as income by the Assessing Officer.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the CIT(Appeals). With respect to Ground Nos. 1 the assessee submitted that commission paid to foreign agents was not chargeable to tax in India since the services were rendered outside India, the agents had no permanent establishment in India, and no operations were carried out in India. It was also submitted that detailed documentary evidences including agreements, debit notes, Form 15CA/CB and export details were furnished. The assessee placed reliance on judicial precedents including *CIT vs. Toshoku Ltd.* (125 ITR 525, SC) and *DCIT vs. Mc Fills Enterprises Pvt. Ltd.* (101 taxmann.com 212). However, the CIT(A) rejected the contentions and confirmed the disallowance by holding that the income accrued in India and TDS under section 195 of the Act was mandatory.

5. With respect to disallowance of interest under section 36(1)(iii) of the Act, the assessee contended that it had substantial interest-free funds and therefore presumption should be drawn that investments in CWIP were made out of such funds. The assessee placed reliance on *CIT vs. Reliance Industries Ltd.* (410 ITR 466, SC), *CIT vs. Torrent Power Ltd.* (363 ITR 474, Guj), *CIT vs. Suzlon Energy Ltd.* (354 ITR 630, Guj)

and other judgments. The CIT(A), however, held that the assessee failed to establish nexus and confirmed the disallowance.

6. With regard to employees' contribution to PF/ESI, the CIT(A) upheld the addition by holding that delayed deposits beyond due dates prescribed under respective Acts are not allowable under section 36(1)(va) of the Act, relying upon statutory provisions and audit report observations. Consequently, all grounds of appeal were dismissed.

7. The assessee is in appeal before us against the order passed by the CIT(Appeals) dismissing the appeal of the assessee.

8. We have heard the rival submissions, perused the orders of the lower authorities and the material placed on record including the written submissions filed by the ld. counsel for the assessee. **Ground No. 1** relates to disallowance of commission paid to non-resident agents under section 40(a)(i) of the Act. We find that the issue is squarely covered in favour of the assessee by the decisions of the Ahmedabad Bench of the Tribunal in the assessee's own case in **Kiri Dyes & Chemicals Ltd. vs. ITO (ITA No.1849/Ahd/2016 & others)** and **Kiri Industries Limited vs. DCIT (ITA No.1513/Ahd/2024)**. The Ahmedabad Tribunal, while dealing with identical facts, has held that commission paid to foreign agents for procuring export orders, where services are rendered outside India and the agents do not have any permanent establishment or business connection in India, does not give rise to income chargeable to tax in India.

9. The relevant findings of the Tribunal in earlier years, inter alia, hold that once the income is not chargeable to tax in India, the provisions of section 195 of the Act are not attracted and consequently disallowance under section 40(a)(i) of the Act cannot be sustained. The Tribunal has

followed the ratio laid down by the Hon'ble Supreme Court in *CIT vs. Toshoku Ltd.* (125 ITR 525), wherein it was held that commission earned by non-resident agents for services rendered abroad cannot be deemed to accrue or arise in India. Similar view has been taken in *DCIT vs. Mc Fills Enterprises Pvt. Ltd.* (101 taxmann.com 212, Ahd) and other decisions. Respectfully following the binding precedents in the assessee's own case, we hold that the disallowance of ₹88,61,356/- is unsustainable and is hereby deleted.

10. The relevant findings of the Tribunal in ITA No.1849/Ahd/2016 & others, as extracted, read as under:

> *"...it is an undisputed fact that the non-resident agents have rendered services outside India for procuring export orders and no part of such services has been carried out in India. The agents do not have any permanent establishment or business connection in India. Therefore, the commission income earned by such non-resident agents cannot be said to accrue or arise in India within the meaning of section 5(2) read with section 9(1)(i) of the Act. Consequently, such payments are not chargeable to tax in India and hence the provisions of section 195 are not attracted. Once there is no obligation to deduct tax at source, no disallowance under section 40(a)(i) can be made..."*

11. Further, the Tribunal relying upon the judgment of the Hon'ble Supreme Court in **CIT vs. Toshoku Ltd. (125 ITR 525)** observed as under:

> *"...where the non-resident agent operates outside India and no part of income arises in India, the commission earned by such agent cannot be deemed to accrue or arise in India. In such circumstances, the assessee is not liable to deduct tax at source under section 195 of the Act..."*

12. The above ratio has been consistently followed by the Coordinate Bench in assessee's own case in subsequent years including **ITA No. 1513/Ahd/2024**, wherein it has been held that:

> *"...commission paid to foreign agents for services rendered outside India for procuring export orders is not chargeable to tax in India in absence of any permanent establishment or business connection in India and therefore no disallowance under section 40(a)(i) is warranted..."*

13. Respectfully following the aforesaid binding precedents in assessee's own case, we hold that the disallowance of ₹88,61,356/- made under section 40(a)(i) of the Act is unsustainable and the same is hereby deleted.

14. **Ground No. 2** relates to disallowance of interest under section 36(1)(iii). We find that this issue is also covered in favour of the assessee by the decision of the Tribunal in ITA No.1849/Ahd/2016 & others, wherein the Tribunal has held as under:

> *"...it is evident from the balance sheet that the assessee is having substantial interest-free funds in the form of share capital and reserves which are far in excess of the investments made in capital work-in-progress. In such circumstances, a presumption arises that the investments are made out of interest-free funds available with the assessee. Accordingly, no disallowance of interest is warranted under section 36(1)(iii) of the Act..."*

15. The Tribunal further relied upon the judgment of the Hon'ble Supreme Court in *CIT vs. Reliance Industries Ltd.* (410 ITR 466) and observed:

> *"...where interest-free funds available with the assessee are sufficient to meet the investments, it shall be presumed that such investments are made out of interest-free funds and no disallowance of interest can be made..."*

16. This view has also been reiterated in assessee's own case in ITA No.1513/Ahd/2024. In the present case also, the factual position demonstrates that the assessee had substantial own funds far exceeding the investments in capital work-in-progress. Therefore, following the binding precedents, we hold that the disallowance of ₹2,70,98,027/- under section 36(1)(iii) is not sustainable and the same is deleted.

17. **Ground relating to disallowance under section 36(1)(va) of the Act** pertains to employees' contribution to PF and ESI. We find that the issue is conclusively settled against the assessee by the judgment of the

Hon'ble Supreme Court in **Checkmate Services (P) Ltd. vs. CIT (448 ITR 518)**, wherein it has been held that employees' contribution deposited beyond the due dates prescribed under the respective Acts is not allowable as deduction under section 36(1)(va), even if deposited before the due date of filing return. The Hon'ble Supreme Court has clearly distinguished employees' contribution from employer's contribution and held that section 43B does not override section 36(1)(va). Similar view has been followed in *Harrisons Malayalam Ltd.* and other judicial precedents. Respectfully following the binding ratio, we uphold the disallowance of ₹7,11,142/-.

18. In the result, the appeal of the assessee is partly allowed.

This Order pronounced in Open Court on	**22/04/2026**

Sd/-	**Sd/-**
(ANNAPURNA GUPTA)	**(SIDDHARTHA NAUTIYAL)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad; Dated 22/04/2026

TANMAY, Sr. PS ***TRUE COPY***

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

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad