आयकर अपीलीय अधीकरण, न्यायपीठ – "A" कोलकाता,

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA

(समक्ष)Before **श्री ऐ. टी. वर्की,** न्यायीक सदस्य **एवं/and** श्री वसीम अहमद, लेखा सदस्य)

[Before Shri A. T. Varkey, JM & Shri Waseem Ahmed, AM]

I.T.A. No. 159/Kol/2016
Assessment Year: 2006-07

Deputy Commissioner of Income-tax, Circle-11(1), Kolkata.	Vs.	M/s. Eveready Industries India Ltd., (PAN: AAACE5778N)
Appellant		Respondent

Date of Hearing	10.10.2017
Date of Pronouncement	18.10.2017
For the Appellant	Shri Kalyan Nath, Sr. DR
For the Respondent	Shri Akkal Dudhwewala, ACA

ORDER

Per Shri A.T.Varkey, JM

This is an appeal filed by the revenue against the order of Ld. CIT(A)-9, Kolkata dated 24.11.2015 for AY 2006-07.

2. Ground no. 1 of revenue's appeal reads as under:

> *"1. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in allowing loss of Rs.534.58 lakh due to exchange fluctuation on foreign currency working capital loan on account of its restatement at the end of the year when such loss would not affect the day to day working or profit for the year of the assessee."*

2.1. Briefly stated facts are that ground No. 1 relates to disallowance of foreign exchange fluctuation loss arising on restatement of foreign currency working capital loan. In the assessment order the AO noted that the assessee had debited exchange fluctuation loss of Rs. 534.58 lacs (net of gain) to its P&L A/c under the heading "Finance Costs". He also noted that loss on restatement of liability arising from exchange fluctuation was claimed as expenditure in the AYs 1998-99 to 2002-03 and such loss was allowed as revenue deduction by the ITAT in assessee's own case. The Special Bench of ITAT, Delhi in the case of ONGC Vs DCIT had similarly held that loss on account of restatement of foreign currency working loan was allowable in computing the business income. He further noted that the

assessee had taken working capital loan in foreign currency and outstanding loan amounts were restated at the exchange rates prevailing on the balance sheet dates and any loss arising from restatement was claimed as expenditure and where the gain was made it was show as income. After noting these facts, the AO relying on the judgment of the Hon'ble Punjab & Haryana High Court in the case of Atlas Cycle Industries Limited Vs JCIT (270 ITR 108) and Hon'ble Gujarat High Court in the case of Mihir Textiles Limited Vs CIT (225 ITR 327) observed that the loss incurred was notional one or it was contingent in nature. Hence, the deduction was not permissible. On appeal, the Ld. CIT(A) has observed as under:

> *"I have carefully considered the submissions of the A/Rs and have perused the appellate orders passed by the ITAT, Kolkata in appellant's own case for the earlier years. From the impugned order I note that the AO has not disputed the fact that the exchange fluctuation loss related to working capital loan obtained by the assessee in foreign currency. It is also not disputed by the AO that such working capital loans taken earlier were outstanding on the earlier balance sheet dates. As per the consistent practice followed the assessee stated in his books the foreign currency working capital loans at the exchange rates prevailing on the respective balance sheet dates. If any loss occurred on such restatement, the same was debited to the P&L A/c as an item of expense and if any gain was made, then the same was credited as income in the P&L A/c of the relevant year. This method of accounting was consistently followed by the assessee in the past years. In the circumstances the issue of allowability of such loss arose in the assessee's own case for AYs 1998-99 to 2002-03. In assessments of these years the loss incurred on restatement of working capital loan was disallowed as being contingent in nature but on appeal the disallowance was deleted by the appellate authorities. I also note that the AO has admitted that on account of restatement the assessee had reported substantial gains in AYs 2003-04 & 2004-05 which were assessed as income in the respective assessments. On these facts therefore I find that in the preceding years the appellate authorities have consistently held loss or gain arising from exchange rate fluctuation was actual loss or actual gain and given effect in income computation. I further find that the issue of allowability of exchange fluctuation loss on restatement of working capital loan is no longer res integra. The Hon'ble Supreme Court in the case of Oil & Natural Gas Corporation Limited Vs CIT (322 ITR 180) while approving the decision of the Special Bench of ITAT, Delhi has held such loss to be allowable as revenue expenditure of the relevant year. Respectfully following the judgment of the Supreme Court and the decisions of ITAT, Kolkata in the assessee's own case for earlier years, I direct the AO to delete the disallowance of exchange fluctuation loss of Rs.534.58 lacs."*

Aggrieved by the order of Ld. CIT(A), the revenue is in appeal before us.

2.2. We have heard rival submissions and gone through the facts and circumstances of the case. At the time of hearing, Ld. Counsel for the assessee submitted before us that the issue is squarely covered in favour of the assessee by the decision of Hon'ble Supreme Court in the case of Woodward Governor India Pvt. Ltd. 312 ITR 254 (SC) and also by the decision of ITAT in assessee's own case for AY 2005-06 in ITA No. 94/Kol/2012 dated 03.02.2016. He also submitted that since the Ld. CIT(A) has deleted the disallowance of exchange fluctuation loss of Rs.534.58 lacs by relying on the decision of Hon'ble Supreme

Court in the case of Woodward Governor India Pvt. Ltd., supra, the order of Ld. CIT(A) does not call for any interference. On the other hand, the Ld. DR relied on the order of AO. We find that the issue is squarely covered by the decision of Hon'ble Supreme Court in the case of Woodward Governor India Pvt. Ltd. and the decision of ITAT in assessee's own case for AY 2005-06 in ITA No. 94/Kol/2012 dated 03.02.2016. The Tribunal vide para 14 of its order dated 03.02.2016 has held as under:

> *"14. We have heard the rival submissions. We are of the view that in the light of the judicial pronouncement in the case of Woodward Governor India Pvt. Ltd. (supra) by the Hon'ble Supreme Court and the decision of the Tribunal in Assessee's own case on identical issue and keeping in mind the fact that the liability in question is on revenue account, the order of the CIT(A) does not call for any interference. Accordingly, ground no.2 raised by the Revenue is dismissed."*

Since the issue is identical with the issue raised in AY 2005-06, which is squarely covered in favour of the assessee and the Ld. DR could not controvert the aforesaid finding of the Tribunal by producing any material before us, following the aforesaid order of the Tribunal, cited supra, we dismiss the ground of appeal of the revenue.

3. Ground no. 2 of revenue's appeal reads as under:

> *"2. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in directing to recompute assessee's tax liability in respect of capital gain on sale of property by applying tax rate prescribed u/s. 112 of the Income Tax Act, 1961 when the said property was held by the assessee as depreciable assets."*

3.1. Briefly stated facts are that ground No.2 relates to computation of deemed short term capital gain assessed in respect of sale of residential property at Golf Link, New Delhi. At the time of assessment, the AO noted that during the relevant year the assessee sold a residential property at Golf Link, New Delhi which was a part of residential building block on which depreciation was allowed. The property in question was sold during the relevant year for Rs 500 lacs. In terms of Section 43(6) read with Section 50 of the Act, the sale proceeds were reduced from the opening WDV of the block as on 01/04/2005 which was only Rs 30,76,885/-. As a result, there was deemed short term capital gain amounting to Rs.4,69,23,115/- as per Section 50 of the Act. Although the assessee reported such gain as short term capital gain, in the matter of calculation of tax, it was the assessee's contention that such capital gain was eligible for concessional tax rate prescribed u/s 112 of the Act. In support of this contention the reliance was placed by the assessee on the judgment of the

Bombay High Court in the case of CIT Vs ACE Builders Pvt Ltd (195 CTR 1). The AO however did not agree with the assessee's such contention and taxed the deemed short term capital gain at the maximum marginal rate of 30%. Aggrieved, assessee preferred appeal before the Ld. CIT(A), who while allowing the assessee's ground of appeal has held as under:

> *"I have carefully considered the A/R's submissions and perused the assessment order on this issue. As per records, the residential property at Golf Link, New Delhi was acquired by the appellant on 19/03/1956. In the circumstances it is not in dispute that on the date of transfer, the property in question was owned and held by the assessee for a period more than three years. It is also not disputed by the assessee that the residential property in question was forming part of the residential building block and in respect of which depreciation was being claimed under Section 32 at the rate of 5%. In the circumstances the residential building at Golf Link, New Delhi had availed benefit of depreciation in the past assessments and therefore the same was required to be dealt with in accordance with Section 43(6) and Section 50 of the Income Tax Act, 1961. It is admitted fact that the opening WDV of the building block for AY 2006-07 was only Rs. 30,76,885/- whereas the sale proceeds realized on sale of Golf Link, New Delhi property was Rs. 500 lacs. In the circumstances when such sale proceeds were reduced from the opening WDV, the assessee made net gain of Rs.4,69,23,115 which was liable to be assessed under the head Capital Gains in the manner prescribed in Section 50 of the Act. It was the assessee's contention before the AO that even though the income assessable was Rs.4,69,23,115 yet such income was earned by the assessee on transfer of a long term capital asset and therefore the same was entitled for availing the concessional rate of tax prescribed in Section 112 of the Act. In support of this contention the assessee had relied on the judgment of the Bombay High Court reported in 195 CTR 1. In the impugned order the AO has not given any detailed reasoning for rejecting the assessee's contention even though the admitted fact was that the capital asset in question was held for period exceeding three years prior to the date of sale.*
>
> *From examination of the facts & material on record, I find that the property in question was admittedly a depreciable asset and therefore came within the ambit of Section 50 of the Income Tax Act, 1961 when the sale proceeds exceeded the opening WDV of the building block. At the same I also note that the property in question was acquired by the assessee in March 1956 and therefore its character was long term in nature. Provisions of Section 112 of the Act provides concessional rate of tax when the gains arise on transfer of long term capital asset. In the circumstances therefore the assessee's contention for availing concessional tax rate had prima facie merit which was required to be adjudicated by the AO. The AO has not dealt with the assessee's contention on 'merits. However I find that this specific issue was considered and decided by the Mumbai Benches of ITAT. In the case of Smita Conductors Ltd Vs DCIT (41 taxmann.com 514), the assessee had similarly sold a residential flat after holding it for more than three years. The said residential flat was part of the building block on which depreciation was allowed u/s. 32. On sale of residential property, proceeds were reduced from the WDV of the building block which resulted in gains which were assessed u/s. 50 of the Act. The assessee claimed that for the purpose of calculating the tax, the deemed short term capital gain assessed u/s 50 were eligible for tax rate prescribed in Section 112 since the capital asset was long term in nature. While deciding the assessee's contention the ITAT held that deeming provisions of Section 50 were only for the purpose of section 48 & 49 relatable to computation of taxable gain and not for other purposes. Since the capital asset in question was held for a period exceeding three years, it was in the nature of long term capital asset and therefore gain realized on transfer of long term capital asset qualified for concessional tax rate provided in Section 112 of the Act. The same was expressed in the case of Poddar Brothers & Investment Pvt Ltd Vs DCIT (ITA No. 1114/Mum/2013). Factually, assessee's case is found to be pari materia with the facts involved in the decisions*

of the ITAT, Mumbai. I direct the AO to re-compute assessee's tax liability in respect of capital gain on sale of property at Golf Link, New Delhi by applying tax rate prescribed in Section 112 of the Act. In view of these findings, the assessee's alternative claim is infructuous and accordingly the same is not considered. Ground Nos. 2.3 & 2.4 are allowed."

Aggrieved, revenue is in appeal before us.

3.2. We have heard rival submissions and gone through facts and circumstances of the case. We find that the facts as narrated by the Ld. CIT(A) in his order were not disputed by the ld. DR at the time of hearing before us. Hence, we refrain from repeating the facts again. We find that the property in question was admittedly a depreciable asset and therefore came within the ambit of Section 50 of the Income Tax Act, 1961 when the sale proceeds exceeded the opening WDV of the building block. At the same we also note that the property in question was acquired by the assessee in March 1956 and therefore its character was long term in nature. Sec. 50 is the special provision for computation of capital gain in case of depreciable assets and the deeming provision of sec. 50 is only for the purpose of section 48 & 49 relatable to computation of taxable gain and not for other purposes. Since the capital asset in question was held for a period exceeding three years, it was in the nature of long term capital asset and, therefore, gain realized on transfer of long term capital asset is qualified for concessional tax rate provided in Section 112 of the Act. We note that identical issue was adjudicated by the Tribunal (Mumbai) Benches in the case of Smita Conductors Ltd. Vs. DCIT 41 taxmann.com 514 and also in the case of Poddar Brothers & Investment Pvt. Ltd. Vs. DCIT, ITA No. 1114/Mum/2013 and the interpretation of the provisions of sections 48, 49 and 50 and sec. 112 was considered and the view expressed by the Tribunal has been followed by the ld. CIT(A) to give relief to the assessee. The Ld. DR could not controvert the finding of the Ld. CIT(A) by producing any material before us or any other precedent to upset the decision relied on by the ld. CIT(A), therefore, we find no infirmity in the order of Ld. CIT(A) and the same is hereby upheld. This ground of appeal of revenue is dismissed.

4. Ground no. 3 of the revenue's appeal reads as under:

"3. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in directing the AO to allow the deduction for Rs.406.58 lacs on account of amortization of upfront fees."

4.1. Briefly stated facts are that the assessee claimed that it had paid upfront fee of Rs. 20 cr. to ICICI Bank for conversion of Rupee Loan into Foreign Currency Loan. Fee of Rs.20

cr. was amortized in 59 equal monthly instalments from the date of conversion commencing from December 2001. For the FY 2005-06 relevant to AY 2006-07, the pro-rata expenditure amounted to Rs.406.78 lacs. The assessee claimed that the said fee was paid by the assessee for reducing the burden of interest cost every year and was an allowable revenue expenditure while computing total income. The AO however, rejected the claim of the assessee for deduction on the ground that the assessee has not charged the upfront fees as part of interest and debited into P&L Account, but the same was claimed in reserve account and claimed as deduction in computation of income, which is not in accordance to law. Hence, he denied the claim of the assessee. On appeal, the Ld. CIT(A) while allowing the assessee's ground of appeal vide para 5.3 has held as under:

> *"5.5. I have carefully considered the submissions of the A/R. I have also examined the past accounts and the appellate order passed for AY 2005-06 wherein similar claim was allowed by the CIT(Appeals). From the facts placed before me, it was noted that the assessee had obtained an Indian currency loan from ICICI Bank which was allowed to be converted in foreign currency loan in December 2001 on the condition that assessee would pay upfront fees of Rs 20 crores. The tenure of the original loan was to expire in October 2006. It was therefore the assessee's contention that benefit of upfront fee payment was to be derived over the unexpired period of 59 months from the date of conversion. The assessee did not claim deduction for upfront fees paid in computing its taxable income of FY 2001-02 being the year in which conversion was allowed. According to the assessee since the benefit of upfront fees accrued to the assessee pro rata over the unexpired tenure of the original loan, the assessee opted to amortize the expenditure of Rs 20 crores over a period of 59 months commencing from December 2001. For the FY 2005-06 relevant to AY 2006-07, the pro-rata expenditure amounted to Rs 406.78Iacs. In the FYs 2001-02 to 2003-04, the assessee accounted amortization of these expenses on pro-rata basis by debiting the appropriate sums to the Profit & Loss Account. In FY 2004-05 however the entire unamortized sum of Rs 1050.85 lacs was set off against the Revaluation Reserve in the Balance Sheet consequent to which no amount was debited in the P&L A/c, of FYs 2004-05 & 2005-06 towards amortization. In the computation of income for AY 2005-06 however the assessee claimed deduction for the pro-rata amount on the plea that the proportionate expenditure on account of upfront fee payment was allowable since the tenure of the loan continued during the relevant previous years. The assessee's claim was disallowed by the AO in AY 2005-06 only on the ground that the assessee did not debit the relevant amount to its P&L A/c but instead wrote off the entire remaining amount in the revaluation reserve. On appeal, the CIT(Appeals) found that in the past assessments, the AOs had in principle accepted the assessee's claim for proportionate deduction for upfront fee payment over the unexpired tenure of the loan amount. The CIT(A) held that since in the past assessments the assessee's claim for pro-rata deduction was consistently allowed and assessee's such claim was in conformity with the decision of Supreme Court in the case of Madras Industrial Investment Corporation Limited Vs CIT (225 ITR 802), the deduction for Rs 406.78 lacs was held permissible. Factually, assessee's case in AY 2006-07 continued to remain same, the AO is directed to allow the deduction for Rs.406.78 lacs in computing assessee's total income for AY 2006-07. Additional Ground of appeal is accordingly allowed."*

Aggrieved, revenue is in appeal before us.

4.2. We have heard rival submissions and gone through the facts and circumstances of the case. At the time of hearing, Ld. Counsel for the assessee submitted before us that the issue is squarely covered in favour of the assessee by the decision of ITAT in assessee's own case for AY 2005-06 in ITA No. 94/Kol/2012 dated 03.02.2016. He also submitted that the Ld. CIT(A) has deleted the disallowance by observing that in the past assessments also the assessee's claim for pro-rata deduction was consistently allowed and assessee's such claim was in conformity with the decision of Hon'ble Supreme Court in the case of Madras Industrial Investment Corporation Limited Vs CIT (225 ITR 802). Since the issue is identical with the issue raised in AY 2005-06, which is squarely covered in favour of the assessee and the Ld. DR could not controvert the aforesaid finding of the Tribunal by producing any material before us and there is no change in law or facts, we respectfully following the aforesaid order of the Tribunal, cited supra, dismiss this ground of appeal of the revenue.

5. In the result, appeal of revenue is dismissed.

Order is pronounced in the open court on 18th October, 2017.

Sd/-	Sd/-
(Waseem Ahmed)	(Aby. T. Varkey)
Accountant Member	Judicial Member

Dated : 18th October, 2017

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – DCIT, Circle-11(1), Kolkata
2. Respondent – M/s. Eveready Industries India Ltd., 1, Middleton Street, Kolkata-700 071.
3. The CIT(A) , Kolkata.
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy, By order,

Sr. Pvt. Secretary