

आय अधीकरण, "सी" आयापीठ, चेन्नई
PELLATE TRIBUNAL 'C' BENCH, CHENNAI

श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री धुवुरु आर.एल रेडी, आयायिक सदस्य के समक्ष
Before Shri A. Mohan Alankamony, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I T.A. No. 180/Mds/2017

आयकर वर्ष/Assessment Year: 2012-13

The Madras Silks India Pvt. Ltd.,
No. 68-A, College Road,
Tirupur 641 602.
[PAN: AACCT4954H]

Vs. The Deputy Commissioner of
Income Tax,
Circle 1, Tirupur.

(Appellant)

(Respondent)

अपीलाथक ओर से / Appellant by : Shri S. Swaminathan, C.A.
आयथक ओर से/Respondent by : Shri Asish Tripathi, JCIT
सुनवाई क तारख / Date of hearing : 30.08.2017
घोषणा क तारख /Date of Pronouncement : 31.10.2017

आदेश /ORDER

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 3, Coimbatore dated 27.10.2016 relevant to the assessment year 2012-13. The only effective ground raised in the appeal of the assessee is that the Id. CIT(A) has erred in confirming the addition of foreign exchange fluctuation loss on principal repayment of wind mill loan.

are that the assessee is engaged in the business of trading in textile, manufacturing of gold and silver, generation and sale of wind power and filed its return of income admitting an income of .32,10,92,610/-. The return filed by the assessee was processed under section 143(1) of the Income Tax Act, 1961 [Act in short]. Subsequently, the case of the assessee was selected for scrutiny and notice under section 143(2) of the Act dated 08.08.2013 was issued and the assessee also filed all the details as called for.

2.1 With regard to foreign exchange fluctuation loss on principal repayment of .86,40,372/-, the assessee is one of the resultant company of the demerged company MCS Textiles P Ltd. The demerged company had taken foreign currency loan for purchase of wind turbine generator not from outside India. During the financial year 2011-12 the assessee repaid JPY 3,65,00,000 on various dates towards principal repayment, being its share of the loan. The assessee had incurred exchange fluctuation loss of .86,40,372/- on this principal repayment of loan and by debiting to the Profit & Loss account of the company's account, claimed it as deduction under section 37(1) of the Act, Further the assessee has claimed that provisions of section 43A of the Act are not applicable. After considering the submissions of the assessee, the Assessing Officer was of the opinion that the loss on account of fluctuations in foreign currencies in respect of capital assets is not

in the case of Sulej Mills P. Ltd. v. CIT 116

116. Moreover, the Accounting Standard 11 Pre-revised treats all foreign exchange losses/gains as capital items. Following the same principle, the loss on currency fluctuation on foreign currency loans incurred for purchase of capital asset was treated as capital loss and by applying the principle in section 43A of the Act, the actual loss of .86,40,372/- incurred on repayment of loan was adjusted to the cost of asset and accordingly, the Assessing Officer allowed eligible depreciation on the same.

4. The assessee carried the matter in appeal before the Id. CIT(A). After considering various submissions of the assessee, the Id. CIT(A) partly allowed the appeal filed by the assessee.

5. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the provisions of section 43A of the Act has no application to the facts of the case, because, the wind mill purchased was not an asset purchased outside India. Further, he has submitted that foreign currency loan and acquisition of indigenous asset are distinct and thus, the fluctuation loss caused upon the assessee bears no nexus or relation to the acquisition to the assets and pleaded that the addition made on foreign exchange fluctuation loss should be deleted. On the other hand, the Id. DR strongly supported the orders of authorities below.

es, perused the materials available on record and gone through the orders of authorities below and also considered the written submissions of the assessee. The assessee has debited the foreign exchange fluctuation loss of .86,40,372/- and claimed the same as deduction under section 37(1) of the Act by relying on the decision in the case of CIT v. Woodward Governor India P. Ltd. 312 ITR 254 (SC). The assessee objected application of provisions of section 43A of the Act. The Assessing Officer, while completing the assessment, has treated the foreign currency fluctuation loss on account of repayment as cost of the asset by following the decision of the Hon^{ble} Supreme Court in the case of Suttlej Mills P. Ltd. v. CIT 116 ITR 1 and in pursuant to the provisions of section 43A of the Act and allowed depreciation thereon, whereas, the gain was assessed as income because it has resulted consequent to demerger.

6.1 The foreign exchange fluctuation loss is in relation to foreign currency loan attributable to acquisition of indigenous machinery. Thus, the substance of the issue is whether foreign exchange fluctuation loss incurred on foreign currency loan borrowed to acquire indigenous fixed assets is chargeable to income tax or not?

6.2 The provisions of section 43A of the Income Tax Act are summarised hereunder:

[Click Here to upgrade to
Unlimited Pages and Expanded Features](#)

- ... has acquired any assets from a country
- b) The assets are acquired for the purpose of business or profession.
 - c) Consequent to change in rate of exchange, there is increase / decrease in the liability of the assessee expressed in Indian currency towards cost of the assets or repayment of money borrowed for acquiring capital asset along with interest in foreign currency.
 - d) Such increase or reduction in the liability shall be added or deducted from the actual cost of assets as and when paid or received.

Further, a bare reading of the aforesaid provision of section 43A of the Act, which opens with a non-obstante and overriding clause, would show that it comes into play only when the assets are acquired from a country outside India and does not apply to acquisition of indigenous assets. Another notable feature is that section 43A of the Act provides for making corresponding adjustments to the costs of assets only in relation to exchange gains/losses arising at the time of making payment. It, therefore, deals with realised exchange gain/loss. The treatment of unrealised exchange gain/loss is not covered under the scope of section 43A of the Act. It is, thus, apparent that special provision of section 43A of the Act has no application to the facts of the present case. Therefore, the issue whether, the loss is on revenue account or a capital one is required to be tested in the light of generally accepted accounting principles, pronouncements and guidelines etc.

6.3 Before we delineate on the allowability of loss based on generally accepted accountancy principles, it may be pertinent to examine whether the

[Click Here to upgrade to
Unlimited Pages and Expanded Features](#)

ation loss can be added to the carrying costs of corresponding capital assets with reference to section 43(1) of the Act. Section 43(1) defines the expression 'actual cost'. As per section 43(1) of the Act, actual cost means actual cost of the assets to the assessee, reduced by that portion of the costs as has been met directly or indirectly by any other person or authority. Several Explanations have been appended to section 43(1) of the Act. However, the section nowhere specifies that any gain or loss on foreign currency loan acquired for purchase of indigenous assets will have to be reduced or added to the costs of the assets. Thus, viewed from this perspective also, such increased liability cannot be bracketed with cost of acquisition of capital assets save and except in terms of overriding provisions of section 43A of the Act.

6.4 By considering various case law, in the case of *Sutlej Cotton Mills Ltd. v. CIT* (supra), the Hon^{ble} Supreme Court has finally concluded as under:

“The law may, therefore, now be taken to be well settled that where profit or loss arises to an assessee on account of appreciation or depreciation in the value of foreign currency held by it, on conversion into another currency, such profit or loss would ordinarily be trading profit or loss if the foreign currency is held by the assessee on revenue account or as a trading asset or as part of circulating capital embarked in the business. But, if on the other hand, the foreign currency is held as a capital asset or as fixed capital, such profit or loss would be of capital nature”.

the Hon^{ble} Supreme Court in the above case is that the borrowals of foreign currency loan had direct nexus with the acquisition of capital assets and thus held that the loss arising to the assessee on fluctuation in foreign currency is entirely forming part of its fixed capital assets.

6.5 However, in the case of CIT v. Tata Iron and Steel Co. Ltd. 231 ITR 285, the Hon^{ble} Supreme Court has held that the cost of an asset and cost of raising money for purchase of an asset are two different and independent transactions. Thus, events subsequent to acquisition of assets cannot change price paid for it. Therefore, fluctuations in foreign exchange rate while repaying instalments of foreign loan raised to acquire asset cannot alter actual cost of assets. The relevant operative para is reproduced hereunder:

“Coming to the question raised, we find it difficult to follow how the manner of repayment of loan can affect the cost of the assets acquired by the assessee. What is the actual cost must depend on the amount paid by the assessee to acquire the asset. The amount may have been borrowed by the assessee, but even if the assessee did not repay the loan it will not alter the cost of the asset. If the borrower defaults in repayment of a part of the loan, the cost of the asset will not change. What has to be borne in mind is that the cost of an asset and the cost of raising money for purchase of the asset are two different and independent transactions. Even if an asset is purchased with non-repayable subsidy received from the Government, the cost of the asset will be the price paid by the assessee for acquiring the asset. In the instant case, the allegation is that at the time of repayment of loan, there was a fluctuation in the rate of foreign exchange as a result of which, the assessee had to repay a much lesser amount than he would have

[Click Here to upgrade to
Unlimited Pages and Expanded Features](#)

... judgment, this is not a factor which can alter the
... see for purchase of the asset. The assessee
may have raised the funds to purchase the asset by borrowing but what
the assessee has paid for it, is the price of the asset. That price cannot
change by any event subsequent to the acquisition of the asset. In our
judgment, the manner or mode of repayment of the loan has nothing to
do with the cost of an asset acquired by the assessee for the purpose of
his business. We hold that the questions were rightly answered by the
High Court. The appeals are dismissed. There will be no order as to
costs.”

Thus, from the above, it is evident that the variation in the borrowals of foreign currency loan amount has no bearing on the cost of the asset as the loan is a distinct and independent transaction as in comparison with acquisition of assets out of said loan amount borrowed. Actual cost of the corresponding fixed asset acquired earlier by utilizing the aforesaid loan will not undergo any change owing to such fluctuation.

6.6 We find that the decision in the case of Sutej Cotton Mills Ltd. (supra), the Hon'ble Supreme Court therein stated the principle of law that where any profit or loss arises to an assessee on account of depreciation in foreign currency held by him on conversion from another currency, such profit and loss would ordinary be trading loss if the foreign currency held by the assessee on revenue account as trading asset or as a part of circulating capital embargo in business.

However, if the foreign currency is held as a capital asset, the loss should be capital in nature. The aforesaid principle of law is required to be

determine whether the foreign currency is held by the assessee on revenue account or as a part of circulating capital. In the present case, fluctuation loss inflicted upon the assessee bears no nexus or relation to the acquisition to the assets. The action of the assessee is tied up to its underlying objective i.e. saving in interest costs, hedging its revenue receipts etc. which are undoubtedly on revenue account. Thus, the loss generated in impugned action bears the character of revenue expenditure.

6.7 Similarly, decision of the Apex Court in the case of CIT v. Tata Iron and Steel Co. (supra) also weighs in favour of the assessee. For the aforesaid reasons, in the absence of applicability of section 43A of the Act to the facts of the present case and in the absence of any other provision of the Income Tax Act dealing with the issue, claim of exchange fluctuation loss in revenue account by the assessee in accordance with generally accepted accounting practices and mandatory accounting standards notified by the ICAI and also in conformity with CBDT notification cannot be faulted. No inconsistency with any provision of Act or with any accounting practices has been brought to our notice. Otherwise also, in the light of fact that the provisions of section 43A of the Act has no application to the facts of the case, it could safely and logically be concluded that any exchange fluctuation arising out of the restatement of the said loan at the end of the year, be it gain or loss would also fall on revenue account and hence,

[Click Here to upgrade to
Unlimited Pages and Expanded Features](#)

ambit of taxation, if it is a case and allowable

as an expenditure under section 37(1) of the Act, if it is a loss. The order of the Id. CIT(A) sustaining the disallowance is not called for and, is, thus, reversed.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced on the 31st October, 2017 at Chennai.

Sd/-
(A.MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, 31.10.2017

Vm/-

आदेश क० प्रतिलिपि अर्पणत/Copy to: 1. अपीलार्थ/ Appellant, 2. प्रत्यर्थ/ Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. वार्षिकीय प्रतिलिपि/DR & 6. गार्डफाइल/GF.