

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "B", KOLKATA**

**BEFORE SH. M.BALAGANESH, ACCOUNTANT MEMBER
AND
SH. S.S.VISWANETHRA RAVI, JUDICIAL MEMBER**

**ITA No. 669 & 1123/KOL/2017
(ASSESSMENT YEAR-2012-13 & 2013-14)**

M/s. Simran Wind Project Ltd., P-46A, Radha Bazar Lane, Kolkata-700001. PAN-AAJCS4400J	vs	DCIT, Circle-5(1), P-7, Chowringhee Square, Kolkata-700069.
(Appellant)		(Respondent)

Appellant by	Sh.A.K.Tulsyan, FCA
Respondent by	Sh. S.Dasgupta, Addl.CIT.DR
Date of Hearing	09.08.2018
Date of Pronouncement	31.10.2018

ORDER

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

These two appeals by the assessee against the separate orders dated 02.02.2017 & 10.04.2017 passed by CIT(A)-2, Kolkata for AYs 2012-13 and 2013-14 respectively. Since the facts in both appeals are similar and identical. Therefore, with the consent of the parties, both appeals being disposed off through this consolidated order for the sake of convenience. First we take up ITA No.669/Kol/2017 for AY 2012-13.

ITA No.669/Kol/2017 (AY 2012-13)

2. Ground No.1 is general in nature & does not require any specific adjudication.
3. For Ground No.3, Ld.AR submits that the assessee is not interested in prosecuting the same in view of smallness of amount and prayed to dismiss the same as not pressed. Therefore, Ground Nos. 3 is treated as not pressed.
3. Ground No.2(a) and 2(b) are relating to confirmation of disallowance made on account of depreciation claimed on capitalization of Foreign Exchange Fluctuation Loss.

4. Heard both and perused the material available on record. Brief facts of the case are that the assessee is a company and engaged in the business of power generation. The assessee availed a loan of 5.50 crores in USD (equal to Rs. 258.24 crores) for purchase of wind mills and land for setting of the said mills. According to the assessee, the said project partly funded by External Commercial Borrowings (in short "ECB") in foreign exchange. The said funds were utilized for making payments to the wind mill suppliers in India. The assessee has incurred loss on account of exchange fluctuation of the borrowings made in USD for making payments to the wind mills suppliers in India and for purchase of land. The said exchange loss has been capitalized with the wind mills. According to the assessee, the said action in capitalizing the fluctuation of loss to the cost of the asset is justified in terms of Accounting Standards AS-11 vide para 46A by notification dated 29.12.2011. Ld.AR further submitted that the exchange difference arising on reporting of long term foreign currency monetary items at rates different from those at which they were initially recorded during the period, or reported in previous financial statements relating to the acquisition of depreciable capital asset, can be added or deducted from the cost of asset over the balance life of the said asset. It is noted from the impugned order, the said submission was not considered by Ld.CIT(A). Ld.CIT(A) in its order at page 5, it is noted that he simply accepted the view of the AO in holding that MTM loss is a notional loss and depreciation is not allowable. In this regard, taking into consideration the submissions of Ld.AR and facts and circumstances of the case and para 46A which was inserted by the Ministry of Corporate Affairs vide notification dated 29.12.2011 in Accounting Standards AS-11, we deem it proper to remand the file to the Ld. CIT(A) for his fresh consideration in terms of submissions as indicated above. Thus, Ground Nos.2(a) & 2(b) raised by the assessee are allowed for statistical purposes.

5. Ground No.4(a) is relating to confirmation of disallowance on account of depreciation claimed as per the Companies Act in determining book profit u/s 115JB of the Act.

6. Heard both and perused the material available on record. According to the AO, the assessee claimed depreciation on plant & machinery under I.T Act and not considered the said deprecation in MAT computation in terms of section 115JB of the Act. In the first appellate proceedings, Ld. CIT(A) held the claim of said depreciation was debited to the P&L account and is a subject matter of addition to book profit and confirmed the order of the AO. There is no dispute that the assessee debited the amount of depreciation to its P & L Account and, therefore, it is an item of consideration for addition for computing book profit in terms of Explanation to section 115JB of the Act. It is also noted that the assessee placed reliance on the decision of Hon'ble Supreme Court in the case of *Apollo Tyres Ltd. reported in 255 ITR 273 (SC)* and for the proposition, the AO has no jurisdiction to go beyond the net profit shown in the P&L account in terms of provisions of Companies Act. It is, on perusal of the said decision, we find that the Hon'ble Supreme Court has held that the AO has limited power of making increase and reduction as provided in the explanation to section 115JB as it stood then, therefore, as discussed above, if any amount referred to any clauses (a) to (i) of Explanation (I) is debited to the statement of P&L Account is a subject matter for addition for computing book profit under MAT proceedings. We find in the instant case that the assessee has only added the exchange fluctuation loss to the cost of its fixed assets and has calculated the depreciation as per the provisions of Companies Act. This depreciation is done only as per the Companies Act and that cannot be disturbed while computing a book profit u/s 115JB of the Act. Accordingly, Ground No.4(a) raised by the assessee is allowed.

7. Ground No.4(b) raised by the assessee is with regard to the addition of Rs.64,343/- towards interest income which was sought to be added to the book profits u/s 115JB of the Act by the AO. In our considered opinion, this item does not fall within the list of items to be added or reduced as per the explanation to section 115JB of the Act. Hence this amount of Rs.64,343/- cannot be added to the

book profit u/s 115JB of the Act. Accordingly, Ground No.4(b) raised by the assessee is allowed.

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

9. Now, we shall take up ITA No.1123/Kol/2017 filed by the assessee.

ITA No.1123/Kol/2017

10. Ground No.1, Ld.AR submits that the assessee is not interested in prosecuting the appeal and prayed to dismiss the same as not pressed. Therefore, Ground No.1 is dismissed as not pressed.

11. Ground No.2 is relating to confirmation of disallowance of depreciation claimed on capitalization of Foreign Exchange Fluctuation Loss. The decision rendered by us in AY 2012-13 in ITA No.669/Kol/2017 in respect of this issue would hold good for this assessment year also. Accordingly, Ground No.2 raised by the assessee is allowed for statistical purposes.

12. Ground No.3 relating to confirmation of disallowance on account of depreciation claimed as per the Companies Act determining book profit u/s 115JB of the Act. The decision rendered by us for AY 2012-13 in respect of this issue vide Ground No.4(a) would hold good for this assessment year also. Therefore, Ground No.3 raised by the assessee fails and it is dismissed.

13. Ground No.4 is general in nature requires no adjudication and it is dismissed.

14. In the result, both appeals of the assessee are partly allowed for statistical purposes.

Order pronounced in the open court on 31.10.2018.

**Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER**

**Sd/-
(S.S.VISWANETHRA RAVI)
JUDICIAL MEMBER**

Date:- 31.10.2018

Amit Kumar

Copy forwarded to:

1. Appellant- M/s. Simran Wind Project Ltd., P-46A, Radha Bazar Lane, Kolkata-700001.
2. Respondent- DCIT, Circle-5(1), P-7, Chowringhee Square, Kolkata-700069.
3. CIT-Kolkata
4. CIT(Appeals)-Kolkata
5. DR: ITAT -Kolkata Benches

Sr.P.S./H.O.O
ITAT, KOLKATA