

आयकर अपीलुय अधलकरण, 'ए' नुयलयपीठ, चेंनुनई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'A' BENCH: CHENNAI**

शुुरी जॉज मलथन, नुयलयक सदसुय एवं शुुरी एस जयरलमन, लेखल सदसुय के समक्ष  
**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND**  
**SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.3062/Chny/2016

नुनधरण वष /Assessment Year: 2012-13

M/s. The Acetech Machinery Components India Pvt. Ltd.,  
No.70 & 71, Thirumurugan Nagar,  
Vadavalli Post,  
Coimbatore – 641 041.

**[PAN: AACCT 6770D]**

(अपीललरुथल/Appellant)

Dy.Commissioner of Income Tax,  
Corporate Circle-2,  
Coimbatore.

(प्रतुयलरुथल/Respondent)

अपीललरुथल कल ओर से/ Appellant by

: Shri S Sridhar, Advocate

प्रतुयलरुथल /Respondent by

: Shri AR.V Sreenivasan, JCIT

तुुतुुतुु /Date of Hearing

: 12 .06.2019

तुुतुुतुु /Date of Pronouncement

: 31.07.2019

**ORDER**

**PER SHRI S. JAYARAMAN, ACCOUNTANT MEMBER:**

The Assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)-1, Chennai, in Appeal No.13/15-16-17 dated 30.08.2016 for the assessment year (AY) 2012-13.

2. M/s. The Acetech Machinery Components India Pvt. Ltd., the assessee, is engaged in manufacturing of industrial components and

sheet metal work. While making the assessment for AY 2012-13, the Assessing Officer (AO), *inter alia*, disallowed ; the fee paid to the ROC for increasing the authorized share capital holding that it is capital in nature, Rs. 7,33,493/- spent towards pooja expenses, foundation day expenses and donation u/s. 37 and disallowed Rs. 98,30,614/- debited in the P & L account as “Loss on Derivative Business” holding that it is speculative in nature. Aggrieved, the assessee filed an appeal before the CIT(A). The Id.CIT(A) dismissed the appeal on these issues. Aggrieved against that order of the Id.CIT(A), the assessee filed this appeal.

3. There is three days delay in filing the appeal for which the assessee filed a condonation petition submitting, *inter alia*, that due to mistake in misplacing the appeal papers, the appeal was filed belated. Since the delay is beyond its control and not wanton, it is pleaded to condone the delay and admit the appeal. On hearing both the parties, the delay in filing the appeal is condoned.

4. The Id. Authorized Representative submitted that although the AR appeared before the Id. CIT(A), filed certain details and sought an adjournment for filing further details, the Id. CIT(A) disposed the appeal based on the materials available on record. He submitted that the fee

paid to the ROC for increasing the share capital is an allowable expenditure. Inviting our attention to the paper book, wherein the ledger copy of pooja expenses incurred from 02.04.2011 to 31.03.2012 at Rs. 4,79,363/- is placed, the AR submitted that the temple is inside the premises of the assessee, the assessee has as a part of welfare measure with its employees and its customers had incurred these expenses, various High Courts have held that the pooja expenses incurred as part of welfare expenses are allowable u/s. 37 and hence this claim may be allowed. With regard to the loss on derivative business, the AR submitted that the derivative transactions are not speculative transactions, they were carried out through a recognized stock exchange only, contract derived its value from the parties, eligible transactions were carried out electronically on screen based systems through a Stock Broker, they were supported by a time stamped contract notes issued by brokers, stock exchange is approved by SEBI and maintains the details of client etc. Therefore, the AR submitted that the transactions in Foreign Currency derivatives are part of a normal business transaction and they are not speculative transactions at all. However, the A O disallowed such a claim stating that every day there is buying and selling of foreign currencies which led to the loss, such loss partakes the colour of speculative loss as is evidenced by the

contract note supplied, it is not wholly and exclusively carried out for the business of the assessee and therefore, the loss incurred by the assessee at Rs. 98,30,614/- on account of derivative business is not an allowable expenditure u/s. 37 and accordingly he added to the total income of the assessee. On appeal, the Id.CIT(A) simply following certain ITAT decisions, held, inter alia, that the assessee has incurred huge losses on trading in currency futures within a span of four months, that is from 09.10.2011 till 05.03.2012 which is an independent and separate business of the assessee. This loss is treated as speculation loss as per provisions of Section 43(5). The Id. AR took us through the provisions of Section 45(3) and submitted that the disallowance made is not correct and pleaded to allow the appeal.

5. Per contra, the Id. Departmental Representative submitted that the ROC charges paid for increasing the share capital being capital in nature, the disallowance made by the lower authorities may be confirmed. With regard to the Pooja expenses, he relied on the orders of lower authorities. With regard to the speculative loss, the DR invited our attention towards para 8 & 9 of the order of the Id. CIT(A) and submitted that the assessee sought an adjournment before the Id. CIT(A) pleading that it is contemplating an option through Income Disputes Resolution

Panel , however, it did not follow up . Therefore, the Id. CIT(A) on due examination has upheld the disallowance and hence, the order of Id. CIT(A) may be confirmed on which the Id. AR submitted since, the facts associated with the case has not been examined properly the issue may be remitted back to the AO for due examination.

6. We heard the rival submissions and gone through the relevant material on record. The fee paid to the ROC for increasing the share capital being capital in nature, the assessee's corresponding grounds of the appeal are dismissed. With regard to the assessee's claim that Rs. 4,79,363/- was incurred as an expenditure in the temple inside the assessee's premises as part of welfare measure with its staff and clients and hence, it is an allowable deduction u/s. 37 of the Act is in accordance with various court decisions and hence, the AO is directed to allow this claim of Rs. 4,79,363/- u/s. 37 of the Act. With regard to the disallowance of loss on derivatives, we find that the AO primarily disallowed it for the reason that the assessee bought and sold foreign currencies every day which led to such loss, it is not wholly and exclusively carried out for the business of the assessee, the loss sustained is on speculative loss as evidenced by the contract note etc. However, the Ld CIT(A) held that the export bill or the import LC of the assessee cannot be linked to the derivative transaction, as the derivative

transactions are not undertaken through any banking channels but only through trading window of the National Stock Exchange. Therefore, trading in currency futures on the NSE is a separate business of the assessee and cannot be linked to the manufacturing and sale of industrial components and sheet metal work. The assessee has incurred huge losses on trading in currency futures within a span of four months, that is from 09.10.2011 till 05.03.2012 which is an independent and separate business of the assessee. This loss is treated as speculation loss as per provisions of Section 43(5). But, the assessee pleaded that its transactions are within the scope of the provisions of Section 45(3) and they fall within the provisos and therefore the disallowance made by the AO is not correct. In the above facts and circumstances, we deem it fit to remit this issue back to the AO for due examination. The assessee shall place all materials in support of its contention and shall comply with the requirements of the AO in accordance with law. The AO is free to conduct appropriate enquiry as deemed fit. However, he shall furnish adequate opportunity to the assessee on the material etc, if any, to be used against it and then decide the matter as to whether the foreign currency transaction is connected with export bills, if it is so, then the loss, if any, incurred is to be allowed as a business loss. On the other

hand, if it is a derivate transaction, the AO shall examine the issue u/s. 43(5), elaborately, and then, decide in accordance with law.

7. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

*Order pronounced in the Court on 31<sup>st</sup> July, 2019 in Chennai.*

**Sd/-**

( )

**(GEORGE MATHAN)**

नं / /JUDICIAL MEMBER

नं /Chennai, /Dated: 31<sup>st</sup> July, 2019.

**Sd/-**

( . )

**(S. JAYARAMAN)**

₹ /ACCOUNTANT MEMBER

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|---------------|--------------------------|-----------------|
| 1. /Appellant | 2. प्रत्यर्था/Respondent | 3. क ( )/CIT(A) |
| 4. क /CIT     | 5. प्रतिनिधि/DR          | 6. /GF          |