

**आयकर अपीलीय अधिकरण "C" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI**

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री वसीम अहमद, लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI WASEEM AHMED, AM

**आयकर अपील सं./ ITA No. 5972/Mum/2018**

(निर्धारण वर्ष / Assessment Year 2013-14)

**आयकर अपील सं./ ITA No. 5973/Mum/2018**

(निर्धारण वर्ष / Assessment Year 2014-15)

The Dy. Commissioner of Income Tax, Room No. 533/579, 5 <sup>th</sup> Floor, Aayakar Bhawan, M.K. road, Mumbai-400 020	बनाम/ Vs.	Concorde Motors (India) Ltd. 3 <sup>rd</sup> Floor, Nanavati Mahalaya, 18 Homi Mody Street, Hutatma Chowk, fort, Mumbai-400 001
<b>(अपीलार्थी / Appellant)</b>		<b>(प्रत्यर्थी/ Respondent)</b>
<b>स्थायी लेखा सं./PAN No. AAACM1054A</b>		

**प्रत्याक्षेप सं./ CO No. 204/Mum/2019**

(Arising out of ITA No.5972/Mum/2018 for AY 2013-14)

**प्रत्याक्षेप सं./ CO No. 205/Mum/2019**

(Arising out of ITA No.5973/Mum/2018 for AY 2014-15)

Concorde Motors (India) Ltd. 3 <sup>rd</sup> Floor, Nanavati Mahalaya, 18 Homi Mody Street, Hutatma Chowk, fort, Mumbai-400 001	बनाम/ Vs.	The Dy. Commissioner of Income Tax, Room No. 533/579, 5 <sup>th</sup> Floor, Aayakar Bhawan, M.K. road, Mumbai-400 020
<b>(आपत्ति करनेवाला / Cross objector)</b>		<b>(प्रत्यर्थी/ Respondent/Org. Appellant)</b>

अपीलार्थी की ओर से / <b>Appellant by</b>	:	Shri Kumar Padmapani Bora, DR
प्रत्यर्थी की ओर से / <b>Respondent by</b>	:	S/Shri Rajan Vora, Nikhil Tiwari, ARs

सुनवाई की तारीख / <b>Date of hearing:</b>	13.11.2019
घोषणा की तारीख / <b>Date of pronouncement:</b>	29.11.2019



## आदेश / ORDER

### PER BENCH:

In these appeals, two appeal filed by Revenue and two CO filed by assessee are arising out of orders of the Commissioner of Income Tax (Appeals)]-2, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-2/10430,10447/2016-17 vide dated 23.07.2018, 25.06.2018. The Assessments were framed by the Asst. Commissioner of Income Tax, Circle-1(1)(1), Mumbai (in short ACIT/ AO) for the A.Ys. 2013-14 & 2014-15 vide orders dated 26.12.2016 & 26.12.2016 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The first common issue in this appeal of Revenue in ITA No.5792/Mum/2018 for AY 2013-14 and cross objection of the assessee in CO. No. 204/Mum/2019 is against the order of CIT(A) deleting the addition of value of closing stock made by Assessing Officer being diminution in the value of closing stock and claiming depreciation therein. For this, Revenue has raised the following two grounds: -

*"1. Whether on the facts and circumstances of the case, the Ld. CIT(A) was right in deleting the addition of Rs. 7,94,91,740/- being diminution in the value of closing stock and claiming*



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*depreciation thereon, without appreciating that the A.O. has given categorical finding in the assessment order on the said issue?*

*2. Whether on the facts and circumstances of the case, the Ld. CIT(A) was right in deleting the addition of Rs. 7,94,91,740/- by relying on the judgement in the case of Alfa Laval (India) Ltd, 295 ITR 451 is totally distinguishable on the facts and circumstances of the case, as in the said case, the issue was that the assessee had reduced the value at a fixed rate 10% from the cost in respect of its obsolete stock, which is not the cash in hand?"*

The assessee has raised the following two grounds: -

*"Corresponding adjustment to value of current year opening stock*

*Without prejudice to the department's appeal, erred in not taking last year's closing stock as computed by the Assessing officer in AO order from AY*



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*2012-13 of ₹1,33,46,22,303/- as opening stock for current year, as against the same, AO has taken opening stock as ₹1,27,29,66,467 i.e. without giving adjustment as proposed by AO in AY 2012-3;*

*Consequential value should be taken as opening stock of next year*

*Without prejudice to the department's appeal, erred in not appearing that if addition made by the AO with regard to the closing stock value of the current year, is sustained, as a natural consequence, opening stock of next year i.e. on 1<sup>st</sup> April 2013 should be taken as same value as taken of closing stock as on 31<sup>st</sup> March 2013;"*

3. At the outset, the learned counsel for the assessee stated that the Assessing Officer has disallowed assessee's claim of reduction of closing stock based on earlier years. He drew our attention to the assessment order, wherein the Assessing Officer vide Para 5 has noted as under: -

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*"5. Disallowance of reduction claimed on closing stock: During AY 2012-13, AO has disallowed assessee's claim of reduction on closing stock. Issue is pending to be decided by CIT(A) office. To maintain consistency, assessee's claim of reduction of ₹7,94,91,704/- from closing stock during AY 2013-14 is rejected."*

Even, CIT(A) relying on the order of assessment order 2012-13 deleted the disallowance while observing in Para 6.1 and 6.11 as under: -

*"6.1 Ground No.1 is on the valuation of Closing Stock. The Assessing Officer has disallowed the appellant's claim of reduction on closing stock. This disallowance was made based on the earlier years orders and at the time of passing the order by the AO), the issue of earlier years pending before Ld. CIT(A). To maintain consistency on the issue, the AO disallowed the claim of reduction of Rs.7,94,91,740/- from closing stock for the relevant year under consideration. However, the appellant had placed a copy*



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*of the order passed by Ld. CIT(A) on the same issue for earlier year.*

*6.1.1 The basis of disallowance by the AO in the relevant year was on the strength of the assessment order for the A.Y.2012-13, and the same has been deleted by the Ld.CIT(A). Further, the appellant had also demonstrated the method of computation of closing stock valuation, therefore, the AO is directed to delete the above addition. The ground of appeal on this issue is treated as disposed off and allowed."*

4. The learned counsel for the assessee took us through the Tribunal's order for AY 2012-13 in ITA No.2333/Mum/2017 vide order dated 01.10.2019, wherein the Tribunal after considering the diminution in value of closing stock on the basis of depreciation deleted the addition by observing in Para 6,7,11 & 12 as under:

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*"6. We have considered the rival submissions of the parties and perused the material available on record. During the assessment the Assessing Officer made addition of ₹6,16,55,838/- by*

*disallowing depreciation on closing stock holding that the depreciation on the closing stock is not eligible deduction. Before the Id. CIT(A), the assessee given the breakup of depreciation on various inventory, demo-vehicles, accessories and consumable Auto Parts in the following manner:*

Sr. No.	Description	Cost	NRV	Cost/NRV whichever is lower
A.	Inventories/ Demo-vehicles	-	-	-
	Sub-total	1,20,75,65762	1,15,19,43,005	1,15,19,43,005
B	Accessories, Consumables and parts			
	Sub-total	12,27,19,312	11,66,86,232	11,56,86,232
C	Service Wip-TML	-	-	-
	Sub-total	1,33,46,22,308	1,27,29,66,467	1,27,29,66,467

*7. On the basis of aforesaid tabulation, the assessee explained that there is a difference of ₹616,55,838/- reported in the cost price and NRV. The Ld. CIT(A) accepted the contention of assessee holding that the assessee has not claimed the depreciation as conceived by Assessing Officer. It is a classification of closing stock both at the cost as well as NRV as per assessee's cost price or market price,*



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*whichever is lower which is correctly made by assessee. The Ld. CIT(A) also concluded that the Assessing Officer not appreciated the fact that it is not at all debited in the profit and Loss A/c and addition made is not justifiable and deleted the addition.”*

5. When these facts were confronted to the learned Sr. DR, he could not rebut the above facts. We noted that the facts are exactly identical in this year i.e. AY 2012-13. We noted that the Assessing Officer required the assessee to explain as to why no disallowance with respect of reduction in certain items on the valuation of closing stock to net reasonable value made. The assessee before Assessing Officer, before CIT(A) and even before us contended that the assessee is a dealer of vehicle and the closing stock of the assessee consists of cars which are held as inventory in its closing stock, demo cars which are used for test drive/ demonstration to customers in show rooms and spare parts and accessories of cars. The assessee computed his income according to cash or mercantile system of accounting in term of section 145 of the Act and accounting standards notified by the Government of India from time to time. The assessee values its closing stock at lower than the cost or net reliable value and to arrive at the valuation of closing stock from the perspective of accounting standards. The assessee reduced the



value of certain items from closing stock to appropriate reflect its net reasonable value which is lower than the cost. The said reduction from the cost represents the wear and tear of the stocks of the items which are lying in the inventory/showrooms. We noted that there is no factual difference in this year and any adjustment in the closing stock for the year no. 1 would consequently result in the adjustment to the opening stock of year No. 2. Further, we noted that the assessee has filed complete details of valuation of closing stock in its paper book along with statements showing details of subsequent sales with regard to the items of closing stock which were revalued to net reliable value along with sample copies of invoices with respect of subsequent sales. From those details it is clear that net reasonable value adoptable by the assessee for the purpose of value of closing stock in certain cases is as per the prevailing accounting practices as accounting standards 2. Hence, we find that no infirmity in the order of CIT(A) and respectfully following the Tribunal's decision for AY 2012-13, we confirm the order of CIT(A) and deleting the addition.

6. The next issue in this appeal of Revenue in ITA No. 5792/Mum/2018 for AY 2013-14 is as regards to the adjustment made while computing book profit under section 115JB of the Act to the closing stock. For this, Revenue has raised the following ground No.3: -

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*"3. Whether on the facts and circumstances of the case, the Ld. CIT(A) was right in deleting the addition of Rs.7,94,91,740/-being diminution in the value of closing stock in arriving at the book profit, without appreciating that diminution in the value of stock in trade is to be adjusted in view of Clause-I inserted in Explanation-1 to sub-section 2 of section 115JB?"*

7. We find that this issue is answered in the first issue and the same finding will apply here also. Hence, we confirm the order of CIT(A) deleting the addition.

8. The only issue in the cross objection of the assessee in CO No. 205/Mum/2019 for AY 2013-14 is as regards to the order of CIT(A) confirming the disallowance of provision for leave encashment under section 43B of the Act. For this, assessee has raised the following ground No. 3:-

*"Disallowance for leave encashment under section 43B of the Act*

*erred in confirming the disallowance made by the AO for provision for leave encashment under section 43B(f) of the*

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*Act of ₹ 12,76,830/- without appreciating that he said provision is not covered under section 43B(f) of the Act and thereby allowable as deduction;"*

9. At the outset, the learned counsel for the assessee stated that the claim of the assessee is only a provision for entitlement of an employee in a particular year and has no nexus with the original enactment of the said section. However, the learned counsel for the assessee stated that the decision of Calcutta High court in the case of Exide Industries Limited And Anr. vs Union Of India (UOI) (2007) 292 ITR 470 (Cal), whereby the provision of section 43B(J) of the Act struck down as arbitrary but stayed and is pending before Hon'ble Supreme court in SLP No. 222889/08. Hence, it was requested that the matter can be kept pending till the decision of Hon'ble supreme court. On this, we require the learned DR, to explain the situation. He only requested that this matter can be referred back to the file of the Assessing Officer who will decide in term of the Hon'ble Supreme Court decision. After hearing both the sides and going through the records, we restore the matter back to the file of the Assessing Officer to decide the claim of assessee in term of the decision of Hon'ble Supreme Court in the case of Exide Industries (supra). This issue of the assessee's CO is set aside to the file of the Assessing Officer.

10. The first common issue in this appeal of Revenue in ITA No.5793/Mum/2018 for AY 2014-15 and Cross Objection of the assessee in CO. No. 205/Mum/2019 is against the order of CIT(A) deleting the addition of value of closing stock made by Assessing Officer being diminution in the value of closing stock and claiming depreciation therein. For this, Revenue has raised the following two grounds: -

*"1. Whether on the facts and circumstances of the case, the Ld. CIT(A) was right in deleting the addition of Rs. 5,94,98,161/- being diminution in the value of closing stock and claiming depreciation thereon, without appreciating that the A.O. has given categorical finding in the assessment order on the said issue?*

*2. Whether on the facts and circumstances of the case, the Ld. CIT(A) was right in deleting the addition of Rs. 5,94,98,161/- by relying on the judgement in the case of Alfa Laval (India) Ltd, 295 ITR 451 is totally distinguishable on the facts and circumstances of the case, as in the said*

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*case, the issue was that the assessee had reduced the value at a fixed rate 100/c from the cost in respect of its obsolete stock, which is not the cash in hand?"*

Assessee has raised the following grounds: -

*"Corresponding adjustment to value of current year opening stock*

*Without prejudice to the department's appeal, erred in not taking last year's closing stock as computed by the Assessing officer in AO order from AY 2013-14 of ₹1,36,97,33,442/- as opening stock for current year, as against the same, AO has taken opening stock as ₹1,29,02,41,702 i.e. without giving adjustment as proposed by AO in AY 2013-14;*

*Consequential value should be taken as opening stock of next year*

*Without prejudice to the department's appeal, erred in not appearing that if addition made by the AO with regard to the closing stock value of the current*

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*year, is sustained, as a natural consequence, opening stock of next year i.e. on 1<sup>st</sup> April 2014 should be taken as same value as taken of closing stock as on 31<sup>st</sup> March 2014;"*

11. The issue has already been adjudicated in AY 2013-14 in Para 2 to 5 of this order. Respectfully following the same, we confirm the order of CIT(A) and delete the addition in this year also.

12. The next issue in this appeal of Revenue in ITA No. 5793/Mum/2018 for AY 2014-15 is as regards the adjustment made while computing book profit under section 115JB of the Act to the closing stock. For this, Revenue has raised the following ground No.3: -

*"3. Whether on the facts and circumstances of the case, the Ld. CIT(A) was right in deleting the addition of Rs. 5,94,98,161/-being diminution in the value of closing stock in arriving at the book profit, without appreciating that diminution in the value of stock in trade is to be adjusted in view of Clause-I inserted in Explanation-1 to sub-section 2 of section 115JB?"*



13. The issue has already been adjudicated in AY 2014-15 in Para 6 & 7 of this order. Respectfully following the same, we confirm the order of CIT(A) and delete the addition in this year also.

**14. In the result, the appeals of the Revenue are dismissed and COs of the assessee are partly allowed for statistical purposes.**

Order pronounced in the open court on 29.11.2019

Sd/-

(वसीम अहमद / WASEEM AHMED)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated:29. 11.2019

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

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

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai