IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA

(Before Sri J. Sudhakar Reddy, Accountant Member & Sri Aby T. Varkey, Judicial Member)

ITA No. 113/Kol/2017
Assessment Year: 2009-10

Asstt. Commissioner of Income Tax, Central Circle-1(1), Kolkata……Appellant
Vs.
M/s. Ramkrishna Forgings Ltd……Respondent
16, Camac Street
L&T Chamber
6th Floor
Kolkata – 700 017
[PAN : AABCR 3285 N]

IT(SS)A No. 08/Kol/2017
Assessment Year: 2009-10

M/s. Ramkrishna Forgings Ltd……Appellant
16, Camac Street
L&T Chamber
6th Floor
Kolkata – 700 017
[PAN : AABCR 3285 N]
Vs.
Asstt. Commissioner of Income Tax, Central Circle-1(1), Kolkata……Respondent

C.O. No. 16/Kol/2017
A/o ITA No. 113/Kol/2017
Assessment Year: 2009-10

M/s. Ramkrishna Forgings Ltd……Appellant
16, Camac Street
L&T Chamber
6th Floor
Kolkata – 700 017
[PAN : AABCR 3285 N]
Vs.

Asstt. Commissioner of Income Tax, Central Circle-1(1), Kolkata……Respondent

Appearances by:

Shri Ram Bilash Meena, CIT, D/R, appearing on behalf of the Revenue.
Shri S.M. Surana, Advocate, appeared on behalf of the assessee.

Date of concluding the hearing : March 3rd, 2020
Date of pronouncing the order : March 13th, 2020

ORDER

Per J. Sudhakar Reddy, AM :-

These appeals filed by the revenue are directed against separate but identical orders of the Learned Commissioner of Income Tax (Appeals), Kolkata, (hereinafter the "ld.CIT(A)"), passed u/s. 250 of the Income Tax Act, 1961 (the 'Act'), both for the Assessment Year 2009-10. The assessee has filed a cross-objection being C.O. No. 16/Kol/2017 against the appeal of the revenue in ITA No. 113/Kol/2017, for the Assessment Year 2009-10.

2. As the grounds of appeal in both the revenue appeals are identical and for the same Assessment Year and on the very same set of circumstances, they are heard together and disposed off by way of this common order.

3. We first take up the revenue appeals. The Grounds of appeal in ITA No. 113/Kol/2017, are as follows:-

> *"1. That CIT (A) has erred both in facts and in law in deleting the disallowance of 50% additional depreciation in A. Y. 2009-10 ignoring the fact that 50% of additional depreciation was claimed and allowed in asst year 2008-09 and plant & machinery which was put to use for less than 180 days in the assessment year 2008-09 was no longer new and hence was not eligible for additional depreciation in assessment year 2009-10.*
>
> *2. Ld. CIT(A) has erred in facts as well as on law in treating the compensation received for under performance of machine as capital receipts, ignoring the reasoned order of the A.O. & relying on the assessee's submission.*
>
> *3) Ld. CIT(A) has erred in facts as well as on law in deleting the disallowance made for delay in deposit of employee's contribution towards provident fund and ESI and allowing relief under section 43B by failing to appreciate the fact that the provisions of employees contribution is governed by the provisions of Sec 36(I)(va) read with 2(24)(x).*
>
> *4) The Ld. CIT(A) has erred in facts as well as on law in deleting the disallowance made u/s 14A read with rule 8D(ii).*
>
> *5) The Ld. CIT(A) has erred in facts as well as on law in enhancing depreciation or block assets which was never claimed in the return.*
>
> *6) The appellant craves the leave to make any addition, alteration and modification etc of ground or grounds on or before the date of hearing of the appeal."*

3.1. The Grounds of appeal in IT(SS)A No. 08/Kol/2017, are as follows:-

> *"1. Ld. CIT (A) has erred both in facts and in law in deleting the disallowance of 50% additional depreciation in A. Y. 2009-10 ignoring the fact that 50% of additional*

depreciation was claimed and allowed in asst year 2008-09 and plant & machinery which was put to use for less than 180 days in the assessment year 2008-09 was no longer new and hence was not eligible for additional depreciation in assessment year 2009-10.

2. Ld. CIT(A) has erred in facts as well as on law in treating the compensation received for under performance of machine as capital receipts, ignoring the reasoned order of the A.O. & relying on the assessee's submission.

3) Ld. CIT(A) has erred in facts as well as on law in deleting the disallowance made for delay in deposit of employee's contribution towards provident fund and ESI and allowing relief under section 43B by failing to appreciate the fact that the provisions of employees contribution is governed by the provisions of Sec 36(I)(va) read with 2(24)(x).

4) The Ld. CIT(A) has erred in facts as well as on law in deleting the disallowance made u/s 14A read with rule 8D(ii).

5) Ld. CIT(A) has erred in law as well as facts in allowing the claim of depreciation on the block value without reduction of the compensation treated as capital receipts which the assessee had actually claimed in the return. Actually, the CIT() has allowed the enhanced depreciation on block of assets without reducing the value of compensation, which was never claimed in the return.

6) The appellant craves the leave to make any addition, alteration and modification etc of ground or grounds on or before the date of hearing of the appeal."

4. We have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, we hold as follows:-

5. Ground No. 1 for both the Assessment Years is on the issue of claim of additional depreciation. The ld. CIT(A) at page 3 of his order followed the judgment of the Delhi Bench of the ITAT in the case of *DCIT vs. Cosmo Films Ltd. (2011) 30 CCH 0419 (Delhi Tribunal)* and held that *"if only half of additional depreciation is allowed in the first/initial year because of user of less than 180 days the balance half of the additional depreciation has to be allowed in the following year as unabsorbed depreciation.....amendment made by Finance Act, 2016 [proviso to Section 32 (1)(ii) of the I.T. Act, 1961] is retrospective."*

5.1. The ld. D/R could not bring to our notice any contrary decision/judgment in this regard and whereas, the ld. Counsel for the assessee relied on the following decisions in support of the order of the ld. CIT(A).

- *Birla Corporation Ltd. vs. DCIT (ITA No. 683/Kol/2011)*
- *Century Enka Ltd. vs. DCIT (ITA No. 560/Kol/2010)*

6. As the ld. CIT(A) has followed the propositions of law laid down by different benches of the ITAT on this issue, which are cited above, we find no infirmity in his order and hence this ground of the revenue in both the appeals.

7. Ground No. 2, is on the issue as to whether compensation received for under performance of SMS EMU CO machine installed in the financial year 2007-08.

7.1. The compensation for under performance was split into two i.e., technical loss amounting to Rs.5,16,27,109/- and financial loss of Rs.3,09,76,266/-. The issues was whether the compensation received on account of technical loss is a capital receipt or a revenue receipt. The Assessing Officer relied on the decision of *CIT v. Manna Ramji & Co., [1972] 86 ITR 29 (SC),* and was of the view that this receipt is taxable as income.

Before the ld. First Appellate Authority, the assessee relied on the following case-law and claimed that the compensation received for technical loss for was on capital account:-

- *CIT vs. Suarashtra Cement [2012] 325 ITR 422 (SC)*
- *Xpro India Ltd. [ITA No. 214/Kol/2011, order dt. 23/03/2016]*
- *Deputy Commissioner of Income-tax, Circle -4, Kolkata vs. Tongani Tea Co. Ltd. [63 taxmann.com 149 Kolkata ITAT]*

7.2. The ld. CIT(A) at para 2.4. page 7 of his order, held as follows:-

> *"2.4. As pointed out by the AR the relevant facts in the case of Manna Ramji are different in so far as the compensation was for rent for the user of godown. The Assessing Officer has not challenged the appellant's claim that the said amount of compensation was for impairment of the assets and was not to compensate for the profit. The AO has observed that the compensation was to compensate the revenue loss of earning but has not established his case that underperformance of the equipment was liable to be treated as revenue loss. On the contrary the appellant's submission has relied on some judicial decisions as noted above which demonstrate that underperformance of the assets in the present case is equivalent to capital loss as the impact is for the entire life of the assets involved. It appears that the machine procured did not meet the specifications promised by the vendor/manufacturer and as a result the supplier agreed to return a part of the sums received from the*

appellant and termed the sum so received as compensation for technical loss. Compensation termed as financial loss [Rs. 3,09,76,266/-] was offered by the appellant as revenue receipt/income and so it is not in dispute. The former compensation is for the permanent impairment of the asset whose performance turned out to be below the specifications agreed during the purchase. The issue appears to be covered by the judicial decisions relied upon in the submission and listed above. Following the said decisions the Ground No. 2 is allowed and the compensation towards the technical loss computed at Rs.5,16,27,109/- is termed as capital receipt."

8. The Kolkata 'A' Bench of the Tribunal in the case of *Xpro India Ltd. (supra)*, considering a similar issue at para 8 held as follows:-

"8. We have heard both the sides and perused the materials available on record. Before us the ld. DR submitted that that the assessee is claiming double deduction by not reducing the compensation from the value of the machine which is not as per law and relied in the order of AO. On the other hand the learned AR submitted that compensation was received as the machine supplier failed to meet the predetermined performance parameters therefore it is a capital receipt. From the facts of the case of the finding that the assessee has purchased plant and machinery from a company based in UK which agreed for certain performance parameter but failed to achieve the desired level of performance. Accordingly the UK Company had to pay the compensation to the assessee in terms of the agreement. The AO has linked compensation with the cost of machines and held that it needs to be reduced from the value of the machine. However we find from the settlement deed with the UK Company that compensation was given as the performance parameters were not achieved. The settlement deed is placed on page number 193 of the paper book. The relevant extract of the settlement deed is reproduced below :-

> *"THIS DEED WITNESSETH 1.1 Without accepting the CONTENTION OF XPRO THAT THEE IS ANY DEFECT IN THE Co-extrusion Film Manufacturing Equipment supplied by BATTENFELD to XPRO under the Contract, but in light of the fact that the performance parameters could not be demonstrated, BATTENFELD shall pay a sum of € 450,000,000 (Euro four hundred and fifty thousand) to XPRO.*

From the above, it is clear that the compensation was awarded for not meeting the performance parameters. The compensation was not computed with the reference to the cost of the said machines. The compensation paid was neither in form of discount nor against the price nor it was in the nature of subsidy nor it was in the nature of the reimbursement. We further find that it was not even compensation for the recouping the damage caused to the plant and machinery. None of the conditions specified in Sec. 143(1) of the Act for deducting the actual cost from value of the machines were applicable to the compensation. Therefore we are

inclined not to reduce the actual cost of the plant and machinery by the amount of compensation. Accordingly we have no hesitation in approving the order of the ld. CIT(A). Hence this ground of Revenue's appeal is dismissed.

8.1. The Hon'ble Supreme Court in the case of *Saurashtra Cement Ltd. (supra)*, was considering a compensation received from the suppliers by way of liquidated damages. It held as follows:-

*"**10.** Thus, the short question for determination is whether the liquidated damages received by the assessee from the supplier of the plant and machinery on account of delay in the supply of plant is a capital or a revenue receipt?*

***11.** The question whether a particular receipt is capital or revenue has frequently engaged the attention of the Courts but it has not been possible to lay down any single criterion as decisive in the determination of the question. Time and again, it has been reiterated that answer to the question must ultimately depend on the facts of a particular case, and the authorities bearing on the question are valuable only as indicating the matters that have to be taken into account in reaching a conclusion. In Rai Bahadur Jairam Valji's case (supra), it was observed thus :*

> *"The question whether a receipt is capital or income has frequently come up for determination before the courts. Various rules have been enunciated as furnishing a key to the solution of the question, but as often observed by the highest authorities, it is not possible to lay down any single test as infallible or any single criterion as decisive in the determination of the question, which must ultimately depend on the facts of the particular case, and the authorities bearing on the question are valuable only as indicating the matters that have to be taken into account in reaching a decision. Vide Van Den Berghs Ltd. v. Clark [1935] 3 ITR (Eng. Cas.) 17. That, however, is not to say that the question is one of fact, for, as observed in Davies (H.M. Inspector of Taxes) v. Shell Company of China Ltd. [1952] 22 ITR (Suppl.) 1, "these questions between capital and income, trading profit or no trading profit, are questions which, though they may depend no doubt to a very great extent on the particular facts of each case, do involve a conclusion of law to be drawn from those facts."*

***12.** In Kettlewell Bullen & Co. Ltd.'s case (supra), dealing with the question whether compensation received by an agent for premature determination of the contract of agency is a capital or a revenue receipt, echoing the views expressed in Rai Bahadur Jairam Valji's case (supra) and analysing numerous judgments on the point, this Court laid down the following broad principle, which may be taken into account in reaching a decision on the issue :*

"Where on a consideration of the circumstances, payment is made to compensate a person for cancellation of a contract which does not affect the trading structure of his business, nor deprive him of what in substance is his source of income, termination of the contract being a normal incident of the business, and such cancellation leaves him free to carry on his trade (freed from the contract terminated) the receipt is revenue : Where by the cancellation of an agency the trading structure of the assessee is impaired, or such cancellation results in loss of what may be regarded as the source of the assessee's income, the payment made to compensate for cancellation of the agency agreement is normally a capital receipt."

13. *We have considered the matter in the light of the afore-noted broad principle. It is clear from clause No. 6 of the agreement dated 1-9-1967, extracted above, that the liquidated damages were to be calculated at 0.5 per cent of the price of the respective machinery and equipment to which the items were delivered late, for each month of delay in delivery completion, without proof of the actual damages the assessee would have suffered on account of the delay. The delay in supply could be of the whole plant or a part thereof but the determination of damages was not based upon the calculation made in respect of loss of profit on account of supply of a particular part of the plant. It is evident that the damages to the assessee was directly and intimately linked with the procurement of a capital asset, i.e., the cement plant, which would obviously lead to delay in coming into existence of the profit-making apparatus, rather than a receipt in the course of profit-earning process. Compensation paid for the delay in procurement of capital asset amounted to sterilization of the capital asset of the assessee as supplier had failed to supply the plant within time as stipulated in the agreement and clause No. 6 thereof came into play. The afore-stated amount received by the assessee towards compensation for sterilization of the profit-earning source, not in the ordinary course of their business, in our opinion, was a capital receipt in the hands of the assessee. We are, therefore, in agreement with the opinion recorded by the High Court on question Nos. (i) and (ii) extracted in Para 1 (supra) and hold that the amount of Rs. 8,50,000 received by the assessee from the suppliers of the plant was in the nature of a capital receipt."*

9. As the ld. CIT(A) has applied the proposition of law laid down by the Hon'ble Supreme Court, on similar facts, we have to uphold the same and dismiss Ground No. 2 of the revenue in both the appeals.

10. Ground No. 3 is on the issue of disallowance made for delay in deposit of employees contribution towards ESI.

11. The ld. CIT(A) on facts held that the ESI payments in question were made in September, 2008 and hence made before the prescribed due date of filing of the return u/s 139 of the Act and hence allowable. This factual position could not be disputed by the ld. D/R. Hence, we uphold the order of the ld. CIT(A) and dismiss Ground No. 3 of the revenue in both these appeals.

12. Ground No. 4 is on the disallowance u/s 14A of the Act.

13. The ld. CIT(A) deleted the disallowance made of proportionate interest of Rs.80,800/- for the reason that the assessee had interest free own funds in excess of investments, on the presumption that interest free funds were utilized for investment. This presumption is in accordance with the propositions of the law laid down by the Hon'ble Bombay High Court in the case of *Commissioner of Income Tax vs. HDFC Bank Ltd.* reported in *[2014] 366 ITR 505 (Bombay)*. Thus, we uphold the order of the ld. CIT(A) and delete this disallowance. Hence, Ground No. 4 of the revenue in both the appeals are dismissed.

14. Ground No. 5, is against the enhancing the depreciation on block assets. The ld. D/R submits that this was not claimed by the assessee. On a query from the Bench he submits that the depreciation in question has to be allowed as per law, though not claimed by the assessee. Thus, we dismiss this ground of the revenue in both the appeals.

15. Ground No. 6 is general in nature in both the appeals.

16. **In the result, both the appeals of the revenue are dismissed.**

17. Coming to the cross-objection filed by the assessee, the grounds of cross-objections, read as follows:-

> *"1. For that in the facts and circumstances of the case, the Ld. CIT(A) was not justified in treating the loss of Rs.99,07,016/-, being Rs.90,78,000/- towards 'Forex Derivative' loss, Rs.6,25,200/- towards the loss on 'forward booking of yen' and Rs.2,03,816/- towards loss on account of 'Revaluation of Packing Credit loan', as speculative loss as against the normal business loss as claimed by the assessee.*
>
> *2. For that in the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in confirming the addition Rs.1,04,526/- made u/s 14A r.w. Rule 8D of the Act."*

18. Ground No. 2 is dismissed as not pressed.

19. After hearing rival contentions, we find that the loss of Rs.90,78,000/- is forex derivatives loss and forex loss of Rs.2,03,816/- was on account of revaluation of packing credit loan. The Kolkata 'C' Bench of the Tribunal in the case of *DCIT vs. M/s. Gujarat NRE Coke Ltd. in ITA No. 167/Kol/2018, order dt. 18/12/2019,* held as follows:-

> *"4. Lastly comes the third issue of disallowance of foreign exchange loss amounting to ₹74,39,71,483/-. The CIT(A)'s detailed discussion qua this last issue reads as under:-*
>
> > *"4. I have carefully considered the action of the Ld.AO as well as the various submissions and arguments made by the appellant company. I have also carefully examined the Paper Book bearing reference to the various issues placed for attention by the Ld. A.R for the appellant in his submissions. From the factual matrix, it emerges that the Ld. A.O. observed that the assessee-company had booked foreign exchange loss of Rs.14,26,54,748/- on repayment of foreign currency loans and Rs.60,13,16,734/- under the head exception items, aggregating to Rs.74,39,71,483/-. When required to explain during the scrutiny proceedings, it was submitted by the appellant that the exceptional items were pertaining to unusual diminution in the value of rupee as against the US Dollar during the year, that the closing value of Packing Credit Facility (PCFC) and External Commercial Borrowings (ECB) had been restated at the rate prevailing as on the last of the A.Y. as per AS-11 and sec.43A does not permit the capitalization of this loss and that the net loss of Rs.51,77,406/- was on revenue account. Reliance was placed in the case of CIT vs. Woodward Governor India Pvt. Ltd. [312 ITR 254 (SC)]. The appellant has also submitted that further, on receipt of the draft order u/s.144C(1)/ 143(3) dated 31.03.2016, the assessee filed a petition u/s. 154 of the, Act dated. 08.04.2016 pointing out that notional capital loss of Rs.74,39,71,483/- on account of revaluation of outstanding foreign currency loans has been erroneously disallowed, inasmuch as loss on repayment/revaluation of foreign currency loans was to the tune of Rs.14,26,54,748, comprising of realized loss on repayment of foreign currency loans of Rs. 11,34,84,999/- and unrealized loss on revaluation of outstanding foreign currency loans as on 31.03.2012 of Rs.2,91,69,750/-, it was contended by the appellant that an erroneous figure by an excess of Rs.71,48,01,733/- [Rs.74,39,71,483 - Rs.2,91,69,750] has been considered in the draft order. However, as has been submitted by the appellant, while passing the final assessment order, the Ld. AO did not consider the said 154 petition, and alleged that the assessee could not substantiate the business expediency for loss of Rs.51,77,406/- on premature cancellation of Forward Exchange Contracts. The Learned. AO also did not accept the assessee's explanation with respect to notional loss on closing value of PCFC & ECB. The Ld. AO has held that the foreign exchange fluctuation loss being a notional loss not incurred in the normal course of business was not on revenue account and hence not allowable u/s 37(1) of the Act.*
>
> *The Ld. AO thus disallowed foreign exchange fluctuation loss amounting to Rs.74,39,71,483/- u/s. 37(1) of the Act and added back the same to the assessee's total income. On examination of the contentions made by the Ld. AR for the appellant, I find myself in agreement with the contentions of the appellant that the Learned. AO has made a mistake in considering the figure of PCFC and ECB revaluation loss to be Rs.74,39,71,483/- rather than Rs.29169.750/- as is obvious from the list of breakup of foreign loss as submitted by the appellant. It is also quite obvious that the Ld. AO has not said anything in the matter of foreix losses incurred by*

the assessee-appellant on account of import of cooking coal and export of metcoke, major components contributing to Forex loss / gain. As has been brought to notice in the succeeding year AY 2013-14, the Ld AO has allowed foreign exchange loss of Rs.45,11,62,855/- being the actual foreign exchange loss incurred on account of import of cooking coal and export of metcoke to be allowable u/s. 37(1) of the Income Tax act, 1961. In the matter of the Revaluation / cancellation of contracts after examination of the details submitted by the appellant, I find that the Ld AO has disallowed the loss on specious grounds that there was no binding urgency on the assessee to cancel the contracts prematurely. The Ld. AO has said that the business expediency was not emanating from such cancellation. However, I find that the matter has been explained by the appellant that it has entered into a number of forward contracts in foreign currency in the normal course of its business of import and export of goods to hedge against fluctuation in exchange rates, and that however, due to insufficient funds to pay to the Bank for import of goods as on the date of maturity of the contact, it had to cancel ta few contracts during the year. It was explained that due to cancellation of these contracts, the Bank debited/credited the account of the assessee with the exchange (loss)/gains. Therefore, I find myself in agreement with the appellant that the exchange loss on cancellation of foreign exchange contracts was actual loss suffered by the assessee. The matter has also been elucidated and substantiated by the as in the sample copy of the Bank Advice for cancellation of the contract and other supporting documents at page 1-3 of the paper book. I am inclined to accept the contention that these were real losses on account of cancellation of the contracts was debited to the account of the assessee, as such the same was a actual loss suffer by the assessee. The assessee is able to establish a proximate nexus of the losses with the business and the matte, in my considered view is covered by the view of the Hon'ble Supreme Court in the case of S.A. Builders Ltd. Vs. CIT (2007) 288 ITR 1 (SC). The losses are, in my considered view to be examined from the point of view of the assessee, as it is seen that these are regular losses / gains coming to the assessee year on year as it ins in the business of import and export of items, and it is a regular importer of cooking coal and exporter of metcoke. Further courts have held that such losses are business losses when there is failure of an assessee to execute certain export contracts for which it has to incur losses, as it is quite a normal practice to hedge against losses by booking foreign exchange in the forward market with banks. I also find that the claim of the assessee that the loss of Rs.1,37,89,339/- on account of revaluation of forward contracts as at the end of the reporting period would be covered by the case of the Hon'ble Apex Court in CIT vs. Woodward Governor India (P) Ltd. (2009) 312 ITR 0254 (SC) wherein it was held that loss due to foreign exchange fluctuation in foreign currency transactions has to be considered on the last date of accounting year and it is deductible u/s 37(1) of the Act. The Hon'ble Court has clarified that the important point to be noted is that AS-11 stipulates effect of changes in exchange rate vis-a-vis monetary items denominated in a foreign currency to be taken into account for giving accounting treatment on the balance sheet date. Therefore, an enterprise has to report the outstanding liability relating to import of raw materials using closing rate of exchange. "Any difference. loss or gain, arising on conversion of the said liability at the closing rate, should be recognized in the P&L account for the reporting period".

5. It is also observed that as has been brought top notice and relied upon by the appellant - company, the said matter is also covered in favor of the assessee by the order of the Hon'ble Jurisdictional ITAT-"C" - Bench in ITA No. 2133/Kol/2010 in the case of Neptune exports Ltd. In their order dated 29.03.2011, the Hon'ble ITAT, relying on the decision of the Hon'ble Apex court in CIT Vs Woodward Governor India Ltd. have observed as follows:

> *"As regarding disallowance on account of foreign exchange fluctuation loss as well as profit on conversion of foreign currency keeping in view of the fact that the Hon'ble Apex Court cited supra has held that "loss suffered by the assessee in respect of the*

> *revenue liability on account of exchange difference as on the date of the balance sheet is an item of expenditure allowable u/s 37(1) in the year of accrual."*
>
> *Since the view taken by the Id. CIT(A) is in conformity with the decision of the Hon'ble Apex Court we find no infirmity in the orders of the Id. CIT(A) and we confirm the same and dismiss the appeal of the Revenue."*
>
> *In view of these rulings, I hold that the Ld AO was not justified in making the addition of Rs.51,77,406/- on account of cancellation and / or revaluation of contracts, and I find that the amount would be deductible u/s 37(1) of the Income Tax Act."*

20. Respectfully following the same, we allow the claim of the assessee by holding that forex loss of Rs.90,78,000/- and forex loss of Rs.2,03,816/- is in the revenue field and has to be allowed as expenditure u/s 37 of the Act.

21. On the issue of forex loss of Rs.6,25,200/-, we find that it is on capital account as it was incurred on forward booking of yen, in respect of a capital asset. Thus, the disallowance to this extent is upheld.

22. In the result, both the appeals of the revenue are dismissed and the cross-objection of the assessee is allowed in part.

Kolkata, the 13th day of March, 2020.

Sd/-	***Sd/-***
[Aby T. Varkey]	**[J. Sudhakar Reddy]**
Judicial Member	Accountant Member

Dated : 13.03.2020
{SC SPS}

Copy of the order forwarded to:

1. ***M/s. Ramkrishna Forgings Ltd***
16, Camac Street
L&T Chamber
6th Floor
Kolkata – 700 017

2. ***Asstt. Commissioner of Income Tax, Central Circle-1(1), Kolkata***

3. CIT(A)-
4. CIT- ,
5. CIT(DR), Kolkata Benches, Kolkata.

True copy
By order

Assistant Registrar
ITAT, Kolkata Benches