

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI S. S. VISWANETHRA RAVI, JM

आयकर अपील सं. / ITA Nos.2202 & 2203/PUN/2017
निर्धारण वर्ष / Assessment Years : 2012-13 & 2014-15

Aesseal India Pvt. Ltd.,
Gat No.85, at Post Varve,
Taluka Bhor,
Pune Bangalore Highway,
Pune-412205.

PAN : AAECA1690F

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Ward-1(4),
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Kishor Phadke
Revenue by : Shri Mahadevan A.M. Krishanan

सुनवाई की तारीख / Date of Hearing : 27.10.2020
घोषणा की तारीख / Date of Pronouncement : 29.10.2020

आदेश / ORDER

PER INTURI RAMA RAO, AM:

These are appeals filed by the assessee directed against different orders of the Commissioner of Income Tax (Appeals)-1, Pune ('CIT(A)' for short) commonly dated 30.06.2017 for the Assessment Years 2012-13 and 2014-15.

2. Since, the identical facts and issues are involved in these appeals, we proceed to dispose the same vide this common order.

3. For the sake of convenience and clarity, the facts relevant to the appeal in ITA No.2202/PUN/2017 for assessment year 2012-13 are stated herein.

4. The assessee raised the following grounds of appeal :-

“1. The learned CIT(A)-1, Pune erred in law and on facts in confirming the disallowance of Rs. 1,54,21,582 made by the learned AO on account of Forex loss pertaining to reinstatement of outstanding balance of External Commercial Borrowing (ECB) loan.

2. The learned CIT(A)-1, Pune erred in law and on facts in confirming the decision of the learned AO of not treating the foreign exchange difference of ECB loan as an adjustment to interest cost to extent of difference in local currency interest and interest in foreign currency as per Accounting Standard - 16 and Accounting Standard Interpretation -10.

3. Alternatively and without prejudice to above grounds, the learned CIT(A)-1, Pune erred in law and on facts in confirming the decision of the learned AO of not allowing capitalization of forex loss of Rs 1,54,21,582/- on respective assets and not allowing corresponding benefit of depreciation amounting to Rs 20,83,974/-.

4. The appellant craves leave to add / modify / alter / delete all / any of the grounds of appeal.”

5. The brief facts of the case are as under :-

The appellant is a company incorporated under the provisions of Companies Act, 1956. It is a 100% subsidiary of UK based company viz. AES Engineering Ltd. It is engaged in the business of development of designs and drawings, manufacture mechanical seals and sealing systems. The return of income for the assessment year 2012-13 was filed on 30.11.2012 declaring a loss of Rs.10,07,16,727/- and it was revised on 28.11.2013 at a loss of Rs.6,71,79,039/-. After processing the said return of income u/s 143(1) of the Income Tax Act, 1961 (“the Act” for short), the case was selected for scrutiny assessment, the assessment was completed by the Dy. Commissioner of Income Tax, Circle- 1(1), Pune (“the Assessing Officer” for short) vide order dated 27.03.2015 passed u/s 143(3) of the Act at loss of Rs.8,51,93,118/-. While doing so, the Assessing Officer had disallowed the claim for allowance of loss of Rs.1,54,21,582/- on account of fluctuation in the foreign exchange rate on External Commercial Borrowing (ECB) loan

claimed by the assessee as revenue expenditure. The relevant facts in this regard as follows : The appellant had availed ECB loan acquisition of assets in India. During the previous year relevant to the assessment year under consideration, the assessee incurred a loss on account of fluctuation in foreign exchange currency rate on the reinstatement of ECB loan or at balance sheet date being sum of Rs.1,54,21,582/- claimed as revenue expenditure which was debited to the Profit & Loss Account. During the course of assessment proceedings, it was submitted that the loss on account of reinstatement of ECB loan should be allowed as a deduction while computing the income under the provisions of Income Tax Act, 1961 or provisions of section 43A were not applicable as no assets were imported by using ECB loan. It was further contended that the loss so computed is allowable as revenue expenditure placing reliance on the decision of the Hon'ble Supreme Court in the case of CIT vs. Tata Iron & Steel Ltd., 231 ITR 285 (SC). It was further submitted that the term "expenditure" includes the actual as well as notional loss. Alternatively, it is claimed that the same should go to add to the actual cost of asset for the purpose of calculating the admissible depreciation. The above contentions of the assessee were turned down by the Assessing Officer by holding that the loss claimed is notional. The alternative claim of the assessee for capitalization of the loss was also turned down by the Assessing Officer placing reliance on the decision of the Hon'ble Supreme Court in the case of Sullej Cotton Mills vs. CIT, 116 ITR 1.

6. Being aggrieved by the above decision of the Assessing Officer, the assessee preferred an appeal before Id. CIT(A), who vide impugned order dismissed the appeal of the assessee by holding that in the absence of specific provisions in Income Tax Act, 1961, the same cannot be allowed either as

revenue expenditure or cannot be added to the actual cost for the purpose of depreciation.

7. Being aggrieved by the order of the ld. CIT(A), the assessee is in appeal before us in the present appeal. During the course of hearing of appeal, the ld. AR for the assessee had withdrawn the grounds no.1 and 2 challenging the decision of the lower authorities in disallowing the claim for allowance as revenue expenditure being loss arisen on account of reinstatement of outstanding balance of ECB loan. The ld. AR had argued only ground of appeal no.3 challenging the decision of the lower authorities in disallowing the claim that the loss that had arisen on account of reinstatement of ECB loan should go to add to the actual cost of the asset. The ld. AR placing reliance on the decision of the Hon'ble Supreme Court in the case of CIT vs. Woodward Governor India Pvt. Ltd., 312 ITR 254 (SC) submitted that the loss arising on account of reinstatement of ECB loan on the date of balance sheet should go to add to the cost of actual asset for the purpose of depreciation.

8. On the other hand, the ld. CIT-DR placed reliance on the orders of the lower authorities.

9. We heard the rival submissions and perused the material on record. The only issue that arises for our consideration is whether the loss arising out of reinstatement of the ECB loan as on date of balance sheet can be added to the actual cost of asset for the purpose of determining the actual cost u/s 43A of the Act. Admittedly, it is an undisputed fact that the ECB loan was availed by the appellant-company for the purpose of acquiring the assets in India. The loss arising consequent upon on the fluctuation, in foreign currency rate is recognized in the books of account by debiting to the

Profit & Loss Account and the same was claimed as revenue expenditure. Alternative plea was also made for capitalization of such loss in order to determine the actual cost under the provisions of section 43(1) of the Act. Both the claims were turned down by both the Assessing Officer as well as Id. CIT(A). Before us, the pleading for allowance as revenue expenditure was withdrawn by the Id. AR of the assessee. Therefore, the only issue surviving for our consideration is whether such loss can be capitalized to the actual cost of the assets for the purpose of depreciation. The principal objection for allowance of claim is that it is only notional loss and therefore the same cannot be recognised either for the purpose of allowance of revenue expenditure or capitalization. This objection is no longer tenable in law in the light of the dictum of the Hon'ble Supreme Court in the case of Woodward Governor India Pvt. Ltd. (supra) wherein the Hon'ble Apex Court had quoted with approval of the decision of the Hon'ble Madhya Pradesh High Court in the case of M. P. Financial Corporation vs. CIT, 165 ITR 765 wherein it was held that the term "expenditure" covers even a case of loss even though the said amount has not gone out from the pocket of the assessee. The Hon'ble Apex Court further observed that the decision of the Hon'ble Madhya Pradesh High Court in the case of M. P. Financial Corporation (supra) was approved by the Hon'ble Apex Court in the case of Madras Industrial Investment Corpn. Ltd. vs. CIT, 225 ITR 802.

10. The next issue which comes up for our consideration is whether or not the increase or decrease in liability in the repayment of foreign loan should be taken into account to modify the figure of actual costs in the year in which the increase or decrease in liability arises on account of the fluctuation in the rate of exchange. The Hon'ble Supreme Court in the case of CIT vs. Arvind

Mills Ltd., 193 ITR 255 had categorically held that the adjustments in the actual cost on account of increase or decrease in liability in the repayment of foreign loan should be taken into account. The Parliament had enacted the provisions of section 43A of the Act w.e.f. 4.1.1967 to provide for adjustments in the actual cost of the assets pursuant to change in the foreign currency exchange rate. The Institute of Chartered Accountant of India had also issued Accounting Standard-11 which also provides for adjustments in carrying cost of the fixed asset acquired in foreign currency due to foreign exchange fluctuation in each balance sheet. Thus, the unamended provisions of section 43A of the Act provides for the adjustment has to be carried out in the actual cost of the assets on account of change in the rate of exchange. The provisions of section 43A of the Act were amended by the Finance Act, 2002 w.e.f. 1.4.2003 to provide that for making the necessary adjustments in the carrying cost of the fixed asset there should be actual cost, on increase or decrease of liability as a consequence of exchange variation infact actual payment of liability. But on plain reading of the provisions of section 43A of the Act, it is clear that provisions of section 43A have application only in the case of imported assets. In the present case, the assets were acquired in India, therefore, the conditions of making actual repayment foreign currency loan is not a condition for making necessary adjustment in the actual cost of the asset. Therefore, the general principles of law would be applicable. The Hon'ble Supreme Court in the case of Arvind Mills Ltd. (supra) observed as under :-

“We may now turn to the second question posed earlier and consider the position on general principles. So far as depreciation allowance is concerned, the position is perhaps a little simpler because it is a recurrent claim. Under the definitions contained in section 32 read with section 43(1) and (6) of the Income tax Act, the depreciation is to be allowed on the actual cost of the asset less all depreciation actually allowed in respect thereof in earlier years. Thus, where the cost of the asset subsequently goes up because of devaluation, whatever might have been the position in the earlier year, it is always open to the

assessee to insist, and for the Income tax Officer to agree, that the written down value in the year in which the increased liability has arisen should be taken on the basis of the increased cost minus depreciation earlier allowed on the basis of the old cost. Thus, in the illustration given earlier, if the asset is one that earns depreciation at 10%, the assessee would have got a depreciation allowance of Rs. 10,000 for the assessment year 1966-67 and that will stand. But, for the assessment year 1967-68, the depreciation allowance will be calculated on an actual cost of Rs. 1,20,000 minus the depreciation earlier allowed of Rs. 10,000, i.e., on Rs. 1,10,000. The written down value and allowances for subsequent years will be calculated on this footing. In other words, though the depreciation granted earlier will not be disturbed, the assessee will be able to get a higher amount of depreciation in subsequent years on the basis of the revised cost and there will be no problem.”

11. Even the Hon’ble Madras High Court in the case of Southern Asbestos Cement Ltd. vs. CIT, 259 ITR 631 had also followed the Hon’ble Supreme Court’s decision in the case of Arvind Mills Ltd. (supra) and in the light of the law laid down by the Hon’ble Supreme Court in the case of Arvind Mills Ltd. (supra), we hold that the necessary adjustments should be made to the actual cost of assets on account of loss consequent to foreign currency fluctuation rate as there is no dispute that ECB loans are utilized for the purpose of acquisition of asset in India. Accordingly, we direct the Assessing Officer to allow necessary adjustment to the actual cost of the asset. Accordingly, this ground of appeal no.3 is allowed.

12. In the result, the appeal in ITA No.2202/PUN/2017 for assessment year 2012-13 is partly allowed.

ITA No.2203/PUN/2017 for A.Y. 2014-15

13. Since, the facts in the present appeal are identical to the facts in ITA No.2202/PUN/2017 for assessment year 2012-13, for the reasons mentioned therein, we partly allow the appeal on the above lines indicated in ITA No.2202/PUN/2017 supra. Hence, the above captioned appeal filed by the

assessee in ITA No.2203/PUN/2017 for the assessment year 2014-15 stands partly allowed.

14. Resultantly, both the appeals of the assessee are partly allowed.

Order pronounced on this 29th day of October, 2020.

Sd/-

(S. S. VISWANETHRA RAVI)
न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(INTURI RAMA RAO)
लेखा सदस्य/**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 29th October, 2020.
Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Pune.
4. The Pr. CIT-1, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.