

आयकर अपीलीय अधिकरण , ' डी ' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**" D " BENCH, CHENNAI**

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. Nos. 1979 & 1980/Chny/2018

निर्धारण वर्ष/Assessment Years : 2012-13 & 2013-14

Assistant Commissioner of Income Tax,  
Corporate Circle – 4(1),  
Chennai.

M/s. LNV Technology Private Ltd.,  
Vs. No. 18/3, Sigap Achi Building  
5<sup>th</sup> Floor, Rukmani Lakshmipathy  
Salai, Egmore,  
Chennai – 600 008.

**[PAN: AAACL 6394H]**

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/Appellant by

: Ms. R. Anitha, JCIT

प्रत्यर्थी की ओर से/Respondent by

: Shri. S. Sridhar, Advocate

सुनवाईकीतारीख/Date of Hearing

: 18.11.2020

घोषणाकीतारीख/Date of Pronouncement

: 07.01.2021

**आदेश/ O R D E R**

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

The Revenue filed these appeals against the orders of Commissioner of Income Tax (Appeals)-8, Chennai in ITA No. 170, 196 & 308/16-17 dated 02.04.2018 for assessment years 2012-13 & 2013-14.

2. M/s. LNV Technology Private Ltd., the assessee is engaged in the business of manufacture, project consultants. While making the assessments for the assessment years 2012-13 & 2013-14, the Assessing Officer, inter alia, disallowed forward contract loss claimed by the assessee and made disallowance u/s. 14A r.w.r. 8D. Aggrieved, the assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) partly allowed the appeals. Aggrieved against those orders, the Revenue filed these appeals with common grounds and hence the grounds related to assessment year 2012-13 & 2013-14 is extracted as under:

*"1. The order of the Id. CIT(A) is contrary to law and facts of the case.*

*2. The Ld.CIT(A) erred in allowing the assessee's claim of losses incurred over the years from the forward contracts executed in all the concerned years by referring to the Jurisdictional ITAT order in ITA 518/Mds/2014 (Chennai Tribunal) 2015 in the case of DCIT Vs Rajkumar Impex Pvt. Ltd. However this decision has not been accepted by the Revenue and further appeal has been filed before the Hon'ble High Court of Madras and the issue has not yet reached finality.*

*2.1 The Id. CJT(A) has failed to observe that the assessee had not taken contracts to the value of sales made or amount realizable. Hence it cannot be said that the intention of the assessee was to safeguard against the loss through future price fluctuations. The assessee entered into the contract only on speculative basis.*

*3. The Ld.CIT(A) erred in restricting the disallowance made u/s.14A by excluding certain expenses for the purpose of calculation of the disallowance u/s. 14A r.w. Rule 8D.*

*3.1 The Ld.CIT(A) 's decision is in contrary to the decision of the Jurisdictional High Court in the case of K. Somasundaram and Bros. Vs. CIT (1999) (238 ITR 939) (MAD) wherein it was held that funds are mixed bag.*

*4. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT (A) may be set aside and that of the Assessing Officer restored."*

3. The Ld. DR inviting our attention to the relevant portion of the assessment orders submitted that the assessee entered into forward contract from September 2011 and the first contract was entered into on 09.09.2011 with USD 25,35,027/- and the delivery period was in October 2011. The total sales made by the assessee up to September, 2011 was only USD 4,26,865/-. Thus, the value of the first contract entered itself is almost 5 times of the total sales made till the date of entering into the contract. All the contracts entered with State Bank of Hyderabad were entered on the same date i.e., 09.09.2011 and the total value on contract is USD 1,44,02,863/-. However, the total sales made upto September 2011 was for USD 4,26,865/- only and the total sales made by the assessee for the whole year was for USD 75,79,618.59/- only. If the assessee's intention was to enter these contracts to safeguard against the loss through future price fluctuation, then it would have taken contracts to the value of sales made or the amount realizable. The value of contract entered with State Bank of Hyderabad alone was almost twice the total sales made for the whole year. The period of contract entered was for short durations, therefore, the assessee could not have fulfilled the contract even when the full

sales were realized. Not even one single contract was honoured by the assessee during the year. Therefore, the AO recorded a finding that the assessee had entered into contract only on speculative basis. All the contracts are not entered to safeguard against the loss through future price fluctuations. Therefore, the disallowance made by the Assessing Officer for assessment year 2012-13 is correct.

4. For the assessment year 2013-14, the assessee has entered into forward contract in the month of October, 2011, for the month of June, 2012 for USD 26,00,000/-. However, the assessee has not made any export sales during this assessment year against this contract. Therefore, the loss claimed by the assessee at Rs. 1,70,82,000/- was treated by the AO as a speculative loss. The Ld. CIT(A) without examining the relevant facts, associated circumstances and material merely extracted the assessee's submissions and allowed the appeals. Therefore, the Ld. DR pleaded that the Revenue's appeals be allowed on this issue. Per contra, the Ld. AR supported the orders of the Ld. CIT(A), took us through relevant portion and invited our attention to the case laws relied on by him.

5. We heard the rival submissions and gone through the relevant material. The assessee claims that it has entered contract with State Bank of Hyderabad and City Bank for foreign currency rates for future period. Such contracts were entered against the total export order against the overseas clients and hence the loss incurred by it should be treated as business loss and not as a speculative loss. On the other hand, the Revenue contends that if the total value of transactions entered for the future contract is more than the total export turnover of the assessee then the loss suffered by it in respect of that portion in excess of transactions are to be considered as speculative loss only as the excess transaction has no proximity with the export turnover. The total sales made by the assessee up to September, 2011 was USD 4,26,865/- only and the total sales made for the whole year is at USD 75,79,618/-. This being so, the assessee's contention that the contracts entered by it for USD 1,44,02,863/- which were to safeguard against the loss through future price fluctuations needs to be examined with the facts and circumstances of the assessee's nature of business with relevant documents of the transactions on which the assessee claims the loss in this case. It is seen from the assessment orders that the AO has taken general view. It is mentioned that the assessee's nature of business is fabricators of machineries/EPC engineers. However, it is not

known what are the products or commodity sold, with whom and when the contracts were entered, whether the contractual conditions are reasonable from the perspective of a business person, the facts and circumstances associated with non-actual delivery etc. The Ld. CIT(A) also merely extracted the submissions of the assessee and allowed the appeals without examining the relevant aspects. Therefore, we are of the view that this issue requires proper examination as to whether the impugned loss is business loss or speculative loss etc. Hence we remit the issues back to the AO for a fresh examination. The assessee shall lay relevant evidence/materials in support of its contention as to why and how the impugned losses claimed by it are business loss before the AO and comply with the requirements of the AO in accordance with law. The AO is free to conduct appropriate enquiry as deemed fit, but he shall furnish adequate opportunity to the assessee on the material etc to be used against it and decide the matter in accordance with law. In the result, the Revenue's appeals on this issues are treated as partly allowed for statistical purposes.

6. The next issue is that while making the assessments for assessment year 2012-13 & 2013-14, the AO invoking the provisions of section 14A r.w.r. 8D made disallowances. Aggrieved against those orders, the assessee filed appeals before the Ld. CIT(A). The Ld. CIT(A) on

examination of the assessee's submissions held that the disallowance u/s. 14A r.w.r. 8D should be made after excluding the banking charges and accordingly restricted the disallowance to Rs. 3,72,259/- for the assessment year 2012-13 and Rs. 13,00,692/- for the assessment year 2013-14. Aggrieved, the Revenue filed these appeals. The Ld DR canvassed the case on the grounds of appeal extracted, supra. Per contra, the Ld. AR submitted that while computing the disallowance, the Assessing Officer included banking fees/charges mistakenly thinking that they are part of interest expenditure. It was submitted before the Ld CIT(A) that the banking fees/charges charged by the banker for various transactions like LC opening charges, LC amended charges, foreign banking charges for overseas transactions, collection charges etc., are directly related to party payments and are not part of the interest expenditure. After considering the same, the Ld. CIT(A) directed the AO to exclude the banking charges for the purpose of computation of disallowance u/s. 14A r.w.r. 8D. Therefore, the Ld. AR supported the orders of the Ld. CIT(A).

7. We heard the rival submissions find merit in the submissions made by the Ld. AR. Since the findings recorded by the Ld. CIT(A) that the bank charges/fees are not related to the interest expenditure is not assailed by the Revenue with relevant material, we do not find any reason to interfere

with the orders of the Ld. CIT(A) and therefore, the corresponding grounds of the Revenue fail for both the assessment years.

8. In the result, the Revenue's appeals for the assessment years 2012-13 & 2013-14 are partly allowed for statistical purposes.

Order pronounced on 07<sup>th</sup> January, 2021 at Chennai.

**Sd/-**

(वी दुर्गा राव)

**(V. DURGA RAO)**

**न्यायिकसदस्य/Judicial Member**

**Sd/-**

(एस जयरामन)

**(S. JAYARAMAN)**

**लेखासदस्य/Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 07<sup>th</sup> January, 2021

**JPV**

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त) अपील(/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF