

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. PAWAN SINGH, JUDICIAL MEMBER
(THROUGH VIDEO CONFERENCING)**

ITA No.1998/Del/2017
Assessment Year: 2011-12

Paramount Communications Ltd., C-125, Paramount House, Naraina Industrial Area, Phase-I, New Delhi-110028 PAN No.AAACP0969Q	Vs	Dy. Commissioner of Income Tax, Circle – 19 (2) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Satyam Sethi, Advocate
Respondent by	Ms. Mrinalini Sapra, Sr. DR

Date of hearing:	17/08/2021
Date of Pronouncement:	17/08/2021

ORDER

PER N. K. BILLAIYA, AM:

This appeal filed by the assessee is preferred against the order of the CIT(A)-7, New Delhi dated 14.02.2017 for A.Y. 2011-12.

2. The solitary grievance of the assessee is that the CIT(A) erred in upholding the disallowance of depreciation of Rs.54,29,216/-

relatable exchange fluctuations in respect of assets acquired in India from the funds raised through foreign currency convertible bonds following its own order of earlier assessment years.

3. The assessment proceedings can be summarized by the following observations made by the AO in the Assessment Order:-

“Disallowance of excessive depreciation claimed during current Assessment Year due to effect of disallowance of prorate exchange fluctuation loss pertaining to indigenous / domestic fixed assets made by CIT(A) for A.Y.2009-10 and assessing officer for A.Y.2010-11.”

4. The CIT(A) confirmed the findings of the AO by observing as under :-

“4.3 Since the facts are similar, being in agreement with the reasoning given in the appellate order for AY 2009-10, which was followed by me in deciding appeal for A.Y.2010-11, the enhanced depreciation is not allowable. The addition of Rs.54,29,216/- is confirmed. This ground of appeal is ruled against the appellant.”

5. It can be seen that both the lower authorities have followed the orders of the earlier assessment years A.Y.2009-10 and 2010-11.

6. We find that the impugned issue has been decided by this Tribunal in assessee's own case in A.Y.2009-10 and 2010-11 in ITA No.767/Del/2014 and 1378/Del/2017. The relevant findings of this Tribunal read as under:-

23.11. We have considered the rival arguments made by both sides, perused the orders of the learned AO and CIT(A) and the paper book filed on behalf of the assessee. We have

also considered the various decisions cited before us. We find the assessee in the instant case had attributed the exchange loss of Rs.12,65,54,992/- to acquisition of indigenous depreciable assets. Accordingly, it had attributed the liability on account of forex loss to the cost of the fixed assets and claimed depreciation of Rs.1,56,34,104/- which was allowed by the Assessing Officer. We find the learned CIT(A) enhanced the income to the extent of depreciation of Rs.1,56,34,104/- by directing the Assessing Officer to reduce an amount of Rs.12,65,54,992/- from the WDV on the ground that section 43A was not applicable since the assets were not acquired from abroad and the liability of the assessee towards cost of the assets or repayment of money borrowed has not increased or decreased during the year. It is the submission of the learned counsel for the assessee that provisions of section 43A are not applicable to the case of the assessee. However, the conclusion that the liability due to exchange fluctuation has not increased during the year because the assets were acquired in earlier years runs contrary to the judgment of Hon'ble Supreme Court in the case of CIT v. Tata Iron and Steel Co. Ltd (1998) 231 ITR 285, wherein, it was laid down that transaction of loan was

distinct and independent transaction in comparison to acquisition of assets.

23.12. We find an identical issue had come up before the Tribunal in the case of ACIT v. M/s. KEI Industries Ltd. in ITA No.1433/Del/2014 & ITA No.528/Del/2016 order dated 3.12.2020, wherein the Tribunal had allowed depreciation on enhanced cost for the assessment years 2009-10 and 2012-13 by observing as under:-

“10. We have considered the rival submissions. The assessee explained before the authorities below that in assessment year under appeal, the assessee had capitalized a sum of Rs.27,37,25,941/- on account of exchange rate fluctuation in respect of machineries bought in India from the foreign funds raised through FCCBs. No repayment of loan by way of FCCBs was made during the year under appeal. However, increase in any liability on account of prevailing exchange rate was shown in the balance-sheet under the Head “Unsecured Loans” the fluctuations to the extent of acquisition of fixed assets in India by utilising FCCBs was added to the actual cost and depreciation charged thereon. Thus, the assessee purchased the machinery in India from the foreign funds through FCCBs which fact is not disputed by the authorities below. It is, therefore, clear that though Section 43A apply to the assets acquired from Abroad, still the A.O. without justification applied Section 43A for making the disallowance of depreciation against the assessee. Section 43A thus could not apply in the case of the assessee which is also held by various Benches of the Tribunal in the decisions quoted above. Accounting Standard-11 would also apply in the case of the assessee. The assessee has also explained that Companies Amendment Rules also apply to the facts of the case

because option is given to assessee and it provided "Where long term foreign currency monetary items relates to acquisition of depreciable capital asset, the same shall be added/deducted from the cost of the asset and shall be depreciated accordingly over the balance life of the asset." It is not in dispute that assessee followed AS-11 regularly. In A.Y. 2010-2011 the Ld. CIT(A) allowed similar claim of the assessee, but, the Department did not file any appeal against the same Order. In A.Y. 2011-2012 though the Department filed appeal before the Tribunal on this issue on allowing depreciation, but, the same has been dismissed vide Order Dated 21.10.2019 (supra). Thus, the Ld. CIT(A) was bound to follow rule of consistency and should not have taken a contrary view in A.Y. 2012- 2013. We rely upon the Judgments of the Hon'ble Supreme Court in the case of Radhasoami Satsung 193 ITR 321 (SC) and Excel Industries Ltd., 358 ITR 295 (SC). The assessee has also followed Companies Rules, 2009 because it has given option to the assessee to do so. The decision of Mumbai Bench in the case of DDIT v. Staubil A.G. India Branch Office (supra), relied upon by the Ld. CIT(A) is on identical facts. Therefore, there is no infirmity in the Order of the Ld. CIT(A) in following the same. It may also be noted here that wherever there was an exchange gain to the assessee, the same was reduced from the WDV and claim was made accordingly, therefore, assessee is following the AS-11 consistently and as such the same should not have been disputed by the authorities below. The Ld. D.R. has not pointed-out any infirmity in the Order of the Ld. CIT(A) in allowing the depreciation to the assessee as per Law. We, therefore, do not find any merit in this Ground No.2 of the appeal of the Revenue and the same is accordingly dismissed."

Since, the assessee in the instant case has attributed increased liability of Rs.12,65,54,992/- to the cost of the assets and the depreciation was allowed, therefore, although assessee has a good case to argue that exchange

fluctuation loss attributable to depreciable assets acquired in India is an allowable revenue expenditure, however, it would require tedious exercise of modifying assessments for number of year. Therefore, we hold that the assessee is entitled to depreciation on exchange loss and the additional grounds raised by the assessee for AY 2009-10 becomes in-fructuous. It is held in the case of CIT v. Industrial Finance Corp of India Ltd. (2009) 185 Taxman 296, that revenue expenditure (loss) is allowable in the year in which it is incurred but where the assessee has spread it over, the Court would allow the benefit. We find merit in the argument of the learned counsel for the assessee that it cannot be held that neither depreciation on enhanced cost due to exchange fluctuation is to be allowed nor the loss itself was to be allowed more so because claim to this effect was raised both before the Assessing Officer as well as the CIT(A). Accordingly, ground no.3 raised by the assessee is allowed and additional ground being infructuous is dismissed.

7. As no distinguishing decision has been brought to our notice by the DR, respectfully following the findings of this Tribunal (supra) we direct the AO to delete the addition of Rs.54,29,216/-.

8. In the result, the appeal filed by the assessee is allowed.

9. Decision announced in the open court in the presence of both the representatives on 17.08.2021.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

NEHA

Date:-17.08.2021

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	17.08.2021
Date on which the typed draft is placed before the dictating Member	17.08.2021
Date on which the typed draft is placed before the Other member	17.08.2021
Date on which the approved draft comes to the Sr.PS/PS	17.08.2021
Date on which the fair order is placed before the Dictating Member for Pronouncement	17.08.2021
Date on which the fair order comes back to the Sr. PS/ PS	17.08.2021
Date on which the final order is uploaded on the website of ITAT	17.08.2021
Date on which the file goes to the Bench Clerk	17.08.2021
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

