

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)**

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.6141/Del./2017
(Assessment Year : 2014-15)**

M/s. Paramount Communications Ltd., vs. DCIT, Circle 19 (2),
C-125, Paramount House, New Delhi.
Naraina Indl. Area Phase I,
New Delhi – 110 028.

(PAN : AAACP0969Q)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri A.T. Panda, Advocate
REVENUE BY : Shri Anil Gandhi, Senior DR

Date of Hearing : 11.10.2021

Date of Order : 20.10.2021

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, M/s. Paramount Communication Pvt. Ltd.
(hereinafter referred to as 'the assessee') by filing the present
appeal sought to set aside the impugned order dated 09.08.2017
passed by the Commissioner of Income - tax (Appeals)-7, New
Delhi qua the assessment year 2014-15 on the grounds inter alia
that:-

**"1. That on the facts and circumstances of the case and in
law, the Commissioner of Income-tax (Appeals)- 7; New Delhi
[briefly "the CIT(A)"] has erred in upholding disallowance of**

depreciation of Rs.1,50,20,339/- on account of exchange fluctuations on assets acquired in India from the funds raised through foreign currency convertible bonds [FCCBs].

2. That on the facts and circumstances of the case and in law, the CIT(A) has erred in not appreciating that the provisions of section 43A of the Act were not applicable to the indigenous assets acquired out of FCCB's brought in to India.

3. Without prejudice, on the facts and circumstances of the case and in law, foreign exchange fluctuations loss attributable to acquisition of indigenous depreciable assets was allowable deduction under section 37 of the Act in computing the business income..”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : During the scrutiny proceedings, Assessing Officer (AO) noticed that the assessee has claimed excessive depreciation of prorata exchange fluctuation loss pertaining to indigenous/domestic fixed assets. AO by following the assessment years 2010-11, 2011-12 & 2012-13 disallowed the excessive depreciation claimed by the assessee to the tune of Rs.1,50,20,339/- and thereby framed the assessment at the loss of Rs.51,98,87,909/- under section 143 (3) of the Income-tax Act, 1961 (for short 'the Act').

3. Assessee carried the matter before the Id. CIT (A) by way of filing appeal who has upheld the addition by dismissing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Ld. AR for the assessee challenging the impugned order passed by the Id. CIT (A) drew our attention to para 4.3 of the impugned order passed by the Id. CIT (A), which shows that Id. CIT (A) has decided the issue against the assessee by following AYs 2010-11 & 2011-12 and further contended that this issue has already been decided in favour of the assessee in **assessee's own case in AYs 2009-10 & 2010-11 and 2011-12 by the Tribunal vide order passed in ITA Nos.767/Del/2014 & 1378/Del/2017 and ITA No.1998/Del/2017 vide order dated 15.06.2021 & 17.08.2021** respectively. However, on the other hand, Id. DR for the Revenue relied upon the orders passed by the AO as well as Id. CIT (A).

6. We have perused the order passed by the **coordinate Bench of the Tribunal in assessee's own case for AYs 2009-10 & 2010-11 and 2011-12** (supra) which is on identical facts and circumstances. Operative para of the order passed by the Tribunal in **AYs 2009-10 & 2010-11** (supra) is extracted for ready perusal as under :-

“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.

24. *Since, the assessee in the instant case has attributed the increased liability of Rs.12,65,54,992/- to the cost of the assets and the depreciation was allowed, therefore, although the 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. So, following the decision rendered by the coordinate Bench of the Tribunal in assessee’s own case in the identical facts and circumstances of the case, we are of the considered view that AO as well as ld. CIT (A) have erred in disallowing the depreciation on enhanced cost due to exchange fluctuation and also disallowing the

loss, because when it is an undisputed fact that the assessee has acquired premises in India out of foreign currency loans and in the computation of income, enhanced liability on account of currency fluctuation was added to the fixed assets stating that addition to the fixed assets include loss of foreign exchange rates at the year-end which is written down value of block of assets. Accordingly, we direct the AO to allow the depreciation on enhanced liability on exchange rate fluctuation by deleting the addition amounting to Rs.1,50,20,339/-. Consequently, the appeal filed by the assessee is allowed.

Order pronounced in open court on this 20th day of October, 2021.

**Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 20th day of October, 2021
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-3, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**