आयकर अपीलीय अधिकरण,'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL , 'C' BENCH, CHENNAI
श्रीमहावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./**I.T.A.Nos.1869 & 1870/Chny/2018**
(निर्धारणवर्ष / Assessment Years: 2013-14 & 2014-15)

The Income Tax Officer, Ward-1, Puducherry.	Vs	M/s. Les Ateliers Pondicherry Pvt.Ltd. R.S.No.15/7, Vazhudavoor Road, Kurumbapet, Pondicherry-605 009.
		PAN: AABCL 2601A
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

&

आयकरअपीलसं./**I.T.A.Nos. 1483 & 1508 /Chny/2018**
(निर्धारणवर्ष / Assessment Years: 2013-14 & 2014-15)

M/s. Les Ateliers Pondicherry Pvt. Ltd. R.S.No.15/7, Vazhudavoor Road, Kurumbapet, Pondicherry-605 009.	Vs	The Income Tax Officer, Ward-1, Puducherry.
PAN: AABCL 2601A		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Department by	:	Mr. G.Johnson, Addl. CIT
Assessee by	:	Mr. L.Shibi, C.A

सुनवाईकीतारीख/Date of hearing	:	02.12.2021
घोषणाकीतारीख /Date of Pronouncement	:	22.12.2021

आदेश / O R D E R

PER G. MANJUNATHA, AM:

This bunch of four appeals filed by the assessee as well as Revenue are directed against common order passed by the learned Commissioner of Income Tax (Appeals), Puducherry dated 19.03.2018 and pertain to assessment years 2013-14 & 2014-15. Since, facts are identical and issues are common, for

the sake of convenience, these appeals were heard together and are being disposed off, by this consolidated order.

ITA Nos. 1869 & 1870/Chny/2018:

2. The Revenue has more or less raised common grounds of appeal for both assessment years, therefore, for the sake of brevity, grounds of appeal filed for the assessment year 2013-14 are reproduced as under:-

> *"1. Whether the CIT(A) is right in deciding that the assessee is entitled for depreciation u/s.32 even when the machinery is not actually used but on the assumption that the machinery was ready to use; relying on the decision of Madhya Pradesh High Court in the case of Premier Industries Limited Vs CIT 323 ITR 672; particularly in view of the judgement of the Honourable Supreme Court in the case of Liquidators of Pursa Ltd., Vs CIT [1954] 25 ITR 265 quoted by the High Court of Kerala in the case of CIT, Kottayam Vs Malayala Manorama Co. Ltd., [2018] 91 taxmann.com 14?*
>
> *2. Whether The CIT(A) is right in relying on the decision of Madhya Pradesh High Court in the case of Premier Industries Limited Vs CIT 323 ITR 672 in the light of the Honourable Supreme Court's decision in the case of Liquidators of Pursa Ltd., Vs CIT [1954125 ITR 265 where it was held that the machinery had to be used during the accounting year for claiming depreciation? This decision of the Supreme Court is now reiterated by the High Court of Kerala in the recent judgment in the case of CIT, Kottayam Vs Malayala Manorama Co. Ltd., [2018] 91 taxmann.com 14?*
>
> *3. Whether the CIT(A) is correct in allowing the expenditure of depreciation u/s32 when the machinery was not used during the year and it remains idle even now after six years?*
>
> *4. Whether the CIT(A) is right in deciding the fact that the machinery was ready for use, when the Auditors commented that they could not physically inspect the machinery?*

> *5. Whether the CIT(A) is correct in allowing the expenditure disallowed under under Section 14 A when bulk of assessee's income/receipts was dividend income which did not form part of total income I taxable income?*

3. The first issue that came up for our consideration from ground No.1 to 4 of Revenue appeal for both assessment years is disallowance of depreciation on plant & machinery. The assessee is engaged in the business of manufacturing of leather goods. During the impugned assessment year, the company has suspended its manufacturing activity due to labour unrest. However, the assessee has claimed depreciation on plant & machinery on the ground that plant & machinery was put to use in business of the assessee and thus, whether any manufacturing activity was carried out or not, depreciation on said machinery is allowable as per the Act. The Assessing Officer, however, was not convinced with explanation furnished by the assessee and according to him, when the assessee has not used plant & machinery for the purpose of business during relevant assessment year, then question of allowing depreciation on plant & machinery does not arise. The Assessing Officer further noted that in order to claim depreciation as per provisions of section 32(1) of the Act, the

assessee should satisfy certain conditions as per which plant & machinery must be owned by the assessee and secondly, said plant & machinery must be used for purpose of business of the assessee. Since the assessee has not used plant & machinery for purpose of business of the assessee, the claim of depreciation on plant & machinery cannot be allowed as deduction and accordingly added back depreciation claimed on plant & machinery.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT(A). Before the learned CIT(A), the assessee reiterated its arguments taken before the Assessing Officer in light of certain judicial precedents, including decision of the Hon'ble Jurisdictional High Court of Madras in the case of CIT Vs Vayithiri Plantations Ltd. (128 ITR 675). The sum & substance of arguments of the assessee before learned CIT(A) are that plant & machinery was put to use in business of the assessee and once particular plant & machinery is ready for use, then depreciation on such plant & machinery needs to be allowed whether or not, said

plant & machinery was used during relevant period. The learned CIT(A), after considering relevant facts and also by following decision of Hon'ble Madras High Court in the case of CIT Vs Vayithiri Plantations Ltd. (supra) observed that plant & machinery on which depreciation claimed was owned by the assessee and further, they have been using in business of the assessee. Although, said plant & machinery was not used for impugned assessment year, but same is because of labour unrest which resulted in temporary suspension of manufacturing activity otherwise, plant & machinery was already put in business of the assessee and thus, the Assessing Officer was incorrect in disallowing depreciation on plant & machinery merely for reason that same was not used for purpose of the business during relevant period.

5. The learned DR submitted that the learned CIT(A) has erred in deleting additions made by the Assessing Officer towards disallowance of depreciation on plant & machinery without appreciating fact that the assessee has not used plant & machinery for purpose of business of the assessee which is

evident from fact that business of the assessee was temporarily closed down due to labour unrest. The learned DR further submitted that in order to claim depreciation asset must be owned by the assessee and further, same needs to be put to use in business. In this case, although asset was owned by the assessee, but same were not put to use in the business for relevant period and thus, question of claiming depreciation on such asset does not arise.

6. The learned A.R for the assessee, on the other hand, supporting order of the learned CIT(A) submitted that there is no dispute with regard to fact that assets were put to use in business of the assessee in earlier financial years. It is also not in dispute that manufacturing activity was temporarily shut down due to labour unrest, otherwise the assessee is owning plant & machinery as a going concern and thus, even if there is no activity in the impugned assessment year, depreciation allowable under the Act on said plant & machinery needs to be allowed. The learned CIT(A), after considering relevant facts has rightly deleted disallowance of depreciation on plant & machinery and his order should be upheld.

7. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The assessee is engaged in the business of manufacturing of leather goods, has commenced its manufacturing activity from assessment year 2012-13 itself, which is evident from fact that the assessee has declared revenue from operations for earlier financial years. It is also an admitted fact that the assessee has claimed depreciation on said plant & machinery for earlier financial year and same has been allowed by the Department. The dispute is with regard to depreciation claimed for impugned assessment year. The assessee has claimed depreciation on plant & machinery on the ground that even though there is temporary suspension of manufacturing activity, but said suspension is temporary lull. Further, the assessee is considered to be a going concern and assets on which depreciation was claimed was continued to be used in the business of the assessee, once labour unrest is resolved. Therefore, it is right in claiming depreciation. It was contention of the Assessing Officer that when assets were not used in the business of the assessee for the relevant

assessment year, question of allowance of depreciation does not arise.

8. We have carefully gone through reasons given by the Assessing Officer to disallow depreciation on plant & machinery in light of arguments of the assessee and we ourselves do not subscribe to the reasons given by the Assessing Officer for simple reason that, when plant & machinery is kept ready for use and further same is put to use in business of the assessee, any forced idleness of the machinery cannot disentitle the assessee from getting benefit of allowance of depreciation. Further, machinery which is kept idle may well deprecate, particularly during idle period. Therefore, once machinery is ready for use and further, put to use in business of the assessee, depreciation needs to be allowed for normal wear and tear whether or not said machinery was actually utilized for purpose of business during relevant period. This principle is supported by the decision of the Hon'ble Madras High Court in the case of CIT Vs. Vayithiri Plantations Ltd. (supra) and decision of the Hon'ble Bombay High Court in the case of CIT vs. Viswanath Bhaskar Sathe

(1937) 5 ITR 621. In this case, assets were not used in business of the assessee. However, due to labour unrest, same were not put to use for manufacturing purpose for impugned assessment year. Therefore, for this reason depreciation on plant & machinery cannot be denied. The learned CIT(A), after considering relevant facts has rightly deleted additions made by the Assessing Officer towards disallowance of depreciation. Hence, we are inclined to uphold findings of the learned CIT(A) and reject ground taken by the Revenue for both assessment years.

9. The next issue that came up for our consideration from ground No.5 of Revenue appeal for both assessment years is disallowance of expenditure u/s.14A of the Income Tax Act, 1961. The assessee has not declared any income from operations for the year under consideration, however, has claimed certain expenditure like travelling and conveyance, legal and professional expenses, communication expenses etc. The Assessing Officer had disallowed expenditure debited into profit & loss account by the assessee on the ground that when there is no income from operations, question of deduction of

various expenditure does not arise and hence, invoked provisions of section 14A of the Act, and disallowed entire expenses claimed by the assessee.

10. The learned DR submitted that the learned CIT(A) has erred in deleting additions made by the Assessing Officer towards disallowance of expenditure u/s.14A of the Income Tax Act, 1961, without appreciating fact that except interest income, the assessee has not shown any income from operations and thus, the Assessing Officer has rightly disallowed various expenditure debited into profit & loss account.

11. The learned A.R, on the other hand, submitted that the assessee has debited various expenditure including communication expenses, travelling and conveyance expenses which are in the nature of day to day expenses, which needs to be incurred by any corporate body whether or not any income generated from business activity. Therefore, the learned CIT(A) after considering relevant facts has rightly deleted additions

made by the Assessing Officer and his order should be upheld.

12. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The Assessing Officer has disallowed various expenditure debited into profit & loss account which are in nature of general administration and other overhead expenses incurred by any corporate body to maintain corporate status of the assessee, without verifying fact that said expenditure is relatable to exempt income, which is not taxable under the Act or not. Further, once there is no exempt income for relevant period, then question of disallowance of expenses relatable to said exempt income does not arise. In this case, on perusal of facts, we find that the Assessing Officer has not recorded any finding on exempt income of the assessee. In absence of any finding with regard to exempt income, the Assessing Officer cannot simply disallow general, administrative and other overhead expenses which are incurred in normal course of business of the assessee for maintaining corporate status of any company u/s.14A of the Income Tax Act, 1961. The

learned CIT(A), after considering relevant facts has rightly held that the Assessing Officer has erred in invoking provisions of section 14A of the Act to disallow various expenditure claimed by the assessee. The said findings of the learned CIT(A) goes uncontroverted from the Revenue. Hence, we are inclined to uphold findings of the learned CIT(A) and reject ground taken by the Revenue for both assessment years.

13. In the result, appeals filed by the Revenue for both assessment years 2013-14 & 2014-15 are dismissed.

ITA No. 1483/Chny/2018 (AY: 2013-14):

14. The assessee has raised following grounds of appeal:-

> *"1. The order of the Respondent is contrary to law and facts of the case and is therefore liable to be set aside.*
>
> *2. The Respondent has erred in disallowance of foreign exchange loss of Rs.58,02,684/- under Section 43A and 37 of the Income tax Act, 1961, without appreciating the fact that the Appellant has incurred foreign exchange loss relating to loan availed from State Bank of India for providing security deposit to its holding company and not for acquisition of any asset either in India or outside India. Moreover, from the said security deposit, the Appellant had earned interest income, which is offered for taxation.*
>
> *3. The Appellant states that the above grounds are independent and without prejudice to one another. The Appellant craves leave to file additional grounds at the time of hearing."*

15. The only issue that came up for our consideration from assessee appeal for assessment year 2013-14 is disallowance of foreign currency fluctuation loss amounting to Rs.58,02,684/- u/s.43A r.w.s. 37 of the Income Tax Act, 1961. The facts with regard to impugned dispute are that the assessee has availed term loan from bank and same has been converted into FCNR (B) loan. The assessee has incurred foreign currency fluctuation loss on account of conversion of term loan into FCNR(B) loan and same has been claimed as deduction u/s.37 of the Act, on the ground that loan has been availed to give security deposit to M/s. Leather Craft India, an associate company of the assessee. The Assessing Officer has disallowed foreign currency fluctuation loss claimed by the assessee u/s.43A r.w.s. 37 of the Act, on the ground that any loss incurred on fluctuation of foreign currency can be allowed only in case where the assessee has borrowed loan for acquisition of any asset outside India. Since, the assessee has taken loan and same has been used for giving security deposit to associate concern, same is not utilized for purpose of

business of the assessee and hence, disallowed foreign currency fluctuation loss claimed by the assessee.

16. The learned AR for the assessee submitted that the learned CIT(A) has erred in sustaining additions made by the Assessing Officer towards disallowance of foreign exchange loss u/s.43A r.w.s. 37 of the Act, without appreciating fact that the assessee has incurred foreign currency fluctuation loss relating to loan availed from State Bank of India for providing security deposit to its holding company and not for acquisition of asset either in India or outside India. He further submitted that any foreign exchange loss can be disallowed u/s.43A of the Act, if such loss is arisen out of conversion of foreign currency loan, and further such loss is arisen in the course of availing loan for acquiring any asset in India. Since, the assessee has taken normal loan for purpose of business of the assessee, any expenditure incurred including loss on fluctuation of foreign currency needs to be allowed u/s.37 of the Income Tax Act, 1961.

17. The learned DR, on the other hand, supporting order of the learned CIT(A) submitted that the Assessing Officer as well as learned CIT(A) has brought out clear facts to the effect that loan was not utilized for purpose of business of the assessee and thus, any loss incurred on foreign exchange fluctuation is capital in nature, which cannot be allowed u/s.43A of the Income Tax Act, 1961.

18. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The assessee has availed term loan from bank and the same has been subsequently converted into FCNR (B) loan. The assessee has incurred exchange loss on account of conversion of term loan into FCNR (B) loan. The Assessing Officer has disallowed exchange loss incurred on account of fluctuation of foreign currency on the ground that said loan was not utilized for purpose of business of the assessee. It was explanation of the assessee before the Assessing Officer that term loan availed from bank was used to give security deposit to holding company of the assessee in normal course of

business and thus, any loss incurred on fluctuation of foreign currency is allowable u/s.37 of the Income Tax Act, 1961. We have gone through reasons given by the Assessing Officer to disallow foreign currency fluctuation loss incurred on FCNR (B) loan in light of arguments of the learned AR for the assessee and we ourselves do not agree with arguments of the learned AR for the assessee for simple reason that unless assessee demonstrates with evidence to prove fact that FCNR (B) loan has been utilized for purpose of business of the assessee, any loss incurred on fluctuation of foreign currency cannot be allowed as revenue expenditure u/s.37 of the Income Tax Act, 1961. No doubt, the Assessing Officer has clearly erred in invoking provisions of section 43A of the Act, to disallow foreign exchange loss, because said provision is applicable only in cases, where the assessee has acquired foreign currency loan for acquiring any asset in India. In this case, the assessee has not acquired any asset either in India or from outside India. Therefore, the Assessing Officer cannot disallow foreign exchange loss u/s.43A of the Act. But, fact remains that the Assessing Officer had also disallowed said loss u/s.37 of the

Act on the ground that loan was not utilized for the purpose of business of the assessee . It is well settled principle of law that in order to claim deduction for any expenditure incurred by the assessee including interest on loans, then loan should be borrowed for purpose of business of the assessee. In this case, the assessee has failed to bring on record any evidence to prove that loan was in fact, borrowed for purpose of business of the assessee. Therefore, we are of the considered view that there is no error in the reasons given by the Assessing Officer to make additions towards disallowance of foreign exchange fluctuation loss u/s.37 of the Income Tax Act, 1961. Hence, we are inclined to uphold order of the learned CIT(A) and dismiss appeal filed by the assessee.

19. In the result, appeal filed by the assessee for assessment year 2013-14 is dismissed.

ITA No. 1508/Chny/2018 (A.Y.2014-15):

20. The assessee has raised following grounds of appeal:-

> *"1. The order of the Respondent is contrary to law and facts of the case and is therefore liable to be set aside.*

2. The Respondent has erred in disallowing land development charges of Rs.54,01,176/- under Section 69 of the Income Tax Act, 1961.

3. The Respondent failed to appreciate that Section 69 can be invoked only when the twin conditions stipulated in the section are satisfied. One. Investment are not recorded in the books of accounts and other, the assessee does not offer explanation about the nature and the source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory. In the present case, the Appellant has recorded the land development charges in the books of accounts which have been subject to audit.

4. The Respondent erred in holding that land is not shown in the fixed asset schedule under the Income Tax Act. The Respondent failed to appreciate that there is no separate field meant for Land in the fixed asset schedule in the Income tax returns prescribed under Income Tax Act as no depreciation allowance is provided for land.

5. The Respondent failed to consider the submission and documents provided by the Appellant where in the explanation sought by the Respondent regarding the land development charges is provided."

21. The only issue that came up for our consideration from the assessee appeal for assessment year 2014-15 is disallowance of land development charges of Rs.54,01,176/- u/s.69 of the Income Tax Act, 1961. The Assessing Officer has disallowed a sum of Rs.54,01,176/- incurred by the assessee for land development charges on the ground that the assessee has failed to file any evidence to prove that expenditure was incurred for land development. The Assessing Officer further

noted that although, the assessee has debited land development charges into fixed asset account, but on perusal of fixed asset schedule as per Income Tax Act, 1961, no such amount was reflected in fixed asset schedule. Therefore, he opined that the assessee has not able to explain investments in land development charges and thus, held that amount incurred for land development charges is unexplained investments, which is taxable u/s.69 of the Income Tax Act, 1961.

22. The learned AR for the assessee submitted that the learned CIT(A) has erred in sustaining additions made towards land development charges u/s.69 of the Income Tax Act, 1961, without appreciating fact that Section 69 can be invoked only when twin conditions stipulated therein are satisfied, as per which, investment is not recorded in books of account of the assessee and further, the assessee does not offer explanation about nature and source of investments. In this case, the assessee has recorded expenditure incurred for land development charges and has also explained source for such investments and hence, the Assessing Officer as well as

learned CIT(A) were completely erred in disallowing land development charges u/s.69 of the Income Tax Act, 1961.

23. The learned DR, on the other hand, supporting order of the learned CIT(A) submitted that the assessee has failed to produce any details for land development charges and also failed to explain how same is not shown in fixed asset schedule as per Income Tax Act, 1961, and thus, there is no error in the reasons given by the Assessing Officer to make additions towards land development charges u/s.69 of the Act.

24. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The provisions of section 69 of the Income Tax Act, 1961, deals with unexplained investment which can be brought to tax. As per said provision, if an assessee made any investments which were not recorded in books of account, if any, maintained by him for any source of income and the assessee offers no explanation about nature and source of investments or explanation offered by him is not in the opinion

of Assessing Officer is satisfactory, then value of investments may be deemed to be income of the assessee for such financial year. From a plain reading of above provisions of section 69, it is very clear that in order to bring any amount within ambit of section 69 of the Act, twin conditions must be satisfied, as per which first condition is that the assessee should made investments which is not recorded in books of account and further, the assessee offers no explanation about nature and source of investments. In this case, the assessee has incurred land development charges and same has been recorded in books of account of the assessee. The assessee has also explained nature and source of investments. Once the assessee has recorded investments in books of account and further explained nature and source of investments, then same cannot be brought to tax u/s.69 of the Act. The Assessing Officer without appreciating facts has made addition for land development charges u/s.69 of the Income Tax Act, 1961. The learned CIT(A) has simply confirmed additions made by the Assessing Officer without giving any valid reasons. Hence, we set aside order of the learned CIT(A) and direct the Assessing

Officer to delete additions made towards land development charges u/s.69 of the Income Tax Act, 1961.

25. In the result, appeal filed by the assessee for assessment year 2014-15 is allowed.

26. As a result, appeals filed by the Revenue for both assessment years are dismissed, appeals filed by assessee for assessment year 2013-14 is also dismissed and that assessment year 2014-15 is allowed.

Order pronounced in the open court on 22nd December, 2021

Sd/-	Sd/-
(महावीर सिंह)	**(जी. मंजुनाथ)**
(Mahavir Singh)	(G. Manjunatha)
उपाध्यक्ष/ Vice-President	लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 22nd December, 2021
DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:
1. Appellant 2. Respondent 3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF.