IN THE INCOME TAX APPELLATE TRIBUNAL
"C"BENCH: BANGALORE

BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.3313/Bang/2018
AssessmentYear: 2014-15

M/s. FMC India Pvt. Ltd. #6, 13th Main, Vasanth Nagar Bangalore **PAN NO :AAACF4579N**	**Vs.**	Deputy Commissioner of Income-tax Circle 3(1)(1) Bangalore
APPELLANT		**RESPONDENT**

Appellant by	:	Shri Nageswar Rao, A.R.
Respondent by	:	Shri Pradeep Kumar, D.R.

Date of Hearing	:	01.12.2021
Date of Pronouncement	:	25.02.2022

O R D E R

PERB.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed this appeal challenging the order dated 31.10.2018 passed by the assessing officer for assessment year 2014-15 u/s 143(3) r.w.s. 144C of the Act in pursuance of directions given by Ld Dispute Resolution Panel (DRP).

2. The grounds of appeal urged by the assessee give rise to the following issues:-

(a) Addition on account of Transfer pricing adjustment.

(b) Disallowance of Research & Development expenses claimed u/s 35(1)(iv) of the Act.

(c) Disallowance of Payroll expenses u/s 40(a)(i) of the Act.

(d) Disallowance of foreign exchange fluctuation on ECB Loans

(e) Disallowance of Product development expenses

(f) Disallowance of finance lease

(g) Disallowance of mark to marked loss arising on account of foreign exchange fluctuations

(h) Disallowance of interest expenditure payable to Micro, Small and Medium Enterprises.

(i) Non-granting of set off of brought forward business loss and unabsorbed depreciation.

3. The assessee company is primarily engaged in the business of manufacturing and trading of crop protection chemicals, viz., insecticides, herbicides, fungicides and also in plant growth regulators. It gets all its products manufactured from third party contractors/toll manufacturers. The assessee imports chemicals and formulations (raw materials) from its AE, M/s FMC Corporation, USA.

3.1 The assessee sells its finished products to third parties in India and also resells the chemicals and formulations imported from FMC Corporation, USA. The assessee also imports raw materials (Lithium Metal) and finished goods for trading from FMC Corporation, USA and FMC Chemicals Ltd, UK. The assessee also provides certain support services to the various divisions of FMC. The assessee also provides development services to the API Hong Kong and application support services to the Health & Nutrition (Pharma) division of FMC Corporation, USA. The support services provided by it are in the form of business development services, SAP Application Support Services, Human Resource Services and Regulatory Affair Management Services to its Associated Enterprises.

4. The first issue relates to the addition made on account of transfer pricing adjustment. The assessee has prepared segmental results for two segments, viz., "Manufacture and sale of products" and "Sourcing & business support services". The TPO has proposed transfer pricing adjustment in respect of "Manufacture and Sale of products". The assessee had reported sales of Rs.252.10 crores and service income of Rs.0.31crores. The assessee had declared operating profit of Rs.11.54 crores in this segment, i.e., the operating expenses was shown at Rs.240.87 crores.

4.1 The TPO noticed that the assessee has not properly allocated/apportioned the expenses. He also noticed that the assessee as considered "Foreign exchange fluctuation loss" and "Product development expenses" as non-operating in nature. Accordingly, he rejected the segmental results prepared by the assessee. He prepared the segmental results by reallocating some of the expenses. The TPO computed Operating expenses at Rs.260.74 crores.

4.2 The assessee had adopted TNM method as most appropriate method and Operating Profit to Sales as Profit Level Indicator (PLI). The TPO was not satisfied with the Transfer Pricing Study conducted by the assessee. Accordingly he rejected the same and selected comparable companies on his own. After confronting the same with the assessee, the TPO finalized following comparable companies:-

FINAL SET OF COMPARABLES		
S.No.	*Name of Company*	*OP/OR (in %)*
1	*Lokmangal Bio-Tech Pvt. Ltd.*	*7.42%*
2	*Bharat Insecticides Ltd.*	*13.77%*
3	*Insecticides (India) Ltd.*	*7.00%*
4	*HPM Chemicals & Fertilizer Ltd.*	*8.00%*
5	*Kilpest India Ltd.*	*4.35%*
6	*Spectrum Ethers Ltd.*	*2.23%*
7	*Super Crop safe Ltd.*	*2.42%*
8	*Bhagiradha Chemicals &Inds. Ltd.*	*3.11%*
9	*Sabero Organics Gujarat Ltd.*	*7.98%*
	AVERAGE	***6.25%***

4.3 The average margin of the comparable companies was 6.25%. Accordingly, the TPO computed average cost at 93.75% of the Operating revenue and arrived at the Arms length Operating cost at Rs.236.34 crores. Accordingly he held that the Operating cost of the assessee, viz., Rs.260.74 crores is excessive by Rs.24.40 crores and proposed the same as Transfer pricing adjustment. After the direction given by Ld DRP, the T.P adjustment came to be Rs.24.63 crores.

4.4 Though the assessee has raised many grounds in respect of transfer pricing adjustment, the Ld. A.R. submitted that he is pressing Ground no.2.6 and Ground No.2.10 only. Accordingly, the remaining grounds relating to transfer pricing adjustment are dismissed as not pressed. In Ground No.2.6, the assessee seeks exclusion of 3 companies namely (a) HPM Chemicals & Fertilizers Ltd. (b) Bharat Insecticides Ltd. (c) Lokmangal Bio-Tech Pvt. Ltd. However, the Ld. A.R. did not press M/s. Lokmangal Bio-Tech Pvt. Ltd. at the time of hearing. Accordingly, the assessee seeks exclusion of only two companies. In Ground No.2.10, the assessee is contending that the transfer pricing adjustment should be

restricted to the international transactions entered with the associated enterprises only.

4.5 We shall first take up Ground No.2.10. With regard to the plea of the assessee to restrict the transfer pricing adjustment to international transactions entered with A.E only, the Ld. A.R. placed his reliance on the decision rendered by Mumbai bench of Tribunal in the case of Hindustan Unilever Ltd. Vs. ACIT (2012) 28 Taxmann.com 142, wherein the Tribunal held that the transfer pricing adjustment should be restricted to the international transactions entered with AE. The Ld. A.R. submitted that the revenue challenged the above said decision of the Tribunal before Hon'ble Bombay High Court. However, the question of law raised by the revenue in this regard was not admitted by Hon'ble Bombay High Court for the reason that the said issue is covered in favour of the assessee by the decision rendered by it in the case of CIT Vs. Tara Jewellers Exports Pvt. Ltd. (Income Tax Appeal No.1814 of 2013 dated 5.10.2015). Accordingly, the Ld A.R submitted that the AO/TPO may be directed to restrict the adjustment to international transactions entered with AEs.

4.6 We heard Ld. D.R. on this issue and perused the record. We notice that the decisions relied on by Ld. A.R. support the plea of the assessee. Accordingly, we direct the AO/TPO to restrict the transfer pricing adjustment to the international transactions relating to import of raw materials and finished goods entered with its A.Es.

4.7 The next issue relates to exclusion of two comparable companies. The assessee seeks exclusion of M/s. HPM Chemicals & Fertilizers Ltd from the list of comparable companies. The Ld.

A.R. submitted that the assessee herein is dealing in crop protection chemicals only. However, M/s. HPM Chemicals & Fertilizers Ltd is engaged in the manufacture and selling of fertilizers also in addition to pesticides. Further, this company has received subsidies in respect of freights on sale of fertilizers and also on supply/sale of imported fertilizers. this company is also having another business run in the name of M/s. Hindustan Pulverizing Mills. However, the financial statements of this company do not report segmental details. Accordingly, he submitted that this company cannot be considered as comparable with the assessee company.

4.8 On the contrary, the Ld. D.R. submitted that the fertilizers business constitutes only 20% of turnover and remaining portion of 80% relates to pesticides business only. Accordingly, the Ld. D.R. submitted that this company has been accepted as a good comparable by Ld. DRP.

4.9 We heard the rival contentions and perused the record. We find merit in the contentions of Ld. A.R. that this company is engaged into diversified business activities, viz., manufacture and sale of pesticides, dealing in fertilizers and running a pulverizing mill. However segmental results have not been given. In respect of fertilizers business, this company has received subsidy towards freight as well as for sale of imported fertilizers. All these facts in our view makes this company not comparable with the assessee company. Accordingly, we direct the A.O./TPO to exclude this company.

4.10 The assessee also seeks exclusion of M/s. Bharat Insecticides Ltd. the ld. A.R. submitted that this company is dealing in

diversified products, viz., pesticides, plant growth regulators, etc. Further, this company also acts as toll manufacturer i.e. doing job work for other companies. He submitted that TPO has wrongly understood that the assessee herein is also engaged in toll manufacturing, whereas the fact remain the assessee gets his product processed/manufactured by other toll manufacturers. He submitted that this company also does not have segmental results. Accordingly, he submitted that this company cannot be considered as a comparable to the assessee.

4.11 We heard Ld. D.R. on this comparable and perused the record. The annual report of the company pertaining to assessment year 2014-15 (F Y 2013-14) is placed at page Nos.2370 to 2408. We notice that the principal product dealt by the company is stated as "pesticides formulation". The total revenue from operations is shown at ₹ 261.88 crores in the profit & loss account and the entire turnover pertains to pesticides formulation only as per information given at page Nos.2370 & 2371. We also notice that this company has not reported any other operating revenues in the profit & loss account available at page No.2371, meaning thereby, the assessee has not carried out any toll manufacturing works during the year under consideration, as submitted by Ld. A.R. Accordingly, we are unable to appreciate the contentions of Ld. A.R. Accordingly, we do not find any other reason to exclude this company from the list of comparable companies. Accordingly, we confirm the order of the AO in including this company as comparable company.

5.0 The next issue relates to the disallowance of claim of capital expenditure u/s 35(1)(iv) of the Act incurred for Research & Development. The assessee has incurred capital expenditure to the tune of Rs.2,09,99,172/- towards scientific project called "Project

Disha" for setting up its own R & D Centre and Health & Nutrition Application Lab in Bangalore. In the books, it claimed depreciation of Rs.23,94,873/- on the above said expenditure. While computing total income, the assessee claimed the WDV amount of Rs.1,86,04,299/- as deduction u/s 35(1)(iv) of the Act.

5.1 The AO noticed that the assessee has earned a sum of Rs.11,73,97,423/- from its AEs by providing R & D services to them. Accordingly, the AO took the view that the assessee is undertaking R & D services for its Associated Enterprises. The AO took the view that the assessee should have conducted R & D activities for the purpose of its own business. Further, the AO held that the assessee should show the nexus between the R & D activities and business carried on by the assessee. Accordingly, the AO took the view that the assessee cannot claim above said capital expenditure u/s 35(1)(iv). Accordingly, he passed the draft assessment order disallowing the claim.

5.2 The Ld DRP confirmed the disallowance with the following observations:-

> *"2.10.1 Having considered the submissions, we find that the AO has discussed the issue in detail in para 4.3 of his order. We are not reproducing the same for sake of brevity. We find that the arguments made by the AO are very precise and valid. The fact remains that the so called R & D activities being claimed are being done for the parent company. Hence, the benefit, if any, will eventually will go to the parent company. As per Master Agreement with the AE, all know-how, technology and technical information developed by FRIL (the assessee) in conducting any work for FMC-API hereunder whether or not patentable, shall be owned and/or controlled exclusively by FMC-API (AE). The assessee has not shown that because of the research done by it, it has got patents in its name. As far as the assessee is concerned, it is a work being carried out at the instruction,*

direction and supervision of the patent company and that work incidentally happens to be related to R & D. This is an incentive given to Indian companies to encourage investment in R & D and not for doing work for some company located abroad. Therefore, we approve of the disallowance u/s 35(1)(iv). As far as depreciation u/s 32 also, we note that as per the Masters Agreement the assessee would not be able to claim ownership over the research and development undertaken by it. In the circumstance, the assessee would not be eligible for claim of depreciation. Accordingly this objection is rejected."

5.3 The Ld A.R submitted that the AO has rejected the claim of capital expenditure in respect of research and development activities only on the reason that it is not related to the business carried on by the assessee. He submitted that the R & D activities support the manufacturing and trading business of both the assessee and its parent company. Hence the benefit of R & D activity is used by the assessee in its business as well. He further submitted that the R & D expenses have been allowed by the AO in the earlier years and only in this year, the AO has taken divergent view.

5.4 On the contrary, the Ld D.R supported the orders passed by Ld DRP and AO.

5.5 We heard rival contentions and perused the record. The assessee has incurred the impugned capital expenditure for setting up a R & D facility in Bengaluru called "Project Disha". The AO noticed that the assessee has earned income of Rs.11.73 crores from its AE by providing R & D services to them. We have noticed earlier that the assessee gets its product manufactured on job work basis by others (called toll manufacturing). It gets the raw

materials, chemicals and formulations from its AEs located abroad. Thus, the assessee did not have its own manufacturing set up. On noticing these facts, we notice that the Ld DRP has examined the ownership rights of the intangibles generated through R & D activities. The Ld DRP noticed that, as per Master Agreement with the AE, all know-how, technology and technical information developed by the assessee in conducting R & D works, whether or not patentable, shall be owned and/or controlled exclusively by FMC-API (AE). This finding of Ld DRP would make it clear that the assessee's role is only to provide services for R & D activity of its AE, i.e., it is carrying on the R & D activity also on behalf of its AE. Further, it cannot own the intangible rights arising out of the research and development activities carried on by it. Thus, R & D activities also are in the nature of support services provided by the assessee to its AE. Accordingly, the Ld DRP has given the finding that the work carried on by the assessee at the instruction, direction and supervision of the parent company happens to be related to R & D. We also find merit in the observation of Ld DRP that the incentive provisions like deduction u/s 35(1)(iv) are given by the Government to encourage Indian Companies and not for doing work for some company located abroad. Accordingly, we are of the view that the tax authorities are justified in disallowing the claim for deduction of Capital expenditure u/s 35(1)(iv) of the Act.

5.6 Since the disallowance of capital expenditure is upheld by us, the assessee would be eligible for depreciation on them at applicable rates. We notice that the AO has disallowed only the WDV amount of Rs.1,86,04,299/- claimed by the assessee after deducting the depreciation of Rs.23,94,873/- claimed in the books of account. The AO may examine the claim of the assessee for allowing correct amount of depreciation, if the above said claim is

not in accordance with the rates prescribed under the Income tax Rules.

6.0 The next issue relates to the disallowance of payroll expenses u/s 40(a)(i) of the Act.The AO noticed that the assessee has paid a sum of Rs.97,69,258/- to its AE FMC Corporation, USA as "Payroll expenses" and it did not deduct TDS there from. When enquired, the assessee submitted that the above said sum represented only reimbursement of salary and related cost of an employee who was deputed by its AE. It was further submitted that the said employee was working with the assessee under its supervision and direction. It was submitted that the above said reimbursement has been made on actual basis without any mark up and hence the same is not liable for tax deduction at source u/s 195 of the Act. The AO did not accept the above said explanations of the assessee. The relevant observations made by the AO are:-

> *(a) The assessee has submitted only certain debit notes and did not furnish any agreement and invoice for payroll expenses. It is not clear from debit whether the above payment was made on actual basis or with mark up. In the absence of agreement, it is not possible to ascertain the relationship between the assessee and the expatriate.*
>
> *(b) Without agreement, it is difficult to ascertain the nature of work performed by the expatriate.*
>
> *(c) The expatiate is assigned by the AE and continues to be in the employment of the AE. He was only assigned to the assessee for a short period. Hence the expatriate was performing the duties for and on behalf of the AE. Further, there is no master and servant relationship between the assessee and the expatriate. Since his services were rendered on behalf of the AE, the remittance made towards reimbursement of salary is in the nature of Fee for technical services. Further the services have been rendered in India.*

Accordingly, the AO held the above said payments are in the nature of Fee for technical services. Since the assessee did not deduct tax at source from the said payment, he disallowed the same u/s 40(a)(i) of the Act in the draft assessment order. The Ld DRP also confirmed the same and accordingly, this addition was made by the AO in the final assessment order also.

6.1 Before us, the Ld AR submitted that the expatriate employee was deputed by AE of the assessee to work under direct control and supervision of the assessee. Accordingly, the employee was performing work for the assessee and not on behalf of the AE, as presumed by the AO. Hence a master-servant relationship has been created between the assessee and its expatriate. Hence it would not be correct to presume the reimbursement of salary to the AE for the salary paid by it to the expatriate as "fee for technical services". He further submitted that the services rendered by the expatriate do not 'make available' any technical knowledge and hence it cannot fall under the category of 'fee for technical services'. In this regard, he relied upon the decision rendered by Hon'ble Karnataka High Court in the case of Abbey Business Services India P Ltd (ITA No.214 of 2014), wherein identical addition has been deleted by Hon'ble High Court. Accordingly, he submitted that this addition is required to be deleted.

6.2 We heard Ld DR and perused the record. From the observations made by the tax authorities, we notice that the assessee has furnished the agreement, if any, entered between the assessee and the AE/expatriate in connection with the deputation of that employee to the assessee. Further, it is the observation of the tax authorities, the assessee has not explained about the nature of services rendered by the expatriate to the assessee. It is the case

of the AO that the expatriate was working on behalf of the AE and hence he might have provided technical services to the assessee on behalf of the AE, even though the assessee refutes the same. Before us, the assessee has submitted that the details of Payroll expenses have been submitted in the paper book. However, what is required to be examined in the present context is the terms and conditions of agreed between the assessee and its AE, the nature of services rendered by the expatriate to the assessee etc. In the absence of the factual details, it would be difficult to apply the legal principles laid down by the Hon'ble Karnataka High Court in the above said case. Under these set of facts, we are of the view that this issue requires fresh examination at the end of AO. The assessee should furnish the terms and conditions of agreement, nature of services rendered by the expatriate etc. Even, if there is no written agreement between the assessee and AE, there should be some other material to show the purpose for which the expatriate was deputed to the assessee. Accordingly, we restore this issue to the file of AO. The AO may take a decision on this issue afresh after considering the details, information and explanation that may be furnished by the assessee. After hearing the assessee, the AO may take appropriate decision in accordance with law.

7.0 The next issue relates to the disallowance of claim of foreign exchange fluctuation on External Commercial Borrowing (ECB). The assessee had availed ECB of USD 20,00,000/- from its foreign AE. The said loan was used to acquire assets for its R & D activity. The assessee has restated the outstanding balance as at the year end and it has resulted in a loss of Rs.1,03,58,838/-. The assessee agreed that the above said foreign exchange revaluation loss should be treated as capital expenditure. However, since the cost of capital assets acquired out of ECB loan was claimed as deduction

u/s 35(1)(iv) of the Act, the assessee claimed the loss arising on revaluation of outstanding liabilities should also be allowed as deduction u/s 35(1)(iv) of the Act. The AO disallowed the same holding it as a notional loss. The Ld DRP also confirmed the same.

7.1 We heard the parties on this issue and perused the record. We earlier noticed that the AO had disallowed the claim for deduction of capital expenditure u/s 35(1)(iv) of the Act. In the preceding paragraphs, we have confirmed the said disallowance. We also directed the AO to allow applicable depreciation on the capital expenses so disallowed. Consequent thereto, the claim of deduction of loss arising on revaluation of outstanding balance of ECB cannot be allowed u/s 35(1)(iv) of the Act. We noticed that the AO has disallowed the claim holding it to be notional loss. Though the view taken by the AO may not be right, yet the disallowance has to be confirmed for the reasons discussed above. Accordingly, we confirm the disallowance of Rs.1,03,58,838/- made by the AO. It is not clear as to whether the provisions of sec.43A would apply to the ECB Loan. Hence the assessee may claim the benefit of provisions of sec.43A, if it is applicable to the ECB Loan repayments.

8.0 The next issue relates to the disallowance of Product development expenses of Rs.4,36,88,418/-. The assessee submitted before the AO that it has incurred these expenses with the intention of expanding the existing line of business. The assessee submitted that incurring of this kind of expenses is an integral part of profit earning process and it aids the assessee to continuously improve its portfolio of products. The assessee also relied upon the decision rendered by Chandigarh bench of ITAT in the case of Glaxo Smithkline Consumer Health care Ltd (112 TTJ 94) and also the decision rendered by Hon'ble Karnataka High

Court in the case of Bharat Earth Movers Ltd (47 CTR 244) and also by Chennai bench of ITAT in the case of Magnetic Meter Systems India Ltd etc. It was submitted that these expenses did not result in any enduring benefit to the assessee.

8.1 The AO did not accept the explanations of the assessee. The AO took the view that these expenses would give enduring benefit to the assessee once the products developed by it are put to commercial use. The AO also examined the nature of expenses and noticed that these expenses have been incurred for registration studies of product Carbosulfan, various diseases of plants, Clomazone etc. He also noticed that the assessee has already started commercially producing the products viz., Carbosulfan, Clomazone etc. Since the expenses have been incurred for getting approval from Central Insecticides Board and also for commercial utilisation of pesticides, these expenses are not recurring in nature and further it would give enduring benefit to the assessee. Accordingly, he disallowed the above said claim of Rs.4,36,88,418/-
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8.2 The Ld DRP noticed that these expenses have been incurred for registration of patent in the name of the AE or for assignment in favour of AE. Accordingly, the Ld DRP confirmed the disallowance. Since the intangible rights are to be owned by the AE, the Ld DRP held that the assessee would not be entitled for depreciation also.

8.3 We heard rival contentions on this issue. We notice that the expenses incurred by the assessee under this head consisted of Registration expenses, Field Trial expenses, Cost of samples issued and Testing fee & other charges. We notice that the AO has taken the view that these expenses are capital in nature. On the contrary,

the Ld DRP has taken the view that the beneficiary of these expenses is the AE of the assessee.

8.4 Hence, it is necessary to find out as to whether the assessee has incurred all these expenses on its own account or on behalf of its AE. If the assessee has incurred expenses on behalf of the AE and the benefits of these expenses go the AE, then the Ld DRP was justified in disallowing this claim. If it is not so, then the assessee is required to prove that these expenses are not capital in nature. The facts available on record are not clear as to whether these expenses are routine expenses incurred for expansion of existing business or not. If it is so, then the relevant expenses are allowable as revenue expenditure. In the absence of relevant details, we feel it proper to restore this issue to the file of AO for examining it afresh in the light of discussions made supra and also in accordance with law. Accordingly we restore this issue to the file of AO.

9.0 The next issue relates to disallowance of claim of finance lease charges of Rs.78,41,340/-. The assessee had taken certain vehicles on finance lease and paid lease charges. The assessee claimed the payment of lease charges as expenditure. The assessee did not include the same as its fixed assets in the depreciation schedule and accordingly did not claim depreciation thereon. The AO took the view that the assessee should recognize the assets taken on lease as its capital asset and should have claimed depreciation and finance charges as per Accounting Standard 19 issued by ICAI. He further held that the finance lease gives enduring benefit to the assessee and it cannot be called as operating lease. Accordingly he disallowed the claim for deduction of finance lease charges. In this regard, he took support of the

decision rendered by Delhi bench of ITAT in the case of Rio Tinto India (P) Ltd (ITA No.363 (Delhi)/2012 dated 22-06-2012.

9.1 The Ld DRP also confirmed the disallowance. It also held that the assessee cannot be granted depreciation as the relevant information are not available on record.

9.2 This issue is now settled by Hon'ble Supreme Court in the case of ICDS vs CIT (2013)(350 ITR 527)(SC), wherein the Hon'ble Apex Court held that the lessor is the owner of the leased property in case of finance lease and he is entitled to depreciation on it. The contra is that the lessee is eligible to claim the lease payments as deduction. Hence the view taken by the tax authorities are against the decision rendered by Hon'ble Supreme Court. Accordingly we direct the AO to allow the claim of the assessee in accordance with the decision rendered by Hon'ble Apex Court in the case of ICDS (supra).

10.0 The next issue relates to the disallowance of loss on foreign exchange fluctuation amounting to Rs.3,77,03,436/-. The assessee submitted that the above said loss pertains to trade receivables/payables. The AO followed the circular issued by CBDT in No.3 of 2010 dated 23.03.2010 and held that the mark to marked loss (revaluation of forward contracts as on Balance sheet date) is not allowable as deduction. The Ld DRP also confirmed the same.

10.1 It is the submission of the assessee, that the above said claim included realised loss also. Further, it was submitted that the forward contracts were entered into for hedging trade receivables and trade payables. Hence this claim was on revenue account. It

was also submitted that the above said disallowance includes loss arising on revaluation of ECB loan as at the yearend amounting to Rs.1,04,19,728/-, which has already been disallowed by the AO. Accordingly it was submitted that the above said amount of Rs.1,04,19,728/- has been disallowed twice.

10.2 We heard Ld D.R and perused the record. In the written submission, the assessee has given following details:-

Year end ECB valuation loss	-	1,04,19,728
Realised losses	-	3,66,55,766
		4,70,75,494
Less:- Unrealised gain		93,72,060
		3,77,03,434

The assessee has also mentioned a sum of Rs.88,56,806/- as "Forward contract premium and MTM translation".

10.3 In the earlier paragraph, we dealt with the disallowance of Rs.1,03,58,338/- pertaining to loss arising on revaluation of ECB loan. We have also confirmed the disallowance made by the AO. Hence, the disallowance of very same amount, which is included in the above said amount of Rs.3,77,03,434/- results in double disallowance. However, there is slight difference in the figures. The Loss arising on revaluation of ECB loan was Rs.1,03,58,338/- when we dealt with the issue in the earlier paragraph. However, the loss arising on revaluation of ECB loan was shown as Rs.1,04,19,728/- in the break-up details given above. Hence this difference needs to be reconciled and it has to be shown by the assessee that both the figures pertain to same claim. Accordingly, we direct the AO to examine the claim of double disallowance and delete the double disallowance, if any.

10.4 There should not be any dispute that the realised losses pertaining to revenue account is allowable as deduction. The AO may verify the details and allow the deduction.

10.5 We are unable to understand as to why the assessee did not offer the amount of Rs.88,56,806/- pertaining to Forward contract premium and MTM transaction as its income. Accordingly, we restore this issue to the file of AO for examining this issue.

11.0 The next issue pertains to disallowance of interest expenditure of Rs.10,07,131/- payable to Micro, Small and Medium Enterprises. It is the submission of the Ld A.R, the outstanding amount shown as payable to Micro, Small and Medium Enterprises pertains to the principal portion of supplies made by those enterprises to the assessee, i.e., it does not include any interest component. It was submitted that the Ld DRP directed the AO to examine the above said claim of the assessee, but the AO retained the disallowance in the final assessment order without carrying out necessary examination. In view of the above, we restore this issue to the file of AO for examining the claim of the assessee in accordance with law.

12. The last issue relates to the setting off of brought forward business losses and unabsorbed depreciation. This issue requires examination at the end of AO as per the records. Accordingly, we restore this issue to the file of AO.

13. In the result, the appeal of the assessee is treated as partly allowed for statistical purposes.

Order pronounced in the open court on 25th Feb, 2022

Sd/-	**Sd/-**
(Beena Pillai)	**(B.R. Baskaran)**
Judicial Member	**Accountant Member**

Bangalore,
Dated 25th Feb, 2022.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.