

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND  
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 231/CHNY/2022

निर्धारण वर्ष /Assessment Year: 2016-17

**Tamilnadu Newsprint and  
Papers Ltd.,**  
No.67, TNPL Building,  
Mount Road, Guindy,  
Chennai – 600 032.

**The DCIT,**  
vs. Corporate Circle 3(1),  
Chennai.

**PAN: AAAC 2935J**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Vikram Vijayaraghavan, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 29.08.2022

घोषणा की तारीख/Date of Pronouncement : 29.08.2022

**आदेश /O R D E R**

**PER MAHAVIR SINGH, VICE PRESIDENT:**

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-16, Chennai in ITA No.583/CIT(A)-16/2019-20 dated 18.02.2022. The assessment was framed by the DCIT, Corporate Circle 3(1), Chennai for the assessment year 2016-17 u/s.143(3) r.w.s.144C(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 30.01.2020.

2. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the disallowance made by AO on forward premium paid amounting to Rs.11,37,645/- by wrongly treating the same as capital expenditure by applying the provisions of section 43A of the Act.

3. We have heard rival contentions and gone through the facts and circumstances of the case. Brief facts are that the assessee is engaged in the business of manufacturing of papers, power, energy, cement, etc. The AO during the course of assessment proceedings noticed from the profit & loss account of the assessee that it had claimed an expenditure of Rs.19,73,897/- as 'forward premium' relating to forward contract taken for hedging for foreign currency loan. According to AO this foreign currency loan was taken for capital asset and hence capital in nature and hence, he disallowed the same u/s.43A of the Act but allowed depreciation @ 15% amounting to Rs.2,96,085/-, thereby net disallowance at Rs.16,77,812/-. However, the AO also reduced the depreciation on forward premium amounting to Rs.2,13,447/- for the assessment year 2013-14 and thereby net addition would have been Rs.14,64,365/-. Further, the AO treated the WDV relating to depreciation on 'forward premium' for assessment year 2014-15

allowable at Rs.3,26,720/- thereby reducing the addition of Rs.14,64,365/- and the balance amount of Rs.11,37,645/- was added to the returned income of the assessee. The CIT(A) simpliciter confirmed the addition by observing in para 6.3 as under:-

6.3 I have considered the matter. The AO has a specific finding that the foreign currency loan was taken capital expenditure. Hence, the same needs to be capitalized. In my considered view, the AO had rightly capitalized the expenses and allowed depreciation @ 15% on it.”

Aggrieved, assessee is in appeal before the Tribunal.

4. We have considered the material placed before us and noted that the forward premium relating to forward contracts booked to hedge the forex risk on foreign currency borrowings should be amortized as expenses over the life of the forward contracts. Accordingly, to mitigate the forex risk involved in the foreign currency loans, the company has taken forward contracts from banks. The forward contract premium debited in the profit & loss account was relating to forward contract booked to hedge the currency risk on foreign currency borrowings. Before us, the Id.counsel for the assessee relied on the decision of Hon'ble Delhi High Court in the case of CIT vs. Industrial Finance Corporation of India Ltd., 185 Taxman 296, wherein exactly on identical facts, the Hon'ble High Court has held as under:-

**“20.** When we apply the aforesaid principle to the facts of this case, the irresistible conclusion would be that the ITAT rightly held that the assessee was entitled to claim deduction of Rs. 67.06 crores incurred in connection with swapping of foreign currency funds in the year under consideration, *i.e.*, the assessment year 1995-96. It is clear from the nature of the transaction, that the assessee had raised foreign currency borrowings and swapped such foreign currency into Indian rupees in order to augment its rupee resources for meeting its lending requirements. The foreign currencies borrowed were repayable to the foreign lenders on later dates falling within the current previous year ending on 31-3-1995 and in some cases falling in the next previous year relevant to subsequent assessment year. In order to ensure that it is able to repay the foreign lenders in the foreign currency on their respective due dates of repayments, the assessee had entered into forward contracts as a safeguard against foreign currency fluctuations. It is the difference between the forward contract rate and the exchange rate on the date of transaction which was claimed as deduction in that very year. The forward contract is an agreement between two parties, requiring the delivery at some specified future date of a specified amount of foreign currency by one of the parties, against payment in domestic currency to the other party, at the price agreed upon in the contract. The rate of exchange applicable to the forward contract is called the forward exchange rate and the market for forward transactions is known as the forward market. Thus, in case of a forward contract, assessee enters into a legally binding, enforceable contract for purchase of foreign currency on a future date at the pre-determined rates. The date and the rate of purchase of the foreign currency are decided at the time of entering into contract. The difference between the forward contract and the exchange rate on the date of entering into the contract has to be recognized as income or expenses, which is ascertained and definite, in terms of the contract and cannot be regarded as notional or contingent. It is clear that the swapping cost incurred by the assessee is capable of determination at the time of execution of the forward contract and such determination does not get postponed.

**21.** Therefore, the test laid down in the aforesaid judgments to treat it as business expenditure in the same year, though part of the liability occurs on a future date, is allowable as expenditure in this very year. It was a debt owed by the assessee, which accrued on the date of entering into the forward contract itself, though as per the contract, part payment was to be made in succeeding years. The expenditure under the accrual system of accounting had, thus, crystallized on the date of the contract.”

4.1 From the above, what follows is that the forward premium relating to forward contract booked to hedge the forex risk on foreign currency borrowings should be amortized as expenses over the life of the forward contracts. To mitigate the forex risk involved in the foreign currency loans, the assessee company has taken forward contracts from banks and accordingly forward premium debited to the profit & loss account was related to forward contracts booked to hedge the currency risk on foreign currency borrowings. Therefore, this forward premium is an allowable expenditure and we accordingly direct the AO to allow the same.

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

Order pronounced in the open court on 29<sup>th</sup> August, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

**(MANOJ KUMAR AGGARWAL)**

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 29<sup>th</sup> August, 2022

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT    | 5. विभागीय प्रतिनिधि/DR  | 6. गार्ड फाईल/GF.            |

Sd/-

(महावीर सिंह)

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT