

**THE INCOME TAX APPELLATE TRIBUNAL
DELHIBENCH 'F', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No. 3361/Del/2019: Asstt. Year : 2015-16

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| PCL Foods Pvt. Ltd., Unit No. 003, Tower-A, Global Business Park, Sector-26, Near Guru Dronacharya Metro Station, Gurgaon-122001 | Vs | ACIT, Circle-19(2), New Delhi-110002 |
| (APPELLANT) | | (RESPONDENT) |
| PAN No. AAHCP3493L | | |

**Assessee by : Sh. R. K. Kapoor, CA &
Ms. Deepti Gupta, CA
Revenue by : Sh. Atiq Ahmed, Sr. DR**

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| Date of Hearing: 04.08.2022 | Date of Pronouncement: 31.10.2022 |
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-7, New Delhi dated 06.02.2019.

2. Following grounds have been raised by the assessee:

"1) That the order of CIT(A) u/s 250 of the Act is bad in law and on facts of the assessee's case.

2) That the Ld. CIT(A) has grossly erred in law in confirming the disallowances made by the AO on account of Depreciation on Boiler, amounting to Rs. 35,59,587 and disallowing loss Rs. 89,20,326/- and brokerage and commission expense Rs. 22,78,228/- in respect of Currency Derivatives aggregating Rs. 1,11,98,554/- on wholly illegal, erroneous and untenable grounds.

3) *That the Ld. CIT(A)/Assessing Officer has erred in facts and law in allowing depreciation amounting to Rs. 35,59,587/- on boiler @ 15% only instead of @ 80% by-*

- a. *Holding that assessee inability to prove its assertion that it is an energy saving device.*
- b. *Not appreciating that Energy saving device, i.e. Boiler is covered by item-III of Machinery and Plant, Sub Item 8(ix) A (a) of Appendix-1 of Income Tax Rules, 1962.*
- c. *Not appreciating that inspection certificate depicts not only boiler, it also depicts other information such as type of boiler, pressure and loading of valve used in boiler.*
- d. *By examining the utility of Boiler in isolation, neither examining the function for which Boiler is used nor considering the key highlights of the boiler describe in the description manual. Thereby ignoring the functional test.*
- e. *Without appreciating the fact that assessee has utilized the specialized boilers which has been developed using advanced technology in order to establish as energy saving device.*

4) *That the Ld. CIT(A)/Assessing Officer has erred in facts and law in disallowing loss Rs. 89,20,326/- and brokerage and commission expense Rs. 22,78,228/- in respect of Currency Derivatives aggregating Rs. 1,11,98,554/- by-*

- a. *Holding that transactions done in currency derivatives do not fall in proviso to section 43(5) and hence nothing but speculative transactions.*
- b. *Holding that loss incurred in respect of currency derivatives is treated as speculation loss governed by section 73.*

- c. *Without appreciating the fact that currency derivate are being taken to hedge the foreign currency exposures in future created out of export sales invoices raised in foreign currency i.e. USD.*
 - d. *Not appreciating the judgments on which the assessee relied upon and not distinguished the facts of the assessee's case with these judgments.*
- 5) *That the interest under section 234B and section 234C of the Act is not chargeable."*

3. The assessee is engaged in the business of purchasing paddy, removing husk and bran layers therefrom, extracting rice from the purchased paddy and polishing and grading the extracted rice. Thus, the assessee can be said to be engaged in 'Rice milling activity'. The case of the assessee was picked up for assessment u/s 143(3) of the Income Tax Act, 1961. Various details as were called by the AO and by the Id. CIT(A) at the appellate stage.

Depreciation on Boilers:

4. During the assessment proceeding it was observed that assessee has claimed Rs.1,43,35,249/- as 'depreciation as per Income Tax Act' in its profit and loss account. Vide para 2(ii) of questionnaire issued dated 25.08.2017 assessee was asked to justify the depreciation on boilers which has been claimed @ 80%.

5. In response, assessee replied as follows vide submission dated 04.09.2017.

"Depreciation as per Income Tax act, 1961 and Rules:

Depreciation is an allowable expense in income Tax act, 1961 on the basis of block of assets on written Down Method (WDV). Rates of depreciation have been prescribed under rule 5(1 A) of the act which is re produced below:

[(1A) The allowance under clause (i) of sub-section (1) of section 32 of the Act in respect of depreciation of assets acquired on or after 1st April, 1997 shall be calculated at the percentage specified in the second column of the Table in Appendix IA of these rules on the actual cost thereof to the assessee as are used for the purpose of the business of the assessee at any time during the previous year.

| <i>Block of Assets</i> | <i>Depreciation allowance as percentage of written down value</i> |
|--|---|
| <p><i>(ix) Energy saving devices, being-A. Specialized boilers and furnaces:</i></p> <p><i>(a) Ignifluid/fluidized bed boilers (b) Flameless furnaces and continuous pusher type furnaces (c) Fluidized bed type heat treatment furnaces (d) High efficiency boilers (thermal efficiency higher than 75 percent in case of coal fired and 80 percent in case of oil/gas fired boilers)</i></p> | <p><i>80%</i></p> |

Depreciation is allowed @ 80% on boilers as per income tax act, 1961. Therefore, it is respectfully submitted that the assessee company has claimed depreciation @ 80% on boilers in line with rate prescribed in the rule 5(1A)."

6. In addition assessee also attached an inspection certificate issued by 'Haryana Boiler Inspection Department' No. 732/16-17 Dated 18.03.2017.

7. The assessee was further probed on the issue and further questioned vide para 2(iv) in questionnaire issued dated 11.10.2017.

"How the boiler on which you are claiming depreciation @ 80% is an 'energy saving device' as stated in appendix to Income Tax rules specifying rate of deprecation. Explain & justify with evidences. Further, you are hereby given show cause for disallowance of depreciation claimed on boiler @ 80% and will be allowed @15% only."

8. In response, the assessee has submitted his reply vide submission dated 23.10.2017 as follows:

"In this regard, it is hereby submitted before you honour that the detailed reply has already been submitted vide submission dated 04.09.2017."

9. The assessee company in addition to the said reply, further submitted that the boiler used in rice milling falls under the following category prescribed under rule 5(1 A) of the Income Tax Rules, 1962 Act which is re produced below for ready reference.:

1(1A) The allowance under clause (i) of sub-section (1) of section 32 of the Act in respect of depreciation of assets acquired on or after 1st April, 1997 shall be calculated at the percentage specified in the second column of the Table in Appendix IA of these rules on the actual cost thereof to the assessee as are used for the purpose of the business of the assessee at any time during the previous year.

| <i>Block of Assets</i> | <i>Depreciation allowance as percentage of written down value</i> |
|---|---|
| <i>(ix) Energy saving devices, being-A. Specialized boilers and furnaces: (a) Ignifluid/fluidized bed boilers</i> | 80% |

It is submitted that heating of paddy involves an energy consuming process. For this process, the boilers are to be used to use energy efficiently. The boilers also has been inspected regularly by Haryana Boiler Inspection Department, copy of which has already been submitted vide submission dated 04m September, 2017 which is again being submitted as per Annexure - 2 for your kind perusal. Thus, the said boiler is an energy saving device and as per income tax act, depreciation @ 80% is prayed to be allowed on boiler used in rice milling process.

Therefore, it is respectfully submitted that the assessee company has claimed depreciation @ 80% on boilers in line with rate prescribed in Rule 5(1 A)."

10. The relevant rules are as under:

(8) (i)

(ii)

.....

(ix) Energy saving devices, being –

A. Specialized boilers and furnaces:

(a) Ignifluid/fluidized bed boilers

(b) Flameless furnaces and continuous pusher type furnaces

(c) Fluidized bed type heat treatment furnaces

(d) High efficiency boilers (thermal efficiency higher than 75 per cent in case of co fired and 80 per cent in case of oil/gas fired boilers)

For which rate of 80% has been prescribed for AY 2015-16.

In nutshell, the AO held that,

(a) Assessee has submitted only the inspection certificate for FY 2016-17 (even not related to AY 2015-16) and nowhere provided any copy of invoices, etc. to judge the nature of boiler.

(b) Inspection certificate (related to FY 2016-17) only depicts it to be boiler and nothing else.

(c) Assessee himself claimed depreciation @ 15% on such boiler (plus additional depreciation @ 20%, which is not clear from documents filed) in AY 2014-15. But considering opening WDV of block of 80% in AY 2015-16, it seems additional depreciation has not been claimed in AY 2014-15.

(d) Assessee nowhere able to justify how the said boiler is an 'energy saving device'.

(e) if the law makers had intention to provide enhanced depreciation of 80% on every type of boiler, there was nothing to prevent them from writing in simple words. But, before the word boiler, prefixing words like "energy saving devices", "specialized", etc. connotes that only particular types of boilers are eligible for depreciation @ 80%.

(f) Further, assessee itself claimed depreciation @ 15% on such boilers for AY 2014- 15. In AY 2015-16, assessee divided the opening WDV of block of 15% in two parts i.e. 15% and 80%.

(g) Closing WDV of Block of 15% & 35% as on 31/03/2014 = Rs. 1,95,86,428 + Rs 1,33,26,339 + Rs. 6,01,264 + Rs. 9,01,690 = Rs. 3,44,15,721/- (As per Form 3CA/3CD filed)

Opening WDV of Block of 15% as on 01/04/2014 = Rs. 2,89,39,433/-

+

Opening WDV of Block of 80% as on 01/04/2014 = Rs. 54,76,288/-

(as per ITR 6 Schedule DPM)

Equals to = 3,44,15,721 which is same as that of closing WDV as on 31/03/2014 calculated above.

(h) Considering above two facts, i.e. 'assessee itself claimed depreciation @ 15% in preceding year' and 'assessee inability to prove its assertion that it is an energy saving device' as required by New Appendix I, the AO held that depreciation on boiler is allowed @ 15% only instead of 80% for AY 2015-16.

11. The Id. CIT(A) affirmed the action of the Assessing Officer holding that there is no evidence to refute the findings of the AO.

12. Before the Tribunal, the Id. AR argued that the boiler surface was 282 M2 approximately 8 tones and basically used to control the flow of energy in an efficient manner. As per the brochure/the description manual, this boiler is an energy saving device for using heat and reduce over consumption and it generates superfast scheme. It also consumes low power which makes it eligible to be categorized under energy saving devices. The certificate of the HBID also denotes that it is not only boiler

but also used for controlling and improving efficiency in consumption of energy. Being modern and efficient, they consume less energy and hence be treated as energy saving devices.

13. Heard the arguments of both the parties and perused the material available on record.

14. Renewal power devices and power saving devices are used to conserve power and fuel. The purpose of allowing higher depreciation on these devices is to balance the higher capital cost with the savings made on account of fuel and power. Hence, the Income Tax Rules under item -III(8)(ix) and (xiii) allowed higher depreciation for such devices to encourage the capital investments and equipment manufacturers. As per the appendix - I(8)(ix)(d) dealing with specialized boilers and furnaces allow depreciation @ 80% on the high energy boilers having thermal efficiency higher than 75% in case of coal fired and 80% in case of oil or gas fired boilers. In the instant case, the assessee could not produce any evidences to prove the thermal efficiency of more than 75% of the boilers employed by them. Hence, in the absence of any tangible evidence to indicate the allowable thermal efficiency, we decline to interfere with the order of the Id. CIT(A). The appeal of the assessee on this ground is dismissed.

Foreign Exchange Fluctuation Loss - Rs. 89,20,326/-

15. The Assessing Officer treated the foreign exchange fluctuation loss of Rs. 89 lac as speculated loss u/s 43(5) r.w.s. 28 of IT Act. The Id. CIT(A) held that that transactions done in

currency derivatives do not fall in proviso to section 43(5) and hence nothing but speculative transactions. The Id. CIT(A) held that loss incurred in respect of currency derivatives is treated as speculation loss governed by section 73. Thus, the main contention of the revenue was that the currency derivatives as referred in Section 2 of the Securities Act, 1956 and hence the contract for differences are part of derivatives and hence the derivatives loss cannot be treated as a trading loss. The Id. AR submitted that during the year under consideration, the Assessee Company had incurred Forex Loss of Rs.89,20,326/- on account of foreign exchange fluctuation in respect of Currency Derivatives i.e. Currency Forward / Futures Contracts taken by Assessee. These Currency Derivatives are being taken by Assessee to hedge their Foreign Currency Exposure- created out of Export Sales Invoices being raised in Foreign Currency (USD) during the relevant previous year and base currency being INR (Indian Rupee). These Currency derivatives are undertaken to hedge, mitigate & minimize the Currency Exchange risk due to volatile movement in USD/INR.

16. After hearing the arguments, we find that the assessee company has taken derivatives to hedge against foreign currency and to take cover of risk associated with foreign currency transactions. The currency derivatives which are purchased by the assessee are integral part of the assessee's business and incidental to the core business of the assessee who is in the business of export of Rice. The assessee had an export turnover of Rs.580 Cr. during the year under consideration and the total loss incurred by the assessee on hedging of foreign currency was Rs.89 lacs. Hence, it can be

treated as a business expenditure. Reliance is being placed in the order of the DCIT Vs. Maddi Lakshamaiah & Co. Ltd. [2017] 82 taxmann.com 205 (Visakhapatnam - Trib.) in which the ITAT has held that "*Loss incurred under forward exchange contracts to hedge underlying exposure arising out of borrowing converted into foreign currency could not be said to be speculative in nature within definition of section 43(5)(d) and, hence, is an allowable expenditure.*"

17. Similarly, in the ease of LGW Ltd. vs. ITO, Kolkata 83 taxmann.com 68 (Kolkata Trib.), the Tribunal held that "*where forward contract in question was purely hedging transactions entered into by assessee to safeguard against loss arising out of fluctuation in foreign currency, loss on such transactions could not be held as speculative transactions felling within ambit of section 43(5).*"

18. We have also examined the order in the case of Perfect Circle India Ltd. vs. DCIT, [20T5] 60 taxmann.com 424 (Mumbai - Trib.), wherein the Co-ordinate Bench held "*that the foreign exchange loss incurred by the assessee on account of entering into forward contracts with the banks for the purpose of hedging the loss in connection with his import/export business cannot be held to be a speculative loss rather a business loss which can be set off against profit and gains of business subject to the condition that the assessee will have to satisfactorily prove that the maturity of the hedge did not exceed the maturity of the underlying transaction.*"

19. Hence, we hereby allow the derivatives loss arises out of hedging and also the associated brokerage and commission expenses paid. The appeal of the assessee on this ground is allowed.

20. In the result, the appeal of the assessee is partly allowed.
Order Pronounced in the Open Court on 31/10/2022.

Sd/-

(Yogesh Kumar US)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 31/10/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR