आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ,चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENTAND
SHRI MANJUNATHA.G, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.940/CHNY/2017**

निर्धारण वर्ष/Assessment Year: 2009-10

The ACIT, Corporate Circle-3(1), Chennai – 34.	vs.	**Tamilnadu Newsprint and Papers Ltd.,** No.67, TNPL Building, Mount Road, Chennai – 600 032. **PAN: AAACT 2935J**
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

&

आयकर अपील सं./**ITA Nos.: 895 & 896/CHNY/2017**

निर्धारण वर्ष/Assessment Year: 2009-10

Tamilnadu Newsprint and Papers Ltd., No.67, TNPL Building, Mount Road, Chennai – 600 032. **PAN: AAACT 2935J**	vs.	**The ACIT,** Corporate Circle-3(1), Chennai – 34.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

राजस्व की ओर से /Revenue by	:	Shri R. Mohan Reddy, CIT & Shri AR.V. Sreenivasan, Addl.CIT
निर्धारिती की ओर से/Assessee by	:	Shri R. Vijayaraghavan, Advocate
सुनवाई की तारीख/Date of Hearing	:	12.04.2023
घोषणा की तारीख/Date of Pronouncement	:	17.05.2023

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

The cross appeals by the Revenue and assessee in ITA Nos. 940/CHNY/2017 & 895/CHNY/2017 are arising out of the order of the Commissioner of Income Tax (Appeals)-13, Chennai in ITA No.1228/CIT(A)-11/AY 2009-10 dated 27.01.2017. The assessment was framed by the JCIT, Company Range-III, Chennai u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') for the assessment year 2009-10, vide order dated 30.12.2011.

Revenue's Appeal in ITA No.940/CHNY/2017

2. The only issue in this appeal of Revenue is as regards to the order of CIT(A) deleting the disallowance of 50% of additional depreciation made by the AO on the basis that new machineries were purchased and installed in financial year 2007-08 pertaining to assessment year 2008-09. For this, Revenue has raised many argumentative grounds, which we will deal with while adjudicating the issue.

3. Brief facts are that the assessee company is a domestic company, in which public are substantially interested and engaged

in the manufacture of newsprint, printing and writing paper and generation of power. The AO during the course of assessment proceedings noted that the assessee claimed additional depreciation of Rs.13,15,54,279/- pertaining to assessment year 2008-09. The AO noted that the assessee claimed that some of the plant and machineries were installed more than 180 days in assessment year 2008-09 on which the assessee claimed depreciation only @ 10% and hence, balance 10% depreciation was claimed during the current assessment year. The AO going through the provisions of section 32(1)(iia) of the Act noted that the above depreciable assets which were installed less than 180 days are only eligible for 50% depreciation during the relevant assessment year and no further depreciation is allowable in any assessment year. According to him there is no ambiguity in the provisions and therefore additional depreciation was denied to the assessee. Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) following the decisions of ITAT, Chennai Bench in the case of Automotive Coaches & Components Ltd., vs. DCIT in ITA No.1789/Mds/2014 and Hon'ble Karnataka High Court in the case Rittal India Pvt. Ltd., [2016] 66 taxmann.com (4) (Kar) allowed the

claim of assessee. The CIT(A) reproduced the observations of Hon'ble Karnataka High Court as under:-

" 7. Clause (iia) of Section 32(1) of the Act, as it now stands, was substituted by the Finance Act, 2005, applicable with effect from 01.04.2006. Prior to that, a proviso to the said Clause was there, which provided for the benefit to be given only to a new industrial undertaking, or only where a new industrial undertaking begins to manufacture or produce during any year previous to the relevant assessment year.

8. The aforesaid two conditions, i.e., the undertaking acquiring new plant and machinery should be a new industrial undertaking, or that it should be claimed in one year, have been down away by substituting clause (iia) with effect from 01.04.2006. The grant of additional depreciation, under the aforesaid provision, is for the benefit of the assessee and with the purpose of encouraging industrialization, by either setting up a new industrial unit or by expanding the existing unit by purchase of new plant and machinery, and putting it to use for the purpose of business. The proviso to Clause (ii) of the said Section makes it clear that only 50% of the 20% would be allowable, if the new plant and machinery so acquired is put to use for less than 180 days in a financial year. However, if nowhere restricts that the balance 10% would not be allowed to be claimed by the assessee in the next assessment year.

9. The language used in Clause (iia) of the said Section clearly provides that "a further sum equal to 20% of the actual cost of such machinery or plant shall be allowed as deduction under Clause (ii)". The word "shall" used in the said Clause is very significant. The benefit which is to be granted is 20% additional depreciation. By virtue of the proviso referred to above, only 10% can be claimed in one year, if plant and machinery is put to use for less than 180 days in the said financial year. This would necessarily mean that the balance 10% additional deduction can be availed in the subsequent assessment year, otherwise the very purpose of insertion of Clause (iia) would be defeated because it provides for 20% deduction which shall be allowed

10. It has been consistently held by this Court, as well as the Apex Court, that beneficial legislation, as in the present case, should be given liberal interpretation so as to benefit the assessee. In this case, the intention of the legislation is absolutely clear, that the assessee shall be allowed certain

> additional benefit, which was restricted by the proviso to only half of the same being granted in one assessment year, if certain condition was not fulfilled. But, that, in our considered view, would not restrain the assessee from claiming the balance of the 11 I.T.A. No.1789/Mds/14 benefit in the subsequent assessment year. The Tribunal, in our view, has rightly held, that additional depreciation allowed under Section 32(1)(iia) of the Act is a one time benefit to encourage industrialization, and provisions related to it have to be construed reasonably, liberally and purposively, to make the provision meaningful while granting additional allowance. We are in full agreement with such observations made by the Tribunal."

Finally, the CIT(A) allowed the claim of additional depreciation of 10% and allowed the claim of assessee. Aggrieved, now Revenue is in appeal before us.

5. After hearing both the sides and going through the facts of the case, it is clear that only dispute is as regards to additional depreciation claimed by assessee u/s.32(1)(iia) of the Act, which was substituted w.e.f. 01.04.2006. No contrary decision was given during the hearing and the issue seems covered by the decision of Hon'ble Karnataka High Court in the case of Rittal India Pvt. Ltd., *supra* and hence, we dismiss this issue of Revenue's appeal. The appeal of the Revenue is dismissed.

Assessee's Appeal in ITA No.895/CHNY/2017

6. The first issue in this appeal of assessee is as regards to the order of CIT(A) confirming the addition made by AO of notional

exchange gain of Rs.13,97,10,757/- on reinstatement of foreign currency loan treating the same as revenue income as against claimed by assessee as capital in nature. For this, assessee has raised many argumentative grounds, which we will deal with while adjudicating the issue.

7. Briefly stated facts are that, the assessee claimed a sum of Rs.13,97,10,757/- being amount as notional exchange gain on reinstatement of foreign currency loan as capital receipt and recorded the same to the profit & loss account. The assessee claimed that the foreign currency loan has been reinstated as on 31.03.2009 as per prevailing foreign exchange rates and accordingly the gain on the same has been credited to the profit & loss account. The assessee before AO explained that the above reinstatement of foreign currency loan given raise to foreign currency gain was on account of reinstatement of foreign currency loan which was taken for Mill Development Plan. The AO has not accepted the plea of the assessee for the reason that the assessee following Mercantile System of Accounting and therefore as per Accounting Standary-11, any gain or loss on foreign exchange has to be debited and credited to the profit & loss account. He also noted that this gain is not related to any part of the fixed assets. Therefore following the

decision of Hon'ble Supreme Court in the case of Woodward Governor India Pvt. Ltd., 179 Taxman 326 treated the entire sum of foreign exchange gain as revenue receipt and added to the returned income of the assessee. Aggrieved, assessee preferred appeal before CIT(A).

8. The CIT(A) after detailed discussion noted that though the assessee claimed that the gain is related to expansion project, however it is not able to prove with evidence that the same is relatable to fixed assets. Therefore, the CIT(A) also following the decision of Hon'ble Supreme Court in the case of Woodward Governor India Pvt. Ltd., *supra,* noted that in case there is a gain, the assessee is required to offer the same as income and if there is a loss, the assessee can claim unrealized loss as expenses. Therefore, the CIT(A) also treated the same as income of the assessee and for this, he observed as under:-

> I have carefully considered the facts of the case, the AO's finding given in the assessment order and the appellant's submissions made during the appeal proceedings, The assessee is following mercantile method of accounting and as per the Accounting Standard -11, whether any gain or loss on foreign exchange is to be credited or debited to the Profit & loss A/c. Moreover, though the assessee has claimed that the gain is related to expansion project, however he is not able to prove with evidences that the same is relatable to the fixed assets. Therefore, the assessee is required to follow up the treatment and accordingly required to offer the same as income. The assessee had not done so. Therefore, relying on the Apex

> Court decision Woodward Governor India Pvt. Ltd., 179 Taxman 326, the Hon'ble Supreme Court held that the accounting and giving of treatment as per Accounting Standard Level-11, if assessee claims unrealised loss as expenses and unrealized gains as income, then "as profits for income tax purpose are to be computed in accordance with ordinary principles of commercial accounting, unless such principles stand superseded or modified by the legislative enactments, unrealized profits in the shape of appreciated value of goods remaining unsold at the end of the accounting year and carried over to the following years account in continuing business are not brought to the charge as a matter of practice, though, as stated above, loss due to the fall in the price below cost is allowed even though such loss has not been realised. Therefore, the foreign exchange gain accruing to the assessee is requires to be treated as income of the assessee. Accordingly, the AO adding sum of Rs.13,97,10,757/- as foreign exchange gain to the total income is confirmed. The ground of appeal on this issue is accordingly dismissed.

Aggrieved, now assessee is in appeal before us.

9. Now, the ld.counsel for the assessee filed detailed note before us, wherein it was claimed that the company embarked upon an expansion project i.e., Mill Development Plan (MDP) involving a capital outlay of Rs.619 crores for increasing pulp and paper production capacities. The MDP project cost was financed by foreign currency, rupee loans and internal accruals and for this, the assessee gave details as under:-

Capital Cost	Rs. 619.00	Crore
Funding:-		
1. Foreign Currency Term Loan	Rs.140.00	Crore (USD 31 Million)
2. Rupee Term Loan	Rs.275.00	Crore
3. Internal Accrual	Rs.204.00	Crore
	Rs.619.00	Crore

The assessee filed copy of 29th Annual Report relating to financial year 2008-09 relevant to this assessment year 2009-10 and referred to page 7, wherein the scope of commissioning status of MDP project was dealt with and the funding which was tuned through foreign currency and INR loans. According to ld.counsel, MDP project was commissioned primarily to increase paper and pulp production and power generation capacities and to add related auxiliary equipments as under:-

1) Hard Wood Pulp Mill (300 tpd)
2) Re-Causticising Plant
3) Chlorine Di-oxide Plat (15 tpd)
4) Oxygen Generation Plat
5) Chemical Bagasse Pulp ECF Bleaching Plant (500 tpd)
6) Chemical Recovery Boiler (1300 tpd)
7) Evaporator
8) Turbo Generator (20 MW)
9) Lime Kilin etc.

The ld.counsel drew our attention to page 7 of the Annual Report where Mill Development Plan is described. The assessee also gave foreign currency term loans availed for the above project amounting to Rs.140 Crore (USD 31 Million), which was utilized for acquisition imported fixed assets as listed below:-

Project Description	Currency	Value in Foreign currency	Value in INR
Supply of Chlorine Dioxide Plant	CAD	3326600	126460598
Hardwood Fibre line	EUR	12527141	721440732
500 tpd Chemical Bagasse	SEK	67848513	412275009

Pulp ECF Bleach Plant Augmentation of Recausticizing Plant	USD	3079673	134596016
Supply of Hardwood Chipping line	USD	857478	38106357
Bop instruments – consistency transmitters	EUR	14650	846770
Ball on/off valves and butterfly on/off valves	EUR	108910	6030137
Wet lap machine	EUR	440000	25355000
			146,51,10620

The ld.counsel also gave a complete list of project description, order realized under MDP, currency and value of foreign currency and in turn value in Indian Rupees. We noted and confronted to ld.counsel for the assessee that these details were never examined by the AO or CIT(A). At this point, ld.counsel stated that part of the details was with the AO but he agreed that complete details were not submitted before the lower authorities. Hence, he requested that for verification of these details and decide the issue afresh, matter can be referred back to the file of the AO. The ld.counsel also stated that in this paper-book, he has filed complete details of imported assets, purchase order, sample bill of entry, bank granting loan, payment to vendors and consequent computation of exchange gain. He argued that this paper-book consisting of 64 pages contains the complete details and he is ready to file these details before the AO in case the matter is remitted back.

10. When these facts were confronted to ld.CIT-DR, he objected for allowing another inning to the assessee and argued that no doubt part of the details were with the AO but complete details of Mill Development Project was not before AO and foreign currency amount was invested in expansion of the project, the details were never submitted. In term of the above, the ld.CIT-DR opposed remitting the matter back to the file of the AO or the CIT(A).

11. After hearing both the sides and going through the facets of the case, we noted that now the assessee has filed complete details and tried to prove that this foreign currency gain is arising out of Mill Development Plan which is an expansion project of the assessee company. The AO needs to verify all these details and for this purpose, matter has to go back to the file of the AO. Needless to say, that the assessee will file complete details before AO as to how the foreign currency loans were utilized for the purpose of expansion of project of mill development and for not any other purpose. In term of the above, we remit this issue back to the file of the AO.

12. The next issue in this appeal of assessee is as regards to the order of CIT(A) restricting the disallowance to the extent of exempt

income of Rs.18,28,080/- as against the disallowance made by the AO at Rs.4,57,368/- and thereby enhancing the disallowance in regard to expenses claimed against the exempt income by applying the provisions of section 14A r.w.rule 8D of the Income Tax Rules, 1962.

13. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the AO has made disallowance under Rule 8D(2)(iii) i.e., average value of investment of Rs.4,57,368/- and the CIT(A) enhanced the disallowance to the extent of exempt income i.e., dividend income earned by assessee i.e., Rs.18,28,080/-. The issue is now covered by the decision of Hon'ble Delhi High Court in the case of Cheminvest Ltd., vs. CIT, 378 ITR 33, wherein it is held that disallowance u/s.14A r.w.rule 8D can be made to the extent of exempt income earned by the assessee. The CIT(A) has simply followed the decision of Hon'ble Delhi High Court and for which he has not committed any infirmity, hence we affirm the order of CIT(A) and accordingly, this issue of assessee is dismissed.

14. The assessee's appeal is partly-allowed for statistical purpose.

ITA No.896/CHNY/2017

15. The appeal by the assessee in ITA No.896/CHNY/2017 is arising out of the order of the Commissioner of Income Tax (Appeals)-13, Chennai in ITA No.196/CIT(A)-11/AY 2009-10 dated 27.01.2017. The assessment was framed by the ACIT, Corporate Circle 3(1), Chennai u/s. 143(3) r.w.s. 263 of the Act vide order dated 31.03.2015.

16. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the disallowance of forward premium treating the same as capital expenditure by applying the provisions of section 43A of the Act. For this assessee has raised following Ground No.2:-

> 2. The Commissioner of Income tax (Appeals) erred in confirming the disallowance of forward premium by wrongly treating the same as capital expenditure by applying the provisions of section 43A. the sum in dispute is not an exchange loss but an expenses (Forward Premium) payable to bankers to mitigate the forex risk as foreign currency loan was not for acquiring any specific asset from a country outside India.
>
> 2.1 The Commissioner of Income tax (Appeals) ought to have appreciated that the expenditure of Rs.4,04,25,325/- includes forward premium relating to forward contracts in respect of foreign currency loans availed for working capital purpose and acquisition of assets within India, therefore allowable as revenue expenditure. Section 43A is not applicable in this case.

17. Brief facts are that assessee filed its return of income for the relevant assessment year 2009-10 on 29.09.2009 and assessment was completed u/s.143(3) of the Act by the AO vide order dated 31.12.2011 after making some additions. Subsequently, the PCIT issued show-cause notice u/s.263 of the Act dated 28.10.2013 as to why the forward premium claimed on foreign exchange fluctuation as capital receipt be not treated as revenue receipt. The PCIT passed the revision order directing the AO to verify the assessee's claim of notional income with reference to annual accounts and verify the nature of forward transactions (hedging transactions) as to whether the assessee has debited the amount crystallized into profit and loss account. Consequently, the AO framed the set aside assessment. The AO noted that the PCIT while revising the assessment u/s.263 of the Act has noted the following facts:-

> "a. It was seen from the documents available on record that the assessee has claimed and allowed Forward Premium on exchange fluctuation as detailed below:

Forward Premium account	37,07,838
Forward Premium account – Buyers credit	71,19,911
Forward Premium account – LTL	2,44,90,066
Forward Premium account – LTL-MD plan	51,07,510
Total	4,04,25325

> The records show that the assessee credited the gain in value of Rs.46,64.38 lakh to Hedging Reserve account under the liability head in the Balance Sheet. The assessee should have taken only the net loss/gain to Profit &

> Loss account as per AS 30. Hence, the expenses claimed Rs.4,04,25,325/- is required to be disallowed.

The AO simply noted that the expenditure is capital in nature and he accordingly disallowed by observing as under:-

> 1. Forward Premium
>
> From the submission of the assessee, it is seen that the assessee has claimed an expenditure of Rs.4,04,25,325/- crores as forward premium relating to forward contracts taken for edging of foreign currency loans. It is also seen that the foreign currency loan were taken for capital expenditure purposes. Forward premium made for capital expenditure to be capitalized as per sec. 43A of the I.T. Act, 1961. In this regard, the claim made by the assessee is disallowed and added back to the income of the assessee."

Aggrieved, assessee preferred appeal before CIT(A).

18. The CIT(A) also confirmed the action of the AO by holding that the provisions of section 43A of the Act are clearly applicable to the facts of the case of the assessee and hence, foreign exchange loan taken were for the purpose of capital expenditure and therefore forward premium paid by assessee is capital expenditure and for this, he recorded the following decision:-

> "Decision
> I have gone through the order of the AO and submission made by the ld.AR. As submitted by the Assessee the sum of Rs.4.04 Crores represents the prorate premium payable to the Banks on account of the forward contracts taken to cover the exchange risk in respect of foreign currency liability under various heads. However the fact remains that the foreign currency loans were taken for capital expenditure purpose therefore the provisions of sec 43A are clearly applicable to the amount claimed by the

> Assessee. Hence the AO has rightly disallowed sum Rs.4,04,25,325/- under sec 43A of the Act. Assessee's appeal on this issue is accordingly dismissed."

Aggrieved, assessee came in appeal before the Tribunal.

19. We have heard rival contentions and gone through facts and circumstances of the case. Before us, the argument of the assessee was that this expenditure was claimed on account of forward premium relating to forward contracts in respect of foreign currency loans availed for the purpose of working capital and acquired assets in India and claimed expenditure of Rs.4.04 crores. The contention of the assessee that this liability has actually been incurred and has become payable to banks in respect of foreign contracts entered with banks and this amount does not represent liability on account of restatement as on the previous year. Its plea was that since the foreign currency loan was not for acquiring any specific asset from country outside India and the exchange loans arose only on account of premium paid on forward contracts and hence, it should not be treated as capital expenditure rather it is revenue expenditure. We do not agree with the contention of the assessee for the reason that the provisions of section 43A of the Act specifically provides that the amount of increase or decrease in the liability due to fluctuation in exchange rate should be adjusted against the actual cost of the

capital expenditure or the cost of acquisition of capital asset. When the terms of Section 43A of the Act are fulfilled, it is mandatory to take the actual cost, capital expenditure or the cost of acquisition at a higher or lower figure for the purposes of depreciation allowance irrespective of whatever might have been the position de hors the provision. This provision has been interpreted by the Hon'ble High Court of Madras in the case of CIT vs. Elgi Rubber Products Ltd., [1996] 219 ITR 109, wherein it has been held that having regard to the provisions of section 43A of the Act, the additional amount paid to the ICICI due to fluctuation in exchange rate was capital in nature and not revenue. Similarly, the Hon'ble High Court of Madras in the case of CIT vs. South India Viscose Ltd., [1998] 229 ITR 203 held a similar view that the amount paid as difference in exchange value resulting in higher installment paid due to exchange fluctuation in respect of loans taken from foreign banks for purchase of machinery, is capital in nature. In view of the above, we are of the view that the AO and CIT(A) has rightly disallowed the expenditure claimed by assessee and we affirm the same. Therefore, the appeal of the assessee is dismissed.

20. In the result, the appeals filed by the Revenue in ITA No.940/CHNY/2017 and assessee in ITA No.896/CHNY/2017 are

dismissed and the appeal filed by the assessee in ITA No.895/CHNY/2017 is partly allowed for statistical purposes.

Order pronounced in the open court on 17th May, 2023 at Chennai.

Sd/-	Sd/-
(मंजुनाथ. जी)	(महावीर सिंह)
(MANJUNATHA.G)	**(MAHAVIR SINGH)**
लेखा सदस्य/ACCOUNTANT MEMBER	उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 17th May, 2023

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. निर्धारिती/Assessee 2. राजस्व/Revenue 3. आयकरआयुक्त /CIT
4. विभागीय प्रतिनिधि/DR 5. गार्ड फाईल/GF.