IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'F' NEW DELHI

BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No.6081/Del/2019
Assessment Year: 2015-16
With
ITA No.6913/Del/2019
Assessment Year: 2016-17

PTC India Financial Services Ltd., Telephone Exchange Building, 8, Bikaji Cama Place, Delhi-110066	**Vs.**	Addl. CIT, Special Range-7, New Delhi
PAN :AAECP0501C		
(Appellant)		**(Respondent)**

With
ITA No.5654/Del/2019
Assessment Year: 2015-16
With
ITA No.7517/Del/2019
Assessment Year: 2016-17

Addl. CIT, Special Range-7, New Delhi	**Vs.**	PTC India Financial Services Ltd., 2nd Floor, NBCC Tower, 15, Bikaji Cama Place, Delhi-110066
		PAN :AAECP0501C
(Appellant)		**(Respondent)**

Assessee by	Sh. Salil Kapoor, Advocate Sh. Utkarsa Gupta, Advocate
Department by	Sh. Vivek Vardhan, Sr. DR

Date of hearing	21.12.2023
Date of pronouncement	21.12.2023

ORDER

PER SAKTIJIT DEY, VICE-PRESIDENT

Captioned cross appeals arise out of two separate orders of learned Commissioner of Income Tax (Appeals)-38, New Delhi, pertaining to assessment years 2015-16 and 2016-17.

ITA No.6081/Del/2019 (Assessee's Appeal)
Assessment Year : 2015-16

2. Ground no. 1 is a general ground, hence, does not require adjudication.

3. In ground no. 2, the assessee has raised the issue of disallowance of foreign exchange fluctuation loss amounting to Rs.5,15,28,999/-.

4. Briefly the facts are, the assessee, a resident corporate entity, is a Non-banking Financial Company (NBFC) engaged in the business of providing finance to companies in energy sector. For the assessment year under dispute, the assessee filed its return of income on 30.09.2015, declaring income of Rs.3,04,46,18,830/-. In course of assessment proceedings, the Assessing Officer, while examining the audited Financial Statements of the assessee, noticed that in the year under

consideration, the assessee has claimed foreign exchange fluctuation loss of Rs.5,15,28,999/- on account of exchange rate difference of External Commercial Borrowings (ECB) and hedging contracts. Noticing this, he called upon the assessee to justify the deduction claimed. Though, the assessee furnished detailed submissions in support of its claim, however, the Assessing Officer did not find merit in them. Ultimately, he concluded that the loss claimed by the assessee, being a notional loss, cannot be allowed as deduction. Accordingly, he added the said amount to the income of the assessee. While deciding the appeal of the assessee, learned first appellate authority confirmed the addition.

5. Before us, it is a common point between the parties that the issue is squarely covered in favour of the assessee by the decisions of the Tribunal in assessee's own case in assessment years 2012-13, 2013-14 and 2014-15.

6. Having considered rival submissions, we find, this a legacy issue between the contesting parties, which continues from assessment year 2012-13. While deciding the issue for the first time in assessment year 2012-13, the Tribunal in ITA No. 4985 &

5051/Del/2017, dated 09.05.2023 has decided the issue in favour of the assessee by holding as under:

> *"27. Upon careful consideration, we agree with the submissions of the ld. Counsel for the assessee that the decision of Hon'ble Supreme Court in the case of Woodward Governor India (P) Ltd. (supra) is applicable. Facts highlighted by the ld. Counsel of the assessee also show that Woodward Governor India (P) Ltd. (supra) extensively discussed the judgment of Indian Molasses Co. P. Ltd. and duly distinguished the same. Another factor in favour of the assessee is that during AYs 2017-18 & 2018-19, assessee earned income on reinstatement of ECB and the same was duly offered to tax and the same was accepted by the assessing officer during the assessment proceedings. So, when the Revenue is accepting the gains, the same treatment should be given to the loss and we are convinced by the submissions of the ld. Counsel for the assessee. Hence, we set aside the orders of the authorities below and delete the addition."*

7. Similar view was expressed by the Tribunal while deciding the issue in assessment years 2013-14 and 2014-15 in ITA No.2162/Del/2017 & Ors., dated 29.11.2023. The observations of the Coordinate Bench in this regard are as under:

"12. We have considered the submission of the parties and perused the records. We observe that during the AY 2012-13 also the assessee had incurred loss of Rs. 10.22 crores on ECB liability which was disallowed by the Ld. AO. On appeal by the assessee, the Ld. CIT(A) affirmed the order of the Ld. AO following the order of the Ld. CIT(A) for AY 2013-14. However, when the assessee carried the matter in appeal before the Tribunal, the Tribunal deleted the disallowance in its order in ITA No. 5051/Del/2017 dated 09.05.2023 for AY 2012-13.

13. While deciding the assessee's appeal for AY 2014-15 the Ld. CIT(A) simply followed his order for the AY 2013-14 without considering the submission of the assessee. In our opinion it is necessary to reproduce the assessee's submission which contains rebuttal of the Ld. CIT(A)'s contentions based on which the order of the Ld. AO was affirmed for AY 2013-14 on the point.

"3.4 It is humbly submitted that the additions made to Appellant's Computation of Income is unwarranted and is void ab-inito, our rebuttal against above allegations are as under:

Foreign Exchange Loss incurred on re-instatement is an allowable expenditure
3.5. At the outset, it is submitted before your Honour that foreign exchange fluctuation loss recorded on re-instatement of a revenue account is an allowable expenditure under section 37 of the Act. In this regard, before asserting any contentions, it is imperative to highlight the provisions of section 37 of the Act.
Legal Provisions
The relevant extract of section 37 of the Act is reproduced below:
**37(1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the Assessee), lad out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head Profits and gains of business or profession,*
Therefore the following conditions should be satisfied for claiming an expense to be tax deductible under the provisions of section 37(1) of the Act:

- *There should be nexus between expenses incurred and business activities undertaken by the Assessee. In other words, the expenses should be incurred 'wholly and exclusively for the purpose of the business;*
- *The expenses incurred should satisfy the test of commercial expediency;*
- *The expenses should not be capital in nature;*
- *The expenses should not be in the nature of personal expenses*

Applicability to instant case
3.6. In this regard it is submitted that all the law requires is that the expenditure should not be in the nature of capital expenditure or personal expenditure of the Appellant, and should be wholly and exclusively incurred for the purposes of the business. Your Honour would appreciate that the impugned expense ie. loss on foreign exchange loss has been incurred by the appellant during the course of its business and is unequivocally justifiable in terms of commercial/business expediency. Expense is neither capital in nature nor a personal expense, hence duly allowable under section 37 of the Act.
3.7 Reference can be drawn from well settled position articulated by various courts including the Apex Court in case of CIT vs Woodward Governor India (P) Ltd SC (2009). Relevant extract of the case which helps to determine the deductibility of an expenditure is stated below:
"21. In conclusion, we may state that in order to find out if an expenditure is deductible the following have to be taken into account (i) whether the system of accounting followed by the assessee is mercantile system, which brings into debit the expenditure amount for which a legal liability has been incurred before it is actually disbursed and brings into credit what is due, immediately it becomes due and before it is actually received; (ii) whether the same system is followed by the assessee from the very beginning and if there was a change in the system, whether the change was bona fide; (iii) whether the assessee has given the same treatment to losses claimed to have accrued and to the

gains that may accrue to it; (iv) whether the assessee has been consistent and definite in making entries in the account books in respect of losses and gains; (v) whether the method adopted by the assessee for making entries in the books both in respect of losses and gains is as per nationally accepted accounting standards; (vi) whether the system adopted by the assessee is fair and reasonable or is adopted only with a view to reducing the incidence of taxation."

3.8. Similar inference has been drawn by corresponding bench of Apex Court in below mentioned judicial precedents

- *Oil & Natural Gas Corp Ltd (SC) (2010) and*
- *Bharat Earth Movers (SC)(2000)*

Applicability of judgements of Apex Court to the instant case

3.9. It is imperative to analyze the applicability of judgements of Apex Court to the facts of the present case especially in light of the tests laid down by Apex Court in case of Woodword Governor (Supra). In this regard, it is submitted that the Appellant is in compliance with all the conditions mentioned by the Hon'ble Supreme Court in the above case with respect to allowability of an expenditure.

- *Consistently following Mercantile System of Accounting*

Appellant has consistently followed mercantile system of accounting and prepared its books as per available guiding principles. It has never been disputed by the Learned AO that Appellant is not following mercantile system of accounting and has not consistently pursued the same. Further, Learned AO has not made any observation with respect to inconsistency or any discrepancy in books of accounts of the Appellant.

- *Consistently following Nationally Accepted Accounting Standards*

Appellate has been consistent in following nationally accepted accounting standards see Accounting Standards, Appellant is required to re-state the value of ECB liability on each balance sheet date depending on the exchange rate prevailing on the date of the balance sheet and to the profit and loss account Accordingly, Appellant profit/loss on such restatement to the restated the value of ECB liability as on March 31, 2014 and based on the accrual principle of accounting stipulated by Accounting Standards, incurred foreign fluctuation exchange loss on such re-statement.

3.10. Further, it is submitted that Appellant is a listed public company incorporated under the Companies Act, NBFC The Appellant is red with the RBI as a 1956 and is registered inter-alia engaged in the business of making principal investments in, and providing financing solutions for companies with projects across the energy value chain. During the year under consideration, ECBs were obtained by the Appellant and were utilized for onward lending in line with the main objective of Appellant. Since, Appellant is a NBFC, it deals in purchase (obtaining) and sale (lending) ECBs to its various customers. Thus foreign exchange loss considered on accrual basis on the ECB liability is a normal business expenditure and should be allowed as expenditure under Section 37(1) of the Act.

3.11. Based on above facts, Appellant vehemently submits that foreign exchange loss recorded by the Appellant on accrual basis on valuation of ECB liability on the balance sheet date should be allowed as expenditure under section 37(1) of the Act.

Misconceived interpretation of Apex Court judgement rendered in case of Woodward Governer (supra)

It is submitted before your Honour, that Learned AO has misconceived the finding of the Apex Court in case of Woodward Governer (supra). As stated above, Learned AO alleged that the facts of the aforesaid mentioned case are not similar to that of the Appellant's as same deals with treatment of foreign exchange loss within the ambit of section 43A of the Act.

3.12. Your Honour would appreciate that Hon'ble Supreme Court not only dealt with treatment of foreign exchange loss with regard to provisions of section 43A but also with respect to the loss outside the purview of section 43A of the Act i.e. profit/ loss arising on account of appreciation/ depreciation in value of foreign currency held by tax payer on revenue account. Relevant findings of Hon ble Supreme Court is this regard have already been stated in para 3.5 above. Further relevant extract of the case law is reproduced as under -

"After careful consideration it held that the assesees's claim for loss arising as a result of fluctuation in foreign exchange rates on the closing day of the year has been disallowed by the Assessing Officer, inter alia, on the ground that this liability was a contingent liability and the loss was a notional one. The main ingredient of a contingent liability is that it depends upon happening of a certain event. We are of the considered opinion that in the case of the assessed the 'event' le. the change in the value of foreign currency in relation to Indian currency has already taken place in the current year. Therefore, the loss incurred by the assessed is a fait accompli and not a notional one.

....

"We, therefore, reject the submission of the Appellant in these appeals that in the revenue account cases, the increase in liability on account of the fluctuation, in the rate of foreign exchange prevailing on the last day of the financial year is notional or contingent and therefore cannot be allowed as a deduction in terms of Section 37 of the Act."

3.13. In light of above, it is submitted that the aforesaid case laws not only deals with the loss falling under the purview of section 43A of the Act but also other losses outside the purview of section 438 of the Act and are thus are squarely applicable to the instant case.

Non-applicability of judgement - Indian Molasses Co. P. Ltd. to the instant case

3.14 It is respectfully submitted that, recently your Honour while adjudicating the matter for AY 2013-14, placed incorrect reliance on the decision rendered by Hon'ble Apex Court in case of Indian Molasses Co. P. Ltd. (37 ITR 66). Your Honour held that although such loss was revenue in nature, however, it did not qualify as "expenditure" and thus cannot be allowed as deduction under the provisions of the Act.

Further, on the contention of the Appellant that the matter is covered in its favour by Apex Court Judgement in ca of Woodward Governer, your Honour held that the same could not be followed case as this judgement was in direct

conflict with the decision of larger bench in case of Indian Molasses Co. P. Ltd. (Supra). Relevant extract of the appellate order is also reproduced hereunder for ease of your Honour's reference-

"5.5 In this case, the foreign currency was utilized as circulating capital and, hence, the gain or loss relating to its appreciation or depreciation is to be treated as on revenue account, ie, income or expenditure, as the case may be. The question is: Whether, for purposes of computing total income under the Income tax Act, such income or loss has to be allowed as deduction on year-to-year basis or at the time of final settlement of accounts.

There is no specific section in the Income Tax Act dealing with Income/expenditure corresponding to the revenue gain/loss due to exchange rate fluctuation. While the gain is treated as income Incidental to business, a loss is treated as expenditure allowable u/s 37(1) the Act. The Hon Supreme Court, In the case of Indian Molasses Co. P. Ltd. vs. CIT (1959) 37 ITR 66 (SC), had occasion to consider the connotation of the term 'expenditure' occurring in section 10(2) of the Income Tax Act, 1922 [which was pari materia with the section 37(1) of Income tax Act, 1961.....

.....

5.9 Exchange rate is dynamic and fluctuates virtually on day-to-day basis. Hence, if there is gain today, there may be bigger gain by tomorrow or it may be wiped out or there may even be a loss. Hence, the loss on account of exchange rate fluctuation on a particular day, unless it happens to be the date of settlement of accounts, is transitory in nature. That being the case, it can be said that it does not pass the criteria of being called 'expenditure', as laid down by the Hon. Supreme Court in the case of Indian Molasses Co. P. Ltd. (supra). Incidentally, the same should also apply in the case of gain. But, the case at hand Involves loss and it is for that reason that loss is being discussed:

.....

5.15. According to the appellant, the decision in the case of Woodward Governor India. (P) Ltd. (supra) should be taken to be the authority for the general proposition that loss due to exchange rate fluctuation in respect of the value of ECBs is, as a rule, revenue expenditure to be allowed as deduction u/s 37(1) of the Act. In view of the foregoing discussion, this argument is not accepted, it cannot be accepted for the simple reason that, if that were done, it would bring the decision in the case of Woodward Governor India(P) Ltd. (supra) in direct conflict with the decision of the larger bench in the case of Indian Molasses Co. P. Ltd. v CIT (supra) as well as with the subsequent decision by the same bench in the case of Southern Technologies Ltd. (supra).

5.16. In view of the foregoing discussion, the loss claimed by the appellant on account of foreign exchange fluctuation on reinstatement of ECBs at Rs. 18.82 crores cannot be treated as revenue expenditure u/s 37(1) of the Act. The disallowance made by the AO is therefore confirmed."

3.15. At this juncture, it is highlighted that the Apex Court in case of Woodword Governor (supra) has extensively discussed the judgement in case of Indian Molasses (Supra) and distinguished the same. Relevant extract of

Woodword Governor is reproduced hereunder for ease of your Honour's reference:

"13. As stated above, one of the main arguments advanced by the learned Additional Solicitor General on behalf of the Department before us was that the word "expenditure" in Section 37(1) connotes "what is paid out and that which has gone irretrievably. In this connection, heavy reliance was placed on the judgment of this Court in the case of Indian Molasses Company (supra). Relying on the said judgment, it was sought to be argued that the increase in liability at any point of time prior to the date of payment cannot be said to have gone irretrievably as it can always come back. According to the learned counsel, in the case of increase in liability due to foreign exchange fluctuations, if there is a revaluation of the rupee vis-à-vis foreign exchange at or prior to the point of payment, then there would be no question of money having gone irretrievably and consequently, the requirement of "expenditure" is not met. Consequently, the additional liability arising on account of fluctuation in the rate of foreign exchange was merely a contingent/notional liability which does not crystallize till payment. In that case, the Supreme Court was considering the meaning of the expression "expenditure incurred while dealing with the question as to whether there was a distinction between the actual liability in presenti and a liability de futuro. The word "expenditure" is not defined in the 1961 Act. The word "expenditure is, therefore, required to be understood in the context in which it is used. Section 37 enjoins that any expenditure not being expenditure of the nature described in Sections 30 to 36 laid out or expended wholly and exclusively for the purposes of the business should be allowed in computing the income chargeable under the head "profits and gains of business. In Sections 30 to 36, the expressions "expenses incurred" as well as "allowances and depreciation has also been used. For example, depreciation and allowances are dealt with in Section 32. Therefore, Parliament has used the expression "any expenditure" in Section 37 to cover both. Therefore, the expression "expenditure" as used in Section 37 may, in the circumstances of a particular case, cover an amount which is really a "loss" even though the said amount has not gone out from the pocket of the assessee.

.....

15. For the reasons given hereinabove, we hold that, in the present case, the "loss" suffered by the assessee on account of the exchange difference as on the date of the balance sheet is an item of expenditure under Section 37(1) of the 1961 Act.

.....

21. In conclusion, we may state that in order to find out if an expenditure is deductible the following have to be taken into account (1) whether the system of accounting followed by the assessee is mercantile system, which brings into debit the expenditure amount for which a legal liability has been incurred before it is actually disbursed and brings into credit what is due, immediately it becomes due and before it is actually received; (ii) whether the same system is followed by the assessee from the very beginning and if there was a change in the system, whether the change was bona fide; (iii) whether the assessee

has given the same treatment to losses claimed to have accrued and to the gains that may accrue to it; (iv) whether the assessee has been consistent and definite in making entries in the account books in respect of losses and gains; (v) whether the method adopted by the assessee for making entries in the books both in respect of losses and gains is as per nationally accepted accounting standards; (vi) whether the system adopted by the assessee is fair and reasonable or is adopted only with a view to reducing the incidence of taxation."

3.16. As stated above, the principal as laid down in case of Woodward Governer (supra) was also upheld by coordinated bench of Apex Court in case of Oil & Natural Gas Corpn. Ltd. (2010) 230 CTR (SC) 313. The Apex Court relying on the judgment of coordinated bench in case of Woodward Governer (supra) held as follows-

"We are of the opinion that the ratio of the said decision, with which we are in respectful agreement, squarely applies to the facts at hand and, therefore, the loss claimed by the assessee on account of fluctuation in the rate of foreign exchange as on the date of balance sheet is owable as expenditure under's 37(1) of the Act."

3.17. Accordingly, it is submitted that the facts in instant case are similar to those in case of Woodword Governor (Supra) and thus are distinguishable with the judgment of Indian Molasses Company (supra).

Non-Applicability of Instructions No. 3/2010

3.18. Ld. AO placed reliance on the Instruction No. 3/2010 dated 23-03-2010 issued by CBDT while disallowing the above expense. In this regard, it is No. 3/2010 cannot override the decision humbly submitted that the Instructions of the Apex Court- Woodward (supra). Once the Apex Court has provided its findings, it shall become binding precedent and any contrary instructions will not override the same. Your Honour's attention is invited to favourable judgments (mentioned below) where, on similar set of facts, various courts have held the issue in favor of the Appellant

- *Hon'ble Delhi High Court in case of Munjal Showa Limited v Deputy Commissioner of Income tax (W.P. (c) 1707/2014 & cm no. 3569/2014) dated February 22, 2016*

Hon ble Delhi Court decided the issue of loss arising on derivative contract on account of Mark to Market reinstatement in favour of assessee and held as under-

"44. This has to be also appreciated in the context of the Assessee following the mercantile system of accounting and Section 145 of the Act. The income of the Assessee is to be computed consistent with the regular method of accounting followed by the Assessee. The Assessee has been following AS-11 and AS-30 issued by the ICAI, in terms of which the loss/gains on outstanding derivatives contracts are to be recognized on mark to market basis. The Assessee is right in contending that CBDT Instruction No. 3 of 2010 cannot possibly override the existing decisions of the Supreme Court/ High Court on similar issues. The legal position in this regard has been explained in Ratan Melting (supra) and has been reiterated in CIT v. Nagesh Knitwears (P.) Ltd.

(2012) 345 ITR 135 (Delhi) and CIT v. Indian Oil Co. Ltd., (2012) 254 CTR 113 (Bom)."
(Emphasis supplied)

- *Hon'ble ITAT in case of Reliance Communications Ltd. vs. The Commissioner of Income Tax [I.T.A. No. 671/Mum/2013)*

As per the facts of the case, the assessee company had raised funds to the tune of Rs. 6485 crores by way of foreign currency convertible bonds (FCCB) during the previous Assessment Year. Out of the said FCCB funds, an amount of Rs. 5142 crores are given to M/s Reliance Info Investment Pvt. Ltd. (RIIL), which in turn invested the said money and earned interest of Rs. 389 crores in the year under consideration. The assessee has acquired forex/derivative Instruments for hedging and the losses are recognized on the settlement day or the reporting day whichever is earlier and the same are recognized in the Profit & Loss Account. On appeal, Hon'ble ITAT held as under
7. As regards to mark to market loss/gain the Tribunal for The A.Y. 2007-08 has considered and decided the issue in para 8 to 8.5 as under:-
The Instruction of CBDT simply states the loss on account of forex derivatives cannot be allowed since it is a contingent loss. It cannot be accepted that the deduction claimed by the assessee towards loss due to foreign exchange fluctuation in foreign currency transactions in, derivatives should be considered as contingent and hence ignored but the gain due to such foreign exchange fluctuations in foreign currency-transactions on derivatives should be assessed to tax. Both the loss/ gain assume the same character of either contingent or non-contingents If the forex loss on account of derivatives is considered as contingent and hence ineligible for deduction, the forex gain will also have to be considered as contingent and hence immune from taxation.
8.5. Be that as it may, it is observed from the impugned order as well as the details of the financial charges that the amount of Rs.21.89 crores represents gain on account of forex derivatives. This fact has also been admitted by ld. CIT in para 6.3 of the impugned order. When there is a net gain of Rs.21.89 crores, which the assessee included in its total income, we fail to appreciate the reason for charging the gain of forex derivatives to tax but ignoring the loss of account of such forex derivatives. As the ultimate net figure on account of forex derivatives in the given facts and circumstances of the case is that of gain which was offered for taxation, it is manifest that the assessment order in accepting said figure of gain as chargeable to tax, cannot be described as prejudicial to the interests of the revenue. We are, therefore, unable to countenance the view canvassed in the Impugned order on this issue."
"8. It is clear that the Tribunal while decided the issue for the A.Y. 2007-08 has also considered the CBDT instruction no. 3/2010 which has been heavily relied upon by the Commissioner as well as the Id. DR. The Tribunal on the identical facts has decided 10 ITA NO.671/Mum/2013 Reliance Communications Ltd, this issue by holding that the view of the Commissioner cannot be countenanced with. Accordingly, we do not find any reason to take a different view from that of already taken by the Tribunal for the A.Y. 2007-08."

Instructions No. 3/2010 cannot be made applicable with respect to forex loss on ECB lability
3.19. Without prejudice to above, your Honour would appreciate that Instruction No. 3 of 2010 issued by CBDT is applicable only where there is trading in forex derivatives, which is the not the situation in the instant case.
3.20. Appellant is an NBFC and inter-alia is in the business of acquiring loan for onward lending. Appellant has incurred loss on foreign exchange fluctuation amounting to Rs. 1864 lacs on account of ECB liability only. Therefore, the conclusion of the AO derived on the basis of CBOT Instruction No. 3 of 2010 in the above circumstances is not fit to be supported with respect to loss incurred on account of re-instatement of ECB liability.
3.21. Reliance is placed on the decision of Hon'ble ITAT in case of Silicon Graphics Systems (India) Pvt. Ltd v DCIT, Circle 8(1), [ITA No. 2976/Del./2013). Hon'ble ITAT adjudicating the matter in favour of the Appellant and held as under ...
"A perusal of assessment order further reveals that the AO has not given concrete findings on the explanation of assessee that Instruction No. 3 of 2010 issued by CBDT is applicable only where there is trading in forex derivatives, which situation does not exist in the instant case, as the AO herself has mentioned the nature of appellant's business as that of Information Technology line, i.e., IT related purchase/sales or services. Therefore, the conclusion of the AO derived on the basis of CBDT Instruction No. 3 of 2010 in the above circumstances is not fit to be supported that the foreign exchange fluctuation loss is a speculative loss."
(Emphasis Supplied)

14. The Revenue has not brought on record any material to contradict the contentions/submissions of the assessee. These remain uncontroverted. In our view, reliance by Ld. CIT-DR on the decision of Mumbai Tribunal in Vaibhavi Trading P. Ltd. does not assist the Revenue. The issue has been decided in favour of the assessee by the decision (supra) of the Tribunal in its own case. Respectfully following the Tribunal's decision (supra) and agreeing with the submissions of the assessee, we delete the impugned disallowance of Rs. 20,54,47,894/- in AY 2013-14 and decide Ground No. 2 to 5 in assessee's favour. Similar disallowance of Rs. 18,64,61,000/- in AY 2014-15 is also deleted. Ground No. 2 and 3 in AY 2014-15 are thus decided in favour of the assessee."

8. Facts being identical, respectfully following the decision of the Coordinate Bench in assessee's own case as discussed above, we delete the disallowance. This ground is allowed.

9. In ground no. 3, the assessee has contested the disallowance of deduction claimed under section 36(1)(viii) of the Act.

10. Briefly the facts are, while verifying the return of income filed by the assessee, the Assessing Officer noticed that the assessee had claimed deduction of Rs.48,62,00,000/- under section 36(1)(viii) of the Act, being the amount transferred to special reserve. Noticing this, the Assessing Officer called upon the assessee to justify the claim. In response to the query raised by the Assessing Officer, the assessee furnished a detailed reply. After perusing the reply of the assessee, the Assessing Officer observed that the deduction under section 36(1)(viii) can be granted to entities, who have commenced their operation between 1st April 1993 or 1st April, 1999. He observed that since the entities in respect of which the assessee has claimed deduction have commenced their business way-back in the year 1961 and 1989 etc., the claim of the assessee to the extent of loans amounting to Rs. 385,38,10,316/- is not justified. Accordingly, he made proportionate disallowance of Rs.2,89,99,437/-. While deciding the issue in appeal, learned first appellate authority directed the Assessing Officer to follow the directions of the first

appellate authority given in assessee's own case in respect of similar dispute in assessment years 2013-14 and 2014-15.

11. Before us, it is a common point between the parties that while deciding identical issue in assessee's own case in assessment years 2013-14 and 2014-15, the Tribunal has allowed assessee's claim of deduction.

12. Having considered the submissions of the parties and perusing the materials on record, we find, while deciding identical issue in assessee's own case in assessment years 2013-14 and 2014-15, the Tribunal in order referred to elsewhere in the order has held as under:

"20. We have carefully considered the rival submissions and perused the records. It is not in dispute that the assessee is eligible for deduction under section 36(1)(viii) of the Act. The dispute is in a very narrow compass i.e. whether taking cognizance of timeline prescribed under section 80IA to make the impugned disallowance under section 36(1)(viii) is in accordance with law or not. The contention of the assessee is that section 36(1)(viii) is a complete code in itself and reference to section 80IA beyond what has been stated in the section itself is not warranted. Section 36(1)(viii) and 80IA are two separate provisions of the Act and deal with two separate category of taxpayers. Section 36(1)(viii) provides deduction to a taxpayer financing loan to eligible undertaking/infrastructure facility including undertaking referred to in section 80IA whereas section 80IA deals with deduction to the undertaking earning profits from certain specified businesses. We are of the view that the above contentions of the assessee are incontrovertible. Section 36(1)(viii) of 1961 Act corresponds to section 10(2)(xiva) of 1922 Act meaning thereby that the provision of special deduction to an specified entity existed in Income Tax Act 1922 and was retained in 1961 Act whereas the provision of section 80IA came into being w.e.f. 1.4.1991 and the provision for benefit of deduction has been amended many a times and at present section 80IA shall not apply to any enterprise which starts the development or operation and maintenance of infrastructure facility on or after 01.04.2017. There is nothing like that in

section 36(1)(viii) of the Act. We, therefore hold that the Ld. AO erred in taking cognizance of timeline prescribed under section 80IA in making the impugned disallowance. The contention of the Ld. AR that the Revenue has allowed the claim of the assessee in AY 2017-18 and 2018-19 has not been refuted by the Ld. CIT-DR. We therefore do not find any justification in making the impugned disallowance which we hereby delete in both the assessment years."

12. Facts being identical, respectfully following the decision of the Coordinate Bench, we direct the Assessing Officer to allow the deduction. This ground is allowed.

13. In the result, the appeal is allowed.

ITA No.5654/Del/2019 (Revenue's Appeal)
Assessment Year: 2015-16

14. The only ground raised by the Revenue is concerning assessee's claim of deduction under section 36(1)(viii) of the Act.

15. In view of our decision in respect of assessee's ground no. 3 in ITA No. 6081/Del/2019 decided by us in the earlier part of the order, this ground has become infructuous, hence, dismissed.

16. In the result, appeal is dismissed.

ITA No. 6913/Del/2019 (Assessee's Appeal)
Assessment Year: 2016-17

17. Ground no. 1 is a general ground, hence, dismissed.

18. In ground no. 2, the assessee has challenged the disallowance of deduction claimed on account of foreign exchange fluctuation loss. This ground is identical to ground no. 2 of ITA

No. 6081/Del/2019 decided by us in the earlier part of the order. Our decision therein will apply mutatis mutandis to this appeal also. Accordingly, ground no. 2 is allowed.

19. In ground no. 3, the assessee has challenged the disallowance of deduction claimed under section 36(1)(viii) of the Act.

20. The issue raised in this ground is identical to the issue raised in ground no. 3 of ITA No. 6081/Del/2019 decided by us in the earlier part of the order. Our decision therein will apply mutatis mutandis to this appeal as well. Hence, the ground is allowed.

21. In the result, the appeal is allowed.

ITA No. 7517/Del/2019 (Revenue's Appeal)
Assessment Year: 2016-17

22. In ground no. 1, the Revenue has challenged the decision of learned Commissioner (Appeals) in allowing assessee's claim of depreciation on Windmill Turbine Generators.

23. Briefly the facts are, while examining assessee's claim of depreciation on Windmill Turbine Generators, the Assessing Officer held that assessee has made investment in Windmill

Turbine Generators to earn income from investment and such investment activity cannot be equated with activities in nature of trade or business or adventure. While deciding the issue in appeal, learned Commissioner (Appeals) allowed assessee's claim of depreciation on the reasoning that the assessee has not only owned the asset but has put it to use for business purposes.

24. Before us, it is a common point between the parties that in various other assessment years in assessee's own case, the issue has been decided in favour of the assessee.

25. Having considered rival submissions and perused the materials on record, we find, this is a legacy issue continuing from assessment year 2010-11 onwards. It is observed, in assessment years 2010-11, the dispute went up to the Hon'ble Jurisdictional High Court and while deciding the issue, the Hon'ble High Court has upheld the decision of the Tribunal in allowing assessee's claim of depreciation. In assessment years 2011-12, 2012-13, 2013-14 and 2014-15 also the Tribunal has decided the issue in favour of the assessee. Thus, keeping in view the decision of the Hon'ble High Court and the decisions of the Coordinate Benches in assessee's own case, we uphold the

decision of learned Commissioner (Appeals). This ground is dismissed.

26. In ground no. 2, the Revenue has challenged the deletion of addition of Rs. 59,70,085/- under section 14A read with Rule 8D.

27. We have considered rival submissions and perused the materials on record. It is observed, the Assessing Officer made disallowance under section 14A by following the mechanism provided under Rule 8D(2)(iii). Before learned first appellate authority, the assessee pleaded that the disallowance under Rule 8D(2)(iii) can be computed by considering only those investments, which have yielded exempt income during the relevant assessment year. Learned Commissioner (Appeals) following number of judicial precedents, accepted the claim of the assessee and directed the Assessing Officer to compute the disallowance by considering only those investments from which the assessee received exempt income during the year.

28. In our view, the aforesaid decision of learned first appellate authority is in accordance with the settled legal position, hence, does not require any interference. Accordingly, ground raised is dismissed.

29. In ground no. 3, the Revenue has raised the issue of deduction claimed by the assessee under section 36(1)(viii) of the Act.

30. While deciding identical issue in assessee's own case, being ground no. 3 in ITA No. 6081/Del/2019, we have deleted the disallowance. In that view of the matter, this ground has become infructuous. Hence, dismissed.

31. In the result, appeal is dismissed.

32. To sum up, assessee's appeals are allowed and Revenue's appeals are dismissed.

Order pronounced in the open court on 21st December, 2023

Sd/-	***Sd/-***
(N.K. BILLAIYA)	**(SAKTIJIT DEY)**
ACCOUNTANT MEMBER	**VICE-PRESIDENT**

Dated: 21st December, 2023.
RK/-
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi