

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I" DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.2542/DEL/2018
Assessment Year 2013-14

Paramount Communication Pvt. Ltd. C-125, Paramount House, Naraina Indl. Area, Phase-I New Delhi	Vs.	DCIT Circle-19(2) New Delhi
TAN/PAN: AAACP0969Q		
(Appellant)		(Respondent)

Appellant by:	Shri Satyan Sethi, Advocate Shri A.T. Panda, Advocate		
Respondent by:	Ms. Ambika Aggarwal, Sr.DR		
Date of hearing:	01	04	2024
Date of pronouncement:	04	04	2024

ORDER

PER PRADIP KUMAR KEDIA-AM:

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-44, New Delhi ('CIT(A)' in short) dated 31.01.2018 arising from the assessment order dated 15.12.2016 passed by the Assessing Officer (AO) under Section 143(3) r.w. Section 144C of the Income Tax Act, 1961 (the Act) concerning AY 2013-14.

2. The grounds of appeal raised by the assessee read as under:

"1. That on the facts and circumstances of the case and in law, the Commissioner of Income tax (Appeals)-44, New Delhi [briefly "the CIT(A)"] has erred in upholding addition of Rs.35,49,435/- being the notional interest on delayed receipt of export proceeds from its associated enterprises [AEs].

1.1 That on the facts and circumstances of the case and in law, the CIT(A) did not appreciate that delayed receipt of export proceeds from AEs was not an international transactions under section 92CA of the Act.

1.2 That on the facts and circumstances of the case and in law, the CIT(A) did not appreciate that applying TNMM, the TPO has already accepted

exports at arm length. Hence, no separate bench marking for delay in receiving export proceeds was warranted.

1.3 Without prejudice, on the facts and circumstances of the case and in law, the adjusted operating margin ratio even after application of LIBOR + 1.5% rate would be 0.28% and the same would be within 3% range of safe harbor rule.

2. That on the facts and circumstances of the case and in law, the CIT(A) has erred in upholding disallowance of depreciation of Rs.1,50,20,339/- on account of exchange fluctuations in respect of assets acquired in India utilizing the funds raised through foreign currency convertible bonds [FCCBs].

2.1 That on the facts and circumstances of the case and in law, the CIT(A) has erred in not appreciating that the provisions of section 43A of the Act were not applicable to the indigenous assets acquired out of FCCB's brought into India.

2.2 Without prejudice, on the facts and circumstances of the case and in law, increased liability on account of foreign exchange fluctuations attributable to acquisition of indigenous depreciable assets was allowable deduction under section 37 of the Act.”

3. As per Ground No.1, the assessee has challenged the Transfer Pricing Adjustment of Rs.35,49,435/- on account of notional interest towards delayed receipt of export proceeds from its Associated Enterprises (AEs).

4. When the matter was called for hearing, the Id. counsel for the assessee straightaway adverted to paragraph 5.4 of the CIT(A) order and submitted that it was pointed out before the CIT(A) that the delay in receipt of export proceed are very minimal and of few days. Besides, interest has not been charged on such receivables pending realization either from AEs or non-AEs. The AE and non AE are treated at par as per its business practices. A tabular statement showing number of days delay qua AEs as well as non-AEs were referred. It was further pointed out that CIT(A) has not examined the issue at all on the ground that such new contention cannot be entertained at this stage in view of the judgment delivered by the Hon'ble Supreme Court in the case of *Goetze India Ltd. vs. CIT, 284 ITR 323 (SC)*. The Id. counsel submitted that the treatment given to export receivables from non-AEs should be applied *mutatis mutandis* to the export receivables from the AEs and therefore, the

Revenue is not justified in making impugned Transfer Pricing Adjustment on account of minor delays in collecting the export receivables from AEs.

5. The Id. Sr.DR for the Revenue, on the other hand, relied upon the first appellate order on the issue and submitted that such contentions were not brought before the AO and therefore, rightly rejected by the CIT(A).

6. We have considered the rival submissions on the issue and perused the case records.

7. The CIT(A) has not examined the new contention on parity in treatment to receivables from AE and non-AE and dismissed the same *in limine* taking support from the judgment in *Goetze India (supra)*. In the instant case, the assessee has merely raised a new facet of argument to support its plea on lack of justifiable grounds for impugned Transfer Pricing Adjustment on account of short delays in receipt of export receivables.

7.1 We also observe that ratio of *Goetze India (supra)* relied upon by the CIT(A) is not applicable in the present case. The Hon'ble Supreme Court in *Goetze India (supra)* has not put any restrictions or fetters upon the assessee to raise a new plea on the subject matter of dispute before the appellate authorities including CIT(A). Thus, non-consideration of the new facet of contentions raised before the CIT(A) does not appear justified.

7.2 Hence, without going into merits of the correctness of additions made by the Assessing Officer, we consider it expedient to restore the matter back to the file of the CIT(A) for fresh examination of the issue in accordance with law. It shall be open to the assessee to raise all contentions before the CIT(A) as may be advised and adduce such evidences as may be considered necessary to challenge the correctness of the impugned Transfer Pricing Adjustment towards interest on delay in

receipt of export receivables from AEs. Needless to say, reasonable opportunity shall be given to the assessee to address the issue before the CIT(A).

7.3 Accordingly, the matter is set aside and restore to the file of the CIT(A).

8. Ground No.1 of the appeal of the assessee is allowed for statistical purposes.

9. Ground No.2 concerns disallowance of depreciation of Rs.1,50,20,339/- on account of exchange fluctuations in respect of assets acquired in India utilizing the funds raised through foreign currency convertible bonds (FCCBs).

10. In the course of hearing, the ld. counsel for the assessee submitted that the CIT(A) has decided the issue against the assessee by adopting the view taken by the precediator CIT(A) for A.Y. 2012-13 vide order dated 26.09.2016. In this regard, the ld. counsel submitted that the sole basis of disallowance is the view taken in A.Y. 2012-13 by the CIT(A) which order of CIT(A) was put under challenge by the assessee before the ITAT. The Co-ordinate Bench of ITAT in ITA No.5395/Del/2016 order dated 18.08.2021 has reversed the disallowance of depreciation claim by applying the view taken by ITAT in A.Ys. 2009-10 and 2010-11 in assessee's own case. The ld. counsel thus pointed out that the issue has attained finality before ITAT there is no reason to take a different view in A.Y. 2013-14 in question.

11. We straightaway refer to the view expressed by the Co-ordinate Bench of ITAT in A.Y. 2012-13 as referred above.

"7. We have heard both the parties and perused the material available on record. The Tribunal in assessee's own case in Assessment Year 2009-10 & 2010-11 has held as under:-

"24. Since, the assessee in the instant case has attributed the increased liability of Rs. 12,65,54,992/- to the cost of the assets and the depreciation was allowed, therefore, although the assessee has a good case to argue that

exchange fluctuation loss attributable to depreciable assets acquired in India is an allowable revenue expenditure, however, it would require tedious exercise of modifying assessments for number of year. Therefore, we hold that the assessee is entitled to depreciation on exchange loss and the additional grounds raised by the assessee for AY 2009-10 becomes in-fructuous. It is held in the case of CIT v. Industrial Finance Corp of India Ltd. (2009) 185 Taxman 296, that revenue expenditure (loss) is allowable in the year in which it is incurred but where the assessee has spread it over, the Court would allow the benefit. We find merit in the argument of the learned counsel for the assessee that it cannot be held that neither depreciation on enhanced cost due to exchange fluctuation is to be allowed nor the loss itself was to be allowed more so because claim to this effect was raised both before the Assessing Officer as well as the CIT(A). Accordingly, ground no.3 raised by the assessee is allowed and additional ground being infructuous is dismissed."

The facts in the present Assessment Year i.e. 2012-13 are also identical and no distinguishing facts were pointed out by the Ld. DR. The assessee has attributed the liability in the present Assessment Year to the fixed assets which were acquired in India out of foreign currency loan. Since the fixed asset was acquired by utilizing foreign currency loan and on account of currency fluctuation, the loan liability was added to the fixed assets. Thus, the assessee is entitled to depreciation on exchange loss. Therefore, we direct the Assessing Officer to allow the depreciation attributable to capitalization of exchange rate fluctuation loss. Thus, the appeal of the assessee is allowed."

12. The issue is thus no longer *res integra* and has been adjudicated by the co-ordinate bench in favour of the assessee in A.Y. 2012-13 as well as in other A.Ys. 2009-10 and 2010-11 in assessee's own case. Therefore, we see no perceptible reasons to re-examine the issue again. In consonance with the view taken in other years noted above in assessee's own case in identical facts, we find substantial merit in the plea of the assessee. The additions on account of depreciation allowance in question made by the lower authorities are thus set aside and cancelled.

13. Ground No.2 of the appeal of the assessee is allowed.

14. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 04/04/2024

Sd/-

**[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER**

DATED: /04/2024

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**