

**IN THE INCOME TAX APPELLATE TRIBUNAL "K" BENCH, MUMBAI**

**BEFORE SHRI ABY T. VARKEY, JM AND SHRI S RIFAUR RAHMAN, AM**

आयकर अपील सं/ I.T.A. No.1235/Mum/2015

(निर्धारण वर्ष / Assessment Year: 2010-11)

Concentrix Services India Pvt. Ltd (Formerly known as Minacs Pvt. Ltd, Minacs Limited and Aditya Birla Minacs Worldwide Limited) 9 <sup>th</sup> Floor, Symphony IT Park, Chandivali Farm Road, Andheri (E), Mumbai-400072.	<b>बनाम/</b> Vs.	DCIT-10(2)(2) Room No. 209, Aayakar Bhavan, M. K. Road, Churchgate, Mumbai-400020.
<b>स्थायी लेखा सं. /जीआइआर सं. /PAN/GIR No. : AAAC1567A</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Chaitanya Joshi & Riken Shah	
Revenue by:	Shri P. Sudhakar Naik	

सुनवाई की तारीख / Date of Hearing: 01/04/2024

घोषणा की तारीख /Date of Pronouncement: 29/04/2024

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This appeal is filed by the assessee against the assessment order passed u/s 143(3) read with section 144C(13) of the Income Tax Act, 1961 (hereinafter "the Act") dated 30.01.2015 passed by the DCIT-10(2)(2), Mumbai for AY. 2010-11, pursuant to direction of the Dispute Resolution Panel-1, Mumbai (hereinafter "the Ld. DRP") dated 27.10.2014.

2. At the outset, the Ld. AR has brought to our notice that this appeal of the assessee company for the relevant year i.e. AY. 2010-11 was partly allowed by this Tribunal vide order dated 12.06.2023. And thereafter, the assessee preferred a Miscellaneous Application (MA)



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before this Tribunal pointing out that an additional ground of appeal relating to disallowance of premium paid on account of repayment of optionally convertible debenture (OCD) u/s 37 of the Act had not been admitted/adjudicated by the Tribunal while disposing of the appeal vide order dated 12.06.2023. Taking note of the grievance of the assessee stated in MA and finding force in the same, this Tribunal vide order dated 26.02.2024 was pleased to allow the MA and recalled the original second appellate order dated 12.06.2023 to the limited extent for admission/adjudication of the ibid ground of appeal viz the additional ground (supra). Pursuant to the MA order dated 26.02.2024, this appeal has been listed for hearing for the limited purpose of admission/adjudication of additional ground filed by letter dated 06.03.2018 which reads as under: -

"On the facts and in the circumstances of the case and in law, the learned AO be directed to allow deduction for proportionate premium paid on repayment of optionally convertible debentures amounting to ₹ 33,860,754/-"

**3.** Brief facts relating to this ground of appeal are that assessee had issued compulsorily convertible debentures (CCD) of Rs. 250 crores on 5<sup>th</sup> January 2010. And on 30<sup>th</sup> January 2014, the assessee changed the terms of CCD to optionally convertible debentures (OCD) of the same value of Rs 250 crores in accordance with the provisions of the Company law. On 26<sup>th</sup> March 2014, the said OCD's were repaid along with the premium of Rs. 130 crores. The proportionate premium for assessment year 2010-11 relating to business activity was



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Rs.3,38,60,754/-. And at the time of filing of its return for assessment year 2014-15, the assessee made an alternate claim by way of notes to the return of income for allowance of the said premium in assessment year 2014-15 i.e. in the year of redemption. And the assessment proceedings for assessment year 2014-15 were completed and the AO as per order dated 21 December 2017 was pleased to reject the assessee's claim for deduction of the premium. Therefore, in order to protect its own interest in the event of such a disallowance, the assessee has made a claim for allowance of the aforesaid premium paid by way of an additional ground. And the assessee also preferred an application dated 14 November 2018 on this issue for admission of additional evidence. And on 16 March 2018, *ibid* additional ground was raised by the assessee. In the light of the aforesaid facts and circumstances, the Ld. AR pleaded for admission of the additional ground [for the first time] before this Tribunal by relying on the following case laws:-

- I. Jute Corporation of India Ltd Vs. CIT and Another (187 ITR 688) (SC)
- II. Ultratech Cement Ltd Vs. ACIT (408 ITR 500) (Bom HC)
- III. CIT Vs. Pruthvi Brokers & Shareholders Pvt. Ltd (349 ITR 336) (Bom HC)
- IV. Balmukund Acharya Vs. DCIT (176 Taxman 316) (Bom HC)
- V. Chicago Pneumatic India Ltd Vs. DCIT (15 SOT 252) (Mum Trib)



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**5.** Further, the Ld. AR fairly admitted before us that in the subsequent assessment years i.e. AY. 2011-12 to AY. 2013-14, the assessee had made similar ground of appeal (*additional ground of appeal*); and this Tribunal was pleased to dismiss the same in assessee's own case (ITA. Nos. 5260 & 5764/Mum/2017, 5280 & 5940/Mum/2017 & 5823/Mum/2019 dated 18.10.2023). However, in the light of the aforesaid facts, the Ld. AR pleaded that compulsorily convertible debentures are in nature of debt and not equity and relied on the following case laws: -

- i. CWT Vs Spenser and Co. Ltd (88 ITR 429) (SC)
- ii. ACIT Vs. CAE Flight Training (India) Pvt. Ltd[IT(TP)A No. 2060/Bang/2016]
- iii. TE Connectivity Services India P. Ltd Vs. NFAC (145 taxmann.com 214) (Bang. Trib)
- iv. IMS Health Analytics Services Vs. DCIT (ITA. No.1549/Bag/2019)

**6.** Further, according to the Ld. AR, the payment of premium on redemption of debentures is allowable as a revenue expenditure and relied on the following case laws: -

- i. Madras Industrial Investment Corporation Ltd Vs. CIT (225 ITR 802) (SC)
- ii. National Engg. Industries Ltd Vs. CIT (106 Taxman 443) (Cal HC)
- iii. CIT Vs. First Leasing Company of India Ltd (Tax Case Appeal No. 209 of 2006 & 1099 of 2004 (Madras HC)



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**7.** According to Ld. AR, accounting treatment is not decisive of allowability of the claim made by assessee and relied on the following case laws: -

- i. Kedarnath Jute Manufacturing Co. Ltd Vs. CIT (82 ITR 363) (SC)
- ii. DCIT Vs. M/s. Bombay Dyeing & Mfg. Co Limited (ITA. No.5059/Mum/2003)
- iii. India Cements Ltd Vs. CIT (60 ITR 52) (SC)

**8.** In the light of the above submissions, he pleaded that the additional ground may be admitted and allowed in favour of the assessee.

**9.** Per contra, the Ld. DR opposes the admission of the additional ground and also relied on the decision of the Co-ordinate Bench of this Tribunal in assessee's own case (supra) for AY. 2011-12 to AY. 2013-14 wherein the Tribunal had rejected similar claim made by assessee.

**10.** We have heard both the parties and perused the records. We find that identical ground of appeal was raised before this Tribunal in assessee's own case for subsequent assessment years (AYs. 2011-12 to AY. 2013-14) wherein the Tribunal was pleased to reject the claim of the assessee by holding as under: -

“7. Ground No. V raised by the Assessee is directed against the disallowance of claim of proportionate premium paid arising on account of repayment of optionally convertible debentures.



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7.1. The relevant facts in brief are that the Assessee had issued Compulsorily Convertible Debentures ("CCD") of INR 250 Crore vide Agreement, 01/01/2010 to Barclays Bank PLC, Mumbai Branch (For Short 'Barclays') being the initial subscriber. 2,500 Debentures were issued to Barclays bearing face value of INR 10,00,000/- each. The CCDs issued were zero-coupon unsecured debentures mandatorily convertible into shares after 60 months from the date of issue. The number of shares to be issued on conversion was dependent upon conversion factor which was to be determined mutually by the subscriber and the Assessee. Since, the debentures were freely transferable, the Aditya Birla Nuvo Ltd. (ABNL), the parent company of the Assessee, ultimately acquired the CCDs on 07/02/2014 from the then holders of CCDs namely L&T Fincorp Ltd., L&T Infrastructure Finance Co. Ltd. & Tata Capital Financial Services Ltd.

7.2. The contention of the Assessee is that on 28/02/2014, the terms of issue of Debentures were changed and the Debentures were converted from mandatorily convertible debentures to Optionally Convertible Debentures. The holder (i.e. ABNL) did not opt for conversion of debentures and therefore, the same were redeemed on 26/03/2014 for INR 380 Crore (including premium of 130 Crore).

7.3. Out of the total amount of premium of INR 130 Crore, in Assessment Year 2014-15 the Assessee claimed deduction for INR 54,59,43,438/- being premium pertaining to debentures proceeds utilised in business for the entire period of Assessment Year 2010- 11 to Assessment Year 2014-15. However, the



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Assessing Officer rejected the plea of full claim and allowed only pro-rata claim for Assessment Year 2014-15 of INR 12,15,52,414 vide order, dated 21/12/2017, passed under Section 143(3) of the Act.

7.4. Meanwhile, vide letter dated 27/02/2015, the Assessee also filed claim for deduction of INR 14,37,11,341/- for the proportionate premium paid on redemption of Debentures under Section 37(1) of the Act during the assessment proceedings for the Assessment Year 2011-12 which was rejected by the Assessing Officer vide Assessment Order, dated 07/05/2015, passed under Section 143(3) read with Section 144C(3) of the Act. The Assessing Officer rejected the aforesaid claim, inter alia, on the ground that the same was expenses claimed were capital in nature.

7.5. The CIT(A) also decline to grant any relief on this issue and did not allow the claim for deduction of INR 14,37,11,341/- pertaining to the proportionate premium paid on redemption of Debentures.

7.6. Being aggrieved, the Assessee has carried this issue in appeal before us.

7.7. We have heard the rival submissions and perused the material on record.

7.8. The contentions raised on behalf of the Assessee (including on the issue of nature of premium paid on redemption of debenture and the year of allowance of deduction) can be summarized as under:



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(a) The return for the relevant assessment year was filed on 28/11/2011, while the premium on OCD was paid on 24/03/2014. Accordingly, the claim became available to the Assessee only after return was filed and hence, an additional claim was made during the course of assessment proceedings.

(b) CCDs are in the nature of debt and not equity. Until its conversion into equity, the same remains a debt. It does not carry any voting rights or any right to receive dividend. Hence the same cannot be considered to be equity until its conversion. Reliance was placed on the following case laws: CAE Flight Training (India) Pvt. Ltd. [IT(TP)A No. 2060/Bang/2016, Bangalore-Trib.]; TE Connectivity Services India (P.) Ltd. v. NFAC (145 taxmann.com 214) (Bangalore - Trib.), IMS Health Analytics Services Private Ltd. v. Dy. CIT (ITA No.1549/Bang/2019), and CWT v. Spencer and Co. Ltd. (88 ITR 429) (SC).

(c) Premium on debenture is an allowable expenditure. Section 2(28A) of the Act defines 'interest' as under:

“interest” means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised.” (Emphasis Supplied)

The use of the words 'in any manner' in the definition of Interest under the Act, supports the case of the Assessee. Therefore, whether it is a case of discount or premium, it would still be allowable as interest expense so long as it is to compensate for use of money.

(d) Discount or Premium on debentures has been held as an allowance expense by the Hon'ble Apex Court in the case of Madras Industrial Investment Corporation Ltd. v. CIT (225 ITR 802). This was a case of 'Discount on issue of Debentures.



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Further, reliance was placed on the decision of Hon'ble Madras High Court in the case of CIT Vs. First Leasing Company of India Ltd (Tax Case Appeal No.209 of 2006 & 1099 of 2004 wherein it is held that there is no distinction between 'Premium' and 'Discount' and both of them are entitled to be spread over the period of debentures. In holding so, the Hon'ble High Court relied upon judgment of the Hon'ble Calcutta High Court in the case of National Engg. Industries Ltd. v. CIT The courts have held that premium on debentures is allowable over the period of debentures. Accordingly, the Assessee has made a claimed deduction for the proportionate amount only for the relevant assessment year.

(e) Premium or interest is indeed recompense for the use of funds. Commercially, when the terms of CCD were converted to OCDs and the OCDs were ultimately redeemed, such recompense was worked out commercially at the compounded rate of approx. 10% p.a. (approx.). This gave an overall premium of 52% on face value. If, however, the rate of return is calculated from the date of conversion to the date of redemption (i.e from 28/02/2014 to 24/03/2014), then the recompense works out to 624% p.a. If it is presumed that the premium runs from the date of conversion, then such presumption would be de-hors of commercial realities as a return of 624% p.a by the issuer company can, by no stretch of imagination, be regarded as a commercially acceptable recompense from the point of view of issuer. Based on the commercial realities, the premium paid should be considered as pertaining to the use of money for the entire period beginning from the date of issue of CCDs till the date of redemption and not just from the date of conversion.

(f) In the present case, the premium on debentures was debited to securities premium account. This is as per the provisions of Section 78 of the Companies Act, 1956 (for Short 'the Companies Act'). The Companies Act permits application of



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securities premium account towards various types of expenses, some of which are capital in nature, while some are revenue in nature. For example, expenses on issue of loan/debentures has been held to be an allowable revenue expense by the Hon'ble Supreme Court in the case of India Cements Ltd. v. CIT (60 ITR 52) (SC). Similarly, discount/ premium on issue/redemption of debentures has been held to be allowable expense by the Hon'ble Supreme Court in Madras Industrial Investment Corporation Ltd. Vs. CIT (225 ITR 802) (SC) and other cases as mentioned above. Therefore, merely because an amount is not debited to P&L account, but it is debited to securities premium account, it does not make the amount a capital expenditure under the provisions of the Act. Entries in books of accounts are not determinative of its tax treatment [Kedarnath Jute Manufacturing Co. Ltd. vs. CIT (82 ITR 363)]. Under similar facts, the Mumbai Bench of the Tribunal has, in the case of DCIT v. M/s Bombay Dyeing & Mfg. Co. Limited (ITA No.5059/Mum/2003), held premium paid on redemption of debentures to be allowable under Section 36(1)(iii)/37 of the Act even though the same was debited to share premium reserve in the books of accounts.

(g) Though the order for Assessment Year 2014-15 is under appeal before CIT(A), in order to protect the Appellant from double jeopardy, the Assessee has made an additional claim for pro-rata amount pertaining to the captioned year of INR 14,37,11,341/- vide letter, dated 27/02/2015.

7.9. Per contra, the Learned Departmental Representative placed reliance on the order passed by the CIT(A) and submitted that the expenditure was of capital nature. The CIT(A) had rightly observed that the claim has been made after the expiry of almost 4 years from the end of the relevant assessment year. The amount claimed as deduction by the Assessee did not enter the books of account of the Assessee for the relevant previous year



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either at the time of closure of books of account or at the time of filing return of income as at that point in time the issue payment of premium of redemption of shares was not there. Therefore, deduction for premium paid on redemption of debentures cannot be allowed to the Assessee as a deduction during the relevant previous year.

7.10. We have given thoughtful consideration to the rival submission. It is admitted position that the Assessee had issued CCDs of INR 250 Crores to Barclays. Since the CCDs were freely transferable the same were eventually purchased by ABNL, the parent company of the Assessee, on 07/02/2014 from the then holders of CCDs namely L&T Fincorp Ltd., L&T Infrastructure Finance Co. Ltd. and Tata Capital Financial Services Ltd. On 28/02/2014, as per mutual agreement between ABNL and the Assessee, CCDs were converted from OCDs. Since, ABNL did not opt for conversion, the OCDs were redeemed on 26/03/2014 at a premium of 130 Crore. The issue raised for consideration before us is whether the Assessee is entitled to claim deduction for the proportionate premium amount during the relevant assessment year since according to the Assessee the deduction for premium is to be allowed over the term of the debentures.

7.11. We note that when the CCDs were initially issued the Assessee had no obligation to pay premium, interest, or charges in relation to the CCDs as the same were convertible into equity on expiry of 60 months as per the conversion formula which was to be mutually agreed by the Assessee and the subscriber/holder of CCDs.



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7.12. Therefore, for the relevant previous year no interest/premium/charges were accounted for or paid by the Assessee during the relevant previous year. Even if it is accepted that CCDs continued to be debt during the relevant previous year, the same would be of no consequence as no interest/premium/charges were either payable or paid in respect of such debt. During the relevant previous year the Assessee neither had any obligation to pay interest as the CCDs were zero-coupon unsecured debenture, nor did the Assessee had any obligation to redeem the debentures as the CCDs were compulsorily convertible into equity shares of the Assessee. Same position prevailed on the date of finalization of accounts and the date of filing of return of income for the relevant previous year. Thus, the Assessee did not have any obligation to redeem the CCDs as at the end of the relevant previous year, or at the date of finalization of account, or even at the date of filing return of income. Therefore, in our view, the Assessee had no liability, whether ascertained or contingent, to redeem the debentures. It is admitted position that no payment towards redemption or premium was made during the relevant previous year. Therefore, in our view, the Assessee could not be permitted to claim deduction either on accrual or paid basis during the relevant previous year.

7.13. On 28/02/2014, by way of mutual agreement between ABNL and the Assessee, OCDs came into existence for the first time. The issue redemption premium arose only when ABNL opted not to get shares and instead sought redemption of debentures, and thereafter, the OCDs were redeemed by the Assessee at a premium of INR 130 Crores on 26/03/2014. Since



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the OCDs were not in existence during the relevant previous year, the question of allowing deduction for the proportionate amount of redemption premium as interest during the relevant previous year, in our view, does not arise.

7.14. It has been contended on behalf of the Appellant that premium on redemption of debentures is recompense for the use of funds. It is a matter of the commercial arrangement whether the lender opts for recompense in the form of allotment of equity shares in case of CCDs or premium on redemption in case of OCDs. For the relevant previous year, the borrower had opted for recompense in the form of allotment of equity shares. Therefore, deduction for premium on redemption claimed by the Assessee cannot be allowed.

7.15. It was submitted on behalf of the Assessee that premium, which is recompense for the use of funds, was worked out commercially at the compounded rate of approx. 10% p.a. giving an overall premium of 52% on face value. If, however, the rate of return is calculated from the date of conversion to the date of redemption (i.e from 28/02/2014 to 24/03/2014), then the recompense works out to 624% p.a. which would be de-hors of commercial realities. In our view that the commercial effect of financial arrangement between the parties cannot form the basis of allowance of claim made by the Assessee. It is admitted position that at the time of modification of terms the CCDs were held by ABNL which was ultimate holding company of the Assessee. It is not the case of the Assessee that the modification of terms on which debentures were issued was occasioned by the circumstances beyond the control of the Assessee. On



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conversion of CCDs into OCDs, the subscriber/holder diluted their obligation to subscribe for equity shares of the Assessee and got an option to seek redemption of debentures in addition to the right to get shares on conversion. From the perspective of the Assessee, as an alternative to allotment of shares, the Assessee could now be asked to redeem the debt amount at a premium. The capital appreciation in the value of shares of the Assessee from the date of subscription of CCDs till the date of conversion from CCDs to OCDs was not accounted for or recorded while agreeing upon the modified terms by the parties and therefore, there is nothing on record to enable us to examine/determine the impact of the commercial trade-off between the original and modified terms at this stage. Further, it is admitted position that the CCDs were transferred from subscriber to holders and from holder to subsequent holders over a period of time. At the time of conversion the CCDs were held by ABNL, however, during the relevant previous year the CCDs were not held by ABNL. Therefore, the modification of terms as agreed upon between the ABNL and the Assessee, cannot change the terms and conditions which were binding upon the Assessee and the holders of CCDs at the relevant time according to which the debentures were to be compulsorily convertible into equity. Given the facts and circumstances of the present case, we are of the view that the commercial arrangement entered into by the Assessee subsequent to the filing of return of income for the relevant previous year, cannot be applied retroactively to make additional claim leading to reduction of the income returned by the Assessee.



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7.16. Having perused the judicial precedents cited on behalf of the Assessee, we conclude that, in view of the above, none of the judicial precedents cited apply to the factual matrix before us and therefore, the same do not advance the case of the Assessee.

7.17. In view of the paragraph 7.10 to 7.16 above, we confirm the order passed by the CIT(A) rejecting the claim for deduction of INR 14,37,11,341/- in respect of proportionate premium on redemption of OCDs made by the Assessee during the assessment proceedings. Accordingly, Ground No. V raised by the Assessee is dismissed.”

**11.** Since facts are identical and there is no change in law, respectfully following the decision in the assessee’s own case for subsequent assessment years, we are inclined to dismiss this additional ground of appeal of the assessee.

**12.** In the result, the additional ground of appeal of the assessee is dismissed.

Order pronounced in the open court on this 29/04/2024.

Sd/-  
(S RIFAUR RAHMAN)  
ACCOUNTANT MEMBER

Sd/-  
(ABY T. VARKEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 29/04/2024.  
Vijay Pal Singh, (Sr. PS)



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**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**