

आयकर अपीलीय अधिकरण 'डी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

मजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
मजनीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

आयकर अपील सं ITA No.2749/Chny/2017
(निर्धारण वर्ष / Assessment Year: 2013-14)

M/s. Caterpillar India P. Ltd. 7 th floor, International Tech Park, Taramani Road, Taramani, Chennai-600 113.	बनाम/ Vs.	DCIT Large Taxpayer Unit-1 Chennai.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AABCC-4615-K		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

Cross Objection No.22/Chny/2023
(In ITA No.2749/Chny/2017)
(निर्धारण वर्ष / Assessment Year: 2013-14)

DCIT Central Circle-3(3), Chennai-34.	बनाम/ Vs.	M/s. Caterpillar India P. Ltd. 7 th floor, International Tech Park, Taramani Road, Taramani, Chennai-600 113.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AABCC-4615-K		
(Cross-Objector)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Assessee by	:	Shri S.P.Chidambaram (Advocate)- Ld. AR
प्रत्यर्थीकी ओरसे/ Revenue by	:	Shri A.Sasikumar (CIT)- Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	29-05-2024
घोषणा की तारीख / Date of Pronouncement	:	11-06-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid appeal by assessee for Assessment Year (AY) 2013-14 arises out of final assessment order dated 12-09-2017 passed by Ld.

Assessing Officer, (AO) u/s 143(3) r.w.s. 144C of the Act, pursuant to the directions of Ld. Dispute Resolution Panel-2, Bangalore (DRP) u/s 144C(5) dated 23.06.2017. Since the assessee carried out certain international transactions with its Associated Enterprises (AE), the same were referred to Ld. Transfer Pricing Officer DCIT(TPO)-1(1), Chennai (TPO) for determination of Arm's Length Price (ALP). The Ld. TPO passed an order u/s 92CA(3) on 25.10.2016 proposing certain Transfer Pricing (TP) adjustment. Incorporating the same, a draft assessment order was passed on 27.12.2016 which was subjected to assessee's objections before Ld. DRP. Pursuant to the directions of Ld. DRP, final assessment order was passed against which the assessee is in further appeal before us.

1.2 The Revenue has filed cross-objection against the additional grounds of appeal filed by the assessee. In these additional grounds, the assessee has raised the ground of limitation. However, these grounds have not been pressed by the assessee vide its letter dated 04.12.2023 which render cross-objection infructuous.

1.3 The grounds raised by the assessee read as under: -

1. The learned Assessing Officer (learned AO'), learned Transfer Pricing Officer (learned TPO') and the Honourable Dispute Resolution Panel ('Hon'ble DRP') have grossly erred in determining an adjustment of INR 540,439,874 to the revenue earned from Associated Enterprises (AEs") in the engineering design services segment, INR 45,489,196 to the revenue earned from AEs in the Information Technology ('IT") segment and INR 4,295 955 to the revenue earned from AEs in the IT enabled Services ('ITeS') segment u/s 92CA of the Income Tax Act, 1961 ('the Act').

2. The learned AO, learned TPO and the Hon'ble DRP have erred in rejecting the transfer pricing documentation maintained by the Appellant by invoking provisions of sub-section (3) of 92C of the Act.

3. The learned AO, learned TPO and the Hon'ble DRP have erred in not considering multiple Year financial data of the comparable companies while determining the arm's length price' as prescribed under Rule 10B(4) of the Income Tax Rules, 1962 ('the Rules').

4. The learned AO, learned TPO and the Hon'ble DRP have erred in using data available at the time of assessment proceedings, instead of the data available at the time

of preparing the transfer pricing documentation as mandated under Rule 10D(4) of the Rules for comparable companies in determining arm's length price.

5. The learned AO, learned TPO and the Hon'ble DRP have erred in rejecting comparability analysis carried in the transfer pricing documentation and in conducting a fresh comparability analysis by introducing various filters in determining the arm's length price.

6. The learned AO, learned TPO and the Hon'ble DRP have erred in not restricting the threshold of export earnings filter to 25 percent of total sales rather than adopting threshold of 70 percent of total sales, which led to erroneous rejection of the following companies that ought to be selected as comparable to the IT segment of the Appellant:

Akshay Software Technologies Ltd.

Sankhya Infotech Ltd.

7. The learned AO, learned TPO and the Hon'ble DRP have erred in applying different financial year ending filter while selecting companies as comparable and erroneously rejected the following companies that ought to be selected as comparable to the relevant segments of the Appellant respectively:

Helios and Mathesons Information Technologies Ltd.-IT segment

Caliber Point (Business) Solutions Ltd. (Seg)- ITeS segment

8. The learned AO, learned TPO and the Hon'ble DRP have erred in not applying upper turnover filter, based on which the following companies selected as comparable to the relevant segments of the Appellant respectively would be rejected:

Larsen and Toubro Infotech Ltd.- IT segment

Infosys BPO Ltd. - ITeS segment

9. The learned AO, learned TPO and the Hon'ble DRP have erred in accepting companies that ought to have not been accepted as comparable to the engineering design services segment of the Appellant:

Vama Industries Ltd.

10. The learned AO, learned TPO and the Hon'ble DRP have erred in rejecting companies that ought to have been accepted as comparable to the engineering design services segment of the Appellant:

Babcock Borsig Softech Private Ltd.

Tismo Technology Solutions Private Ltd.

11. The learned AO, learned TPO and the Hon'ble DRP have erred in accepting companies that ought to not have been accepted as comparable to the IT services segment of the Appellant:

Larsen & Toubro Infotech Ltd.

Thirdware Solutions Ltd.

12. The learned AO, learned TPO and the Hon'ble DRP have erred in accepting companies that ought to have been accepted as comparable to the IT segment services of the Appellant:

Akshay Software Technologies Ltd.

Helios & Matheson Information Technology Ltd.

Cigniti Technologies Ltd.

Kals Information Systems Ltd.

CTIL Ltd.

Cat Technologies Ltd.

Sankhya Infotech Ltd.

Evoke Technologies Private Ltd.

13. The learned AO, learned TPO and the Hon'ble DRP erred in accepting companies that ought not to have been accepted as comparable to the ITeS segment of the Appellant:

MPS Ltd.

ICRA Online Ltd.

Infosys BPO Ltd.
Hartron Communications Ltd. (Seg)

14. The learned AO, learned TPO and the Hon'ble DRP have erred in not accepting companies that ought to have been accepted as comparable to the ITeS segment of the Appellant:

Informed Technologies Ltd.
ICRA Techno Analytics Ltd.
Caliber Point Business Solutions Ltd. (Seg)
Crystal Voxx Ltd.
Coalition Development Systems (India) Private Limited
Omega Healthcare Management Services Private Ltd.

15. The learned AO, learned TPO and the Hon'ble DRP have erred in not considering foreign exchange gain/loss as non-operating expense.

16. The learned AO, learned TPO and the Hon'ble DRP have erred in not considering provision for doubtful debts as non-operating expense.

17. Without prejudice to the argument of the Appellant on selection/ rejection of companies selected as comparable to the relevant segment of the Appellant, the learned AO, learned TPO and the Hon'ble DRP have made erroneous computation of margins of the following companies in determining the arm's length price:

Acropetal Technologies Ltd.
Tata Elxsi Ltd.
Sasken Communications Technologies Ltd.
CG- Vak Software & Exports Ltd.
Larsen and Toubro Infotech Ltd.
MPS Ltd.
ICRA Online Ltd.
Hartron Communications Ltd. (seg)
Jindal Intellicom Ltd.

18. The learned AO, learned TPO and the Hon'ble DRP have erred in not granting working capital adjustment on account of difference in working capital of the Appellant vis-a-vis, entrepreneurial companies selected as comparable.

19. The learned AO/learned TPO/Hon'ble DRP erred in not granting market risk adjustment or account of difference in market risk borne by the Appellant vis-a-vis the companies selected as comparable.

Corporate Tax grounds

20. Ground on Disallowance of foreign exchange loss on interest Rs.20,20,00,000.

The learned AO and the Hon'ble DRP have erred in disallowing foreign exchange loss of Rs.20,20,00,000 on interest accrued on External Commercial Borrowing ('ECB') under Section 36 of the Act.

The learned AO and the Hon'ble DRP have erred in treating the foreign exchange loss as a notional loss and consequently denying deduction under the provisions of the Act.

The learned AO and the Hon'ble DRP have erred in not appreciating the Accounting Standards issued by Institute of Chartered Accountants of India and more specific AS - 11 (Effects of changes in foreign exchange rates), which mandates to recognize loss on restatement of interest on ECB loan on the Balance sheet date.

The learned AO and the Hon'ble DRP have erred in not relying on the following judicial precedents submitted by the Appellant and summarily rejecting the below stating the same were rendered in different facts:

CIT v. Woodward Governor Ltd. [2009] 179 Taxman 326 (SC)
India Cements Ltd. v. CIT [1966] 60 ITR 52 (SC)

The learned AO and the Hon'ble DRP have erred in treating the foreign exchange as capital in nature

The learned AO and the Hon'ble DRP have erred in not appreciating the provisions of Section 43(1) of the Act, wherein all the costs incurred after the put to use of the asset are to be treated as revenue in nature

The learned AO and the Hon'ble DRP ought to have appreciated that the restatement of ECB would qualify as an interest cost which is allowed on actual basis.

Notwithstanding the above, where the learned AO and the Hon'ble DRP have considered the above as capital in nature, the learned AO and the Hon'ble DRP erred in not allowing consequential depreciation on the same.

21. Ground on Disallowance of provision for obsolescence Rs.12,80,00,000

The learned AO and the Hon'ble DRP have erred in disallowing the provision for obsolescence of inventories amounting to Rs.12,80,00,000.

The learned AO and the Hon'ble DRP have failed to appreciate that the provision was created on the account of obsolescence of inventories in the normal course of business and is an allowable deduction under the Act.

The learned AO and the Hon'ble DRP ought to have observed the fact that the said amount of 12,80,00,000 had arisen on account of revaluing the inventories at the lower of cost or net realizable value which is in accordance with Accounting Standard 2 issued by Institute of Chartered Accountants of India.

The learned AO and the Hon'ble DRP have also erred in not taking cognizance that the concerned inventories had no market value and had to be sold as scraps. The learned AO and the Hon'ble DRP also failed to appreciate the fact that the Company has offered to tax sale proceeds of scrap inventories to tax in the subsequent years.

The learned AO and the Hon'ble DRP ought to have appreciated that the Company has established very robust mechanism of identifying obsolesce inventories/ non-moving inventories.

22. Ground on Disallowance of repairs and maintenance to Buildings Rs.1,52,72,362

The learned AO and the Hon'ble DRP have erred in disallowing an amount of Rs.152,72,362 pertaining to repairs and maintenance expenditure on buildings.

The learned AO and the Hon'ble DRP ought to have appreciated the fact that the repairs made by the company was incurred for upkeep and maintenance of the building on regular basis.

The learned AO and the Hon'ble DRP have erred in disallowing the repair and maintenance expenses based on the representations made by third parties under notice issued by the learned AO under section 133(6) of the Act without granting the Appellant the reasonable opportunity of hearing.

The learned AO and the Hon'ble DRP have erred in concluding that the said expenditures resulted in enduring benefit to the Appellant.

23. Ground on Disallowance of stamp duty charges Rs.27,27,050

The learned AO and the Hon'ble DRP have erred in disallowing an amount of Rs.27,27,050 owing to stamp duty charges paid by the Appellant on registration of rental agreement entered into by the Appellant.

The learned AO and the Hon'ble DRP ought to have appreciated the fact that office premises were taken with a view to carry on the business activity and had not resulted in creation of any advantage of enduring nature.

The learned AO and the Hon'ble DRP have erred in concluding that the expenditure was to acquire benefits of right of property and any expenditure incidental to the acquisition of the lease is to be considered as capital in nature.

24. Ground on Disallowance of depreciation on printers, scanners and UPS Rs.5,02,541

The learned AO has erred in disallowing depreciation of Rs.5,02,541 on the printers, scanners and UPS by treating the servers as 'plant and machinery' instead of 'computers'. The learned AO has erred in limiting the allowance for depreciation on printers, scanners and UPS to 15% of the cost as against the depreciation rate of 60% permitted under the Rules.

The learned AO further erred in not granting relief as per the Hon'ble DRP directions to the Appellant i.e., allowing depreciation on printers and scanners at 60%,

25. Ground on Disallowance of depreciation on licensed software Rs.23,97,707

The learned AO and the Hon'ble DRP have erred in adding back a sum of Rs.23,97,707 as excess depreciation claimed under section 32 of the Act.

> The learned AO and the Hon'ble DRP have erred in limiting the allowance for depreciation on purchase of licensed software to 25% of the cost as against the depreciation rate of 60%, permitted as per the Rules.

> The learned AO and the Hon'ble DRP ought to have appreciated the fact that as per section 32 of the Act read with New Appendix 1, the rate of depreciation for computer including computer software is 60%,

'Notwithstanding and without prejudice to the above, the learned AO and the Hon'ble DRP ought to have appreciated that if depreciation is allowed @25% on computer software then the excess depreciation to be disallowed would be Rs. 18,33,078 as against Rs.23,97,707 disallowed in the draft assessment order.

26. Ground on Non grant of balance additional depreciation

> The learned AO and the Hon'ble DRP have erred in not allowing balance additional depreciation at the rate of 10% on new plant and machinery acquired during FY 2011-12 amounting to Rs. 130,04,23,529 which has been put to use for a period of less than 180 days in its year of acquisition.

Ground on Disallowance of Secondment payments to Associated Enterprises Rs.77,97,40,472

The learned AO and the Hon'ble DRP have erred in disallowing the reimbursement of salary paid to associated enterprise on account of non-withholding of taxes under Section 40(a) (i) of the Act.

> The learned AO and the Hon'ble DRP have erred in holding that the services rendered by Associated Enterprises (AEs") to the Appellant was in the nature of Fee for Technical Services taxable under Section 9 (1) (vii) of the Act.

The learned AO and the Hon'ble DRP ought to have appreciated that the payments made to AEs by the Appellant are mere reimbursement of salary expenses of the seconded employees and not fees for technical services.

> The learned AO and the Hon'ble DRP have erred in not appreciating the fact that the employer-employee relationship existed between the Appellant and seconded employees.

The learned AO and the Hon'ble DRP have erred in not appreciating the fact that the above issue is already covered in the Appellant's favor by the ruling of Hon'ble Bangalore ITAT in a similar case for A Y 2008-09.

The learned AO and the Hon'ble DRP ought to have appreciated that service provided by The associated entity does not make available technical knowledge, experience, skill, knowhow or processes, for it to be taxable under the India - USA Double Taxation Avoidance Agreement ('tax treaty').

The learned AO and the Hon'ble DRP ought to have appreciated that once a service is not taxable under the tax treaty, the need for disallowance under Section 40 (a) (i) does not arise.

> Notwithstanding and without prejudice to the above, the Appellant submit that the actual payment towards reimbursement of salary of seconded employees made by the Appellant is Rs.28,37,93,461 whereas the learned AO and the Hon'ble DRP have erred in disallowing a sum of Rs.77,97,40,472.

As is evident, the assessee is aggrieved by confirmation of certain Transfer Pricing Adjustments as well as certain corporate adjustments. The issues that fall for our consideration are: (i) Transfer Pricing Adjustment in three segments; (ii) Disallowance of forex loss; (iii) Disallowance of provision for Obsolescence; (iv) Disallowance of Repairs & Maintenance to Buildings; (v) Disallowance of stamp charges; (vi) Disallowance of Depreciation on Printers & Scanners; (vii) Disallowance of depreciation on licensed software; (viii) non-grant of additional depreciation; (ix) Disallowance of Secondment Payments.

1.4 The Ld. AR placed on record issue-wise chart and advanced arguments supporting the case of the assessee. Reliance has been placed on various judicial decisions, the copies of which have been placed on record. The Ld. CIT-DR also advanced arguments supporting the assessment framed by lower authorities. The written submissions have also been filed which have duly been considered. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Proceedings before lower authorities

2.1 The assessee being resident corporate assessee is wholly owned subsidiary (WOS) of Caterpillar Commercial SA, Belgium which in turn, is WOS of Caterpillar Inc. USA. The assessee is engaged in manufacturing activities as well as rendering services to its Associates Enterprises (AE). The international transactions as carried out by the assessee with its AE have been tabulated in para-3 of Ld. TPO's order.

In its Transfer Pricing (TP) study report, the assessee adopted itself as a tested party for all the segments using segmental TNMM and submitted that its own margin, in each of the segment, was way above than average margins of comparable entities. Therefore, no TP adjustment was offered.

2.2 The dispute arose in Engineering & Design Segment (EDS), IT Segment and ITeS segment. The Ld. TPO, applying certain filters disturbed the comparable entities by rejecting some of the entities as selected by the assessee and by introducing certain new comparable entities. The Ld. TPO also denied certain economic adjustment viz. risk adjustment, working capital adjustments as claimed by the assessee. The forex gains / losses were treated as operating in nature.

2.3 The Ld. TPO proposed TP adjustments in each of these three segments as under: -

Segment	Assessee's PLI	Average PLI of comparable entities	TP Adjustments (Lacs)
EDS Segment	16.79%	28.07%	5404.39
IT Segment	14.90%	19.69%	395.44
ITes Segment	14.66%	18.76%	34.04
		Total	5833.88

2.4 Incorporating the above adjustments, a draft assessment order was passed by Ld. AO on 27-12-2016. In this order, Ld. AO made some other corporate disallowances and adjustments.

2.5 The assessee preferred objections against draft assessment order before Ld. DRP which were partly accepted vide directions dated 23-06-2017. Pursuant to the same final assessment order was passed on 12-09-2017. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

TP Adjustments under EDS Segment

3.1 In this segment, Ld. TPO has worked out assessee's Profit Level Indicator (PLI) as 16.79% as against mean margin of 28.07% reflected by 4 comparable entities. Under this segment, Ld. AR has sought exclusion of two comparable entities viz. Acropetal Technologies Ltd. and Vama Industries (segment).

Acropetal Technologies Ltd.

This entity has reflected margin of 61.11%. The Ld. AR seek exclusion of the same on the ground that financial results of this entity are window-dressed and this entity is primarily engaged in outsourcing its activities to third-parties. This is abnormal year of operation and this is high risk bearing entity with significant R&D activities. The Ld. AR has relied on the decision of Chennai Tribunal in the case of **M/s Doosan Power Systems India Pvt. Ltd. (ITA No.1885/Chny/2017 & ors. dated 23-06-2023)** which is for same AY 2013-14. We find that in this decision, the bench has excluded this entity on the ground that financials of this entity are based on fraud committed as per clear-cut finding of SEBI adjudicator. Considering the same, we direct Ld. TPO to exclude this entity from comparable matrix.

Vama Industries (Segment)

The Ld. AR has submitted that this entity is functionally dissimilar. This entity is leading IT service provider and is engaged in providing services in the areas of IT infrastructure, IT and ITeS. This entity is stated to be in diversified business and relevant segment information is not available. The Ld. AR has submitted that Ld. TPO has considered software development segment as details of EDS segment were not available.

This being a software provider, the same could not be equated with EDS. We find that Ld. TPO has included this entity on the ground that this entity is engaged in EDS which is given as a part of software development. EDS include design, analysis, testing and product support services whereas software service includes application development, migration, testing and maintenance. Accordingly, this segment has been held to be comparable. However, we are of the opinion that software development and EDS services are two distinct segments and the margins in these two segments could not be held to be comparable with each other. Therefore, we direct Ld. TPO to exclude the same in final comparable matrix.

3.2 The Ld. AR has submitted that after exclusion of two entities, the margins of the assessee would be much more than comparable entities and therefore, other grounds in this segment need not be adjudicated. Considering the same, delving into the other arguments, on this issue, has been rendered mere academic in nature.

TP Adjustments under IT Segment

3.3 In this segment, Ld. TPO has worked out assessee's Profit Level Indicator (PLI) as 14.90% as against mean margin of 19.69% reflected by 8 comparable entities. Under this segment, Ld. AR has sought exclusion of two comparable entities viz. Larsen and Toubro Infotech Ltd. and Thirdware Solutions Ltd. The same are adjudicated as under: -.

Larsen and Toubro Infotech Ltd.

The Ld. AR seek exclusion of this entity on the ground that this entity is into diversified businesses and segmental breakup of software product segment and software development segment is not available. The Ld. AR has also submitted that this entity has brand and intangibles. Further,

the segment turnover of this entity is more than 36 times as that of the assessee. This entity is stated to be excluded by various benches of Tribunal. We find that for AY 2013-14, this entity has been excluded by Bangalore Tribunal in the case of **Evolving Systems Networks India P. Ltd. (130 Taxmann.com 212)** on the ground of large turnover. Since similar facts are there in the present case, we direct for exclusion of this entity.

Thirdware Solutions Ltd.

The Ld. AR seeks exclusion of the same on the ground that this entity is primarily into ITeS services. Further, segmental information of this entity is not available. This entity is stated to be excluded by various benches of Tribunal. We find that for AY 2013-14, this entity has been excluded by Mumbai Tribunal in the case of **Lionbridge Technologies P. Ltd. (101 Taxmann.com 41)** on the ground this entity was into acquisition / purchase of hardware and software including software as a service. This entity was also engaged in software development, implementation and support services. Therefore, it earned income from products and services. On the other hand, the assessee was solely into software services. The bench, relying on the decision of Delhi Tribunal in the case of *St-Ericsson India (P.) Ltd. v. Addl. CIT [2017] 79 Taxmann.com 207 (Delhi - Trib.)*, held that this was not a valid comparable. Following the same, we direct for exclusion of this entity.

3.4 The Ld. AR has submitted that after exclusion of two entities, the margins of the assessee would be within tolerance range and therefore, other grounds in this segment need not be adjudicated. Considering the same, delving into the other arguments, on this issue, has been rendered mere academic in nature.

TP Adjustments under ITeS Segment

3.5 In this segment, Ld. TPO has worked out assessee's Profit Level Indicator (PLI) as 14.66% as against mean margin of 18.76% reflected by 10 comparable entities. Under this segment, Ld. AR has sought exclusion of two comparable entities viz. Infosys BPO Ltd. and Hartron Communications Ltd. For the same, Ld. AR has relied on the decision of Chennai Tribunal in the case of **Cameron Manufacturing India P. Ltd. (109 Taxmann.com 303)** wherein for AY 2013-14, both these entities have been excluded. Upon perusal of the same, we find that co-ordinate bench has directed for exclusion of M/s Infosys BPO Ltd. on the ground that turnover of this entity was quite high i.e., approx. Rs.1356 crores. There was wide gap between the size and turnover of the company. The other entity viz. M/s Hartron Communications Ltd. was also directed to be excluded on the ground that this entity had diversified operations which could not be compared with ITeS segment. Further, during this year, there were extraordinary operations and therefore, it could not be taken as comparable entity. Respectfully following the same, we direct for exclusion of both these entities.

3.6 The Ld. AR has submitted that after exclusion of two entities, the margins of the assessee would be within tolerance range and therefore, other grounds in this segment need not be adjudicated. Considering the same, delving into the other arguments, on this issue, has been rendered mere academic in nature.

3.7 In the result, The TP grounds stand partly allowed in terms of our above order.

Corporate Tax Grounds

4. Disallowance of notional loss

4.1 The assessee claimed deduction of Rs.2020 Lacs which represent foreign currency loss. The Ld. AO held the same to be notional loss and observed that the same would accrue only at the time of repayment of loan. Therefore, the deduction was denied. The Ld. DRP held that the loss was capital in nature. The said loss could not be adjusted to WDV of fixed assets also. The loan was utilized for purchase of fixed assets. Aggrieved, the assessee is in further appeal before us.

4.2 The assessee, in its written submissions, has stated that it was incurred net forex loss of Rs.2022.55 Lacs after reversal of opening forex losses. It has also been stated that these losses have similarly been reversed in succeeding AY. The said methodology is stated to be in accordance with applicable accounting standards. Another submission is that the assessee has followed consistent accounting policy in this regard. In AY 2015-16, the assessee has earned similar gains which have been offered to tax.

4.3 We find that Ld. DRP has rendered a finding that the loans have been utilized towards fixed assets and therefore, the loss is capital in nature. From the facts, it is not clear as to how the loan has been utilized by the assessee. In our opinion, if the loan is utilized towards purchase of fixed assts, it would be in the nature of capital expenditure. However, if it has been utilized for day-to-day business operations, the same would be revenue in nature. Apparently, the assessee is following consistent method of accounting to claim the same. It is also not clear as to what treatment has been given by the assessee to claimed profit / loss in the year of liquidation. All these facts would have material bearing on determination of issue. Therefore, we restore this matter back to the file of Ld. AO for fresh adjudication by bringing on record correct factual

matrix. The corresponding grounds stands allowed for statistical purposes.

5. Disallowance of Provision for Obsolescence

5.1 The assessee claimed loss of Rs.1280 Lacs under this head in the computation of income without claiming the same in Profit & Loss Account. The same represent provision for obsolete inventory. The Ld. AO disallowed the same which was confirmed by Ld. DRP.

5.2 We are of the considered opinion that mere provision of old stock could not be allowed to the assessee by way of deduction in the computation of income. The assessee would be following a definite accounting policy to value the book stocks and the profit or loss arising therefrom would accrue only at the time of sale thereof. Therefore, this claim has rightly been denied by lower authorities.

6. Disallowance of Repair and Maintenance Expenditure

6.1 The assessee claimed amount of Rs.192.26 Lacs under this head which represent interior work, modular partition, strengthening of building pillars, interiors, routine maintenance etc. as tabulated in para-8 of final assessment order. It transpired that the assessee constructed first and second floor of 1250 sq. meter on each of floor on PMG building. The entire project was carried out by various parties. The assessee added additional capacity to the office spaces. All these facts led to a conclusion that the expenditure was capital in nature. The assessee created a new-assets and installed furniture and fittings. The Ld. DRP directed Ld. AO to delete an amount of Rs.31.99 Lacs since the same was not debited to the Profit & Loss Account. The Ld. DRP also directed Ld. AO to allow depreciation on the same. Accordingly, Ld. AO disallowed amount of Rs.152.72 Lacs.

6.2 We find that the aforesaid expenditure has enabled the assessee to add more work space which would mean that there is enlargement of profit-making apparatus for the assessee. The mere fact that the same was carried out on a leased space would not materially affect this fact. The assessee has added more floors to the existing office space which is nothing but capital in nature. The expenditure would bring enduring benefit to the assessee in future. Therefore, the directions of Ld. DRP could not be faulted with.

7. Disallowance of Stamp Duty Charges

7.1 An amount of Rs.27.27 Lacs was paid as stamp duty towards registration of rental agreement for office premises. The agreement was for 3 years whereas entire stamp duty was claimed in the year of incurrence which was not correct methodology. The Ld DRP held that the expense was towards acquisition of lease and therefore, it was capital in nature. Accordingly, the same was disallowed. Aggrieved, the assessee is in further appeal before us.

7.2 We find that the liability to pay stamp duty has crystallized only during this year. The lease agreement may be for more than one year, however, the expenditure is mere a revenue expenditure and unless the assessee chooses to treat the same as deferred revenue expenditure, full deduction thereof shall be allowable to the assessee in the year of incurrence i.e., in this year. We direct Ld. AO to allow this deduction.

8. Disallowance of Depreciation on Printers etc.

8.1 The assessee claimed higher depreciation on printers @60% as applicable to computers. However, Ld. AO allowed depreciation of 25% and made disallowance of Rs.5.02 Lacs.

8.2 It is apparent that the printers and scanners are being used along with computers and do not carry separate existence as such. Therefore, we direct Ld. AO to allow higher depreciation on the same.

9. Disallowance of Depreciation on Softwares

9.1 The assessee claimed higher depreciation on software @60% as applicable to computers. The Ld. AO proposed allowance of 25%. The Ld. DRP held that the same could not be allowed for want of TDS. However, in the final assessment order, Ld. AO allowed depreciation of 25% and made disallowance of Rs.23.97 Lacs.

9.2 We find that this issue is covered in assessee's favor by the decision of Hon'ble High Court of Madras in the case of **Computer Age Management Services (267 Taxman 146)** wherein it has been held that where software license acquired by assessee was in nature of software application, the assessee would be eligible to claim depreciation at 60%. Respectfully following the same, we allow this claim of the assessee.

10. Disallowance of Secondment Payment to Employees

10.1 The assessee made payments of Rs.7797.40 Lacs to its AE on account of Salary expenses of seconded employees and the amounts were stated to be in the nature of reimbursements. The Ld. DRP proposed to treat the same as Fees for Technical Services. The assessee submitted that it entered into secondment agreement with group companies for deputation of employees to facilitate the business operations of the assessee. Pursuant to the same, actual salary was reimbursed to Group Company. The same were in the nature of reimbursements only and do not include any element of income. The seconded employees were under the control and supervision of the assessee. The risk and reward of the worked performed by the deputed

employees was with assessee. Further, due Tax at source was deducted u/s 192 against these payments.

10.2 The Ld. DRP, upon perusal of agreement, observed that the assessee sought certain services from its group entity (AE) and the said AE agreed to provide such services through secondment of employees. The function of such employees was defined in the agreement. It was AE who was the employers and providing services to the assessee through these employees. Further, these employees had specified skills and expertise. The purpose of secondment was to utilize technical as well as leadership skills of the group entities for specific time and establishing the global practices in the assessee company. Therefore, the provision of services was nothing but technical services being provided by AE to the assessee. The mere fact that the employee worked under control and supervision of the assessee would not change their status of employment with AE. Considering various judicial decisions, such payments were held to be fees for technical services. Accordingly, Ld. AO was directed to make disallowance u/s 40(a)(i). Aggrieved, the assessee is in further appeal before us.

10.3 Upon perusal of agreement, it emerges that the assessee has availed services of employees of its group entities. The same was to facilitate business operations of the assessee. These seconded employees have worked under the control and supervision of the assessee which is evident from the fact that the assessee, as an employer, has deducted due TDS u/s 192. Therefore, these payments have already suffered TDS. The assessee has merely reimbursed actual salary to its AE. The same were merely in the nature of reimbursements only and do not include any element of income. The risk and reward of

the work performed by the deputed employees was with assessee. Therefore, Ld. DRP, in our opinion, is not correct to treat the same as Fees for Technical Services which would require separate TDS. Accordingly, impugned disallowance as made u/s 40(a)(i) stand deleted.

11. Disallowance of Additional Depreciation on Plant & machinery installed during FY 2011-12

Apparently, this issue has not been considered by any of the lower authorities. Considering the same, we direct Ld. AO to render factual finding on the same and adjudicate the issue. The assessee is directed to substantiate its case. The corresponding grounds stand allowed for statistical purposes.

Conclusion

12. The appeal stands partly allowed in terms of our above order. The cross-objection of the revenue stand dismissed as infructuous.

Order pronounced on 11th June, 2024

Sd/- (MANU KUMAR GIRI) न्यायिक सदस्य / JUDICIAL MEMBER	Sd/- (MANOJ KUMAR AGGARWAL) लेखक सदस्य / ACCOUNTANT MEMBER
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चेन्नई Chennai; दिनांक Dated : 11-06-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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2. प्रत्यर्थी/Revenue
3. आयकरआयुक्त/CIT., Chennai / Madurai / Coimbatore / Salem
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