

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.3236/Chny/2017
निर्धारण वर्ष/Assessment Year: 2013-14

M/s.Sundram Fasteners Ltd., 98-A, 7 th Floor, Dr.Radhakrishnan Salai, Mylapore, Chennai-600 004.	v.	The DCIT, Corporate Circle-6(2), Chennai.
[PAN: AAACS 8779 D]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri Vikaram Vijayaraghavan, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Shri A. Sasikumar, CIT
सुनवाईकीतारीख/Date of Hearing	:	12.06.2024
घोषणाकीतारीख /Date of Pronouncement	:	26.07.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the impugned order of the Assessing Officer (hereinafter in short 'the AO') dated 30.10.2017, pursuant to the direction of the Dispute Resolution Panel (hereinafter in short 'the DRP') dated 21.09.2017 and pertains to Assessment Year (hereinafter in short 'AY') 2013-14.



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2. Ground Nos.2 to 2.1.2 relates to the issue of TP adjustment towards international transactions amounting to Rs.3,88,48,718/-. The TPO noted that assessee has given loan to its AE's as under:-

No	Loan granted To	Amount	Rate of Interest	Interest Amount (in Rs.)
1	Peiner Umformtechnik GmbH, Germany	346,873,500.00	6% p.a.	2,12,03,715
2	TVS Peiner Services, Germany	45,168,500.00	6% p.a.	13,70,111
3	Windbolt GmbH, Germany	35,365,000.00	9% p.a.	1,48,53,174

2.1 According to the TPO, it can be seen from the chart (supra) that the assessee has charged interest @9% for the loans given to one of the related company M/s Windbolt GmbH, Germany, whereas, it has charged only 6% on the loans given to other two related parties. So, according to him, interest rate should be @9% from the other two AEs also and accordingly, made an adjustment of Rs.3,52,83,780/- as under:

No	Loan granted To	Amount	Rate of Interest	Interest Amount (in Rs.)
1	Peiner Umformtechnik GmbH, Germany	346,873,500	9% p.a.	3,12,18,615
2	TVS Peiner Services, Germany	45,168,500	9% p.a.	40,65,165
Total				3,52,83,780

2.2 The DRP has confirmed the action of the TPO. The Ld.AR of the assessee pointed out that Companies to whom assessee gave loan @6% were wholly owned subsidiary of the assessee's/Pioneer Group; and further



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submitted that the loan advanced to them were for the purpose of business; and since, both the AEs were not in good financial health, considering the commercial expediency, the assessee had advanced loan to them; and also pointed out that even though, interest was charged @6%, the assessee had to eventually waive off the interest and thus, the assessee in fact had advanced the amount interest-free to these subsidiary/AE's. And in this context, the Ld.AR pointed out that the assessee had enough own-money to give interest-free loan to related parties/AE's and therefore, no adjustment was warranted; and submitted that similar issue had cropped up in the assessee's own case for AYS 2010-11 & 2011-12, and the Tribunal had remitted back the very same issue to the file of the AO to verify the actual surplus funds available with the assessee and gave certain direction [refer order for AY 2010-11]. Therefore, according to him, for the year under consideration also the issue of disallowance of interest may be remitted back to the file of the AO with similar directions.

2.3 Per contra, the Ld.DR submitted that interest should be charged on the amount advanced by the assessee to its AE's at Germany; and since, the assessee has charged @9% from a joint venture, the AO rightly charged interest @9% rate of interest on the loan advanced to other two AEs. Therefore, he does not want us to interfere with the order of the DRP/TPO/AO. In his rejoinder, the Ld.AR pointed out that the company



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from whom assessee charged interest @9% was a joint-venture and formed for execution of a new project and therefore, there was more risk involved in the said project and therefore, interest was charged at the rate of 9%. Therefore, according to the Ld.AR, the same treatment cannot be given to transactions with that of wholly owned subsidiaries.

2.4 We have heard both the parties and perused the material available on record. We note that the assessee company had advanced interest-free loans to its wholly owned two subsidiary companies at Germany and a joint-venture company @ 9%. The plea of the assessee is that the assessee had sufficient own money to give interest-free advances to its subsidiaries and due to commercial expediency, loan was advanced to them and so it is allowable; and we agree to such a contention in principle. We find that similar issue had come up in the assessee's own case for earlier assessment years [*especially for AY 2010-11*] as noted (*supra*) and the Tribunal had set aside the issue to the file of the AO to verify the *actual surplus funds* available with the assessee and also to verify whether assessee had borrowed loan and whether there was nexus between the borrowed loan and advance given by the assessee to the AEs at Germany. Since the factual scenario on this issue are similar to that of the AY 2010-11 & 2011-12, we are of the considered view that the matter needs to be reconsidered in the light of the observations made by this Tribunal for AY 2010-11. Accordingly, the orders of the lower authorities



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are set aside and issue of TP adjustment made in this regard for an amount of Rs.3,52,83,780/- are remitted back to the file of the AO; and the AO shall re-examine the issue as directed by the Tribunal for AY 2010-11 in ITA No.688/Mds/2015 dated 04.03.2016 and thereafter, decide the issue in accordance to law after giving reasonable opportunity to the assessee.

3. Corporate guarantee given to the AE, wherein, the TPO made adjustment of Rs.35,64,938/-.

3.1 The TPO noted that the assessee company has provided corporate guarantee on behalf of its AE and since, no guarantee fee has been collected from its AE, he was of the opinion that 1% of the value of the corporate guarantee should be adjusted and made adjustment of Rs.35,64,938/-. In this regard, the Ld.AR submitted that this issue is covered by the decision of the Tribunal in the assessee's own case for earlier AYs 2009-10 & 2012-13 which relied on the Hon'ble jurisdictional High Court in the case of PCIT vs. Redington (India) Ltd., reported in [2021] 430 ITR 298 (Mad.)(HC) and the Hon'ble Bombay High Court in the case of Everest Kanto Cylinder Ltd. v. ACIT (LTU) reported in [2014] 52 taxmann.com 395 (Bom.) & 378 ITR 57 and directed that AO to restrict the disallowance at 0.5% of the guarantee value.



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3.2 After hearing both the parties and going through the facts and circumstances of the case, we concur with the TPO's order that this is an international transaction, but upward adjustment is now covered in favour of the assessee by the decision of Hon'ble jurisdictional High Court in the case of Redington (India) Ltd. (supra) and the Hon'ble Bombay High Court in the case of Everest Kanto Cylinder Ltd, supra, therefore, we direct the AO to restrict adjustment @0.5% of the guarantee value.

4. Ground Nos.3 to 3.3 are related to issue of deduction u/s.35(2AB) of the Act amounting to Rs.68,16,688/-.

4.1 Brief facts are that the AO noted that during the year under consideration, assessee has claimed Revenue expenditure of Rs.7,10,30,334/- on which it has claimed 200% deduction (weighted deduction) u/s.35(2AB) of the Act amounting to Rs.14,20,60,668/-. However, the AO noted from Form No.3CL that recurring expenditure (other than Land & Building) allowed by Department of Scientific & Industrial Research (hereinafter in short 'DSIR') is only Rs.6,76,22,000/-. Therefore, according to him, the eligible deduction u/s.35(2AB) of the Act at 200% can be only of Rs.6,76,22,000/- i.e. Rs.13,52,44,000/-. Thus, according to the AO, the excess claim of Rs.68,16,688/- needs to be disallowed and the DRP sustained it.



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4.2 Assailing the action of the AO/DRP, the Ld.AR submitted that the AO erred in disallowing of Rs.68,16,688/- and cited the decision of Mumbai Tribunal in the case of ACIT v. Crompton Greaves Ltd., reported in [2020] 181 ITD 40 (Mum.), wherein, similar issue had come up for consideration and the Tribunal held as under:

3. Apropos ground no.1, the Assessing Officer ('A.O.', for short) noted, after verifying Form Nos. 3CM and 3CL concerning the deduction claimed by the assessee u/s. 35(AB) of the Income Tax Act, 1961 ('the Act', for short), that the eligible amount, as noted by the Department of Scientific and Industrial Research ('DSIR' for short), in Form No. 3CL was less as compared to the deduction claimed by the assessee. The A.O. made the disallowance of Rs.42,52,032/- on this basis. The Id. CIT(A) has confirmed the assessment order on this score, by observing as follows:

7.2 I have carefully perused the assessment order and the submission of the appellant. It is found that during remand hearing, the appellant has not objected to the action of the AO for making disallowance u/s 35(2AB) of the Act. During appellate proceedings, the appellant stated that the claim of the appellant u/s 35(2AB) is to be allowed in full without any restriction on account of DSIR report in Form No 3CM and 3CL. The appellant relied on the decision of Hon'ble Tribunal in the case of Torrent Pharmaceuticals Ltd (28 CCH 781). The appellant further claimed that the expenditure was fully vouched for and was supported by documentary evidence. The DSIR has not given any reason in support of its action, it is seen that the extent of expenditure was never verified by the AO. The appellant has not noted which expenditure was not considered by the D.S.I.R. Therefore, it cannot be ascertained as to whether the expenditure are properly vouched or not, It is also not clear as to why the DSIR has not allowed the claim of expenditure of the appellant. Therefore, it is held that the decision of Hon'ble 1TAT in the case of Torrent Pharmaceutical Ltd is not directly applicable in the instant situation.

Further, a plain reading of section 35(2AB)(1) would indicate that where a company is engaged in the business of biotechnology or any business of manufacture or production of any article or thing, not being an article or thing specified in the list of the Eleventh Schedule incurs any expenditure on 'Scientific Research' (not being expenditure in the nature of cost of any land or building) on in-house, research and development facility 'as approved by the prescribed authority/ such assessee would be entitled to a deduction of a sum equal to one and half



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times of the expenditure so-incurred.. Such expenditure incurred should be approved by the authority prescribed under section 35(2AB) read with rules framed thereunder. The authority prescribed to grant such approval under rule 6(1B) of the rules, 1961 is the Secretary, Department of Scientific and Industrial Research.

As per DSIR regulation/ the Prescribed Authority would pass the order after verification of the expenditure. The appellant has not provided any details as to why the DSIR(ie Prescribed authority) has not allowed the expenditure and whether the appellant has raised any objection thereon. Therefore, I do not find any force in the submission of the appellant. Accordingly, ground no 2 of the appeal is dismissed.

4. The Id. Counsel of the assessee has contended that the Id. CIT(A) has erred in confirming the disallowance wrongly made by the A.O., without appreciating that the assessee was eligible for weighted deduction based on the Auditor's certificates and the tax audit report; that alternatively and without prejudice, the assessee had incurred the expenditure on Scientific Research in the in-house, Research and Development facility approved by the prescribed authority, being the department of Industrial and Scientific Research, i.e., the DSIR. The written submissions have also been filed, which we shall presently discussing.

5. The Id. Departmental Representative (Id. DR for short), on the other hand, has placed strong reliance on the impugned order. It has been contended that the Id. CIT(A) has correctly undone the A.O.'s action of denying the assessee's weighted deduction of Rs.42,52,032/-, including the amount of Rs.28,34,688/-, being the actual expenditure incurred @ 100% of the expenditure u/s. 35(1)(iv) of the I.T. Act; that the eligible expenditure, as per the DSIR, in Form No. 3CL was lower as compared to the amount claimed by the assessee; that the DSIR had not given any reason in support of its action; that as per the DSIR Regulations, the prescribed authority would pass an order after verification of the expenditure; that the assessee had not furnished the reasons for the DSIR's action and no objection had been filed; that the Id. CIT(A) has correctly distinguished the decision of the Ahmedabad Tribunal in the case of Torrent Pharmaceuticals Ltd (2009) 28 CCH 781 (Ahd); that it remains undisputed that the DSIR had not given any reason in support of its action; that the extent of the expenditure was never verified by the A.O.; that the assessee also has not pointed out as to which expenditure was not considered by the DSIR; that in these facts, the Id. CIT(A) cannot be said to have faulted in holding that it cannot be ascertained as to whether the expenditure was properly vouched or not; that it is also unclear as to why the DSIR did not allow the claim of the expenditure as made by the assessee; that, therefore, as correctly held by the Id. CIT(A), Torrent Pharmaceuticals Ltd. (supra) was rightly held to be inapplicable to the facts of the present case.



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6. Here it is seen that it is the assessee's stand that it had incurred in-house Scientific Research expenditure (capital and revenue). It had claimed weighted deduction u/s. 35(2)(AB) of the Act, as under:

i. Revenue expenditure of Rs.10,05,03,198/- @ 150% -
Rs.15,07,54,797/-.

ii. Capital expenditure of Rs.1,27,94,490/- @ 150% -
Rs.1,91,91,735/-.

The assessee, thus, claimed deduction of a sum of Rs.16,99,46,532/-. The details of this expenditure has been filed at Assessee's Paper Book (APB for short), pgs. 93 to

100. It is the claim of the assessee that this expenditure was deductible u/s.35(2AB) of the Act in computing the total income @ 150% of the actual expenditure. The expenditure was incurred for the Kanjurmarg unit of the company; rather, the unit stood approved by the DSIR, in Form No. 3CM, as on 28.08.2008 (APB, pg. 88), as per the requirements of section 35(2AB) of the Act for the period from 01.04.2007 to 31.03.2009. The assessee's Auditor duly certified the genuineness of such expenditure and its eligibility for weighted deduction u/s. 35(2)(AB), as available at APB pgs. 93 to 100, as also by the tax auditor, as evident from APB pgs. 91, 92.

7. It was the action of the DSIR in issuing Form No. 3CL (APB pgs. 89 & 90), dated 24.08.2010, quantifying the eligible expenditure at Rs.11,04,63,000/-, as against that of Rs.11,32,97,688/-, resulting in a difference of Rs.28,34,688/-, which prompted the A.O. to make the disallowance in question.

8. It is seen that as rightly contended on behalf of the assessee, section 35 of the Act grants deduction for Scientific Research expenditure, under the circumstances prescribed there-under, on compliance of the conditions laid down in various provisions of section 35. Now, whereas in some cases, like those coming under the provisions of sections 35(1)(i) and 35(2AB), a specific approval of quantum of expenditure, by the prescribed authority, is the pre-requisite for deduction, the provisions of section 35(2AB) requires approval for Units and not approval for the quantum of expenditure. For ready reference, section 35(2)(AB) reads as under:

Expenditure on scientific research.

35. (2AB)(1) Where a company engaged in the business of biotechnology or in any business of manufacture or production of any article or thing, not being an article or thing specified in the list of the Eleventh Schedule incurs any expenditure on scientific research (not being expenditure in the nature of cost of any land or building) on in-house research and development facility as approved by the prescribed authority, then, there shall be allowed a deduction of a sum equal to one and one-half times of the expenditure so incurred:



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Provided that where such expenditure on scientific research (not being expenditure in the nature of cost of any land or building) on in-house research and development facility is incurred in a previous year relevant to the assessment year beginning on or after the 1st day of April, 2021, the deduction under this clause shall be equal to the expenditure so incurred.

Explanation.--For the purposes of this clause, "expenditure on scientific research", in relation to drugs and pharmaceuticals, shall include expenditure incurred on clinical drug trial, obtaining approval from any regulatory authority under any Central, State or Provincial Act and filing an application for a patent under the Patents Act, 1970 (39 of 1970).

(2) No deduction shall be allowed in respect of the expenditure mentioned in clause (1) under any other provision of this Act.

(3) No company shall be entitled for deduction under clause (1) unless it enters into an agreement with the prescribed authority for co-operation in such research and development facility and fulfils such conditions with regard to maintenance of accounts and audit thereof and furnishing of reports in such manner as may be prescribed.

(4) The prescribed authority shall submit its report in relation to the approval of the said facility to the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General in such form and within such time as may be prescribed.

(5) [***]

(6) No deduction shall be allowed to a company approved under sub-clause (C) of clause (iia) of sub-section (1) in respect of the expenditure referred to in clause (1) which is incurred after the 31st day of March, 2008.

9. The operative phrase here is "on in-house research and development facility as approved by the prescribed authority", the word "facility" has been hereby show us to emphasis the point that it is the unit which requires approval of the prescribed authority under this provision. Further, in the memorandum, explaining the provision of section and the notes on the clauses issued at the time of insertion of section 35(2AB) in the Act, copies of both of which have been filed on record before us by the assessee, it has been clearly provided that the deduction would be available to the assessee's having an approved in-house R & D facility by the prescribed authority. Undisputedly, there is no mention or approval of the quantum of expenditure.

10. Then, as observed by the Ahmedbad Bench of the Tribunal in the case of Sun Pharmaceutical Industries Ltd. Vs. Pr.CIT (2017) 162 ITD 484 as approved by the Hon'ble Gujarat High Court vide its decision reported at 250 taxmann 270, it has been held that the objective of



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Form 3CL is limited to the forwarding of the intimation of the approval of the unit; that Form No. 3CL is a mere report for intimation of approval of R & D facility. In this regard, as rightly pointed out, such aspect stands confirmed by sub- rule (7A) of Rule 6 of Income Tax Rules, as within subsisting (now amended w.e.f. 01.07.2016), to provide for quantification of expenditure as well. The Finance Act, 2015 as amended to sub section (3) of section 35 w.e.f. 01.04.2016, providing for furnishing of reports in the manner to be prescribed. It is, thus, w.e.f. 01.04.2016 that the provision has been made for approval of quantum of expenditure, for the first time.

11. Further still, in Pune ITAT decision in the case of Cummins India Ltd. v. Dy. CIT (2018) 96 Taxmann.com 576 (Pune-Trib.), which is a decision directly on the issue at hand, it has been held, inter alia, to the fact that though the Rules stipulate the filing of audit report before the prescribed authority by availing the deduction u/s. 35(2AB) of the Act. The provision of the Act prescribed or approved to be granted by the prescribed authority vis-à-vis the expenditure from year to year; that the amendment was brought in by the Income Tax amendment Rules w.e.f. 01.04.2016, wherein, a separate part has been inserted for certifying the amount of expenditure from year to year and the amended Form No. 3CL, thus, lays down the procedure to be followed by the prescribed authority; that prior to the said amendment, no such procedure; methodology was prescribed; and that therefore, in the absence of any such procedure or methodology, the A.O. had erred in curtailing the expenditure and consequent weighted deduction claimed u/s. 35(2AB) of the Act on the summon that the prescribed authority had approved the part of the expenditure in Form No. 3CL.

12. It would also be apt to reproduce here-under the provisions substituted in clause (b) of sub rule (7A) of Rule 6, as brought in by the amendment effective from 01.07.2016 as above: "The prescribed authority shall furnish electronically its report,- (i) in relation to the approval of the in-house research and development facility in Part A of Form No. 3CL; (ii) quantifying the expenditure incurred on in-house research and development facility by the company during the previous year and eligible for weighted deduction under sub-section (2AB) of section 35 of the Income Tax Act, 1961 in Part B of Form No. 3CL."

13. Hitherto, the provision was as follows: "The prescribed authority shall submit its report in relation to the approval of in-house facility and development facility in Form No. 3CL to the Director General (Income-tax Exemptions) within sixty days of its granting approval."

The above also makes it amply clear that prior to the amendment, i.e., upto 30.06.2016, it was not required to quantify the expenditure and it was only w.e.f. 01.07.2016 that this mandate has been put in place.

14. The year under consideration is A.Y. 2009-10 and, for this year, the amendment was not applicable. Therefore, the assessee is right in contending that the non approval of the expenditure claimed by CSIR did not entitle the A.O. to make the disallowance and the Id. CIT(A) to confirm the same.



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This does also take care of a without prejudice contentions raised by the assessee, to the fact that deduction of actual expenditure of Rs.28,34,688/- be allowed to the assessee under the provisions of section 35(1)(i) and 35(1)(iv). These provisions of allowing 100% deduction of expenditure on in-house scientific research, irrespective of the approval of the unit and the certification of the expenditure, where the actual expenditure, as in the case of the assessee is verified by the Statutory Auditor and certified by the Independent Auditor and Tax Auditor.

15. The assessee is found correct in contending that the Id. CIT(A) has observed that the extent of the expenditure was never verified by the A.O. Thus, according to the assessee it goes to confirms that the A.O. disallowed the claim without due application of mind. This contention of the assessee is correct, as evident from the assessment order itself, wherein the ground for the disallowance was the non approval of the expenditure claimed by the DSIR.

16. On behalf of the assessee, another contention has been raised, that the Id. CIT(A) is wrong in observing that during the remand proceedings, the assessee has not objected to the action of the A.O. in making the disallowance u/s. 35(2AB). This, it has been emphasized, that the assessee had always objected to the disallowance before the A.O. as well as the Id. CIT(A). The attention in this regard has been drawn to the grounds taken by the assessee and the submissions raised by the assessee before the Id. CIT(A). It has further been submitted that in the remand proceedings, qua this issue, no enquiry whatsoever had been made by the A.O., notwithstanding the fact that the remand proceedings were proceedings where the assessee was required to press his claim afresh, which could have only be done by way of objecting to the action of the A.O.

17. Be that as it may, the disallowance stands objected to by the assessee before us, which issue we have answered in the preceding paragraphs.

In view of the above, finding merit in ground no. 1 raised by the assessee, the same is hereby accepted to the reversing order passed by the Id. CIT(A) on this issue and deleting the disallowance of Rs.42,52,032/-, made u/s. 35(2AB) of the Act.

4.3 We note that the assessee has claimed deduction of Rs.14,20,60,668/- and the AO allowed deduction of only Rs.13,52,44,00/- as approved by the DSIR. It is noted that prior to the amendment brought in Rule 6(7A) of the Income Tax Rules, 1962 (hereinafter in short 'the Rules') w.e.f. 01.07.2016 i.e. from AY 2016-17, the prescribed



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authority had to submit its report in relation to the approval of in-house facility and development facility in Form 3CL to DG (Income Tax Exemption) within sixty days of its granting approval unlike after the amendment, the quantum of expenditure incurred for in-house research & development facility by assessee was required to be given by the authority; and since, the year under consideration (i.e. AY 2013-14) and the amendment was not applicable as noted (supra) in the case of Crompton Greaves Ltd., the assessee has rightly contended that amendment was not applicable, and the prescribed authority was not required to quantify the expenditure and had to only give report in relation to the approval of in-house facility and development facility, and therefore, in the absence of any requirement of law, the AO erred in curtailing the expenditure and consequent weighted deduction claimed by assessee. Therefore, the non-approval of the expenditure by the DSIR doesn't disentitle the assessee to make the claim of Rs.14,20,60,668/- in the relevant year under consideration and hence, the AO couldn't have disallowed Rs.68,16,668/-. Therefore, respectfully following the ratio of the decision of the Tribunal in the case of Crompton Greaves Ltd. (supra), we allow grounds of appeal of the assessee and direct deletion of Rs.68,16,668/-.

5. Ground No.4 to 4.3 relates to the issue of disallowance of software, Revenue expenditure amounting to Rs.1,31,17,218/-.



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5.1 At the outset, the Ld.AR of the assessee brought to our notice that similar issue had come up before this Tribunal in the assessee's own case for AY 2011-12 and the Tribunal was pleased to set aside the matter back to the file of the AO by observing as under:

13. We have considered the rival submissions on either side and perused the relevant material available on record. As rightly submitted by the Ld. D.R., the assessee's claim of expenditure included fee for software licenses, cost of application software, annual maintenance contract, software development and maintenance charges. The annual maintenance charges and cost of upgradation charges are held to be revenue in nature by the Dispute Resolution Panel and it has to be allowed in the year in which it was incurred. In respect of software licenses, the DRP found that there are two types of licenses one is annual license and another one is permanent license. In respect of annual license, the Dispute Resolution Panel found it to be as revenue expenditure and to be allowed in the year in which it was incurred. As far as permanent license is concerned, the Dispute Resolution Panel found that there was enduring benefit to the assessee. When the assessee bought the software permanently, the initial purchase of software has to be on the capital field since the assessee earned the right over the software. Even though it was licensed to use, the license given to the assessee is exclusively for the assessee. Therefore, this Tribunal is of the considered opinion that the Dispute Resolution Panel has rightly found that the permanent license is in the capital field. As far as application of software is concerned, again we have to see whether it was temporary one or for long period. If the application software is only for a short period, then it has to be treated as revenue expenditure and it has to be allowed in the year in which it was incurred. If the application software is for a longer period, then it will have an enduring benefit. Therefore, as rightly found by the Dispute Resolution Panel, the expenditure has to be capitalized. The Dispute Resolution Panel directed the Assessing Officer to verify the nature of expenditure and thereafter to decide the issue. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly, the same is confirmed.

5.2 In AY 2011-12 on identical issue, the Tribunal held as under:

19. We have heard Dr. Milind Madhukar Bhusari, the Ld. Departmental Representative also. As rightly submitted by the Ld.counsel for the assessee, the Tribunal remitted back the matter to the file of the Assessing Officer by directing the DRP to verify the nature of expenditure and thereafter decide the issue. This Tribunal found that if the application software is only for a short period, then it can be treated as revenue expenditure. However, if the application software is



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for a longer period, then it will have enduring benefit, therefore, it has to be capitalized. Since the facts need to be verified. This Tribunal is of the considered opinion that the matter can be verified by the Assessing Officer. Accordingly, the orders of the authorities below are set aside and the Assessing Officer is directed to verify the nature of expenditure and thereafter decide the issue in accordance with law after giving a reasonable opportunity to the assessee.

5.3 In the light of the above orders of the Tribunal in the assessee's own case, we note that the assessee's case as far as total software expenditure in this year is concerned is noted to be on account of annual-licence fee, which issue was set aside back to the file of the AO to verify the nature of expenditure as observed (supra); therefore, respectfully following the same, we set-aside the impugned order on this issue back to the file of the AO to verify the nature of expenditure as observed (supra) and decide the issue as directed in assessee's own case supra in accordance to law after giving reasonable opportunity to the assessee.

6. Ground Nos.5 to 5.3 relates to disallowance u/s.43B amounting to Rs.1,90,141/-. At the outset, the Ld.AR of the assessee fairly conceded that this issue has been decided against the assessee by the Hon'ble Supreme Court in the case of Exide Industries v. UOI reported in 292 ITR 0470 and therefore, the same stands dismissed.

7. Ground Nos.6 to 6.2 relates to the issue of amortization of capital expenditure (lease hold land amounting to Rs.6,37,836/-).

7.1 At the outset, the Ld.AR of the assessee brought to our notice that the Hon'ble Madras High Court in the assessee's own case (TCA No.498 of



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2018) dated 15.03.2021 has set aside the issue back to the file of the AO for re-consideration of the issue. It is noted that before the Hon'ble Madras High Court, the assessee had raised the substantial question of law as under:

"Whether Tribunal ought to have granted depreciation under Section 32 on the amount paid to SEZ as it had acquired commercial right for the use of the land for the purpose of business of the Assessee?"

7.2 And the Hon'ble Madras High Court held that even though foundational facts appears to have been recorded, the issue have not been canvassed by the assessee in the right Forum i.e. before the AO and therefore, the issue/claim of depreciation was remitted back to the AO for his adjudication by observing as under:

Since foundational facts, though appear to have been on record, have not been canvassed by the assessee in the right form before the Assessing Officer to enable the Assessing Officer to take a decision in the matter. Nevertheless, this Court, having been satisfied that a issue arises for consideration in the assessee's case, is of the view that the matter should be remanded back to the Assessing Officer for a decision to be taken on merits. Therefore, while upholding the order passed by the Tribunal to the extent indicated, insofar as the factual issue touching upon the question, which was framed for consideration, the matter stands remitted to the Assessing Officer for a decision to be taken on merits and in accordance with law, after taking note of the submissions that the assessee may make before the Assessing Officer.

9. In the result, the Tax Case Appeal is allowed to the extent indicated and matter stands remanded to the Assessing Officer and consequently, the substantial question of law is left open. No costs.

7.3 In the light of the binding decision of the Hon'ble High Court (supra) the impugned order on this issue is set aside back to the AO and we direct the AO to consider whether the premium paid for grant of leasehold rights is eligible for depreciation after hearing the assessee.



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8. Ground Nos.7 to 7.3 relates to the issue of claim of foreign exchange fluctuation loss amounting to Rs.3,84,59,950/-. The assessee claimed foreign exchange fluctuation loss of Rs.452.47 lakhs; and the AO asked the assessee to explain the claim; and the assessee submitted that the transaction in question pertains to foreign currency loan taken towards acquisition of fixed assets. According to assessee, since loan was taken for acquisition of fixed assets which were "**indigenous assets**" the foreign exchange fluctuation on the same is allowable. However, the AO didn't agree and cited the decision of the Hon'ble Supreme Court in the case of ACIT v. M/s.Elecon Engineering Co. Ltd., reported in [2010] 322 ITR 20 (SC), and he was of the opinion that assessee is only eligible for depreciation on such assets @15% being Plant & Building and allowed a sum of Rs.67,87,050/- and the balance amount of Rs.3,84,59,950/- was added back to the total income of the assessee. The DRP confirmed the same. The Ld.AR of the assessee submitted that the AO failed to appreciate that section 43A applies only towards foreign exchange loss on acquisition of imported assets (*Rs 95.59 Lakhs have already been suo-moto disallowed by assessee in Return of income*) i.e. assets procured from a country outside India and not towards acquisition of indigenous assets. And further Ld AR submitted that if an assessee takes a foreign loan i.e an ECB (External Commercial Borrowing) in foreign currency and



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it is used for purchasing domestic assets, then there are two points of time to consider:

- On every 31-3 date (restatement date) when accounts are drawn up. At this date, the AS-11 standard says the forex receivable/payable of revenue items must be shown in the P&L and is allowable as a revenue deduction if it is a forex loss. Thus on 31-3 of every year, the forex difference on the outstanding loan amount if it is a loss will appear as a deduction in the P&L. Whether this claim is allowable under Income Tax was settled in the affirmative in the SC decision of CIT Vs Woodward Governor India P Ltd – 312 ITR 254(paras 18-21). This issue is dealt with in Ground 8 of this Appeal separately. Please refer the same
 - On realization date (date of actual repayment of loan) wherein the loan is repaid and there may be a forex loss between the date of loan taken and loan repayment and such loss is an allowable deduction. This is clearly allowable as a normal revenue item under S.37 as held by Supreme Court in Wipro Finance Ltd Vs CIT – CA No.6677 of 2008 dated 12.04.2022 and Cooper Corporation (P) Ltd Vs DCIT in ITA No 866/PN/2014 and Order of Chennai Tribunal in Alchymars ICM SM P Ltd refer in page 40 of paperbook-2,
- The reason for distinction of “purchase of domestic assets” above and not simply “purchase of assets” is in the Income Tax Act, S.43A was introduced which specially carves out an exception for imported assets alone stating that forex losses on imported assets must be treated as a capital item and not a revenue item. S.43A reads: “S.43A(1) Notwithstanding anything contained in any other provision of this Act, where an assessee has acquired any asset in any previous year from a country outside India for the purposes of his business or profession...” (emphasis added). Hence S.43A puts the forex losses of loans used for purchasing imported assets in the capital field and allows the cost of the asset to be adjusted for the forex loss at the time of repayment.
- In this case, the forex loss of Rs.452.47L on actual repayment of loan taken for purchasing domestic assets is a revenue item and not a capital item covered u/S 43A and is thus allowable u/S 37 as a deduction under IT Act.
- This was upheld in Wipro Finance SC which was referred to in Alchymars(para 7 of the Order in running page 44 of paperbook-2) the ITAT held as follows:

“We have heard rival contentions and gone through facts and circumstances of the case. Admitted facts are that the assessee has availed an external commercial borrowing to part finance its expansion project. The loan was drawn down and utilized for the purpose of fixed assets all of which were purchased from the domestic market i.e., domestic assets. The assessee did not use the loan for purchase of assets from abroad. Accordingly, fluctuation in the exchange rate viz-a-viz the rate at which loans were available, the transactional gain or loss is to be assessed as Revenue. Respectfully following the decision of Hon’ble Supreme Court in the case of Wipro Finance Ltd., supra, we allow the claim of assessee.”
- The Pune ITAT in Cooper Corporation (P) Ltd Vs DCIT in ITA No 866/PN/2014 has held in para 11 as follows:-



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“For the aforesaid reasons, in the absence of applicability of section 43A of the Act to the facts of the case and in the absence of any other provision of the Income Tax Act dealing with the issue, claim of exchange fluctuation loss in revenue account by the Assessee in accordance with generally accepted accounting practices and mandatory accounting standards notified by the ICAI and also in conformity with CBDT notification cannot be faulted. No inconsistency with any provision of Act or with any accounting practices has been brought to our notice. Otherwise also, in the light of fact that the conversion in foreign currency loans which led to impugned loss, were dictated by revenue considerations towards saving interest costs etc. we have no hesitation in coming to the conclusion that loss being on revenue account is an allowable expenditure under S. 37(1) of the Act. The order of the CIT(A) sustaining the disallowance is not called for and is thus reversed. In the result, the Ground No.1 is allowed”

8.1 The Ld.AR of the assessee brought to our notice that the issue is no longer res integra and cited the decision of this Tribunal in the case of M/s.Alchymar’s ICM SM Pvt. Ltd., in ITA No.862/2020 for AY 2012-13, wherein, similar question was answered by this Tribunal by taking note of the case cited by the AO in the case of M/s.Elecon Engineering Co. Ltd. (supra). The Tribunal took note of the decision of the Hon’ble Supreme Court in the case of M/s.Wipro Finance Ltd. v. CIT in TCA No.6677/2008 order dated 12.04.2022, wherein, this issue was considered and their Lordships held that provisions of Sec.43A of the Act will not apply where the assessee had not acquired any asset from any country outside India for the purpose of its business. It would be gainful to reproduce the decision of this Tribunal in the case of M/s.Alchymar’s ICM SM Pvt. Ltd. (supra), wherein, the Tribunal held as under:

3. The first issue in this appeal of assessee is as regards to the order of CIT(A) confirming the disallowance of Rs.37,08,705/- being loss incurred in foreign currency exchange fluctuation on account of ECB loss holding the same as capital in nature. For this, assessee has raised following grounds:-



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2. The Commissioner of Income tax (Appeals) erred in confirming the disallowance of Rs.37,08,705/- being loss incurred in foreign currency exchange fluctuation on account ECB loss on the ground that it is capital in nature.

2.1 The Commissioner of Income tax (Appeals) ought to have appreciated that the borrowings were for the purpose of business and hence cost relating thereof is an allowable deduction.

2.2 The Commissioner of Income tax (Appeals) ought to have appreciated that only in respect of transactions to which Section 43A applies, foreign exchange loss or gains should be adjusted against the cost of the assets. In respect of other transactions, the forex loss should be allowed as a revenue expenditure.

4. Brief facts are that the assessee is engaged in the business of manufacture and sale of API and bulk drug intermediates. The AO during the course of assessment proceedings noticed that the assessee had claimed loss of Rs.37,08,705/- arising out of foreign exchange fluctuation in respect of foreign loss obtained by assessee. The AO disallowed the loss claimed on the ground that the amounts were utilized for acquisition of assets and hence, capital in nature. Aggrieved, assessee preferred appeal before CIT(A). The CIT(A) after considering the submissions of the assessee noted that gain on fluctuations on account of foreign currency loan taken to acquire fixed capital asset will be treated as capital receipt. Hence, loss on fluctuation on account of foreign currency loans taken to acquire fixed capital assets will be a capital loss. Aggrieved, assessee came in appeal before the Tribunal.

5. Before us, the Id.counsel for the assessee explained that assessee has availed external commercial borrowing to part finance its expansion project. The loan was drawn down and utilized for purchase of fixed assets all of which were domestic assets. He contended that assessee did not use the loan to procure assets from abroad. Therefore he argued, that there has been fluctuation in exchange rate viz-a-viz the rate on which loan was availed. The differential or transactional difference has resulted in loss of Rs.37,08,705/- to the assessee. The Id.counsel explained that the AO as well as the CIT(A) has considered the application of provision of section 43A of the Act and disallowed the loss. The Id.counsel argued that section 43A of the Act has been inserted to provide that if an assessee incurs such a loss on account of an imported asset, then such exchange loss has to be adjusted with the cost of the respective asset and should not be considered as a revenue item. He argued that when there is a specific section for treatment of such loss for an imported asset, there is no such section for such loss incurred on account of domestic assets. There is no such section for such loss on account of domestic loss. He then took us through the provisions of section 43A of the Act and also relied on the decision of Hon'ble Supreme Court in the case of Wibro Finance Ltd., vs. CIT, Civil Appeal No.6677 of 2008, wherein this issue was considered and held that the provisions of section 43A of the Act will



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not apply where the assessee had not acquired any asset from any country outside India for the purpose of its business. The Hon'ble Supreme Court considered this asset in para 12 & 13 as under:-

12. Learned counsel for the department had also relied on the decision of this Court in Assistant Commissioner of Income Tax, Vadodara vs. Elecon Engineering Company Limited. This decision is on the question of application of Section 43A of the 1961 Act. Accordingly, the exposition in this decision will be of no avail to the fact situation of the present case. For, we have already noticed that the appellant had not acquired any asset from any country outside India for the purpose of his business.

13. In view of the above, this appeal ought to succeed. The impugned judgment and order of the High Court needs to be set aside and instead, the decision of the ITAT dated 3.6.2004 in favour of the appellant on the two questions examined by the High Court in the impugned judgment, needs to be affirmed and restored. We order accordingly.

The Id.counsel for the assessee also relied on the decision of Coordinate Bench of Pune, in the case of Cooper Corporation (P) Ltd., vs. DCIT, in ITA No.866/PN/2014 and Chennai Bench in the case of TVS Motor Co. Ltd., in ITA No.1153/Mds/2016 & 1183/Mds./2016.

6. When these were pointed out to Id. Senior DR, he only relied on the assessment order and that of the CIT(A).

7. We have heard rival contentions and gone through facts and circumstances of the case. Admitted facts are that the assessee has availed an external commercial borrowing to part finance its expansion project. The loan was drawn down and utilized for the purpose of fixed assets all of which were purchased from domestic market i.e., domestic assets. The assessee did not use the loan for purchase of assets from abroad. Accordingly, fluctuation in the exchange rate viz-a-viz the rate at which loans was available, the transactional gain or loss is to be assessed as Revenue. Respectfully following the decision of Hon'ble Supreme Court in the case of Wipro Finance Ltd., supra, we allow the claim of assessee.

8.2 In this case in hand, we note that Forex loss was to the tune of Rs.452.47 lakhs which was on actual payment of loan taken for purchasing domestic assets. Therefore, it needs to be allowed as Revenue expenditure u/s.37 of the Act and is not hit by sec.43A of the Act, which is only when assessee has acquired imported assets; and since, we have



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noted that assessee has taken External Commercial Borrowings (ECB) for acquiring "indigenous assets" and not for acquisition of imported assets, disallowance made by the AO u/s.43A of the Act was erroneous and respectfully following the ratio of the decision of the Hon'ble Supreme Court in the case of M/s.Wipro Finance Ltd. (supra) we allow the claim of the assessee.

9. Ground No.8 to 8.2 relates to the issue regarding re-statement of foreign currency loan amounting to Rs.5,68,33,000/-.

9.1 The assessee had claimed Rs.568.33 lakhs as deduction towards foreign exchange loss on re-statement of foreign currency loan taken towards acquisition of capital assets which was disallowed by the AO stating that since such expenditure was towards acquisition of capital assets, it is in the nature of capital expenditure, and therefore, such claim made by the assessee is not allowable, and consequently disallowed the claim of deduction of Rs.5,68,33,000/-.

9.2 According to the Ld.AR, when a foreign loan i.e. an ECB is taken in Foreign Currency and is used for purchasing domestic asset (not imported assets), then there are two points of time which we have discussed while adjudicating Ground No.7 (supra); and on this issue on every date on 31.03 (i.e, 31st March re-statement date) when accounts are drawn up, AS-11 standard mandates that Forex receivable/payable of Revenue items



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must be shown in P & L and is allowable as Revenue deduction, provided it is a Forex loss and so he urged us to allow the claim.

9.3 According to the Ld.AR the AO/DRP erred in disallowing the claim made by the assessee on re-statement of foreign currency loan taken towards acquisition of indigenous assets and pointed out that this issue is no longer res integra, as held by the Hon'ble Supreme Court in the case of CIT v. Woodward Governor 312 ITR 254, wherein, it was held as under:

"17. Having come to the conclusion that valuation is a part of the accounting system and having come to the conclusion that business losses are deductible under Section 37(1) on the basis of ordinary principles of commercial accounting and having come to the conclusion that the Central Government has made Accounting Standard-11 mandatory, we are now required to examine the said Accounting Standard ("AS").

18. AS-11 deals with giving of accounting treatment for the effects of changes in foreign exchange rates. AS-11 deals with effects of Exchange Differences. Under para 2, reporting currency is defined to mean the currency used in presenting the financial statements. Similarly, the words "monetary items" are defined to mean money held and assets and liabilities to be received or paid in fixed amounts, e.g., cash, receivables and payables. The word "paid" is defined under Section 43(2). This has been discussed earlier. Similarly, it is important to note that foreign currency notes, balance in bank accounts denominated in a foreign currency, and receivables/payables and loans denominated in a foreign currency as well as sundry creditors are all monetary items which have to be valued at the closing rate under AS-11. Under para 5, a transaction in a foreign currency has to be recorded in the reporting currency by applying to the foreign currency amount the exchange rate between the reporting currency and the foreign currency at the date of the transaction. This is known as recording of transaction on Initial Recognition. Para 7 of AS-11 deals with reporting of the effects of changes in exchange rates subsequent to initial recognition. Para 7(a) inter alia states that on each balance sheet date monetary items, enumerated above, denominated in a foreign currency should be reported using the closing rate. In case of revenue items falling under Section 37(1), para 9 of AS-11 which deals with recognition of exchange differences, needs to be considered. Under that para, exchange differences arising on



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foreign currency transactions have to be recognized as income or as expense in the period in which they arise, except as stated in para 10 and para 11 which deals with exchange differences arising on repayment of liabilities incurred for the purpose of acquiring fixed assets, which topic falls under Section 43A of the 1961 Act. At this stage, we are concerned only with para 9 which deals with revenue items. Para 9 of AS-11 recognises exchange differences as income or expense. In cases where, e.g., the rate of dollar rises vis-à-vis the Indian rupee, there is an expense during that period. The important point to be noted is that AS-11 stipulates effect of changes in exchange rate vis-à-vis monetary items denominated in a foreign currency to be taken into account for giving accounting treatment on the balance sheet date. Therefore, an enterprise has to report the outstanding liability relating to import of raw materials using closing rate of exchange. Any difference, loss or gain, arising on conversion of the said liability at the closing rate, should be recognized in the P&L account for the reporting period.

...

20. In the case of Sulej Cotton Mills Ltd. v. CIT reported in 116 ITR 1 this Court has observed as under:

"The law may, therefore, now be taken to be well settled that where profit or loss arises to an assessee on account of appreciation or depreciation in the value of foreign currency held by it, on conversion into another currency, such profit or loss would ordinarily be a trading profit or loss if the foreign currency is held by the assessee on revenue account or as a trading asset or as a part of circulating capital embarked in the business. But, if on the other hand, the foreign currency is held as a capital asset or as fixed capital, such profit or loss would be of capital nature." (emphasis supplied)

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"



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9.4 We find force in the submission of Ld AR, and note that the assessee's has claimed Rs.568.33 lakhs as deduction towards foreign exchange loss on restatement of foreign currency loan (on 31st March) which was undisputedly taken towards acquisition of indigenous assets; and assessee as per AS-11 has rightly shown the same (forex loss) in the P & L A/c; and therefore is allowable as revenue deduction, and we order accordingly.

10. Ground Nos.9 to 9.5 relates to the issue of interest on diverted funds amounting to Rs.30,80,119/-. The AO noted from the financial statement (refer Page No.56 of the annual report) that the assessee company had given an amount of Rs.9,06,50,000/- as advance to its subsidiary M/s.Sundaram Fasteners Investment Ltd., and also admitted that the outstanding interest free loans to the subsidiary (M/s.SFIL) as on 31.03.2013 was Rs.5,69,00,000/-. The AO also noted that during the year under consideration the borrowings of the assessee company was to the tune of Rs.597,98,68,000/- and the interest and finance charges claimed on such loan was to the tune of Rs.30,33,48,000/-. According to the AO, the business of M/s.SFIL are separate and distinct than that of the assessee company and therefore, it cannot be considered as neither given for the purpose of the business of the assessee nor for any commercial expediency. And he held that assessee failed to prove that such advances were given out of non-interest bearing funds, and



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accordingly, he disallowed an amount of Rs.30,80,119/-. (Proportionate interest on interest bearing loan). The DRP confirmed the action of the AO/TPO.

10.1 At the outset, the Ld.AR brought to our notice that similar issue had come up before this Tribunal in the assessee's own case in ITA Nos.3437 & 3438/Chny/2019 for AYs 2006-07 & 2007-08 order dated 01.04.2022, wherein, it was held as under:

9. Upon perusal of material facts, it could be gathered that the loans have been advanced by the assessee to its subsidiary i.e., SFIL which is an investment arm of the assessee. M/s SFIL, as an investment company, promoted new ventures and made investments on behalf of the assessee, granted loans and acquired shares of other companies. M/s SFIL was a registered NBFC and its objects were money lending. During the year, fresh loans have been advanced to M/s Upasana Engineering Ltd. which is in the same line of business as that of assessee. A part of the loans and equity investments have been made in M/s TVS Infotech Ltd. which facilitated IT operations for the assessee. The earlier loans as granted to M/s SFZL were utilized to expand overseas market. It is also an undisputed fact that all these entities generated dividend and the assessee was benefitted by way of dividend, capital appreciation and ease of operations. Thus the test of commercial expediency, in our opinion, was duly satisfied by the assessee. It could be said that the investments were made in furtherance of business interest and the ratio of decision of Hon'ble Supreme Court in the case of CIT V/s S.A. Builders (288 ITR 1) would favor the case of the assessee. In this decision, it was held that once nexus was established between the expenditure and the purpose of the business, which need not necessarily be the business of the assessee itself, revenue could not disallow the claim assuming what was reasonable.

10. Another aspect of the matter is that the assessee is successful in establishing that there was sufficient cash generation to make the aforesaid investments. In fact, overall interest free loans have reduced from Rs.3605.38 Lacs to Rs.3337.22 Lacs during the year. As against this, there was sufficient cash generation to source this investment. Therefore, as per the ratio of Hon'ble Supreme Court in the case of CIT V/s Reliance Industries Ltd. (307 CTR 121), it could be presumed that the investments were made from interest free funds available with the assessee. The ratio of decision of Hon'ble Madras High Court in CIT V/s Hotel Savera (239 ITR 795) as well the decision of Hon'ble Bombay High Court in CIT V/s Reliance Utilities (313 ITR 340) was applicable to the case of the assessee.

The availability of cash surplus as tabulated by the assessee in its reply to Ld. CIT(A) was as under: -



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Particulars	(Rs. In Lacs)		
	FY 2007-08	FY 2006-07	FY 2005-06
Net Worth	42211	37476	32387
Profit before tax	10446	11194	9615
Less : Tax	3499	4008	3422
Profit After Tax	6947	7168	6194
Add : Depreciation	3423	3012	2739
Less : Dividend Paid	2213	2096	2037
Cash flow after Tax	8158	8101	6895

Upon perusal, it could be seen that the assessee has sufficient cash generation to advance loans.

11. As far as the revenue's reliance on the case law of Punjab & Haryana High Court in CIT V/s Abhishek Industries Ltd. (156 Taxman 257) is concerned, we find that the same is distinguishable on facts. In that case, the assessee debited interest expenses as pre-operative expenses and advanced large sum of money interest free to sister concerns before the commencement of production. Accordingly, Ld. AO held that the borrowings were diverted for non-business purposes. Therefore, this case law differs on facts. In the present case, the loans have been advanced in furtherance of assessee's business interest and the assessee has sufficient cash generation to fund those advances. These facts have already been noted by us in the preceding paragraphs.

12. Lastly, we find that similar issue stood covered in assessee's favor by the decision of this Tribunal for AYs 2003-04 & 2005-06, ITA Nos.956/Mds/2011 & ors. order dated 15.07.2016. Nothing has been shown to us that the aforesaid order has been reversed by any judicial authority, in any manner or the ratio of the same is not applicable to the facts of this year.

13. In view of the foregoing, the impugned order would not require any interference on our part. By confirming the stand of Ld. CIT(A), we dismiss the appeal. Appeal for AY 2007-08

14. It is undisputed position that similar are the facts in AY 2007-08. The Ld. AO has repeated interest disallowance of Rs.230.92 Lacs on similar reasoning. However, the Ld. CIT(A), on similar findings, has deleted the additions. Aggrieved, the revenue is in further appeal before us.

15. Since facts as well as issue is similar in this year, our findings as well as adjudication as for AY 2006-07 shall mutatis mutandis apply to this year also. Resultantly, the appeal stands dismissed.

10.2 Before us, the Ld.AR brought to our notice that the assessee had profit after tax to the tune of Rs.95 Crs. and his net worth was Rs.694 Crs. as evident from Page No.10 of the assessment order and the loan given to the sister concern is only to the tune of Rs.9.06 Crs. Therefore, applying the ratio in the case of CIT (LTU) v. Reliance Industries 307 CTR



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121, it can be safely presumed that assessee had sufficient own funds, and that advances/loans were given to M/s.SFIL from the interest free funds (own funds) available with the assessee and not from the interest bearing funds (mixed fund of both) and refer to the decision of the Hon'ble Madras High Court in the case of CIT v. Hotel Savera 239 ITR 796 (Mad.) and also the decision in the case of CIT v. Reliance Utilities & Power Ltd. 313 ITR 340 (Bom.).

10.3 In the light of the aforesaid ratio of cases, and based on discussion supra, we direct deletion of Rs.30,80,119/-

11. Ground No.10 to 10.7 relates to the issue of disallowance u/s.14A amounting to Rs.3,77,43,460/-. The AO noted that the assessee company received total amount of Rs.310.88 as dividend income and out of this, the assessee claimed Rs.1,00,57,139/- as exempt u/s.10(34) of the Act. Therefore, he asked assessee 'as to why' expenses for earning exempt income should be disallowed and thereafter, the AO applied Rule 8D and disallowed Rs.3,79,47,451/- as under:

Rule 8D	Amount in Rs.
Rule 8D(i)- The expense attributed by the assessee directly	203
Rule 8D(ii) $A*B/C$	3,08,77,306
Rule 8D(iii) $-0.5\%*B$	68,66,245
Total disallowance u/s. 14A r.w. Rule 8D	3,79,47,451



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11.1 It is noted that the assessee had suo moto disallowed Rs.2,03,990/- The Ld.AR assailing the action of the AO submitted that no disallowance under Rule 8D(ii) can be made, because, the investment made for earning exempt income was only Rs.132 Crs. and the assessee had own funds of more than Rs.673 Crs. as discernable from the balance sheet placed at Page No.15 of the Paper Book. Therefore, according to the Ld.AR, no disallowance is warranted as held by the Hon'ble Bombay High Court in the case of CIT v. Reliance Utility & Power Ltd. (313 ITR 340). We find force in the submission of the Ld.AR that since assessee had own funds of more than Rs.673 Crs. and investments as noted by the AO is only to the tune of Rs.132 Crs. It can be safely presumed that its own funds (interest free) were utilized for earning of exempt income. Therefore, no disallowance under Rule 8D(2)(ii) is warranted in this case.

11.2 Assailing the action of the AO in making adjustment u/r.8D(2)(iii) i.e. by applying 0.5% of the total investments made, the Ld.AR submitted that investment which earned dividend should only be considered for making disallowance under Rule 8D(2)(iii) and cited the decision of the ITAT Special Bench in the case of ACIT v. Vireet Investment (P.) Ltd., reported in [2017] 82 taxmann.com 415 (Delhi - Trib.) (SB). We find force in the submission of the Ld.AR and we direct the AO to compute disallowance under Rule 8D(2)(iii) by only considering the investment which yielded exempt income (dividend) and not other investments.



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12. The assessee has also raised two additional grounds. The first one is to allow deduction of education cess to the tune of Rs.1,02,27,618/- as business expenditure. At the outset, the Ld.AR does not press the same, since it was covered against the assessee by the decision of the Hon'ble Supreme Court. Therefore, this additional ground stands dismissed.

13. The next additional ground raised by the assessee is as under:

2. The Deputy Commissioner of Income-tax ought to allow claim of deduction u/s. 10AA of Rs. 11,45,95,653/- for SEZ Unit-I as per the provisions of Sec. 10AA in light of the decision of the Mumbai Tribunal in the case of Reliance Industries Limited in ITA No. 7299/Mum/2017 applying the ratio of the decision of the Apex Court in the case of Vijay Industries in Civil Appeal No.1581/1582 of 2005.

13.1 The Ld.AR submitted on this ground as under:

Revised claim of deduction under Section 10AA:

Sundram Fasteners Limited (SFL) had established Auto Ancillary Special Economic Zone (SEZ-I) unit at Mahindra World City, Maraimalai Nagar, Chennai. SEZ Unit I commenced its operations in September 2007 which is engaged in manufacture and export of Hubs, shafts and sprockets.

During the previous year ended 31st March 2013, SEZ Unit-I had claimed Rs.6,92,16,009/- being the amount eligible as deduction under section 10AA. SEZ Unit-I has been claiming deduction u/s. 10AA *after* deducting tax depreciation and investment allowance for computing the business income as per Section 10AA of the Income tax Act.

The Supreme Court in the case of *Vijay Industries Vs CIT reported in 412 ITR 1* SC observed that the scheme of the Act itself differentiates between the concept of "Income" under the Act and "Profits and Gains". On reference to income-linked deduction requires computation of "income" after allowance of all deductions and allowances wherein, in case of deduction linked to "profits and gains", deduction can be allowed with reference to commercial profits *without* considering the tax depreciation and other allowances.

The Mumbai Tribunal following this decision in the case of *Reliance Industries Limited vs ACIT (ITA No. 7299/Mum/2017, para 133 to 136)* held that grant of deduction u/s.80IA / 10AA would be on the gross profit and gains of business without deduction of depreciation and investment allowance.

We wish to revise the claim of deduction under Section 10AA on the commercial profits calculated before claiming tax depreciation and investment allowance as tabled below:



ITA No.3236/Chny/2017 (AY 2013-14)
M/s.Sundram Fasteners Ltd.

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Amount claimed u/s. 10AA	Amount to be claimed u/s. 10AA
6,92,16,009	11,45,95,653

All the facts and figures for the above are on record and only the issue of method of quantification of profits / deduction is to be determined on the basis of the decision of the Apex Court.

As this is a legal issue, going to the root of the matter, the additional grounds may be admitted and decided on merits following the Hon'ble SC and Tribunal decisions *supra*. The Appellant relies on the following decisions for admission of additional grounds:

- CIT Vs M.K.Yashwant Singh (231 ITR 145 (Del))
- National Thermal Power Co Ltd (229 ITR 383 (SC))
- CIT (vs) Ashok Leyland Ltd (253 ITR 425 (Mad))
- CIT Vs Associated Stone Industries (224 ITR 560 (SC))

In addition to the grounds of objections raised in Form 36B before the Hon'ble Tribunal, the Petitioner hereby wishes to file the following Additional grounds and it is prayed that additional grounds may be admitted and decided on merits.

13.2 Since we find that this issue was not raised by the assessee before the AO, hence, there was no occasion for him to look into the merits of such claim. Therefore, we admit this ground and remit it back to the file of the AO for de novo adjudication after hearing the assessee and the assessee is at liberty to file all relevant documents necessary for adjudication of this ground and the AO to pass order in accordance to law.

14. In the result, appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on the 26th day of July, 2024, in Chennai.

Sd/-
(अमिताभ शुक्ला)
(AMITABH SHUKLA)
लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(एबी टी. वर्की)
(ABY T. VARKEY)
न्यायिक सदस्य/**JUDICIAL MEMBER**



ITA No.3236/Chny/2017 (AY 2013-14)
M/s.Sundram Fasteners Ltd.

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चेन्नई/Chennai,
दिनांक/Dated: 26th July, 2024.

TLN, Sr.PS

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF