

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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI S.R.RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.362/Chny/2024
निर्धारण वर्ष/Assessment Year: 2011-12

M/s. Ashok Leyland Ltd., No.1, Sardar Patel Road, Guindy, Chennai-600 032.	v.	The DCIT, Non Corporate Circle-8(1), LTU-II, Chennai.
[PAN: AAACA 4651 L]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.484/Chny/2024
निर्धारण वर्ष/Assessment Year: 2011-12

The DCIT, Non Corporate Circle-8(1), LTU-II, Chennai.	v.	M/s. Ashok Leyland Ltd., No.1, Sardar Patel Road, Guindy, Chennai-600 032.
		[PAN: AAACA 4651 L]
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Assessee by	:	Mr. Vikram Vijayaraghavan, Advocate
Department by	:	Mr. Nilay Baran Som, CIT
सुनवाईकीतारीख/Date of Hearing	:	05.08.2024
घोषणाकीतारीख /Date of Pronouncement	:	25.09.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

These are cross appeals preferred by the assessee as well as the Revenue against the order of the Learned Commissioner of Income Tax



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(Appeals)-16, (hereinafter in short 'the Ld.CIT(A)'), Chennai, dated 15.12.2023 for the Assessment Year (hereinafter in short 'AY') 2011-12.

2. At the outset, it is noted that there is a delay in filing of the **Revenue's appeal** (ITA No.484/Chny/2024) i.e. it is delayed by '10' days, for which, the DCIT has filed an affidavit for condonation of delay, and the Ld.Counsel of the assessee didn't raise any serious objection. Consequently, the delay of '10' days in filing of the appeal stands condoned and the appeal filed by the Revenue is taken up for hearing on merits.

First of all, we will take up ITA No.362/Chny/2024 preferred by the assessee.

3. **Ground No.1** is general in nature, so dismissed.

4. **Ground No.2** is regarding disallowance of claim of weighted deduction on R&D expenditure to the tune of Rs.23,13,53,553/-, since expenditure was not approved by DSIR. It is noted that similar ground has already been allowed by this Tribunal for AY 2010-11 in the assessee's own case in ITA No.361/Chny/2024 by holding as under:

3.3 We have heard both the parties and perused the material available on record. We note that the assessee has 3 in-house R&D facilities for undertaking scientific research duly approved by DSIR as an in-house R&D centre per requirement of section 35(2AB). Deduction claimed for these approved R&D centers was duly audited and certified by statutory auditors in annual report. DSIR is merely authority for approval of R&D facility. Once facility is approved,



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expenditure incurred automatically qualifies for deduction u/s.35(2AB), irrespective of DSIR approval. It is noted that the R & D Facility has been approved as required by the authority i.e. DSIR. The settled position was that once facility is approved, expenditure incurred in this regard qualifies for deduction u/s.35(2AB) of the Act until amendment was brought in Rule 6(7A) of the of the Income Tax Rules, 1962 (hereinafter in short 'the Rules') w.e.f. 01.07.2016 (relevant to AY 2017-18). Therefore, the AO/Ld.CIT(A) erred in disallowance the weighted deduction u/s.32(2AB) of the Act on the expenditure incurred in an approved in-house R & D facility. In other words, deduction can't be restricted to the amount of expenditure quantified by the DSIR before the AY 2017-18. Similar issue came up before this Tribunal in the case of M/s.Sundaram Fasteners Ltd., in ITA No.3236/Chny/2017, wherein, at Para No.4.3 at Page No.12, it has been observed as under:

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 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. Respectfully following the order of the Tribunal in assessee's own case (supra) on the same reasons *mutatis mutandis*, we allow this ground of appeal and direct the AO to allow weighted deduction on R&D expenditure to the tune of Rs.23,13,53,553/-.



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6. Ground No.3 is regarding disallowance of deduction for forex loss accounted in hedge reserve to the tune of Rs.1,63,39,984/-. The AO has disallowed the deduction claimed by the assessee by holding as under:

"it is evident that the underlying forecasted transaction has not occurred during the year and therefore the income or expense relating to the forecasted transaction has not been claimed by the assessee in the profit and loss account. As per Section 37, any expense which has been incurred during the year only can be claimed. Since the assessee has not claimed any expenses relating to the underlying transaction, the loss arising out of forward contract in relation to the said expenses also cannot be allowed. Further, the assessee's reliance on the decision of the Hon'ble Apex Court in the case of Woodward Governor will not be applicable in the assessee's case, since the court has held that the loss realized or unrealized arising out of debtors or creditors only are allowable."

6.1 Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) and the Ld.CIT(A) upheld the action of the AO by following his predecessor's order for earlier year i.e. AY 2009-10 and dismissed the ground of appeal of the assessee.

6.2 Aggrieved, the assessee is in appeal before this Tribunal.

6.3 We have heard both the parties and perused the material available on record. The assessee claimed deduction for AY 2011-12 in respect of the forex loss on forward contracts on firm commitments on Revenue items such as export receivables, import of raw materials and components, operating expenses etc. which was accounted in Hedge reserve (B/S) in accounts. According to the Ld.AR, in subsequent years, when the underlying transaction (such as import of raw materials) is



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accounted in P&L, the forex loss on the forward contract was also accounted in P&L. It was clarified by the Ld.AR that in subsequent year in which it is accounted in P&L., Appellant would disallow the forex loss in the memo of income, since it has already been claimed in the relevant year. According to the Ld.AR, the claim in return for 2011-12 was based on the principle that unrealized loss due to foreign exchange fluctuation in transaction of revenue items as on the last date of the accounting year is eligible for deduction. In the alternate, the Ld.AR submitted that deduction may be allowed in the year in which forex loss is charged to P&L account of the assessee and brought to our notice that similar contentions were accepted in assessee's own case for AY 2010-11 by CIT(A)-DIN & Order No: ITBA/APL/S/250/2023-24/1058800666(1). We agree with the alternate submissions of the assessee and note that in AY 2010-11, the Ld.CIT(A) has appreciated the assessee's alternate contention that there will be double disallowance of the same expenditure, once in AY 2009-10 (through AO order) and the other in AY 2010-11 *suo-moto* by the assessee. It is noted that the assessee had moved an application before the Ld.CIT(A) to withdraw the voluntary disallowance made by it in its return for AY 2010-11 and the Ld.CIT(A) after appreciating the claim of the assessee has rightly held as under:



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16.3 I have gone through the documents submitted before me on this issue and on scrutiny of the computation of total income for AY 2009-10 and 2010-11. In the return of income for AY 2009-10, the Appellant claimed this amount as a deduction in the memo of income as the loss had occurred on account of restatement of forex liability on account of the forward contracts in that year by placing reliance on the Supreme Court decision in CIT vs. Woodward Governor India P Limited [2009] 312 ITR 254 (SC)/For AY 2010-11, when the underlying transaction such as import of raw materials actually crystallize, the hedge reserve is reversed and the loss is debited to Profit and Loss account. Though this amount was claimed as a deduction in for AY 2009-10, the debit to P&L was in AY 2010-11. In order to avoid double deduction, the debit to P&L in AY 2010-11 was nullified by the Appellant by adding back the amount of loss in the memo of income for AY 2010-11 However, the claim of deduction for AY 2009-10 was not allowed by the AO and confirmed by the CIT(A) and is pending before the ITAT. If the claim of deduction made in memo of AY 2009-10 is not allowed, the Appellant's adding back of the amount in AY 2010-11 will effectively result in denying this loss of forex changes on account of revenue item. Therefore, in order to mitigate the double whammy both in AY 2009-10 (by the AO in his assessment order which has been upheld by the CIT(A)) and in AY 2010-11 (by suo-moto disallowance in return by the Appellant), the Appellant is eligible to delete the voluntary disallowance made in the return of income for AY 2010-11 which the AO is directed to allow. This ground is allowed in favour of the Appellant. However, if the disallowance is deleted for A.Y. 2009-10, the AO may accordingly recalculate the loss and add the same back to the income of the appellant in this year.

6.4 We concur with the aforesaid action of the Ld.CIT(A) albeit for AY 2010-11, and accordingly, direct the AO to allow deduction when the underlying transaction such as import of raw materials etc., actually crystallize (i.e. on actual realization of this amount in subsequent years). The AO may verify the same and allow the claim of the assessee accordingly.

7. Ground No.4 disallowance of deduction for wealth tax expenditure u/s.40(a)(ii) of Rs.11,11,299/-. The Ld.AR doesn't press this ground, so it stands dismissed.



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8. Ground No.5 is regarding disallowance of Rs.11,21,078/- u/s.14A r.w.r.8D while computing the book profits u/s.115JB of the Act.

8.1 We note that this issue had come up in appeal in AY 2010-11 and appeal [ITA No.361/Chny/2024], wherein similar grounds of appeal was raised by the assessee and this Tribunal was pleased to hold as under:

5.4 We have heard both the parties and perused the material available on record. We note that assessee suo-moto disallowed expenditure u/s.14A of the Act an amount of Rs.16,06,664/- while computing of book profit u/s.115JB of the Act. According to the Ld.AR, provisions relating to normal tax computation can't be imported into sec.115JB of the Act which is a separate code by itself i.e. Rule 8D computation for disallowance u/s.14A can't be used for making adjustment for computation of book profit u/s.115JB of the Act and relied on the decision of Special Bench in the case of ACIT v. Vireet Investment (P) Ltd., reported in [2017] 58 ITR(T) 313 (Delhi-Trib.) which decision has been upheld by the Hon'ble Bombay High Court. He also pointed out that the Ld.CIT(A)/NFAC in the assessee's own case for AY 2018-19 appreciated the aforesaid submissions of the assessee and allowed the claim of the assessee.

And therefore, for the same reason *mutatis mutandis* this issue is allowed in favour of the assessee.

9. In the result, appeal filed by the assessee in ITA No.362/Chny/2024 for AY 2011-12 stands partly allowed.

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10. Ground No.2 is regarding disallowance of depreciation and maintenance cost of aircrafts.

10.1 We note that the very same issue had been considered while adjudicating **Ground No.2** of the Revenue appeal for AY 2010-11 [ITA



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No.482/Chny/2024] and on the same reasons *mutatis mutandis*, we set aside this issue back to the file of the JAO for verification and passing of orders on similar lines as that of AY 2007-08 & 2008-09 of Tribunal order dated 23.09.2016 after hearing the assessee.

11. Ground No.3 of the Revenue is regarding depreciation in the assessee's own case on the issue on UPS @60% instead of 15% granted by the AO. This issue had already been considered by us in the Revenue's appeal for AY 2010-11 (*supra*) and we upheld the action of the Ld.CIT(A) allowing the depreciation @60% since it is a part of the computer accessories and therefore, we dismiss this ground of the Revenue.

12. Ground No.4 of the Revenue appeal is regarding disallowance of consultancy expenditure u/s.40(a)(ia) of the Act for non-deduction of TDS.

12.1 The AO disallowed the consultancy expenditure claimed by the assessee for non-deduction of TDS by observing that though the payee/non-resident provides training to the engineers of the assessee company on their individual capacity, he is a Consultant who is qualified to provide managerial and professional services and in fact, imparting technical knowledge to the engineers would also satisfy the condition for



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"make available test". The AO also noted that the assessee has not obtained any Certificate u/s.195 of the Act to claim that TDS needn't be deducted in respect of the payment made.

12.2 Aggrieved, the assessee preferred an appeal before the Ld.CIT(A), who allowed the appeal of the assessee by holding as under:

"It is a well settled principle that no TDS applies on services which do not meet the 'make available test' under the Article on Fees for Technical Services of DTAA and services which are covered under the Article on Independent Personal Services of DTAA. The documents such as invoices, CA certificate in Form 15CB clearly bring out this fact of applicability of the exemption under these articles of the tax treaties to the facts of the case. It is a settled principle that provisions of the tax treaties apply to non-residents to the extent that they are more beneficial than the provisions of the Act. Hence, I am of the view that the Appellant was not required to deduct taxes u/s 195 of the IT Act and this ground is allowed in favour of the Appellant."

12.3 Aggrieved, the Revenue is in appeal before this Tribunal.

12.4 We have heard both the parties and perused the material available on record. Drawing our attention to the copies of the invoices and Certificates and Form 15CB in support of the nature of payments, the Ld.AR submitted that the remittances are not taxable under the beneficial provisions of DTAA and hence, according to him, no TDS is warranted. According to the Ld.AR, the Certificate u/s.195 of the Act isn't mandatory and is warranted only when a part of remittance is liable for tax in India. The payments made to the following parties in foreign countries in respect



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of nature of services and reasons for non-deduction of TDS are given in the Chart below:

S.No.	Name of payee & Country	Country	Nature of service	Reason for non-deduction
1	Pinsent Masons, LLP	UK	Legal services	Article 15-Independent personal services since, services are provided from outside India and the personnel of the vendor firm have not stayed in India more than 90 days. Alternatively, even under Article 13- Royalties & FTS, fees does not 'make available' any technical know-how/skill
2	QAIS Insights Pte Ltd.	Singapore	Customer Satisfaction Index (CSI) study	Article-13 - Royalties & FTS, fees does not 'make available' any technical know-how/skill
3	M.S.Krishnan	US	Fees for SAP consultancy	Article 15-Independent personal services since, services are provided from outside India and the personnel of the vendor firm have not stayed in India more than 90 days. Alternatively, even under Article 12 - Royalties & Fees for Included Services, fees does not 'make available' any technical know-how/skill

12.5 We note that the AO disallowed consultancy expenditure of Rs.1,54,53,119/- u/s.40(a)(i) of the Act for non-deduction of TDS. It is noted that assessee has made payment of legal fees and consultancy fees to individuals in UK & USA, on which, assessee hasn't deducted tax at source by relying on Article-15 of the respective Tax Treaties on Independent Personal Services (IPS). Having gone through the Article-15



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of the respective Tax Treaties on IPS as well as Article-13 of the DTAA with UK and Article-12 of USA, we are of the view that legal and accountancy services obtained from firm/individuals are exempt from tax in India and are taxable only in UK/USA i.e. country of resident.

12.6 Coming to the payment made to Singapore Entity, it is noted that the assessee has paid fees for consultancy study/report on "Customer Satisfaction Index", on which payment, the assessee hasn't deducted tax at source. According to the assessee, the services doesn't meet "make available test" as laid down under Article-13 of the Indo Singapore DTAA. We note that the fees has been paid to the Singapore Entity for the study which they conducted on Customer Satisfaction Index and the AO hasn't pointed out that 'as to how' the Singapore entity has made available technical knowledge or skill to the assessee, i.e. how to create such study. Since, the services rendered by the Singapore entity doesn't meet the "make available test" under the Article on fees for technical services of DTAA and the services which are covered under the Article Independent Personals Services of DTAA, the Ld.CIT(A) is right to hold after examining/verifying the relevant documents (invoices, CA certificate in Form 15CB) that the provisions of tax treaties applies to non-resident to the extent that they are more beneficial than provisions of the Act. Hence, assessee was not required to deduct tax at source u/s.195 of the



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Act, therefore, we don't find any infirmity in the action of the Ld.CIT(A) allowing the claim made by the assessee.

13. In the result, appeal filed by the Revenue is dismissed.

14. In the result, appeal filed by the assessee in ITA No.362/Chny/2024 is partly allowed & appeal filed by the Revenue in ITA No.484/Chny/2024 is dismissed.

Order pronounced on the 25th day of September, 2024, in Chennai.

Sd/-
(एस. आर. रघुनाथा)
(S.R.RAGHUNATHA)
लेखा सदस्य/**ACCOUNTANT MEMBER**

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

चेन्नई/Chennai,
दिनांक/Dated: 25th September, 2024.
TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित /Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF