आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD

BEFORE

SHRI LALIET KUMAR, JUDICIAL MEMBER
AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

ITA Nos.190 and 1721/Hyd/2016		
Assessment Years: 2010-11 and 2012-13		
Allcargo Gati Limited, (Formerly known as Gati Limited), Mumbai. PAN : AABCG3709Q	Vs.	The Assistant Commissioner of Income Tax, Circle 2(2), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri Madhur Agarwal, Advocate. (appeared through virtual mode)	
Revenue by:	Ms. K. Haritha, CIT-DR	
Date of hearing:	03.12.2024	
Date of pronouncement:	10.12.2024	

<u>O R D E R</u>

<u>PER LALIET KUMAR, J.M:</u>

These two appeals filed by the assessee are directed against separate orders of Commissioner of Income Tax (Appeals) – 9 dated 28.12.2015 for the A.Y. 2010-11 and Commissioner of Income Tax (Appeals) – 2, Hyderabad dt.25.10.2016 for A.Y. 2012-13. Since, the facts are identical and issues are common but for

the figures, for the sake of convenience, these two appeals were heard together and are being disposed of, by this consolidated order.

2. The assessee has raised more or less similar grounds for both the assessment years, therefore, for the sake of brevity, the grounds raised in ITA No.190/Hyd/2016 for A.Y. 2010-11 read as under :

> *"1. The order of the learned Commissioner of Income tax(Appeals)-9, Hyd. in ITA No.0369/ITO, Ward-2(2)/2015-16 dt.28-12-2015 rejecting the claim of the appellant is contrary to law and facts.*
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> *2. It is contended that the disallowance of Rs.35,35,167 being pro-rata premium on Foreign Currency Convertible Bonds (FCCB) is erroneous and arbitrary. In the facts and circumstances of the case, the entire premium is allowable as expenditure as FCCB's were issued for obtaining finance for general business purposes of the entire appellant's business and not for any specific business activity.*
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> *3. Without prejudice the appellant contends that both Assessing officer and learned commissioner erred in treating premium to be paid on FCCB bonds as interest falling under section 36(1)(iii) of the IT Act. The appellant contends that the premium payable on redemption of bonds falls to be allowed as a expenditure u/s 37 (1) of the IT Act and not u/s 36(1)(iii) of the I.T. Act.*
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> *4. It is contended that the assets in the shipping division aggregating to Rs.6.19 crores were acquired out of FCCB proceeds and these FCCB's were converted into share capital in the financial year 2007-08. As such the acquisition of assets cannot be termed as assets relatable to the shipping division purchased out of borrowed funds. Hence, the pro-rata disallowance of premium of Rs.35,35,167 relatable to utilization of FCCB proceeds for acquisition of assets of shipping division is erroneous.*
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> *5. In any event the proportionate premium of Rs.35,35,167 is allowable u/s 37(1) and does not fall under section 36(1)(iii) of the I.T.Act.*

6. The appellant contends that the disallowance of proportionate premium of Rs. 68,19,473 towards amounts utilized for construction of buildings is erroneous.

7. The appellant contends that out of sum of Rs.11.94,06,472 the amount utilized for construction of buildings was Rs.8,57,41,868, amount utilized for furniture and fixtures was Rs.82,05,480, amount utilized for office equipments was Rs.42,59,783, and amount utilized for Plant & Machinery was Rs.2,11,99,341 aggregating to Rs. 11,94,06,472. The entire assets costing Rs.11,94,06,472 have all been put to use in the earlier years itself as per details given in Annexure-I to the Statement of Facts.

8. In any event the proportionate premium of Rs.68,19,473 is allowable u/s 37(1) and does not fall under section 36(1)(iii) of the I.t.Act.

9. The appellant contends that the disallowance of proportionate premium of Rs.1,17,34,254 in respect of FCCB funds of Rs.20.54 crores utilized by the appellant for acquiring lands at Chennai and Kolkata is erroneous. The land at Chennai was put to use during the year for parking of the vehicles belonging to the appellant.

10. The appellant contends that the report of the DDIT referred to in the appellate order appears to have been obtained upon inspection made in March, 2013 while appellant sold the property in February, 2012. These lands may have been kept vacant by the purchaser for which the appellant cannot be found fault with.

11. In any event this report was never furnished to the appellant excepting being orally stated. The appellant denies any knowledge of the content of the report excepting to the extent of knowing that it was obtained in Mar, 2013 or thereafter.

12. In any event the proportionate premium of Rs.1,17,34,254 is allowable under section 37(1) of the IT Act and not u/s. 36(1)(iii) of the IT Act.

13. The appellant contends that the disallowance of the proportionate premium of Rs.54,25,585 towards amounts utilized aggregating to Rs.9.50 crores for paying advance under agreement for purchasing land admeasuring 10579 Sq. Yds at Sanant Nagar, Hyderabad is erroneous.

14. In any event the proportionate premium of Rs.54,25,585 is allowable u/s 37(1) and does not fall under section 36(1)(iii) of the Act.

15. The proportionate premium of Rs.54,25,585 is paid on funds employed for business purposes and it therefore allowable as business expenditure.

16. The appellant contends that the disallowance of proportionate premium of Rs. 12,49,312 on FCCB funds utilized for investment in 100% subsidiary namely (Gati Holdings Ltd) u/s 14A of the IT Act erroneous. The provisions of section 14A are inapplicable as the income receivable from the investments in foreign subsidiary it taxable under the Income Tax Act. The entire disallowance of Rs.12,49,312 u/s 14A of the I.T. Act read with Rule 8D is uncalled for.

17. The Appellant craves leave to add, amend or alter any of the above grounds as the occasion may require.

18. For these and other reasons that will be submitted at the time of hearing of appeal, the appellant prays that the disallowances made may be deleted and the appeal be allowed."

3. The brief facts of the case are that assessee company, engaged in Express Cargo Distribution and Warehousing, filed its return of income for AY 2010-11, declaring NIL income from the EDSE Division and Rs.22,46,480/- from the CTC Division under normal provisions, and book profits of Rs.30.11 crores under Section 115JB of the Act. The return was processed under Section 143(1) and selected for scrutiny under CASS. During assessment proceedings, notices under Sections 143(2) and 142(1) were issued and sought for furnishing the details of utilization of FCCB proceeds received at Rs.85,23,89,442/- and other details. The assessee's representatives appeared to furnish the required details. After verifying the information submitted and submissions made, Assessing Officer observed that assessee had invested major amounts in purchase of lands in place of warehouses and out of Foreign Currency Convertible Bonds (FCCB) proceeds, the

assessee had utilized Rs.6,19,00,000/- towards purchase of containers and vessels. Assessing Officer thereafter, completed the assessment by making disallowances on interest claims related to FCCB proceeds, including Rs.35.35 lakhs for vessels and containers (tonnage tax system), Rs.68.19 lakhs for buildings under construction under Section 36(1)(iii)), Rs.1.17 crores for vacant lands not utilized for business, Rs.54.25 lakhs for unregistered disputed land, and Rs.12.49 lakhs for foreign subsidiary investments under Section 14A of the Act. Thereafter, passed assessment order u/s 143(3) of the Act dt.31.03.2013, assessing the total income of the assessee at Rs.25,73,81,330/-.

4. Aggrieved with such assessment order, assessee filed an appeal before the LD.CIT(A), who dismissed the appeal of assessee.

5. Aggrieved with the order of LD.CIT(A), the assessee is now in appeal before us.

6. Ground Nos.1 to 4:

With respect to ground nos.1 to 4, the ld.AR for the assessee has drawn our attention to the order passed by the Tribunal in assessee's own case for the previous year i.e., A.Y. 2009-10 wherein the Tribunal has held as under :

> *"11. Heard both the parties and perused the material available on record. From the reading of provisions of Section 115VG of the Act, reproduced hereinabove, it is abundantly clear that once the assessee opts for a Tonnage Tax Scheme, then Tonnage income cannot be set off against any deduction provided under the Act. In the present case, it is admitted that the assessee has opted for Tonnage Income Tax which has been accepted by the Assessing Officer and ld.CIT(A).*
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> *11.1 Therefore, the question must be considered whether, after opting for the Tonnage Tax Scheme, the assessee can claim the deduction in derogation of the provision of the Act provided under section 115VG(6) of the Act. In our view, the law is clear and unambiguous, which provides that once specified provisions deal with the subject and have been accepted by the assessee, the assessee is precluded from taking the deduction of any other expenditure under any other provisions of the Act against the Tonnage income. In our view, the provisions of section 115 VG of the Income Tax Act, 1961 are complete, and once the assessee opts for the Tonnage Tax Scheme, the assessee cannot take the shield of taking the deduction of any other expenditure. Hence, we are of the opinion that the assessee is not entitled to deduction as claimed by the assessee towards interest paid being the pro rata term paid on FCCD.*
>
> *11.2 The argument of the assessee is that the assessee was having free funds is devoid of any merit, as it was not a case before the ld.CIT(A) that the investments were made out of free funds available within it on account of liquidation of the part of the FCCD Bonds. Further, once the specific provision which prohibits the assessee from claiming any deduction, then the question of allowing the deduction of interest on the pretext of availability of mixed funds does not arise. In so far as the case laws relied upon by the assessee, those case laws are not applicable to the present case, as they are on different facts. In light of the above, the ground Nos.2 and 3 raised by the assessee are dismissed."*

7. It was submitted that the issue is covered against the assessee therefore, the co-ordinate Bench of the Tribunal has decided the issue accordingly.

8. Per contra, ld.DR has not raised any objection and submitted that the previous order of the Tribunal in assessee's own case for A.Y. 2009-10 may be followed.

9. Since the issue has been adjudicated by the Tribunal in the case of assessee, therefore, respectfully following, the same reasoning, we dismiss ground nos.1 to 4 raised by the assessee.

Ground No.5:

10. With respect to the allowability of proportionate premium of Rs.35,35,167/- u/s 37(1) of the Act, ld.AR for the assessee submitted that that deduction claimed by the assessee towards premium on bonds is an allowable expenditure u/s 37(1) of the Act and for that purpose, the ld.AR has drawn our attention to the decision of Hon'ble Supreme Court in the case of Madras Industrial Investment Corporation Ltd, Vs. CIT reported in 225 ITR 802 (Supreme Court), wherein it was held as under :

> *"12. Section 37(1) further requires that the expenditures should not be of a capital nature. In the case of India Cements ltd. v. Commissioner of Income-tax, Madras (1966 60 ITR 52) the appellant-company had obtained a loan of Rs. 40 lakhs from the Industrial Finance Corporation secured by a charge on its fixed assets. In connection with this loan it spent a sum of Rs. 84,633/-, etc., and claimed this amount as business expenditure. This Court considered whether the expenditure so incurred was business expenditure or whether it was capital expenditure. This Court quoted with approval the observations of Shah, J. in Bombay Steam Navigation Co. Ltd. v. Commissioner of Income-tax (1965 56 ITR 52 at 59) that whether a particular expenditure is revenue expenditure incurred for the purpose of business must be determined on a consideration of all the facts and circumstances, and by the application of principles of commercial trading. The question must be viewed i the larger context of business necessity or expediency. If the outgoing or expenditure is so related to the carrying on or conduct of the business, that it may be regarded as an integral part of the profit- making process and not for acquisition of an asset or a right of a permanent character, the possession of which is a condition of the carrying on of the business, the expenditure may be regarded as revenue expenditure. This Court went on t observe that the provisions of the English Income-tax Act in this regard are somewhat different from those of the Indian Income-tax Act. It referred to the English case of Taxes Land and*

mortgage Co. V. William Holtham (1894 3 Tax cases 255, 260) where a mortage company had raised money by the issue of debentures and debentures stock and incurred expenses in this connection. The English High Court said that the expenses would not be deducted as trading expenses because the amount paid was for raising capital. Differing from the observations made therein, this Court observed that a loan is a liability and has to be repaid and in its opinion it is erroneous to consider a liability as an asset or an advantage. This Court disagreed with the English view that borrowing money by the issue of debentures was an acquisition of capital asset and that any commission or expenditure incurred in respect thereof was of a capital nature. It said; "we are of the opinion that (a) the loan obtained is not an asset or advantage of an enduring nature; (b) that the expenditure was made for securing the use of money for a certain period; and (c) that it is irrelevant to consider the object with which the loan was obtained. Consequently, in the circumstances of the case, the expenditure was revenue expenditure within Section 10(2)(xv)", The same ratio would apply here also.

13. Our attention was drawn to the case of Lomax (Inspector of Taxes) v. Peter Dixon and son, Ltd, a decision of the English Court of Appeal reported in (12 Suppl. ITR 513) where the English Court had treated discount or premium in the hands of the recipient as a receipt of a capital nature. But the character of payment in relation to the payer can be different from the character of that payment in the hands of the recipient. In the light of the ration laid down by this Court in the case of India Cements Ltd. (supra) any liability incurred for the purpose or obtaining the loan would be revenue expenditure.

14. The Tribunal, however, held that since the entire liability to pay the discount had been incurred in the accounting year in question, the assessee was entitled to deduct the entire amount of Rs. 3,00,000/- in that accounting year. This conclusion does not appear to be justified looking to the nature of the liability. It is true that the liability has been incurred in the accounting year. But the liability is a continuing liability which stretches over a period of 12 years. It is, therefore, a liability spread over a period of 12 years. Ordinarily, revenue expenditure which is incurred wholly and exclusively for the purpose of business must be allowed in its entirety in the year in which it is incurred. It cannot be spread over a number of year even if the assessee has written it off in his books over a period of years. However, the facts may justify an assessee who has incurred expenditure in a particular year to spread and claim it over a period of ensuing years. In fact, allowing the entire expenditure in one year might give very distorted picture of the profits of a particular year. Thus in the case of Hindustan Aluminium Corporation Ltd. v. Commissioner of Income-tax, Calcutta-I (1983, 144 ITR 474) the Calcutta-High Court upheld the claim of the assessee to spread out a lump sum payment to secure technical assistance and training over a number of years and allowed a proportionate deduction in the accounting year in question.

15. Issuing debentures at a discount is another such instance where, although the assessee has incurred the liability to pay the discount in year of issue of debentures, the payment is to secure a benefit over a number of years. There is a continuing benefit to the business of the company over the entire period. The liability should, therefore, be spread over the period of the debentures.

16. The appellant, therefore, had, in its return, correctly claimed a deduction only in respect of the proportionate part of discount of Rs. 12,500/- over the relevant accounting period in question. In this connection, we agreed with the reasoning and conclusion of the Madhya Pradesh High Court in the case of M.P. Financial Corporation v. Commissioner of Income-tax (supra). The view that we have taken is also in conformity with accounting practice of showing the discount in "discount on debentures account" which is written off over the period of the debentures.

17. The appellant is, therefore, entitled to deduct a sum of Rs. 12,500/- out of the discount of Rs. 3,00,000/- in the relevant year. The balance expenditure of Rs. 2,87,500/- cannot be deducted in the assessment year in question. Question No. 2 (as reframed) therefore, which is the subject matter of appeal before us, is answered in the negative in so for as it related to the deduction of Rs. 2,87,500/- in the assessment year in question though for reasons entirely different from those given by the High Court. The second part of the reframed question is answered in the affirmative. But only proportionate part of the discount can be deducted in the assessment year in question. Question No. (as reframed) therefore, which is the subject matter of appeal before us, is answered in the negative in so for as it relates to the deduction of Rs. 2,87,500/- in the assessment year in question though for reasons entirely different from those given by the High Court. The second part of the reframed question is answered in the affirmative. But only a proportionate part of the discount as set out earlier. The appeal is disposed of accordingly and the judgment of the High Court is set aside. There will be no order as to costs in the circumstances of the case."

11. Similarly, the ld.AR has also drawn our attention to the decision in the case of DCIT Vs. Gujarat Narmada Vally Fertilizers Co., Ltd., wherein the Hon'ble Gujarat High Court has held as under :

"3.1 In our view, the Tribunal correctly accepted assessee s version; particularly in view of the decision of the Apex Court in case of Madras Industrial Investment Corporation Limited v. Commissioner of Income Tax, reported in 225 ITR 802.

Learned counsel for the assessee brought to our notice a decision of this Court dated 1st February 1998 rendered in Income-Tax Application No. 259 of 1998 in case of Commissioner of Income Tax, Gujarat vs. Anil Starch Products Limited, wherein, it is observed as under :-

4. The question arose for consideration before their Lordship in Supreme Court in Madras Industrial Investments Corporation Limited v. Commission of Income tax 225 ITR 802. it was a case where the appellant company had issued debentures in December 1966, at a discount. The total discount on the issue of Rs.1.5 crores amounted to Rs.3.00 lakhs. For the assessment year 1968-69, the company wrote off Rs.12,500 out of the

total discount of Rs.3 lakhs being the proportionate amount of discount for the period of six months ending with June 30, 1967, taking into account the period of 12 years which was the period of redemption and dividing the amount of Rs.3 lakhs over the period of 12 years. The Income-tax Officer disallowed the claim but the appellate Assistant Commissioner allowed the deduction of Rs.12,500. The Tribunal held that the entire expenditure of Rs.3,00,000 was allowable as expenditure for the year of issue incurred for the purpose of business. On a reference, the High Court noted that out of the total discount of Rs.3,00,000 an amount of Rs.12,500 had been allowed which the Department had not challenged. Hence, the High Court was concerned only with the balance amount of Rs.2,87,500 which the High Court held, could not be considered as expenditure. On appeal to the Supreme Court, the Supreme Court held that the liability to pay the discounted amount over and above the amount received for the debentures was a liability incurred by the company for the purposes of business in order to generate funds of its business activities. It was therefore revenue expenditure.

5. Thus, according to the law laid down by the Supreme Court, where the company undertakes to pay more amount than what it has borrowed, and liability to pay the excess amount undertaken to be paid by the company to fulfil its needs for borrowed money is an allowable expenditure under section 37 of the Income Tax Act.

This question, therefore, is not required to be considered."

12. On the basis of the above, it is submitted by the ld.AR that since the issue of allowability of the expenditure is covered under Section 37(1) of the Act. Further, it was also the case of the assessee that in the previous year also, the Tribunal has allowed the expenditure u/s 37 of the Act and our attention was also drawn to the decision of the Tribunal in the case of the assessee for the year which is to the following effect :

"6. After considering the contentions, we are of the opinion that the amount is an allowable deduction. Similar issue was considered by the Hon'ble Supreme Court in the case of Madras Industrial Investment Corporation Limited Vs. CIT [225 ITR 802] (SC), wherein it was held:

"Expenditure' is not necessarily confined to the money which has been actually paid out. It covers a liability which has accrued or which has been incurred, although it may have to be discharged at a future date. However, a contingent liability which may have to be- discharged in future cannot be considered as expenditure. Although expenditure primarily denotes the idea of spending' or paying out, it may, in given circumstances,

also cover an amount of loss which has not gone out of the assessee's pocket but which is all the same, an amount which the assessee has had to give up. It also covers a liability which the assessee has incurred in praesenti although it is payable in futuro. A contingent liability that may arise in future is, however; not 'expenditure'. It would also cover not just a one-time payment but a liability spread out over a number of years.

When a company issues debentures at a discount, it incurs a liability to pay a larger amount than what it has borrowed, at a future date. It is not necessary to go into the question whether this additional liability equivalent to the discount, which is incurred in praesenti but is payable in future, represents deferred interest or not. That may depend upon the totality of circumstances relating to the issue of debentures, including its terms. The liability, to pay the discounted amount over and above the amount received for the debentures, is a liability which has been incurred by the company for the purposes of its business in order to generate funds for its business activities. The amounts so obtained by issue of debentures are used by the company for the purposes of its business. This would, therefore, be expenditure. In the light of the ratio laid down by the Court in the case of India Cements Ltd. v. CIT [1966] 160 ITR 52 (SC) liability incurred the purpose of obtaining the loan would be revenue expenditure.

The Tribunal, however, held that since the entire liability to pay the discount had been incurred in the accounting year in question, the assessee was entitled to deduct the entire amount of Rs. 3 lakhs in that accounting year. This conclusion was not justified looking to the nature of the liability. It was true that the liability had been incurred in the accounting year. But the liability was a continuing liability which stretched over a period of 12 years. It was, therefore, a liability spread over a period of 12 years. Ordinarily, the revenue expenditure which is incurred wholly and exclusively for the purpose of business must be allowed in its entirety in the year in which it is incurred. It cannot be spread over a number of years even if the assessee has written it off in his books over a period of years. However, the facts may justify an assessee who has incurred expenditure in a particular year to spread and claim it over a period of ensuing years. In fact, allowing the entire expenditure in one year might give a very distorted picture of the profits of a particular year.

Issuing debentures at a discount is another such instance where, although the assessee has incurred the liability to-pay the discount in the year of issue of debentures, the payment is to secure a benefit over a number of years. There is a continuing benefit to the business of the company over the entire period. The liability should, therefore, be spread over the period of the debentures.

The appellant, therefore, had, in its return, correctly claimed a deduction only in respect of the proportionate part of discount of Rs. 12,500 over the relevant accounting period in question. The view taken is also in conformity with accounting practice of showing the discount in 'discount on debentures account' which is written off over the period of the debentures.

The appellant was, therefore, entitled to deduct a sum of Rs. 12,500 out of the discount of Rs. 3 lakhs in the relevant assessment year. The balance expenditure of Rs. 2,87,500 could not be deducted in the assessment year in question".

> *6.1. Respectfully following the same, since facts are similar, we allow the assessee's claim. AO is directed to allow the same. Appeal of assessee is allowed."*

13. Per contra, ld.DR has drawn our attention to para 2.2. of the assessment order wherein the contention of issuing FCCB were captured by the Assessing Officer which is to the following effect :

> *2.2 As could be seen from the FCCB offer document, the assessee has to invest a major portion of the FCCB proceedings in warehousing projects. During the course of hearings, the assessee was asked to furnish the details of utilization of FCCB proceeds received at Rs.85,23,89,442/-. As per the information filed, the utilization details of FCCB so furnished are as under:*

Investment in lands	*Rs.60,30,41,370*
Buildings	*Rs.11,94,06,472*
Computers and scanners	*Rs. 3,31,56,058*
Vehicles	*Rs. 1,30,10,548*
Vessels & containers purchased Overseas	*Rs. 6,19,00,000*
Investment in overseas subsidiary Companies	*Rs. 2,18,74,994*
Total	***Rs.85,23,89,442"***

14. It was submitted by the ld.DR that the amount was raised by the assessee for carrying out the activities which are in the nature of capital expenditure and therefore, the amount which sought for deduction was not fall u/s 37 of the Act and would fall u/s 36(1)(iii) of the Act.

15. Further, ld.DR has relied upon the decision of Tribunal in the case of M/s. Ok Play India Limited, Haryana Vs. JCIT, Gurgaon in ITA No.3402/Del/2016 dt.13.01.2020 wherein the Delhi Tribunal while entering of section 28(iv) of the Act upon relying upon the decision of Hon'ble Supreme Court in the case of CIT Vs. Mahindra and Mahindra Ltd., reported in (2018) 93 taxmann.com 32 (SC), has decided the issue against the assessee. The relevant portion in the case of CIT Vs. Mahindra and Mahindra Ltd (supra), is to the following effect :

> *"7. Before concluding , it was contended that since an amount is waived off, for which the Respondent is claiming exemption, it actually amounts to income at the hands of the Respondent in the sense that an amount which ought to be paid by it is now not required to be paid. As a result, the case of the Revenue falls within the ambit of Section 28(iv) and, alternatively within Section 41 of the IT Act. Hence, the decision of the High Court is liable to be set aside.*
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> *8. Conversely, learned senior counsel for the Respondent submitted that the Kaiser Jeep International Corporation (KJIC) supplied the toolings and the loan was given by the Kaiser Jeep Corporation (KJC), hence, these transactions were independent transactions. The only relationship, which survived after the supply of toolings, was that of a lender and borrower. The purchase of toolings was not a transaction for the purchase of goods on credit in the ordinary course of business nor could it be equated to unpaid purchase consideration to be liquidated over a period of time.*
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> *9. Further, it was also submitted that it is very clear that the amount of $650,000 provided by KJC was in fact a loan on which interest was being paid regularly from time to time. It is also pointed out that in the books of account of the Respondent, this loan has been shown in the Balance Sheet under the heading "Loans- unsecured". Hence, it is submitted that the said sum could not be brought to tax as it represents the waiver of a loan liability which was on the capital amount and is not in the nature of income. Accordingly, the High Court rightly upheld the order of the Tribunal and, hence, these appeals deserve to be dismissed.*

16. We have heard the rival submissions and perused the material on record. Section 37 of the Act provides as under :

> ***Section 37: General Expenses***
>
> *(1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".*

17. From the reading of Section 37(1) of the Act, it is clear that the expenditure which is incurred wholly and exclusively for the purpose of carrying out any expenditure not being in the nature of capital expenditure shall be allowed and computed the income chargeable under head Profits and gains of business or profession. In the present case, admittedly, the assessee had sought the deduction of amount which was received by the assessee for the purpose of expansion of his capital investment is clear from the terms of FCCB reproduced by the Assessing Officer in para 2.2 of the assessment order. Therefore, in our view, any expenditure which has been incurred towards the expenditure which is in the nature of capital expenditure will not fall in realm of Section 37 of the Act and accordingly, we do not find any reason to accept the contention of the assessee and therefore, the contention of the assessee is required to be dismissed.

18. The reliance on the decisions of Hon'ble Supreme Court in the case of Madras Industrial Investment Corporation Ltd (supra) and also in the case of DCIT Vs. Gujarat Narmada Vally Fertilizers Co., Ltd., are on peculiar facts and in this case, the issue was not before the Hon'ble Supreme Court and High Court whether the amount received by the assessee was for incurring capital expenditure, can be considered as an allowable expenditure u/s 37 of the Act or not. In view of the above, we are of the opinion that the said decisions are not applicable to the present set of facts. On the contrary, if you look into the recent judgment in the case of Wipro Finance Limited Vs. CIT reported in (2022) 137 taxmann.com 230 (SC), wherein the Hon'ble Supreme Court has laid down the purpose for which the amount has been spent will determine the nature and character of the expenditure. The relevant portion in the case of Wipro Finance Limited (supra), read as under :

> *"16. ….. the loan obtained is not an asset or advantage of an enduring nature….. the expenditure was made for securing the use of money for a certain period … and it is irrelevant to consider the object with which the loan was obtained. …..*
>
> *17. ….. the act of borrowing money ….. was not incidental to the carrying on of a business. ….." Similarly, the exposition in the case of Empire Jute Co. Ltd.8 is also extracted by the ITAT, which reads thus: −*
>
> *"5…… it is not a universally true proposition that what may be capital receipt in the hands of the payee must necessarily be capital expenditure in relation to the payer. The fact that a certain payment constitutes income or capital receipt in the hands of the recipient is not material in determining whether the payment is revenue or capital disbursement qua the payer. ….."*

19. In the present case, as per the case of the assessee, the amount has been spent for was capital in nature. Therefore, the claim of the assessee per se is not allowable u/s 37 of the Act. Now coming to the decision of co-ordinate Bench of the Tribunal, the spending of amount towards capital expenditure was not the subject matter of earlier proceedings and has not been examined by the co-ordinate Bench of the Tribunal. Therefore, we are of the opinion that the decision is not applicable to the facts of the present case. Furthermore, the expenditure had not been debited to the trading account or profit and loss account in the year under consideration. In view of the above and respectfully, following the decisions in the case of Wipro Finance Limited (supra) and Mahindra and Mahindra Ltd (supra), ground no.5 is dismissed.

<u>Ground Nos. 6 to 8:</u>

20. Now coming to the merits of the case, ground nos. 6 to 8 pertains to the amount of disallowance made by the Assessing Officer and confirmed by the LD.CIT(A).

20.1. In this regard, ld.AR has drawn our attention to pages 4 and 5 of the statement of facts annexed to Form 35 of the appeal memo, which is to the following effect :

> *"13. The assessing officer has made a disallowance of the proportionate amount of Rs.68,19,473/- on account of "buildings shown under work-in-progress" of Rs.11,94,06,472/-. As per the Balance Sheet as at 31st*

March 2010 there is Capital Work in progress of Rs.34,04,22,875/- under schedule 6 of Fixed Assets. The amount of Rs.34,04,22,875 does not include Rs. 11,94,06,472/- as has been incorrectly described as "Building shown under work-in-progress" in the assessment order at para 4. The details of assets of Rs. 11,94,06,472/- which are not included in capital work-in-progress as these have already been capitalized in the books and are being utilized for the purpose of business are as per Annexure -I.

14. Appellant states that the acquisition of land and building was for the purpose of constructing warehouses thereon for the purpose of warehousing business of the assessee. It is inevitable that the construction and completion of warehouses require long amount of time and several approvals and sanctions from the Government and semi Government authorities. The findings /observations of the assessing officer are against the facts and evidence on record, illegal, invalid, unreasonable and / or otherwise perverse."

21. On the basis of the above said facts, the amount for which disallowance has been made capitalized in the previous year and therefore, there was no occasion to the LD.CIT(A) to disallow the expenditure. The ld.AR has also drawn our attention to the relevant paras of the LD.CIT(A), which is to the following effect :

"6.1 Ground numbers 687 relate to the disallowance of proportionate interest of Rs 68,19,473/- with regard to the buildings shown under work in progress. During the course of assessment proceedings, the assessing officer has called for the details of closing work-in-progress amounting to Rs. 34,04,22,875/- out of which Rs. 11,94,06,472/- pertains to buildings which are under construction. As the assessee has utilized the borrowed funds for investing in buildings which are under progress, the proportionate interest on the value of investment in building was disallowed as provisions for Sec 36(1)(iii).

6.2 With regard to this addition, the assessee states that the amounts in respect of these assets were already put to use in the course of the assessee's existing warehousing and express division and supply chain business. The assessee further states that the acquisition of land & building was for the purpose of construction of warehouses for the purpose of warehousing business of the assessee. It is submitted that since the construction & completion of warehouses require long amount

of time these may be allowed. However the contentions of the assessee GATI LIMITED 2010-11 are not acceptable as interest on borrowed funds cannot be allowed till the asset is put to use for the purposes of business as per the provisions of Sec 30 (1)() Therefore the addition made by the assessing officer by disallowing proportionate interest of Rs. 68,19,473/- out of Rs. 11.94 Crores is upheld.

6.3 Further the assessee's alternative argument is that in case of this disallowance. appropriate depreciation may be allowed. However on any asset, depreciation is allowable only in the year in which the building is put to use. Therefore since the buildings are still under construction, depreciation cannot be allowed in this year. As such, this contention is also not tenable."

22. Ld.AR had submitted that these issues need to be sent back to the lower authorities for the verification and for passing the consequential order which allow the expenditure, if any, that was capitalized in the previous years.

23. Per contra, ld.DR fairly submitted that the matter may be set aside to the file of Assessing Officer for the purpose of verification.

24. We have heard the rival submissions and perused the material available on record. In this regard, the statement of facts which is forming part of Form 35 clearly shows that the assessee has made out a case before the LD.CIT(A) that the amount has already been capitalized in the previous year and therefore, it should have been allowed in the year under consideration. In light of the above and more particularly, when the order of LD.CIT(A) is silent on this aspect, we are of the considered view that the matter

is required to be sent back to the file of Assessing Officer for verifying and passing the appropriate orders after considering the submissions of the assessee as to whether the amount has been capitalized in the previous year or not. Hence, these grounds of the assessee are allowed for statistical purpose.

Ground Nos.9 to 12

25. Ground nos.9 to 12 are with respect to acquiring of lands at Chennai and Kolkata.

25.1. In this regard, ld.AR has submitted that the assessee has claimed interest on the property, and which has been used for the purpose of parking of their vehicles and therefore, the assessee is entitled for allowing of the said expenditure. In support of its contentions, assessee also filed written submissions and the relevant portion of written submissions filed by the assessee read as under :

> *"6.7 This land at Chennai was purchased primarily for the construction of warehouse / godown for its already existing Express Distribution and Supply Chain business. The appellant company was hiring number of godowns for storage of material required for transportation. It also needed land for parking of its vehicles and loading and unloading of shipments. The company has on an average several thousands of vehicles (own and hired) for its business. The company was paying lease rents for buildings taken on hire for storage purposes.*
>
> *6.8 The intent of having own buildings is to do away with rented properties which was causing problems. Pending the construction these lands were used for parking a number of vehicles of the appellant used for transportation. Steps were in fact taken for construction of warthouse at Chennai by conversion of land inte commercial use and drawing the*

building plans etc., Because of slowdown of the economy and adverse conditions, the plan for construction of warchouse become unviable and the Chennai land was sold in Feb, 2012. Till the year Feb, 2012 the land was used for parking of the appellants trucks and loading and unloading of heavy and high dimensioned goods/packages. It would therefore be seen that the land purchased at Chennai was for carrying on the existing business in the normal course and not for its expansion. In any case it was put to use from the date it was purchased for parking of vehicles.

6.9. At para 6.2 of the assessment order it was stated by the AO, the property was inspected. Upon inspection it was found there was construction. The assessing officer borrowed this reasoning from the order of assessment for assessment year 2010-11. The appellant understands that the inspection was made sometime during March 2013 while the land was sold by the appellant in Feb 2012. Therefore, if there was no activity the appellant is not responsible it and it ceased to be the appellant's property. The department may be called upon to produce the inspection report, the date of inspection etc., as no such information was furnished to the appellant till date by the department.

6.10 The land at Chennai was sold out during the financial year 2011-12 for a consideration of ₹. 26 crores and profit /loss on sale thereof duly offered to tax under the head 'Capital Gains' in assessment year 2012-13 which is under appeal. Since the asset itself disposed off, the question of put to use does not arise. Hence the disallowance of pro-rata premium of ₹.2,55,21,426 is without any basis andwhich done on routine copying the earlier years orders. The act of the assessing office is wholly incorrect,

Kolkata

6.11 The company wanted to purchase land for office and parking of its vehicles. A sum of 2. 3,11,12,500 was paid to M/s. Adhunik Corporation Ltd. towards advance. The sale could not be completed because of certain deficiencies in the seller's title of the land which initially it thought it could purchase. The company could not get back the advance and the matter is under litigation. The fact remains that the advance paid has nothing to do with the expansion of business. It was paid for carrying on the existing business more efficiently."

26. Per contra, ld.DR further submitted that the Assessing Officer has relied upon the report received from the Investigation Wing, DDIT, whereby it was confirmed that there is no evidence of activity like parking of vehicles. He further submitted that the

assessee has purchased agricultural land and there was no evidence for usage of agricultural land for the purpose of business of assessee and therefore, no expenditure is required to be allowed with respect to that under section 36(1)(iii) of the Act.

27. We have heard the rival submissions and perused the material available on record. Admittedly, as contended by the assessee it was an agricultural land and the assessee was claimed to produce any evidence pending the usage of the property for the purpose of its business and from the provisions of section 36(1)(iii) of the Act, it is clear that the alleged capital of assessee was nor put to use by the assessee for business purposes. Therefore, the assessee is not entitled to the deduction of interest paid over and above. We may point out that the assessee had sold the agricultural land in subsequent years i.e., prior to field inspection by the revenue authorities while registering the sale deed. No evidence of conversion of land to non-agriculture usage or sale of commercial property had been furnished. In view of the above, we do not find any merit in the submissions of the ld.AR and accordingly, these grounds are s dismissed.

Ground No.13 to 15:

28. These grounds are with respect to the disallowance of proportionate premium of Rs.54,25,585/- towards amount utilized aggregating to Rs.9.50 crores for paying advance under

agreement for purchasing land admeasuring 10579 sq.yards at Sanathnagar, Hyderabad.

28.1. It was submitted by the ld.AR that assessee has paid a sum of Rs.9.50 crore as advances for the purpose of purchase of land and has disallowed the interest on the said amount during the year under consideration. It was further submitted that the assessee is entitled for disallowance under section 36(1)(iii) of the Act. In support of its contentions, assessee also filed written submissions and the relevant portion of written submissions filed by the assessee read as under :

> *"6.12 A sum of ₹. 9,50,00,000 was paid to M/s.Crown Castings Pvt. Ltd. towards advance. It was intended that the land should be purchased for constructing warehousing godowns for the purpose of appellant's warehousing business. The construction work could not be started because of disputes with the seller. Here again there is no expansion of business. The amount was paid for carrying on the existing business more efficiently.*
>
> *6.13 From the explanation furnished it is evident that all the assets were put use much earlier itself. In respect of land at Kolkata and Sanathnagar the payment was made to acquire the asset for carrying on the regular business of the company. The payment did not fructify into acquisition of asset. Therefore, even it is assumed that the provisions of section 36(1)(iii) are attracted, the proviso has no application. These expenditure cannot be disallowed."*

29. Per contra, the ld.DR submitted that the assessee has not proved any acquisition of the capital asset at Sanathnagar, Hyderabad and used the same for claiming allowance u/s 36(1)(iii) of the Act and therefore, no disallowance is tenable under law.

30. We have heard the rival submissions and perused the material available on record. In our view, to invoke and applicability of section 36(1)(iii) of the Act, it is to be seen whether the capital assets was put to use or not. In the present case, the assessee has not acquired any capital asset and therefore, there was no occasion of putting it for any use for the purpose of business and accordingly, the claim of the assessee is not permissible under law. Thus, these grounds are dismissed.

31. In the result, the appeal of assessee in ITA No.190/Hyd/2016 for A.Y. 2010-11 is partly allowed for statistical purposes.

<u>ITA No.1721/Hyd/2016</u>

32. The grounds raised by the assessee for A.Y. 2012-13 are all covered by us while deciding the appeal for A.Y.2010-11 except one i.e., "LD.CIT(A) has erred in allowing loss of Rs.1,19,40,368/- on slump sale of shipping business division".

32. In this regard, ld.AR has submitted that the assessee has entered into agreement with slump sale of shipping business. The department has filed the appeal before the Tribunal saying that the profit earned on account of slump sale of shipping business is subjected to tax, for which the assessee has already filed application under Vivad se Vishwas Scheme and the order has been passed in favour of the department acknowledging that profit on slump sale of shipping business division subject to tax. It was

submitted that the same fact is required applying for a loss incurred by the assessee in the said business and hence, the same may be allowed. For the above said purpose, ld.AR has filed evidence showing the grounds raised by the department as well as the form accepted by the department filed under Vivad se Vishwas Scheme, for slump sale of shipping business division.

33. Ld.DR had relied upon the order passed by the lower authorities.

34. We have heard the rival submissions and perused the material available on record. Admittedly, department has accepted the profit accrued to the assessee on account of slump sale of shipping business and subjected to tax. In our view, the same analogy is required to be applied in the case of the loss caused to it on account of current business and therefore, following the same analogy, we are of the opinion that the assessee is entitled for claim of loss also and accordingly, we allow this ground.

35. In the result, the appeal of assessee in ITA No.1721/Hyd/2016 for A.Y. 2012-13 is allowed.

36. To sum up, the appeals of assessee in ITA No.190/Hyd/2016 is partly allowed for statistical purposes and ITA No.1721/Hyd/2016 is allowed.

Order pronounced in the Open Court on 10th December, 2024.

Sd/-	**Sd/-**
(MADHUSUDAN SAWDIA) **ACCOUNTANT MEMBER**	**(LALIET KUMAR)** **JUDICIAL MEMBER**

Hyderabad, dated 10.12.2024.
TYNM/sps

Copy to:

S.No	Addresses
1	Allcargo Gati Limited, formerly known as Gati Limited, 4th Floor, B Wing, Allcargo House, CST Road, Kalina, Santacruz (East), Mumbai – 4000098, Maharashtra
2	The Assistant Commissioner of Income Tax, Circle 2(2), Hyderabad.
3	Pr.CIT -2, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order