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

माननीय श्री मनु कुमार गिरि ,न्यायिक सदस्य एवं माननीय श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
BEFORE HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND
HON'BLE SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1332/Chny/2024, Assessment Years: 2018-19

आयकर अपील सं./ITA No.1694/Chny/2024, Assessment Years: 2018-19

IL & FS Tamil Nadu Power Company Limited, **Old No.21, New No.2, KPR Tower,** **4th Floor, Greams Road,** **S.O, Nungambakkam** **Chennai-600 006.** **[PAN: AABCF1176A]**	**Deputy Commissioner of Income Tax,** **Corporate Circle-1(1),** **Chennai**

आयकर अपील सं./ITA No.1694/Chny/2024, Assessment Years: 2018-19

Deputy Commissioner of Income Tax, **Corporate Circle-1(1),** **Chennai**	**IL & FS Tamil Nadu Power Company Limited,** **Old No.21, New No.2, KPR Tower,** **4th Floor, Greams Road,** **S.O, Nungambakkam** **Chennai-600 006.** **[PAN: AABCF1176A]**
(अपीलार्थी/Appellant)	**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Assessee by	:	**Shri.Ashwin, CA**
प्रत्यर्थी की ओर से /Revenue by	:	**Shri Shivanand K Kalakeri, CIT**
सुनवाई की तारीख/Date of Hearing	:	**26.03.2025**
घोषणा की तारीख /Date of Pronouncement	:	**25.04.2025**

आदेश / O R D E R

PER AMITABH SHUKLA, A.M :

The below mentioned appeals have been filed by the appellant assessee and Revenue for AY-2018-19 contesting the order of Ld. First Appellate Authority indicated in Column-E, herein below:-

S. No.	Appeal Nos.	AYs	Appellant	CIT(A) Order Details	Respondent
A	B	C	D	E	F
1	ITA-1332 / Chny / 2024	2018-19	**IL & FS Tamil Nadu Power Company Limited,** Old No.21, New No.2, KPR Tower, 4th Floor, Greams Road, S.O, Nungambakkam Chennai-600 006. **[PAN: AABCF1176A]**	DIN & Order No.ITBA / NFAC / S / 250 / 2023-24 / 1062048589(1) dated 05.03.2024	**Deputy Commissioner of Income Tax,** Corporate Circle-1(1), Chennai
2	ITA-1694 / Chny / 2024	2018-19		DIN & Order No.ITBA / NFAC / S / 250 / 2023-24 / 1062048589(1) dated 05.03.2024	

Both the appeals filed by the assessee and Revenue are concerning same assessment year and hence for the purposes of convenience were heard together and are being adjudicated together.

ITA No.1332/Chny/2024, Assessment Years - 2018-19

2.0 The first issue raised by the assessee through its grounds of appeal is regarding the violation of principles of natural justice stating that proper opportunity of being heard was not given. The Ld. Counsel for the assessee submitted that emails were sent on the email address of former employee and hence the non-compliance to the Ld. AO's notices was justified.

3.0 The Ld. DR placed reliance on the order of lower authorities.

4.0 We have heard rival submissions in the light of material available on records. The argument put forth by the assessee is not in conformity with facts on records. Apparently a case is made out that the show

cause notices sent by the Ld.AO were inaccessible having been sent on the email Ids of ex-employees. At the outset, the argument per se is flawed because revenue is only bound to send notices to taxpayers on details provided by it. In the instant case, the assessee has voluntarily chosen to give email Id of its employee and therefore no blame can be attached on revenue for sending its communication to the said email Id. Further, in case the employee had exited the appellant company, then it was for the appellant assessee to have informed the Ld.AO of the changes by giving an alternate email Id. Consequently, the blame fastened by the assessee on revenue's shoulders do not survive. We have also noted that contest of the assessee suffers from another incorrect fact. The Ld.AO on page 2 of his order recorded that "…*In response to notices, assessee had made return submissions on the ITBA Portal. During the relevant year, the assessee derived income from the heads profit and gains from business or profession….".* It goes on to indicate the assessee had filed its submissions through the ITBA Portal and was in touch with the communication mode thereof. Accordingly, we do not find any merit in the arguments of the assessee. **The grounds of appeal raised by the assessee regarding violation of principles of natural justice are therefore dismissed.**

5.0 The next issue raised by the assessee through its grounds of appeal is regarding the addition of Rs.19,90,79,300/- made by the Ld.AO

on account of foreign exchange forward contracts and its confirmation by the Ld. First Appellate Authority. The Ld. Counsel for the assessee submitted that the appellant had entered into foreign currency forward contract on 29 March 2017 to hedge the risk on repayment of loan of USD 60 million given to its subsidiary Company, IL&FS Maritime Offshore Pte Ltd (Singapore Entity). Since, the forex gain on the above contract was in connection to hedge the loan given to subsidiary company, it was treated as capital in nature and deducted while computing taxable income. It was argued that the Appellant is not in the business of providing loans but in the business of generation and distribution of electricity. Loan extended is on capital account. It is the case of the assessee that repayment of the principal portion of the loan provided by the appellant would constitute a capital receipt. To protect the foreign currency exposure, the appellant is required to enter into forward exchange contracts. In support of its contentions the Ld. Counsel placed reliance upon the decision of the Hon'ble Apex Court in the case of Sutlej Cotton Company Limited 116 ITR 1 and Tata Locomotive and Engineering Company Limited 60 ITR 405.

6.0 The Ld. DR vehemently argued in favour of order of the Ld.AO and the action of Ld. CIT(A) in affirming it.

7.0 We have heard rival submissions in the light of material available on records. The principal issue seminal to the controversy is regarding

treatment of impugned receipts as of capital in nature or are Revenue in nature. We have noted that the Ld.AO while making the addition, on page-3 of his order, observed that the assessee had failed to respond to opportunities given by him to explain the impugned transactions. The assessee had merely claimed that *"as per the company the forex gain is not taxable income as it is capital in nature and not revenue".* No detail explanation with any supporting documents were adduced in support of the said statement. We have also noted that the Ld. CIT(A) has discussed the issue extensively from pages 48 to 63 of his order comprehensively analysing the facts of the case in the light of judicial pronouncements relied upon by the assessee, inter-alia, including the decision of the Hon'ble Apex Court in the case of Sutlej Cotton Company Limited 116 ITR 1 and Tata Locomotive and Engineering Company Limited 60 ITR 405.

8.0 Considering the complexity of the matter, we deem it necessary to reproduce the relevant observations of Ld.CIT(A) as under:-

> *"…..7.4.2. As seen from the submissions of the appellant it is clear that the appellant assessee recognized the forex gain received/earned on forward contract as revenue in the P&L A/c. When the assessee itself has recognised it as revenue as per Companies Act, how can it become capital as per Income Tax Act? The assessee is bound to prepare the financial statements as per Schedule VI of the Companies Act, 2013. The PBT so arrived at in the P&L A/c is altered as per the Income tax Act, 1961 so as to arrive at the Total Income for tax purposes. In any foreign exchange forward contract (FEFC) there are two parties involved viz., Speculator and its Client. This FEFC was entered into between the speculator (PNB, Mumbai) and the assessee as the client of the speculator on 29-03-2017 with the fund delivery date as 30-03-2018. The confirmation copy, duly signed by both these parties has been obtained and placed on record, as per which the*

foreign subsidiary, IL & FS Maritime Offshore Pte Ltd, Singapore (IMOL) does not figure in the contract at all. Then how can the assessee's transaction with IMOL determine the nature of another independent transaction of the assessee with another independent person (Speculator)?

7.4.3. Before we proceed further, let us understand how FEFC operates …

In FEFC, a client can enter into transaction with a speculator either to buy or sell the foreign currency at the present rate but to deliver at a future date. In the instant case of the appellant-assessee, the speculator (PNB) was the buyer of foreign currency worth USD 60,000,000 @INR 68.04/USD (with a counter currency value of Rs.408,24,00,000) from the appellant-assessee as the seller on 29/03/2017 but the fund delivery of USD 60,000,000 was to be made on 30/03/2018. It may be noted no speculator enters into such an FEFC with anybody without verifying the client's ownership of such quantum of foreign currency. In the instant case, the speculator was satisfied that the appellant-assessee was in ownership of USD 60 million which it lent to a foreign subsidiary to be repayable. Thus the speculator believed in the underlying capacity of the appellant-assessee to own such quantum of USD 60 million. That is why the contract was done for USD 60 million and not for USD 10 million or nor for USD 100 million. The rates of conversion between USD and INR along with contract conversion rate are given below …

1 USD = Rs.65.9054 as on 29.03.2017 as taken from internet.
1 USD = Rs.68.04 (mutually agreed price to be on 30.03.2018).
1 USD = Rs.65.0795 as on 30.03.2018 as taken from internet.

7.4.4. There are three variables in FEFC between the two parties, viz.,
(i) cost of acquisition of hard currency (x),
(ii) future agreed price of hard currency (y), and
(iii) actual price of hard currency (z) on reaching the future date.

For instance, the speculator agreed to buy 1 dollar at a price Rs.y and the seller (appellant in this case) agreed to sell at the same price, Rs.y at a future date (say, after a year). Whereas the cost of acquisition of 1 dollar is Rs.x at current date. After completing the contract period of 1 year, let's say the market price of 1 dollar is Rs.z. Then the gain or loss is determined as follows …

There are many possibilities of gain and loss for both the speculator and the speculator's client. Possible combinations by taking any two variables are x < y, x > y, x < z, x > z, y < z, y > z. When 3 variables (x, y, & z) are all taken together out of these 6 possibilities, more than 6 possibilities of gains and losses to both the speculator and speculator's client will be thrown up. And even there is a possibility of gains to both the speculator and speculator's client at the same time and also a possibility of losses to both the speculator and speculator's client at the same time. If we discuss all these possibilities, matters will get complicated. Therefore, the one possibility that occurred in this specific case alone is discussed.

Case (i) x = cost of 1 USD on 29/03/2017 = Rs.65.9054,

y = future agreed price of dollar to be on 30/03/2018 = Rs.68.04

z = actual price of dollar on 30/03/2018 = Rs.65.0795.

In this specific case of the appellant, x < y & x > z & y > z.

Gain per dollar in the hands of the appellant = y – x

= Rs.68.04 – Rs.65.9054
= Rs.2.1346

When multiplied with the actual number of dollars, the total gain will be determined in absolute figures.

Formula for gain/dollar in the hands of the speculator = z – x

= Rs.65.0795 – Rs.65.9054
= (-)Rs.0.8259

It resulted in negative figure and therefore the speculator incurred loss from this contract. When multiplied with the actual number of dollars, the total loss will be determined in absolute figures.

Thus from the above demonstration, it is clear that the gain on FEFC has been earned by the appellant-assessee and the loss on FEFC has been incurred by the speculator. In this FEFC transaction, the foreign loan borrower, i.e., IMOL has no role at all whatsoever. The FEFC transaction between the appellant (IL&FSTNPCL) and the speculator (PNB) is an independent transaction between these two entities only with no impact on IMOL.

7.4.5. Now let's turn to and analyse the replies given by the appellant on 14.09.2023 in response to the specific questionnaire issued by the FAA u/s.250 on 07.08.2023.

***FAA's query**: 2.3. As per the terms of loan agreement between the appellant company and the Singapore company, who is supposed to bear the exchange risks? Or are the exchange risks to be borne by both?*

***Appellant's reply**: 2.3.1 The appellant submits that there are no specific terms in loan agreement between the appellant and Singapore Company in regard to the exchange risks.*

The question is very straightforward. The appellant was asked to clarify if the exchange risks were to be borne by either the lender (i.e., the appellant) or the foreign borrower (IMOL, fully owned subsidiary) or to be borne by both. In response, the appellant has admitted that there are no specific terms in loan agreement between the appellant and IMOL (fully owned foreign subsidiary), which means that the loan repayment of USD 60 million is to be made by IMOL to the appellant with each party bearing the risk of conversion to/from USD. In other words, IMOL has to bear the risk of conversion from Singaporean dollar to USD with no impact on the appellant and at the same time, the appellant has to bear the risk of conversion from USD to INR with no impact on IMOL. So, in order to avoid the losses in Singaporean dollar, IMOL could have entered into hedging transaction with a speculator in Singapore. On the same lines the appellant entered into a hedging transaction with the speculator, M/s.PNB in India to hedge against the volatility in

USD to INR conversion. The hedging contract between the appellant and the speculator (PNB) is different from and independent of the hedging contract between IMOL and Singaporean speculator.

7.4.6. In such a case, the nature of transaction between the appellant and IMOL being loan transaction (capital) has no impact on or no relevance to the hedging contract either between the appellant & Indian speculator (PNB) or between IMOL & Singaporean speculator. Hence the hedging profit earned from a third party-speculator or loss incurred towards a third party speculator does not and cannot partake the character of the loan transaction between the appellant and IMOL. Therefore, the profit earned on FEFC is not capital in nature but revenue in nature and hence taxable.

7.4.7(a) Another relevant question was asked vide Qn.2.6 in the same notice u/s.250 dated 07.08.2023 as follows …

> *2.6. Please state if the appellant-company incurred any expenses for entering into forex forward contract and if so, how much? and what was the accounting treatment*
> *of such transactional expenses?*
>
> *In response on 14.09.2023, the appellant gave the following reply …*
>
> *2.6.1. The details of the transaction will be submitted in due course.*

Actually, the answer to this query hardly takes any time. But the appellant chose not to reply as it questions the appellant's stand in claiming deduction of expenses incurred on forex forward contract. It is really mysterious that the time gap of 38 days between Notice u/s.250 dated 07.08.2023 and the appellant's reply dated 14.09.2023 was not sufficient for the appellant to answer this query. Even more mysterious and strange is that the appellant chose not to give this simple answer even after 14.09.2023. Communication window was open for the appellant to give the answer to this question. But the appellant remained quiet. After repeated reminders the appellant finally gave the answer on 27th Feb 2024 as follows …

"The expenses related to forex forward contract are grouped under 'other borrowing cost' under Note 28 – Finance cost of Rs.46 lakhs as bank charges."

(b) From this answer it is clear that the incidental charges incurred on forex forward contract have been claimed as deduction in Total Income computation. That means the appellant treated the incidental charges as revenue in nature but the gain on FEFC as capital for I-T purposes. Why that contradiction? Because the appellant did not want to pay tax on gain on FEFC. Rightly the appellant claimed the gain on FEFC as revenue receipt as per Companies Act and also rightly claimed the incidental charges on FEFC as revenue expense as per Companies Act, but the appellant removed only the gain on FEFC from income in the total income computation but did not remove the incidental expenses from total income computation. Total income should not be computed so as to illegitimately give benefit to the assessee but should be computed as per the provisions of the I-T Act. It is a well-established principle if a transaction is capital in nature its associated expenses will also be capital in nature. But in the instant case the appellant claimed only the incidental expenses as deduction in Income Computation but treated the gain on FEFC as capital and removed it from taxation.

7.4.8. From this discussion it is crystal clear that the appellant-assessee itself admits that incidental charges are not capital in nature and then how can gain on FEFC be capital in

nature? Therefore the gain on FEFC is also revenue in nature in Total Income computation. Accordingly, I hold the gain earned/received on FEFC as taxable revenue.

7.4.9. Another relevant and important question was asked vide Qn.2.7 in the same notice u/s.250 dated 07.08.2023. The question/s posed and the answer/s given by the appellant on 14.09.2023 are reproduced hereunder …

> *2.7. a. The loan transaction with Singapore subsidiary company and the forward contract with the speculator are completely different and separate. The foreign borrower has to repay the same quantum of loan in dollar terms irrespective of the underlying INR value as on the date of repayment of dollar loan. When there cannot be any reduction or enhancement in dollars at the time of repayment of loan to the Indian lender, how can a transaction entered into with a third party for hedging the dollar against Indian currency become loan transaction relatable to the foreign borrower (Singapore subsidiary company) and thereby how can it be the capital receipt?*
>
> *b. Nevertheless, please substantiate how and why "the loan transaction with Singapore subsidiary company" and "the forward contract with the speculator" are not different and separate.*
>
> *c. Please state whether the risk of loan repayment by the borrower was hedged/insured or whether the USD to INR conversion was only hedged/insured? If it is the case of hedging of USD to INR conversion, then please explain how the quantum of loan principal amount in dollars as repayable by the borrower gets affected with the fluctuations in conversion between USD and INR, because the principal quantum of loan in USD should remain the same as per the loan agreement between both the parties.*
>
> *2.7.1. As it was submitted before Your Honors, forex gain being on hedging contract pertaining to the loan given to its subsidiary company, the appellant has treated the same as Capital in nature and deducted the same while computing taxable income.*
>
> *2.7.2. To substantiate our claim, we support our contentions with following case laws:*
>
> *2.7.2.1 Hon'ble Supreme Court in the case of Sutlej Cotton Co, Ltd. vs.CIT [1979] 116 1 TR 1 wherein it was held that:*
>
> *"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 toss would ordinarily be 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. "*
>
> *The losses/ gains arising on revenue account will be an allowable deduction/taxable subject to the fulfilment of the condition that the underlying purpose for which the derivative contract is entered into in on revenue account and not on capital account. For example, loss from a forward exchange contract to hedge an export sale is an allowable deduction as it is on a revenue account.*

However, forward exchange contract to hedge a repayment of a loan for capital purposes may not be an allowable transaction as it is on a capital account. "

2.7.2.2 Hon'ble Supreme Court in the case of Tata Locomotive and Engineering Co. Ltd vs CIT 60 ITR 405 wherein it was held that: "If the act of keeping the money for capital purposes was part of or a trading transaction then any trading transaction then assessment year profit that would accrue would be revenue receipt; if it was not part of or a trading transaction then the profit made would be a capital profit and not taxable."

2.7.2.3. Hon'ble Gujarat High court in the case of Garden Silk Mills vs DCIT 320 ITR 720

7.4.10. Analysis the appellant-assessee's replies given in response to Qn.2.7(a),(b)&(c):

In the query 2.7(a) it was categorically conveyed to the appellant that "The loan transaction with Singapore subsidiary company and the forward contract with the speculator are completely different and separate. The foreign borrower has to repay the same quantum of loan in dollar terms irrespective of the underlying INR value as on the date of repayment of dollar loan. In continuation of this query further question was raised as "When there cannot be any reduction or enhancement in dollars at the time of repayment of loan to the Indian lender, how can a transaction entered into with a third party for hedging the dollar against Indian currency become loan transaction relatable to the foreign borrower (Singapore subsidiary company) and thereby how can it be the capital receipt?".

In response to this query, the appellant simply gave the reply vide its submission dated 14.09.2023 as

2.7.1. As it was submitted before Your Honors, forex gain being on hedging contract pertaining to the loan given to its subsidiary company, the appellant has treated the same as Capital in nature and deducted the same while computing taxable income.

7.4.11. Instead of answering why the loan transaction with Singapore subsidiary and the forex forward contract are not different and not separate, and instead of answering whether the dollar loan changes in quantum on the date of repayment, and further instead of answering how a forex forward contract entered into with a third party for hedging become loan transaction with IMOL, the appellant simply evaded the answers by expressing its stand on treating the forex gain on forward contract as capital in nature. Is it enough to express its stand in treating the forex gain on forward contract as capital for really treating it as capital? No. The appellant could not answer to the specific questions raised and hence it kept quiet. The queries unanswered before the FAA cannot be taken up at higher appellate forum because the FAA loses the right of raising the supplementary queries emanating from its answers. Therefore, it is concluded that the gain on forex forward contract is taxable revenue in nature.

The second sub-question is raised as under …

Query 2.7(b). Nevertheless, please substantiate how and why "the loan transaction with Singapore subsidiary company" and "the forward contract with the speculator" are not different and separate.

7.4.12. Instead of answering this pin-pointed and specific query, the appellant quoted three case laws viz., (1) Hon'ble Supreme Court in the case of Sutlej Cotton Co, Ltd. vs. CIT [1979] 116 1 TR 1, (2) Hon'ble Supreme Court in the case of Tata Locomotive and Engineering Co. Ltd vs CIT 60 ITR 405 and (3) Hon'ble Gujarat High court in the case of Garden Silk Mills vs DCIT 320 ITR 720.

7.4.13. Let's analyse these 3 case laws and see if they are applicable to the facts of the case.

> ***(1) Hon'ble Supreme Court in the case of Sutlej Cotton Co Ltd. vs. CIT [1979] 116 ITR 1:*** *"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 toss would ordinarily be 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."*
>
> ***FAA's analysis:*** *In this case law, there was no foreign exchange forward contract. Hon'ble Supreme Court held that if any foreign currency held by the assessee on revenue account or as a trading asset or as circulating capital results into gain or loss on conversion into another currency, then it is trading profit or loss. On the other hand, if the foreign currency is held as capital asset or fixed capital such profit or loss would be capital in nature. But in the instant case, the loan given to the foreign subsidiary (IMOL) was hedged against the fluctuation risks with another third party, which is independent of IMOL.*

To explain with facts and figures, let us borrow data from the preceding paragraphs.

1 USD = Rs.65.9054 as on 29.03.2017 as taken from internet.
1 USD = Rs.65.0795 as on 30.03.2018 as taken from internet.

In the absence of FEFC, gain per USD

= USD rate on the date of repayment – USD rate on the date of advancing the loan
= Rs.65.0795 – Rs.65.9054
= (-) Rs.0.8259.

As per the Hon'ble Supreme Court decision in Sutlej Cotton case law, this is capital loss presuming that the loan was repaid on 30th March 2018. [It is a different matter, however, that loan was not repaid by IMOL to the appellant-assessee on 30th March 2018 in which case even this capital loss becomes notional or un-incurred capital loss which will have no effect either on Revenue account (P&L A/c) or on Capital A/c (Balance Sheet)].

Whereas, with entering into of Foreign Exchange Forward Contract by the appellant-assessee, it hedged its forex risk in future and earned gain as opposed to forex loss in the absence of FEFC. In figures …

Gain per dollar in the hands of the appellant = y – x

= Rs.68.04 – Rs.65.9054
= Rs.2.1346.

Thus it is clear that the appellant-assessee earned forex hedging gain of Rs.2.1346 per USD through the force of FEFC rather than incurring capital loss of Rs.0.8259 per USD.

Hence it is clearly demonstrated that the case law relied on by the appellantassessee is not applicable to the facts of the case on hand since there was no FEFC in the case of ***Sutlej Cotton Co Ltd.***

(2) The appellant also relied on Hon'ble Supreme Court in the case of Tata Locomotive and Engineering Co. Ltd vs CIT 60 ITR 405: "If the act of keeping the money for capital purposes was part of or a trading transaction then any trading transaction then assessment year profit that would accrue would be revenue receipt; if it was not part of or a trading transaction then the profit made would be a capital profit and not taxable."

FAA's analysis: *The explanation given by the undersigned in the case of Sutlej Corporation Case law in the preceding paragraphs is squarely applicable to this case law also since there is no Foreign Exchange Forward Contract for hedging the foreign currency against the future fluctuations. Hence this case law is also not applicable to the facts of the case on hand.*

(3) The appellant further relied on Hon'ble Gujarat High court in the case of Garden Silk Mills vs DCIT 320 ITR 720. In this case, the Indian assessee entered into a foreign exchange forward contract for borrowing for the purpose of importing capital asset. At the time of making payment to the foreign supplier if there is any profit or loss arising from the FEFC, then such profit or loss gets adjusted against the cost of the machinery and accordingly lower or higher depreciation would be claimed by the assessee. However, in this case law, the FEFC was even cancelled and the Hon'ble Court went in the direction of deciding whether such a gain would be in the nature of capital or not and held that the gain on cancellation of FEFC would be akin to the gain without cancellation of FEFC and therefore held it to be capital.

The difference between the appellant's case with that of Garden Silk Mills case law is that in the appellant's case loan was not even repaid to the appellant by the foreign subsidiary. On the strength of loan receivable of USD 60 Million, the appellant merely betted on the conversion rate with a third party and earned the gain while without receiving the forex loan.

Thus the facts in the instant case are very clear that the appellant earned real profit (not notional) from a third party speculator by hedging a sum of USD60 million. It is immaterial whether this amount of USD60 million was with the appellant-assessee or given to another person as loan but the right over this money belongs to the appellant and hence the speculator agreed to enter into hedging contract. Thus in the process the appellant earned and received forex gain without actually receiving the loan back from IMOL. Therefore, the gain earned and received on FEFC is taxable as revenue as per I-T Act. Moreover, as per ICDS (Income Computation and Disclosure Standards) notified by the Government of India as applicable for the AY 2018-19, any profit or loss arising on cancellation or renewal of forward exchange contract shall be recognised as income or as expense for the previous year.

7.4.14. With regard to the query in 2.7(c), the appellant remained silent by not answering.

> *2.7(c). Please state whether the risk of loan repayment by the borrower was hedged/insured or whether the USD to INR conversion was only hedged/insured? If it is the case of hedging of USD to INR conversion, then please explain how the quantum of loan principal amount in dollars as repayable by the borrower gets affected with the fluctuations in conversion between USD and INR, because the principal quantum of loan in USD should remain the same as per the loan agreement between both the parties.*

This specific query was posed to the appellant expecting an obvious reply from the appellant stating that only the risk of USD to INR conversion was hedged with the third party. However, the appellant did not reply. Based on the obvious reply the transaction of currency conversion can be delinked from the foreign currency loan transaction. With that delinking, it becomes clear that transaction on FEFC has no linkage to the foreign currency loan transaction and hence both the transactions are independent and separate from each other.

In view of this, the gain on FEFC cannot be treated on par with loan transaction and hence it is held to be taxable revenue in nature.

7.4.15. There was a last query on this subject of forex gain in notice u/s.250 dated 07.08.2024, which is reproduced hereunder …

> *2.8 Please state if the appellant-company entered into such forex forward contracts in the years earlier to and later to FY 2017-18. If so, please state if the appellant-company earned forex gain or incurred forex loss in any of the years on forex loans given or taken till 31/03/2023 and what was the accounting treatment of forex gain/loss in all the years from FY 2013-14 till 2022-23.*

The FAA desired to know if the appellant gave similar treatment to the forex loss on forward contract on loans given to the foreign subsidiary. However, in response, the appellant gave the following reply in its reply dated 14.09.2023.

> *2.8.1. The details of the transaction will be submitted in due course.*

Communication window was open for the appellant to give the answer to this question. But the appellant remained quiet. After repeated reminders the appellant finally gave the answer on 27th Feb 2024 as follows …

> *"It is hereby submitted that loan was impaired in the subsequent years. The accounting treatment for Forex gain/loss remains the same as done during the year i.e. debited/credited to profit & loss account, as the Company follows Ind AS system of accounting."*

The appellant's answer is not full. If the gain on FEFC on the strength of loan given to foreign subsidiary was to be treated as capital, then the loss on FEFC too on the strength of loan given to foreign subsidiary should be treated as capital. Without prejudice to the decision in the previous paragraphs the facts are not forthcoming from the appellant to make a point. To this extent the FAA is deprived of giving judgment on these facts alone. Getting the details from the appellant is

really getting difficult perhaps for the reason that if more details are given by the appellant as called for by the FAA, they would only turn against the appellant's case and therefore the appellant is releasing the details in bits and pieces that too not in full.

7.5.1. Sections 43A and 43AA deal with foreign exchange fluctuations. Section 43A talks exclusively about adjustment of fluctuation gain or loss against the actual cost of the capital asset purchased from outside India.

For the sake of understanding, Sec.43A is reproduced hereunder …

> *[**Special provisions consequential to changes in rate of exchange of currency.***
>
> ***43A.** 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 and, in consequence of a change in the rate of exchange during any previous year after the acquisition of such asset, there is an increase or reduction in the liability of the assessee as expressed in Indian currency (as compared to the liability existing at the time of acquisition of the asset) at the time of making payment—*
>
> *(a) towards the whole or a part of the cost of the asset; or*
>
> *(b) towards repayment of the whole or a part of the moneys borrowed by him from any person, directly or indirectly, in any foreign currency specifically for the purpose of acquiring the asset along with interest, if any,*

the amount by which the liability as aforesaid is so increased or reduced during such previous year and which is taken into account at the time of making the payment, irrespective of the method of accounting adopted by the assessee, shall be added to, or, as the case may be, deducted from—

(i) the actual cost of the asset as defined in clause (1) of section 43; or
(ii) the amount of expenditure of a capital nature referred to in clause (iv) of sub-section (1) of section 35; or
(iii) the amount of expenditure of a capital nature referred to in section 35A; Or
(iv) the amount of expenditure of a capital nature referred to in clause (ix) of sub-section (1) of section 36; or
(v) the cost of acquisition of a capital asset (not being a capital asset referred to in section 50) for the purposes of section 48,

and the amount arrived at after such addition or deduction shall be taken to be the actual cost of the asset or the amount of expenditure of a capital nature or, as the case may be, the cost of acquisition of the capital asset as aforesaid:

***Provided** that where an addition to or deduction from the actual cost or expenditure or cost of acquisition has been made under this section, as it stood*

immediately before its substitution by the Finance Act, 2002, on account of an increase or reduction in the liability as aforesaid, the amount to be added to, or, as the case may be, deducted under this section from, the actual cost or expenditure or cost of acquisition at the time of making the payment shall be so adjusted that the total amount added to, or, as the case may be, deducted from, the actual cost or expenditure or cost of acquisition, is equal to the increase or reduction in the aforesaid liability taken into account at the time of making payment.

Explanation 1.—In this section, unless the context otherwise requires,—

(a) "rate of exchange" means the rate of exchange determined or recognised by the Central Government for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

(b)"foreign currency" and "Indian currency" have the meanings respectively assigned to them in section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999).

Explanation 2.—Where the whole or any part of the liability aforesaid is met, not by the assessee, but, directly or indirectly, by any other person or authority, the liability so met shall not be taken into account for the purposes of this section.

Explanation 3.—Where the assessee has entered into a contract with an authorised dealer[5] as defined in section 2 of the Foreign Exchange Management

Act, 1999 (42 of 1999), for providing him with a specified sum in a foreign currency on or after a stipulated future date at the rate of exchange specified in the contract to enable him to meet the whole or any part of the liability aforesaid, the amount, if any, to be added to, or deducted from, the actual cost of the asset or the amount of expenditure of a capital nature or, as the case may be, the cost of acquisition of the capital asset under this section shall, in respect of so much of the sum specified in the contract as is available for discharging the liability aforesaid, be computed with reference to the rate of exchange specified therein.]

7.5.2. Whereas Sec.43AA talks about all other situations of foreign exchange fluctuation and its taxation. This section was inserted by the Finance Act, 2018, w.r.e.f. 1-4-2017 i.e., making it applicable from AY 2017-18 onwards. The AY concerned in the instant case is AY 2018-19 and therefore Sec.43AA is applicable to the case of the appellant-assessee.

Section - 43AA, Income-tax Act, 1961 - FA, 2018

[Taxation of foreign exchange fluctuation.

***43AA.** (1) Subject to the provisions of section 43A, any gain or loss arising on account of any change in foreign exchange rates shall be treated as income or loss, as the case may be, and such gain or loss shall be computed in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145.*

(2) For the purposes of sub-section (1), gain or loss arising on account of the effects of change in foreign exchange rates shall be in respect of all foreign currency transactions, including those relating to—

(i) monetary items and non-monetary items;
(ii) translation of financial statements of foreign operations;
(iii) ***forward exchange contracts;***
*(iv) foreign currency translation reserves.****]***

As per sec.43AA(2)(iii), forex gain or loss shall be computed as per ICDS notified u/s.145(2) of I-T Act. CBDT published ICDS (Income Computation and Disclosure Standards) vide Government of India Notification dated 29th September, 2016 being made applicable to the Assessment Year 2017-18 and subsequent assessment years.

As the subject AY is AY 2018-19, ICDS are squarely applicable to the case on hand.

7.5.3. The issue in consideration is taxation of foreign exchange fluctuation, which is dealt with in ICDS VI.

F. Income Computation and Disclosure Standard VI relating to the effects of changes in foreign exchange rates

Preamble

This Income Computation and Disclosure Standard is applicable for computation of income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" and not for the purpose of maintenance of books of account.

In the case of conflict between the provisions of the Income-tax Act, 1961 ('the Act') and this Income Computation and Disclosure Standard, the provisions of the Act shall prevail to that extent.

Article 8 of ICDS VI deals with forward exchange contracts.

Forward Exchange Contracts

8. (1) Any premium or discount arising at the inception of a forward exchange contract shall be amortised as expense or income over the life of the contract. ***Exchange differences on such a contract shall be recognised as income or as expense in the previous year in which the exchange rates change.*** *Any profit or loss arising on cancellation or renewal shall be recognised as income or as expense for the previous year.*

Besides the foregoing discussion prior to Sec.43AA in this Order, gain on forex forward contract is held to be taxable revenue.

7.6. *Hon'ble Supreme Court in the case of PCIT vs Bangalore International Airport Ltd reported in [2023] 154 taxmann.com 395 (SC) held that in case of assesse availing external commercial borrowing from international financiers to produce capital assets, fluctuation in rates of foreign exchange can result in either a gain or a loss because of value of currency which appreciates or depreciates on date of computation namely 31st March of relevant accounting year, thus, adjustment on account of foreign exchange rate fluctuation is required to be made to actual cost at end of every year after amendment to section 43A with effect from 1-4-2003 and gain arising on account of exchange fluctuation is not liable to tax as it is on capital account. This case law is about external commercial borrowing for the purpose of acquiring capital asset. The Hon'ble Supreme Court held that foreign exchange rate fluctuation should be adjusted to the actual cost of the asset and thus less depreciation is claimable by the assessee because such gain or loss is directly relatable to the asset acquired. In other words, where such adjustment of fluctuation gain or loss cannot be made on capital account as in this case of the appellant, then the fluctuation gain or loss should be treated as revenue and to be offered to tax. There cannot be a situation wherein the fluctuation gain/loss is not adjusted either on capital account or on revenue account irrespective of whether it results in more tax or not. By derivative of this judgment, fluctuation gain esp on forex forward contract not adjusted on capital account in Balance Sheet shall be treated as taxable revenue.*

7.7. HENCE, THE PROFIT EARNED ON FOREIGN EXCHANGE FORWARD CONTRACT AMOUNTING TO Rs.19,90,79,300 IS HELD TO BE REVENUE IN NATURE AS PER INCOME TAX ACT, 1961. Therefore, the ground of appeal raised on this issue is rejected and accordingly dismissed..."

9.0 We have noted that the decision of Ld.CIT(A) is based upon correct understanding and appreciation of facts on records. He has vividly analyzed the issue of forward exchange contracts in line with statutory provisions of Income Tax Act, standard guidelines published by the Central Board of Direct Taxes under Income Computation and disclosure standards (ICDS) dated 29.09.2016 operative from AY-2017-18 onwards, decision of Hon'ble Apex Court in Sutlej Cotton Company Limited, Tata Locomotive and Engineering Company supra and Garden Silk Mills 320 ITR 720, deficient compliance of the assessee in providing requested details as well as decision of Hon'ble Apex Court in the case of

Bangalore International Airport Limited 154 Taxman.com 395. We have noted that the Hon'ble Supreme Court in the impugned decision held that foreign exchange rate fluctuation should be adjusted to the actual cost of the asset and thus less depreciation is claimable by the assessee because such gain or loss is directly relatable to the asset acquired. Therefore, where such adjustment of fluctuation gain or loss cannot be made on capital account as in this case of the appellant assessee, then the fluctuation gain or loss should be treated as revenue and to be offered to tax. There cannot be a situation wherein the fluctuation gain/loss is not adjusted either on capital account or on revenue account irrespective of whether it results in more tax or not. Consequently, the transaction entered by the assessee would fall in the nature of revenue receipt. We are therefore of the considered view that there is no case for any interference to the order of the Ld.CIT(A) at this stage. **Accordingly, all the grounds of appeal raised by the assessee on this issue are dismissed.**

10.0 The next issued raised by the assessee through its grounds appeal is regarding the action of the Ld.AO in making an addition of Rs.80,85,51,659/- on account of disallowance of finance costs claimed under IGAAP and its affirmation by the Ld. First Appellate Authority. The Ld.AO has discussed the impugned addition on page 4 of his order. The addition was primarily made in view of non-submission of any reply by the

assessee. The Ld. Counsel for the assessee submitted that while computing the total income, the Appellant had claimed interest computed in accordance with the ICDS-IX of INR 1,051,86,98,488 and accordingly disallowed the interest debited to P&L a/c of INR 971,01,46,829 which is as per IND AS. Thus the Appellant assessee had reportedly claimed INR 1051,86,98,488 as deduction and offered INR 971,01,46,829 as disallowance for the purpose of computing the total income under the head profits and gains from business or profession. The Ld. AO however disallowed INR 80,85,51,659 also as inadmissible amount. The Ld. Counsel submitted that the assessee has prepared its accounts in accordance with IND AS which adopts fair valuation approach. As per IND AS 109, all financial liabilities are carried at amortised cost using effective interest rate method. Such discounting of liabilities entails recognition of interest costs on notional basis which ought to be offered as disallowance and that the appellant has duly done the same. In support of its contentions the Ld. Counsel drew our attention to following presentation of its financial liabilities.

Particulars	Amount as per IND AS (INR)	Amount as per ICDS (INR)	Difference
Interest cost on FCCD	60,20,70,000	1,63,17,67,076	(1,02,96,97,076)
Interest on term loans from banks	5,56,51,15,497	5,55,48,47,869	1,02,67,628
Amortized cost on loan to subsidiary	10,14,32,022	Nil	10,14,32,022
Interest on long term financial liabilities	10,94,46,730	Nil	10,94,46,730
Total	**9,71,01,46,829**	**1051,86,98,488**	**(80,85,51,659)**

It was accordingly argued that the interpretation of lower authorities is wrong and deserves to be overruled. The Ld. Counsel submitted that accordingly the Ld.CIT(A) has also misinterpreted the facts of the case while denying relief.

11.0 The Ld.DR relied upon the order of lower authorities.

12.0 We have heard rival submissions in the light of material available on records. We have noted that the Ld.CIT(A) has observed in para 8.4.2 to 8.4.4 of his that there was no effective compliance on the part of the assessee to have enable him to arrive at a judicious decision. In para 8.4.4 he has observed that *"….without full facts on records it is difficult to adjudicate this ground and hence not adjudicated. Therefore,*

this ground of appeal is rejected and accordingly dismissed as not adjudicated…". In view of the above remarks it is abundantly clear that the matter is not adjudicated by the Ld.CIT(A). Accordingly, we deem it fit to restores this issue to the file of the Ld.CIT(A) for readjudication de novo after according due opportunity of being heard. The assessee shall be bounden to comply with statutory notices. In the event of any non-compliance adverse view may be taken against the assessee. **All the grounds of appeal raised against this issues are allowed for statistical purposes.**

13.0 The next issue raised by the assessee is regarding the addition made by the Ld.AO of Rs.38,04,30,000/- on account of notional gains on derecognition of financial liabilities and its confirmation by the Ld.CIT(A). We have noted that the Ld.AO while making the addition, on page-4 of his order, observed that the assessee had failed to respond to opportunities given by him to explain the impugned transactions. No detailed explanation with any supporting documents were adduced in support thereof. We have also noted that the Ld. CIT(A) has discussed the issue extensively from pages 72 to 76 of his order comprehensively analyzing the facts of the case. The Ld. Counsel of the assessee submitted that the appellant has entered into an onshore works and service contract dated December 22, 2010, with one Shandong Tiejun Electric Power Engineering Co Ltd (Teijun) for Construction, erection and

pre-commissioning, commissioning of a thermal power plant. As per understanding the appellant had a right to retain 10% of the amounts of each invoice and proportionately release/repay them on the completion date of such unit. However, upon completion of the project, the appellant was not in a position to repay such retention liability of Rs. 2,590.81 million. The matter was renegotiated with the party and the release of the retention liability was deferred by 3 years. This resulted in modification in the terms of the contract as regards applicability of IND AS 109. Thus, in accordance with Ind AS 109, the appellant was thus required to derecognize such liability (which was payable on immediate basis) and recognize revised liability (new deferred terms of payment in 3 years) at fair value. Accordingly, the difference between both the liabilities of Rs.38 Crores was credited to P&L. As such, there is no actual reduction in liability, or any gain made by the company on revision in terms of the contract. The appellant is still liable to pay the entire retention money. It was argued that the net gain on derecognition credited to P&L a/c is notional in nature and hence, not taxable as per the provisions of the Act. Reliance was placed upon the decision of this tribunal in the case of Sriram Properties Limited TS 130 – ITAT – 2023 and Kesar Terminals and Infrastructure Limited.

14.0 Ld. DR argued in favour of order of lower authorities.

15. We have heard the rival submissions in the light of material available on records. The appellant has not responded to queries of Ld.AO during the assessment proceedings. We have noted from pages 72 to 76 of appellate order that the appellant was required to file a specific details in support of its contentions but the same were not complied. In this regard, we have noted the following as per para 9.4 on page 76 of the appellate order:-

"….*The appellant mentioned in its submissions that it negotiated with the lenders, and it was decided to defer such liability by another 3 years. At the same time the appellant also talked about extinguishment of original liability. Any extinguishment of liability is a benefit received by an assessee because the assessee need not repay that liability. In this case, it appears to be a case of the appellant getting benefitted by extinguishment of liability by the other party. Several questions were asked in the questionnaire issued u/s.250 by the FAA. But the appellant did not demonstrate that it did not receive any benefit out of the extinguishment of liability and the other party did not forego any benefit in favour of the appellant by dint of extinguishment of appellant's liability towards the other party. Therefore, I am of the view that the benefit received by the appellant through derecognition of liability due to extinguishment of liability is a benefit u/s.28(iv) of I-T Act and should be taxed accordingly. Hence the ground of appeal on this issue is rejected and accordingly dismissed…."*

16.0 Thus we have noted that there is an issue of non-submission of requested details by the assessee leading to drawing of adverse conclusions by the Ld. First Appellate Authority. The reliance by the assessee to the decisions of this Hon'ble Tribunal would be relevant only when the facts are identical. In the instant case, full facts have not been

brought on record by the assessee. Be that as it may be we deem it fit to restore this issue to the file of the Ld.CIT(A) for readjudication de novo, in accordance with law, after according due opportunity of being heard. The assessee shall be bounden to comply with statutory notices. In the event of any non-compliance adverse view may be taken against the assessee. **All the grounds of appeal raised by the assessee against this issue are allowed for statistical purposes.**

17.0 In the result, the appeal of the assessee is partly allowed.

ITA No.1694/Chny/2024, Assessment Years: 2018-19

18.0 The next issue raised by the Revenue through its ground of appeal is regarding the action of the Ld. First Appellate Authority in deleting the addition of Rs.225,21,81,428/- made by the Ld.AO invoking provisions of section 14A. The Ld. Counsel drew our attention to page 7 to 9 of the order of Ld.AO to allude that the addition was made purely upon guess work and estimation by the Ld.AO. It was stated that the Ld.AO had drawn a fallacious conclusion that there cannot be a case of not incurring any expenditure on investments earning exempt income. The Ld. Counsel for the assessee submitted that the Ld.First Appellate Authority has correctly understood and appreciated the facts of the case while according relief to the assessee. Before us it was also argued that the case of the assessee is fully covered by the decision of this tribunal in

assessee's own case for AY-2012-13 – AY-2014-15 vide ITA No.1989, 1990 & 3217/Chny/2017. Reliance was also placed upon the decision of Hon'ble Jurisdictional High Court in Chettinad Logistics 80 Taxman.com 221 and the fact that Revenue's SLP stood dismissed by the Hon'ble Apex Court.

19.0 The Ld.DR relied upon the order of lower authorities. It was argued that the explanation inserted by finance act 2022 was clarificatory in nature that even if there is no exempt income yet disallowance under section 14A r.w. Rule 8D would apply .

20.0 We have heard rival submissions in the light of material available on records. We have noted that this tribunal in assessee's own case for AY-2012-13 – AY-2014-15 vide ITA No.1989, 1990 & 3217/Chny/2017 has ruled as under :-

"….2. The only issue in this appeal of Revenue is as regards to the order of CIT(A) deleting the disallowance of expenses made by the AO of expenses relatable to exempt income by invoking the provisions of section 14A r.w.rule 8D of the Income Tax Rules, 1962 for the reason that there is no exempt income in the case of the assessee.

2.1 We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the CIT(A) deleted the addition by noting the fact that the assessee has not earned any exempt income and following the decision of Hon'ble Jurisdictional High Court in the case of CIT v. Chettinad Logistics (P) Ltd., [2017] 80 taxmann.com 221 and Redington (India) Ltd., vs. Addl.CIT, [2017] 77 taxmann.com 257 and held as under:-

6. As regards to issue of disallowance u/s.14A, the appellant before me has submitted that no dividend income is earned during the assessment year under consideration, and therefore no disallowance u/s.14A can be made. The appellant has relied on the judgement of Jurisdictional High Courtin the case of Redington (India) Ltd. (2017) 77 taxman. Com 257 (Madras) in support of the ground taken against the said disallowance. The assessing officer has computed the disallowance u/s.14A at Rs. 1,84,57,282 in accordance with rule 8D of I.T. Rules.

7. Matter is considered. This issue is covered in favour of the appellant by the judgement of Apex Court in the case of Chettinad Logistics (P) Ltd. (2019) 95 taxmann.com 250(SC) whereby the judgement of Hon'ble Madras High Court in the same case in (2017) 80 taxmann.com 221 (Madras) has been upheld by dismissing the SLP filed by the Revenue on the ground of delay as well as merits. Now the law is if the appellant did not earn any exempt income like dividends, section 14A cannot be invoked. Respectfully following this judgement, subject to the condition that the appellant did not earn any exempt income during Asst. Year 2013-14, I direct the assessing officer to delete the addition made on account of disallowance u/s.14A at Rs.1,84,57,282/-. Ground taken is allowed.

2.2 Since the issue is covered in favour of assessee and against Revenue by the decision of Jurisdictional High Court, we dismiss this appeal of Revenue…."

21.0 We have noted that no distinguishment of facts has been pointed out by the revenue in the present case qua those available in the matter decided by Hon'ble coordinate bench of this tribunal supra. Accordingly, in respectful compliance to the decision of Hon'ble Coordinate Bench of this tribunal in assessee's own case, and decision of the Hon'ble Jurisdictional High Court **we confirm the order of the Ld.CIT(A) and dismiss the ground of appeal raised by the Revenue**.

22.0 Another issued raised by the Revenue is regarding an addition of Rs. 42 Crores made by the Ld. AO on account of liquidated damages and the decision of Ld.CIT(A) in remitting back the matter to the Ld.AO for limited verification. As per para 7 of his order, the Ld. AO had made the impugned addition since assessee had failed to offering detailed explanation. The Ld.AO proceeded to treat the non-submission as assessee's non-objection to the disallowance of Rs. 42 Crores. Before the Ld.CIT(A) the assessee had submitted that the Ld.AO had failed to

correctly understand the accounting principles. It was submitted that the appellant had offered liquidated damages as income in its profit and loss account but had claimed the same against the asset in the asset schedule per provisions of Income Tax Act. Consequently, the Ld.CIT(A) directed the Ld.AO to conduct the limited verification of the above facts and to allow the claim if assessee's claims were correct. The Ld. Counsel for the assessee argued in favour of the decision of the Ld.CIT(A) .

23.0 The Ld.DR relied upon the order of Ld.AO.

24.0 We have heard the rival submissions in the light of material available on records. The Ld.CIT(A) has deliberated on this aspect in great detail on pages 77 to 81 of his order. We have noted that there is nothing wrong in the principles enunciated by the Ld.CIT(A) on the matter. **Accordingly, we confirm the order of the Ld.CIT(A) and dismiss all the grounds of appeal raised by the Revenue on the issue of liquidated damages.**

25.0 Another issue raised by the Revenue through its grounds of appeal is regarding the addition made by the Ld.AO on account of closing stock of Rs. 362,47,21,715/- and its deletion by the Ld. CIT(A). The Ld. AO has made the impugned addition. As per para 8 of his order, the Ld. AO had made the impugned addition since assessee had failed to offering detailed explanation. The Ld.AO proceeded to treat the non-

submission as assessee's non-objection to the disallowance of Rs. 362,47,21,715/-. Before the Ld.CIT(A) the assessee had submitted that the Ld.AO had failed to correctly understand the accounting principles. The Ld. CIT(A) relied upon the argument of the assessee that the closing stock figures were reported net of material consumed, as per the ITR figures and that there was no case for making an addition. He relied upon the arguments of the assessee that closing stock were shown by reducing the value of closing stock from the opening stock and purchases. The Ld. Counsel for the assessee argued in favour of the order of Ld.CIT(A).

26.0 The Ld.DR relied upon the order of the Ld.AO.

27.0 We have heard rival submissions in the light of material available on records. We have noted the Ld.CIT(A) has discussed the issue on pages 81 to 84 of his order. At the outset, we have noted that the Ld.CIT(A) has given some confusing and contradictory findings in respect of his decision. He has also alluded towards deficient compliance by the assessee, though proceeding to summarily drawing his conclusions. As stated above, the Ld.AO has also not given clear and cogent findings by making additions. Whereas we are in agreement with the Ld.CIT(A) regarding modes of closing stock depiction by an assessee, we are of the view that sufficient material has not been brought on records before according relief to the assessee. Be that as it may be we are of the

view that ends of justice would be met if the Ld.AO is directed to do a limited verification on the matter with the books of accounts and Income Tax returns of the assessee and to take a decision in accordance with law. We accordingly set aside the order of lower authorities and direct the Ld.AO to do the limited verification. The Ld. AO shall provide due opportunity of being heard to the assessee before making his conclusions. Any non-compliance on the part of the assessee shall be adversely viewed**. All the grounds of appeal raised by the Revenue on this issue are therefore allowed for statistical purposes.**

28.0 Before parting we would like to delve upon an important issue concerning appellate functioning at the First Appellate Authority level. Para 5.2 on page 30 - 32 of the impugned order of Ld.CIT(A) vividly contains the unfortunate helplessness of the Ld.CIT(A) in his inabilities to obtain a remand report from the Ld.AO. In para 5.2 he observes that he had asked for a remand report vide his letter dated 27.02.2023. Again he reiterated his request vide letter dated 06.03.2023 by writing to the Jurisdictional PCIT, a copy of which was enclosed to supervisory Additional CIT. It was amply clarified that the case falls in the category of high priority case designated by Central Board of Direct Taxes (CBDT). The hapless soul continued making request through letters dated 08.03.2023, 17.03.2023, 10.04.2023, 25.04.2023, 10.05.2023, 16.06.2023 and 10.07.2023 involving Principal Chief Commissioner of

Income Tax, Chief Commissioner of Income Tax, Principal Commissioner of Income Tax and Additional Commissioner of Income Tax as well as the Ld.AO. It is intriguing and thoroughly in-comprehensible as to why and how all these authorities miserably failed in discharge of their duties. We have come across cases where the Revenue has contested orders of First appellate Authority for violation of principles of natural justice in as much as Rule 46A was not adhered and adequate opportunity of being heard was denied to the Ld.AO. The present case is classical case where the First Appellate Authority chose to give the Ld.AO an opportunity to defend his order and there was no response from the Ld.AO. Strangely all the respective supervisory authorities also did not rise to the occasion of coming in support of a reasonably senior Revenue authority, i.e, CIT(A)

28.1 We have been compelled to consider this issue as we have noted that the issue of non-submission of remand report from the Ld.AO to the Ld. First Appellate Authority is not an exception but is becoming a rule. The obdurate recalcitrance is on the increase for reasons better known to the assessing officers. In another case heard by undersigned, being Revenue's appeal in ITA No.1762, the Ld.CIT(A) languished for seven long years waiting for submission of a remand report and ultimately passed orders over ruling AO's views. Ironically, the Revenue had the cheek to contest the decision of the Ld.CIT(A) on the premise its

principles of natural justice were violated and that the Appellate Authority ought to have waited for submission of remand report. There cannot be any dispute that Rule 46A is a important provision on the statute which gives department a chance to present its case and rather acts like a fretter on the unbridled powers of the Ld. First Appellate Authority. Thus it is a important duty cast upon the Appellate Authority. However, the same cannot be taken by the department as a luxury. Once a request for remand report is made, it becomes the duty of the Ld.AO to comply with the request. In such a situation the Ld.AO acquires twin roles of a representative of the department mandated to protect Revenue's interest as well as an officer of the court who is required to assist the court in discharge of its judicial functions. Thus, the Ld. AO gets seized with responsibility towards Revenue as well as the CIT(A), the latter also part of Revenue only. Timely non-submission remand report has huge potential of adversely impacting the prospects of Revenue both in terms of loosing precious revenue as well as tarnishing its image of a professionally competent department.

28.2 We are, therefore, of the considered view that department needs to do an introspection as to why such cases are frequently happening and are in fact on the rise. We are convinced that such instances of obdurate non-submission of remand report by the Ld.AO would not be

limited to Chennai Benches along but must be taking place elsewhere also. It would be appropriate for the department to conduct a detailed enquiry into the matter, get to root of the problem and try to put in place a full proof mechanism to avoid recurrences. Such a measure will go a wrong way in restoring the image of the Revenue as an efficient organization. As regards the present case, we recommend that the department should try and identify the delinquent authority and take action as deemed appropriate with a view to create a strong deterrence. identifying and acting against delinquent authority is necessary since as observed by late president Dr.A.P.J.Abdul Kalam a guilty must be punished since by non-punishment , on one hand the organization suffers at the hands of an unworthy employee and on the other it deprives the guilty an opportunity to mend one's ways. We would like the Ld. DR to convey our views to the Chairman, Central Board of Direct Taxes being the apex governing body to urgently intervene in the matter and take necessary action so that there is miscarriage of justice.

29.0 In the result, the appeal of the revenue is partly allowed for statistical purposes.

30.0. In the result, the appeal of the assessee and Revenue are decided as detailed hereunder:-

ITA Nos	Assessment Year	Result
ITA No. 1332 / Chny / 2024	2018-19	Partly allowed
ITA No. 1694 / Chny / 2024	2018-19	Partly allowed

Order pronounced on 25th , April-2025 at Chennai.

Sd/-
(मनु कुमार गिरि)
(MANU KUMAR GIRI)
न्यायिक सदस्य / Judicial Member

Sd/-
(अमिताभ शुक्ला)
(AMITABH SHUKLA)
लेखा सदस्य /Accountant Member

चेन्नई/Chennai, **दिनांक**/Dated: 25th , April-2025.
KB/-

आदेश की प्रतिलिपि अग्रेषित**/Copy to:**
1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/**CIT -** Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF