

**IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH  
MUMBAI**

**BEFORE            SHRI M.BALAGANESH, AM  
&  
SHRI AMARJIT SINGH, JM**

**ITA No.7374/Mum/2016  
(Assessment Year :2012-13)**

M/s. Pharmabase India P. Ltd. C/o. Hiten & Jiten CAs. 10, Vasant vihar CHSL 2 <sup>nd</sup> Floor, Plot No.17, New Nagardsas Cross Road Andheri East Mumbai – 400 069	Vs.	Dy. Commissioner of Income Tax DCIT-13(1)(2) Mumbai
<b>PAN/GIR No.AAACP8321N</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Reepal Tralshawala
Revenue by	Shri Abi Rama Kartikeyan
<b>Date of Hearing</b>	<b>31/07/2019</b>
<b>Date of Pronouncement</b>	<b>07/08/2019</b>

**आदेश / ORDER**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No.7374/Mum/2016 for A.Y.2012-13 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-21, Mumbai in appeal No.CIT(A)-21/DCIT-13(1)(2)/IT-17/2015-16 dated 19/09/2016 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 09/03/2015 by the Id. Dy. Commissioner of Income Tax, Circle – 13(1)(2), Mumbai (hereinafter referred to as Id. AO).

2. The first issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the disallowance of foreign exchange fluctuation loss of Rs.2,92,79,250/- arising out of re-statement of External Commercial Borrowings (ECB) at the year end rates in accordance with Accounting Standard – 11 (AS-11) prescribed by the Institute of Chartered Accountants of India (ICAI). The interconnected issue involved therein is as to whether the Id. CIT(A) was justified in confirming the disallowance of foreign exchange loss above by holding that it is capital expenditure and cannot be allowed as deduction u/s.37(1) of the Act.

3. We have heard rival submissions. At the outset, we find that the assessee had borrowed ECB in earlier years and had restated the same at the exchange rate prevailing at the end of the year and had incurred exchange fluctuation loss thereon during the year in the sum of Rs.2,92,79,250/-. This was debited to the profit and loss account by the assessee under the head "Finance Charges" as is evident in Note No.23 of the Balance Sheet as on 31/03/2012. In other words, since assessee is not paying any interest on the said ECB, in view of the huge exchange fluctuation risk undertaken by the assessee, the assessee pursuant to its renegotiation with its foreign lender had resorted to treat the exchange fluctuation loss as finance charges (i.e. interest). It is not in dispute that the foreign lender had also agreed to the fact of not charging any interest on the ECB advanced by them to the assessee. Hence, it could be safely concluded that the difference in exchange rate resulting in exchange fluctuation loss would partake the character of interest liability for the assessee. It is not in dispute that the ECB loan availed by the assessee was utilised for capital expenditure by the assessee. It is not in dispute that the loan has been utilised for the purpose of business of the assessee in the earlier years. During the year the only movement in the

ECB is with regard to exchange fluctuation loss arising due to re-statement at the year end exchange rates in accordance with AS-11 issued by ICAI which is mandatorily to be complied with by the assessee as per Section 211(3C) of the companies Act, 1956. The assessee had debited this exchange loss in its P & L account in the sum of Rs.2,92,79,250/- and claimed the same as deduction in the return of income. The Id. AO held that the ECB was used for capital purposes by the assessee, the exchange loss arising there from would also take the character of capital expenditure and accordingly disallowed the same u/s.37(1) of the Act. The Id. AO had not granted depreciation of foreign exchange loss even though the same was treated as capital in nature. The Id. AO also applied the provisions of Section 43A of the Act in support of his contentions. We find that the Id. CIT(A) had observed that the provisions of Section 43A of the Act are not applicable to the facts of the instant case as admittedly the assets were purchased by the assessee only in India and not from abroad. We find that both the Id. AO as well as the Id. CIT(A) had observed that the exchange fluctuation loss arising due to re-statement of ECB loan at the year end exchange rates is only a notional loss and not actual loss. In this regard, we hold that it is mandatory on the part of the assessee company to comply with the requirements of AS-11 issued by ICAI which mandates re-statement of foreign currency assets and liabilities at the exchange rate prevailing at the end of the year and correspondingly debit / credit the exchange fluctuation loss / gain thereon, as the case may be, in the profit and loss account of the assessee company. We find that the assessee company had duly complied with AS-11 issued by ICAI in this regard. We also find from the tabulation furnished in page 72 of the paper book that assessee had been earning exchange gain and had been incurring exchange loss due to re-statement of ECB loan at the year end rates from A.Y.2007-08

onwards and the same had been routed through profit and loss account of the assessee company and income has been offered whenever exchange gain arises and deduction has been claimed whenever exchange loss arises. This treatment made by the assessee has been consistently accepted by the revenue in the earlier years in scrutiny proceedings as tabulated hereinbelow:-

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Sl. No.	Asst Year	Financial Year	Exchange Fluctuation Loss / (Gain) on External Commercial Borrowing (ECB)			Treatment given in A/Cs Credited to / Debited to?	Refer Schedule / Note no. in Audited accounts	Status thereof in Assessment
			ECB-1	ECB-2	Total Loss / (Gain)			
1	2007-08	2006-07	(4,612,577)	4,756	(4,607,821)	Taken to Balance sheet	Included in Capital WIP in 'Schedule 'D' (as a part of Pre-operative expenses)	Assessment completed u/s 143(3)
2	2008-09	2007-08	(9,050,000)	(3,385,485)	(12,435,485)	Credited to Profit & Loss A/c	Schedule 'J' Other Income & Schedule 'E' Capital WIP (Pre-operative expenses)	Assessment completed u/s 143(3)
3	2009-10	2008-09	27,450,000	21,960,000	49,410,000	Debited to Profit & Loss A/c	'Schedule 'Q' Administrative & Other Expenses	Assessment completed u/s 143(3)
4	2010-11	2009-10	(14,525,000)	(11,620,000)	(26,145,000)	Credited to Profit & Loss A/c	Schedule 'K' Other Income	Assessment completed u/s 143(3)
5	2011-12	2010-11	(1,225,000)	(980,000)	(2,205,000)	Credited to Profit & Loss A/c	Schedule 'K' Other Income	Assessment completed u/s 143(3)
6	2012-13	2011-12	16,266,250	13,013,000	29,279,250	Debited to Profit & Loss A/c	Note No. 23 - Finance Charges	Assessment completed u/s 143(3) Matter before ITAT

3.1. Hence, going by the principle of consistency which has been upheld by the Hon'ble Supreme Court in the case of Radhasaomi Satsang reported in 193 ITR 321, there is no reason for the Id. AO to take a divergent stand during the year under consideration by disallowing the foreign exchange loss, when there is no change in facts when compared

to earlier years. Even otherwise, we find that this issue is also squarely covered by the decision of Hon'ble Supreme Court in the case of Woodward Governor India Ltd., reported in 312 ITR 254 wherein, among other aspects, it was also held that compliance to AS-11 of ICAI is mandatory for all companies registered in India.

3.2. We also find that the ECB has been utilized for purchase of capital assets in India by the assessee company. Thereafter, any change in the ECB value due to exchange fluctuation would not alter the cost of fixed assets. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of Tata Iron and Steel Company Ltd., reported in 231 ITR 285. Hence, it could be safely concluded that exchange loss has got absolutely no bearing / link with the cost of fixed asset. In that scenario, the only alternative is to treat the said loss as loss incurred on the revenue field and hence, to be allowed as revenue expenditure. In view of the aforesaid observations, we find that the decisions relied upon by the revenue are not at all applicable to the facts of the instant case and the decisions relied upon by us herein supra hereinabove would rule the field. Hence, we hold that the assessee deserves to be granted deduction towards foreign exchange fluctuation loss for more than one reason as detailed hereinabove. Accordingly, the grounds raised by the assessee are allowed.

**4. In the result, appeal of the assessee is allowed.**

Order pronounced in the open court on this 07/08/2019

**Sd/-**  
**(AMARJIT SINGH)**  
JUDICIAL MEMBER

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 07/08/2019  
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai