IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

Before: Ms. Annapurna Gupta, Accountant Member
And Ms. Madhumita Roy, Judicial Member

ITA No. 1110 /Ahd/2018 &
ITA Nos. 1605 & 1606/Ahd/2019
Assessment Year 2014-15 to 2016-17

CLP Wind Farm (India) Ltd. 6th Floor, Chanakya Building, Off. Ashram Road, Ahmedabad-380009 PAN No: AADCC4393G (Appellant)	Vs	The DCIT, Circle-1(1)(2), Ahmedabad (Respondent)

Appellant by :Shri S. N. Soparkar Sr. Adv.
& Shri Dhrunal Y Bhatt, A.R.
Respondent by : Shri Alokkumar, CIT/D.R.

Date of hearing : 29-06-2022
Date of pronouncement : 31 -08-2022

आदेश/ORDER

PER : ANNAPURNA GUPTA, ACCOUNTANT MEMBER:-

The present appeals all relate to the same Assessee , pertaining to Assessment Year (A.Y) 2014-15 to 2016-17 and are against separate orders passed by the Commissioner of Income Tax (Appeals)-1, Ahmedabad, (in short referred to as CIT(A)), u/s. 250(6) of the Income Tax Act, 1961(hereinafter referred to as the "Act").

2. It was common ground that in all the appeals there was common issue involved relating to claim of premium paid on forward covers of foreign exchange rates. All the appeals were therefore taken up together for hearing and are disposed of by way of this common consolidated order for the sake of convenience.

3. We shall be dealing with the facts in the case of the assessee pertaining to A.Y. 2014-15 in ITA No. 1110/Ahd/2018 and our decision rendered therein will apply mutatis mutandis to the rest of the appeals also.

ITA No. 1110/Ahd/2018 for A.Y. 2014-15

4. The grounds raised by the assessee pertaining to the disallowance of forward cover premium in the impugned year reads as under:

> *1. In law and in the facts and circumstances of the case, the learned CIT(A) has erred in holding that forward cover premium of Rs.38,96,97,000/- claimed by appellant is capital expenditure as against revenue expenditure claimed u/s 37(1) of the Act. The CIT(A) ought to have allowed the same as revenue expense.*

5. Drawing our attention to the facts of the case as stated in the orders of the authorities below, ld. Counsel for the assessee pointed out that the assessee carried on the business of generation of power and during the impugned year it had claimed expenses amounting to Rs. 38,96,97,000/- on account of forward cover premium. The same, he pointed out, was explained to the Assessing Officer (A.O.), were incurred on account of forward contracts for foreign exchange entered into by the assessee

company to mitigate any foreign currency exposure arising out of fluctuation in foreign currency rate. The foreign exchange ,he stated was required for repayment of foreign currency loan taken by way of external commercial borrowings to develop its various projects in the renewal energy sector being carried out at various locations. He contended that it was pointed out to the authorities below that the claim of the said premium as revenue in nature was in accordance with prescribed norms, i.e (i) it was in accordance with the Accounting Standards issued by the Institute of Chartered Accountants of India (ICAI), (AS-11) in this regard. (ii) it was in accordance with the Income Computation and Disclosures Standards (ICDS) recommended by the Act for computing income from business and profession under the Income Tax Act. (iii) was in accordance with various decisions of the Hon'ble High Courts and the ITAT.

5. He contended that the Revenue authorities, however found no 6erit in the contention of the assessee stating that the neither the Accounting Standards nor the ICDS prescribed claiming the premium paid for forward exchange contracts to the Profit and Loss account. And further noting that the premium paid was in relation to foreign currency loan taken for execution of projects it was capital in nature .Our attention was drawn to the findings of the Ld. CIT(A) at Para 3.4 of his order as under:

> *3.4. From the above facts of the case, it is seen that the appellant has availed various external commercial borrowings in order to develop its capital project. The issue under consideration is whether amortized amount of premium, paid to obtain forward contract to mitigate the risk of exchange rate fluctuation on such contract is allowable as revenue expenditure as claimed by the appellant in the*

return of income. It is amply clear that the expenses incurred by the appellant are in relation to and connected with the principal part of the appellant's liability and not the interest. It is pertinent to mention that Para-37 of ICAI says that premium on forward exchange contract is to be accounted for separately from the exchange differences on the forward exchange contract. However, this does not stipulate that it has to be recognized as expenditure in the profit and loss account. Thus, AS-11 does not support the plea of the appellant. Similarly the recent /CDS provisions as referred by the appellant nowhere states that such premium is to be recognized as an expenditure in profit and loss account and even such /CDS are not applicable in current assessment year. The most significant point is the fact that the amount in question is intricately linked to the principal component of the instant ECB loan and does not represent interest cost on such borrowings and hence such repayment cannot be claimed as revenue expenditure. Such forward premium which is linked to the equated monthly instalment payments of such loan cannot be allowed as allowable revenue expense as it is directly linked to the principal component of the loan which is on capital account.

7. Ld. Counsel for the assessee reiterated his contentions before us stating that the claim of premium paid on foreign exchange contracts was in accordance with the Accounting Standards issued by the ICAI in this regard and as per the decision of the Hon'ble Apex Court in the case of CIT-VI vs. Virtual Soft Systems Ltd. [2018] 404 ITR 409 holding that where there was no specific bar in the Act regarding application of Accounting Standards prescribed by the ICAI, deduction on the basis of these Accounting Standards was to be allowed. He further reiterated that the claim was in accordance with the accounting standard prescribed by the Act in ICDS

issued. He further drew our attention to the following case laws pointing that the issue was directly covered by the same.

(i) Deep Industries Ltd. vs. DCIT in ITA NO. 2910/Ahd/2017 dated 04/01/2021
(ii) DCIT, Circle-2(1),Guntur vs. Maddi Lakshmaiah &Co. Ltd. [2017] 166 ITD 69 (Visakhapatna-Trib.)
(iii) CIT vs. Britannia Industries Ltd. [2015] 63 taxmann.com 16
(iv) CIT vs. Industrial Finance Corporation of India [2009] 185 taxmann.com 296 (Delhi).

8. Ld. D.R. per contra relied on the order of the authorities below contending that

- premium was paid on account of loan taken for capital purposes and therefore could not be allowed as revenue expenditure.
- the premium paid was not in the nature of interest and therefore was not allowable as per Section 36(1)(iii) of the Act as relating to interest paid on loans taken for capital purposes after the acquisition of the assets.
- the Accounting Standards referred to by the ld. Counsel for the assessee did not specifically mention that the premium paid on foreign exchange contract was to be claimed in the profit and loss account.

And further that the ITAT Banglore Bench in the case of Orchid Ply Industries Ltd. vs. DCIT Circle-2(1), Banglore dated 17.07.2012 in ITA No. 1079/Bang/2011 had ruled against the assessee.

9. We have heard both the parties. The claim in dispute before us relates to premium paid on foreign exchange forward contracts entered

into by the assessee amounting in all to Rs.38,96,97,000/- .The claim is vis a vis the amortized portion of the forward cover premium, which fact is noted in para 3.1 of the assessment order. These foreign exchange forward contracts were entered for the purposes of repayment of foreign exchange loan/external commercial borrowing taken by the assessee for its projects in the renewal energy business, which fact is not disputed . Having outlined the facts as above we shall now proceed to adjudicate the issue.

10. The contention of the assessee is that the claim is in accordance with Accounting Standard AS-11 issued by the ICAI in this regard and in the absence of any bar in the Act regarding the applicability of the Accounting Standard, the treatment as per Accounting Standard is applicable.

11. The Revenue on the other hand contradicts the contention of the assessee that the claim is in accordance with AS-11,stating that the standard does not specifically provide for writing off the premium in the Profit and Loss account and only speaks of amortizing the premium over the life of the asset . And the premium being paid for capital purposes could not be allowed as Revenue expenditure.

12. We have gone through the contents of AS-11.The said Accounting Standard is titled " Effects of changes in foreign exchange rates" and deals with different issues in accounting for foreign currency transactions and foreign operations relating to which exchange rate to use and how to recognize in the financial statements the financial effect of changes in

foreign exchange rate. The objective of the Standard brings out the above as under:

Accounting Standard (AS) 11*

The Effects of Changes in Foreign Exchange Rates

(*This Accounting Standard includes paragraphs set in bold italic type and plain type, which have equal authority. Paragraphs in bold italic type indicate the main principles. This Accounting Standard should be read in the context of its objective and the General Instructions contained in part A of the Annexure to the Notification*.)

Objective

An enterprise may carry on activities involving foreign exchange in two ways. It may have transactions in foreign currencies or it may have foreign operations. In order to include foreign currency transactions and foreign operations in the financial statements of an enterprise, transactions must be expressed in the enterprise's reporting currency and the financial statements of foreign operations must be translated into the enterprise's reporting currency.

The principal issues in accounting for foreign currency transactions and foreign operations are to decide which exchange rate to use and how to recognise in the financial statements the financial effect of changes in exchange rates.

Para 36-39 of the Standard deals with Foreign Exchange Contracts as under:

Forward Exchange Contracts

36. ***An enterprise may enter into a forward exchange contract or another financial instrument that is in substance a forward exchange contract, which is not intended for trading or speculation purposes, to establish the amount of the reporting currency required or available at the settlement date of a transaction. The premium or discount arising at the inception of such a forward exchange contract should be amortised as expense or income over the life of the contract. Exchange differences on such a contract should be recognised in the statement of profit and loss in the reporting period in which the exchange rates change. Any profit or loss arising on cancellation or renewal of such a forward exchange contract should be recognised as income or as expense for the period.***

37. The risks associated with changes in exchange rates may be mitigated by entering into forward exchange contracts. Any premium or discount arising at the inception of a forward exchange contract is accounted for separately from the exchange differences on the forward exchange contract. The premium or discount that arises on entering into the contract is measured by the difference between the

exchange rate at the date of the inception of the forward exchange contract and the forward rate specified in the contract. Exchange difference on a forward exchange contract is the difference between (a) the foreign currency amount of the contract translated at the exchange rate at the reporting date, or the settlement date where the transaction is settled during the reporting period, and (b) the same foreign currency amount translated at the latter of the date of inception of the forward exchange contract and the last reporting date.

38. ***A gain or loss on a forward exchange contract to which paragraph 36 does not apply should be computed by multiplying the foreign currency amount of the forward exchange contract by the difference between the forward rate available at the reporting date for the remaining maturity of the contract and the contracted forward rate (or the forward rate last used to measure a gain or loss on that contract for an earlier period). The gain or loss so computed should be recognised in the statement of profit and loss for the period. The premium or discount on the forward exchange contract is not recognised separately.***

39. In recording a forward exchange contract intended for trading or speculation purposes, the premium or discount on the contract is ignored and at each balance sheet date, the value of the contract is marked to its current market value and the gain or loss on the contract is recognised.

13. A bare perusal of the above reveals that AS-11 prescribes how the effects of changes in foreign exchange rate is to be accounted for on transactions undertaken in foreign currency or in foreign country. One of the effects dealt with the standard relates to premium paid on foreign exchange cover. Thus with respect to the issue before us ,undoubtedly it is AS-11 which prescribes the method of accounting for the same and it recommends the premium paid on foreign exchange forward contracts to be amortized as expense or income over the life of the contracts. The term expense has been used in juxtaposition with income and its meaning has to be derived in conjunction and consonance with the term "*income",* which undoubtedly is revenue receipts. There is no doubt therefore that the recommendation by AS-11 of writing off the premium on forward exchange contracts as expense means writing it off as revenue expenditure

in the profit and loss account. The language of the Accounting Standard is very clear when it recommends amortizing the premium as expense or income. The manner of writing off recommended by the Standard, i.e" *expense or income*" itself makes it very clear that it is to be written off in the Profit and Loss account where all expenses and incomes are recorded. The claim of the assessee therefore clearly is in accordance with AS-11 of the ICAI.

Having said so, for allowability of the claim as per AS-11,it is pertinent to see whether there is any bar to the applicability of the same in the Act. In other words it is to be seen whether the Act prescribes any specific treatment for the said premium which is to be followed if so prescribed and in the absence of same, the claim is to be allowed as prescribed by the Accounting Standard. The Hon'ble Apex Court in the case of Virtual Soft Systems Ltd. (supra) has laid down the proposition that where there is no express bar in Act regarding the application of a Accounting Standard prescribed by ICAI, deductions /claims of assesses are to be determined on the basis of these accounting standards. The relevant portion of the order of the Hon'ble Apex Court reads as under:

> *"16. In the present case, the relevant Assessment Year is 1999-2000. The main contention of the Revenue is that the Respondent cannot be allowed to claim deduction regarding lease equalization charges since as such there is no express provision regarding such deduction in the IT Act. However, it is apt to note here that the Respondent can be charged only on real income which can be calculated only after applying the prescribed method. The IT Act is silent on such deduction. For such calculation, it is obvious that the Respondent has to take course of Guidance Note prescribed by the ICAI if it is available. Only after applying such method which is prescribed in the Guidance Note, the Respondent can show fair and real income which is liable to tax*

> *under the IT Act. Therefore, it is wrong to say that the Respondent claimed deduction by virtue of Guidance Note rather it only applied the method of bifurcation as prescribed by the expert team of ICAI. Further, a conjoint reading of Section 145 of the IT Act read with Section 211 (un-amended) of the Companies Act make it clear that the Respondent is entitled to do such bifurcation and in our view there is no illegality in such bifurcation as it is according to the principles of law.* ***Moreover, the rule of interpretation says that when internal aid is not available then for the proper interpretation of the Statute, the court may take the help of external aid. If a term is not defined in a Statute then its meaning can be taken as is prevalent in ordinary or commercial parlance.*** *Hence, we do not find any force in the contentions of the Revenue that the accounting standards prescribed by the Guidance Note cannot be used to bifurcate the lease rental to reach the real income for the purpose of tax under the IT Act."*

14. The Act, under section 43A, prescribes the adjustments on account of foreign exchange fluctuations to be made to the cost of fixed assets purchased outside India which requires payment to be made in foreign exchange. Explanation 3 to the said section requires cost of such assets to be computed with reference to the rate agreed in the foreign exchange forward contracts if any entered.

The said section, we find is not applicable to the facts of the present case since it is not the case of the Revenue that the foreign exchange loan has been taken for purchasing any asset outside the country.

No other section dealing with the allowability of premium paid on forward contracts has been pointed out by the Ld.DR before us. Therefore as per the decision of the Hon'ble apex court in the case of Virtual Soft(supra), the accounting prescribed by AS-11 will apply, according to which the premium/discount on forward exchange contracts is to be amortized as expense/income.

The reliance by the Ld.DR/Ld.CIT(A) on the decision of the Bangalore Bench of the ITAT in the case of Archidply Industrial Ltd vs DCIT (supra) for the proposition that the loan having been taken for meeting capital obligations ,the premium paid for forward cover also is to be treated as capital in nature, we find is of no assistance to the assessee since the Visakhapatnam Bench of the ITAT in the case of Maddi Lakshmi(supra) held that for determining whether devaluation loss is Revenue or capital ,the object for which the currency is obtained is not relevant and what is relevant is the utilization of the amount at the time of devaluation. The ITAT while holding so referred to and relied on the decision of the Hon'ble apex court in the case of CIT vs Woodword Governor India(P) Ltd(2009) 312 ITR 254 (SC) and the Hon'ble Bombay High Court in the case of CIT vs Dempo and Co. (P) Ltd (1994) 206 ITR 291.

15. In view of the above, we hold that the assessee is entitled to claim the amortization of premium paid on foreign exchange contracts amounting to Rs. 38,96,97,000/-.

16. Appeal of the Assessee is allowed.

ITA No. 1605/Ahd/2019 for A.Y. 2015-16

17. Ground no. 1 reads as under:

> *1. In law and in the facts and circumstances of the case, the learned CIT(A) has erred in holding that forward cover premium of Rs.43,58,80,000/- claimed by appellant is capital expenditure as against revenue expenditure claimed u/s 37(1) of the Act. The CIT(A) ought to have allowed the same as revenue expense.*

18. This ground has already been decided by us in ITA No. 1110/Ahd/2018 for A.Y. 2014-15 in Ground no. 1 therein. In the absence of any changed circumstances the same shall apply mutatis mutandis

19. Appeal of the assessee is allowed.

ITA No. 1606/Ahd/2019 for A.Y. 2016-17

20. Ground no. 1 reads as under:

> *1. In law and in the facts and circumstances of the case, the learned CIT(A) has erred in holding that forward cover premium of Rs.53,49,90,000/- claimed by appellant is capital expenditure as against revenue expenditure claimed u/s 37(1) of the Act. The CIT(A) ought to have allowed the same as revenue expense*

21. This ground has already been decided by us in ITA No. 1110/Ahd/2018 for A.Y. 2014-15 in Ground no. 1 therein. In the absence of any changed circumstances the same shall apply mutatis mutandis. This ground is allowed.

22. Ground no. 2 reads as under:

> *2. In law and in the facts and circumstances of the case, the learned CIT(A) has erred in confirming disallowance of excess depreciation of 10,71,535/- when no such disallowance is called for. The CIT(A) ought to have allowed the same as revenue expense.*

23. Ground no. 2 was not pressed by the ld. Counsel for the assessee considering the smallness of the amount involved. Ground no. 2 is dismissed as not pressed.

24. Appeal of the assessee is partly allowed.

25. In effect:

(i) ITA No. 1110/Ahd/2018 being Assessee's appeal for A.Y 2014-15 is allowed.
(ii) ITA No. 1605/Ahd/2019 being Assessee's appeal for A.Y 2015-16 is allowed.
(iii) ITA No. 1606/Ahd/2019 being Assessee's appeal for A.Y 2016-17 is partly allowed.

Order pronounced in the open court on 31 -08-2022

Sd/-	**Sd/-**
(MADHUMITA ROY)	**(ANNAPURNA GUPTA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**