

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **2093/CHNY/2017**

निर्धारण वर्ष/Assessment Year: 2009 - 10

Super Sales India Ltd.,
34-A, Kamraj Road,
Coimbatore – 641 018.

The DCIT,
vs. Corporate Circle-1,
Coimbatore.

PAN: AADCS 0650A

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Vikram Vijayaraghavan, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing : 27.09.2022

घोषणा की तारीख/Date of Pronouncement : 27.09.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-1, Coimbatore, in Appeal No.141/15-16 dated 30.05.2017. The re-assessment under dispute was framed by the DCIT, Corporate Circle-1, Coimbatore for the assessment year 2009-10 u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 31.03.2015.

2. The Id.counsel for the assessee seriously argued only one issue out of the following three grounds:-

2) The learned CIT(A) has erred in confirming the initiation of re-assessment proceedings even while the conditions laid down in Section 147 had not been satisfied by the AO, in the facts and the circumstances of the case and in law.

3) The learned CIT(A) ought to have held that no income had escaped assessment to the extent of depreciation allowed on the foreign exchange loss to the extent of Rs.2,19,94,875/- as it is less than the amount of deduction, to which the appellant is entitled for deduction, in the computation of the income from business, in the facts and the circumstances of the case and in law.

(4) The learned CIT(A) ought to have held that where section 43A is not applicable in respect of foreign exchange fluctuation loss, the appellant is entitled to deduction in respect of any obligation in respect of debt u/s 2(28A) of the I.T.Act, 1961, for purchase of a capital asset, in the computation of 'profits and gains of business in the facts and the circumstances of the case and in law.

3. The Id.counsel for the assessee stated the facts that the original assessment was completed by the AO u/s.143(3) of the Act and allowed depreciation claim on account of foreign exchange fluctuation relating to foreign currency term loan availed for purchase of windmills being capitalized. The assessee availed depreciation @ 80% on this foreign exchange loans. Subsequently, the Revenue issued notice u/s.148 of the Act after recorded reasons and reopened the assessment and disallowed the claim of depreciation on foreign exchange loss. The AO observed in para 4 as under:-

“4. On verification of the details filed, it is noticed that the assessee has added a sum of Rs.2,19,94,875/- on account of Foreign Exchange Fluctuation relating to Foreign Currency Term Loan availed for purchase of wind mill being capitalized. The assessee has availed depreciation at 80% on this foreign

exchange loss. On verification of the details filed, it I seen that the assessee has acquired Vestas Wind Mill in India by using foreign currency loan. As per the provisions of Section 43A of the IT Act, the assets should have acquired outside India to avail the benefit of depreciation. As the assessee's claim is found to be not in order, the claim of depreciation of Rs.2,19,94,875/- is hereby withdrawn and added back to the total income.”

Aggrieved, assessee preferred appeal before CIT(A). The CIT(A) also confirmed the action of AO. Aggrieved, assessee is in appeal before Tribunal.

4. Before us, the Id.counsel for the assessee made submissions that the assessee has claimed depreciation amounting to Rs.2,19,94,875/- on account of foreign exchange fluctuation loss relating to foreign currency term loan availed for purchase of windmill and the same was capitalized by the assessee in its books of accounts. The assessee has made alternative claim that the assessee's case falls under the claim of revenue expenditure because of provisions of section 43A of the Act does not apply to assessee's case for the reason that these assets are indigenous assets and not purchased from out of India. However, Id.counsel stated that once the assessee has capitalized these and claimed depreciation spread over many years, he did not want to disturb the finalized assessments. Hence, the claim of depreciation in case is allowed, he has no grievance. On query from the Bench, the Id. Senior DR supported the order of AO and that of the CIT(A).

5. After hearing rival contentions and going through the facts of the case, we noted that the assessee has purchased windmill and capitalized the same in its books of accounts. The assessee purchased this machinery indigenously and hence, provisions of section 43A will not apply. But, since the assessee has capitalized and claimed depreciation in spread over years and assessments have become final and in this year, the assessee has made claim of depreciation @ 80% on the loan on account of foreign exchange fluctuation loss relating to foreign currency term loan, which was availed for the purchase of this windmill and capitalized, hence we are of the view that the assessee is entitled for claim of depreciation and we allow the same.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 27th September, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 27th September, 2022

RSR

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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|------------------------|--------------------------|-----------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकरआयुक्त (अपील)/CIT(A) |
| 4. आयकरआयुक्त /CIT | 5. विभागीयप्रतिनिधि/DR | 6. गार्डफाईल/GF. |