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I.T.A. No.352/2003**HIGH COURT OF DELHI : NEW DELHI****+ ITA No. 352 of 2003****% Decided on: November 21, 2003****# COMMISSIONER OF INCOME TAX VI
NEW DELHI****...Appellant****! Through: Mr. Sanjeev Sabharwal, Adv.****Versus****\$ M/S TEJ QUBECOR PRINTING LTD.
8-B, Bahadurshah Zafar Marg,
New Delhi.****...Respondent****^ Through: Nemo****Coram:**

- * HON'BLE MR. JUSTICE D.K. JAIN**
- * HON'BLE MR. JUSTICE MADAN B. LOKUR**

1. Whether the Reporters of local papers may be allowed to see the judgement?
2. To be referred to Reporter or not?
3. Whether the judgement should be reported in the Digest?



*** D.K. JAIN, J. (Oral)**

This appeal, by the Revenue, under Section 260A of the Income-tax Act, 1961 (for short "the Act") is directed against order dated 2 January 2003, passed by the Income-tax Appellate Tribunal, Delhi Bench 'F' New Delhi (for short "the Tribunal") in ITA No.3105/Del/2002, in respect of Assessment Year 1996-97. According to the Revenue, the order involves the following substantial questions of law:-

- "a) Whether in the facts and circumstances of the case, LD ITAT was correct in deleting addition under the head depreciation due to foreign exchange rates fluctuation on the notional basis and not on actual payment?
- b) Whether in the facts and circumstances of the case, the depreciation has to be allowed on addition in plant and machinery which represents notional increase in liability of foreign currency loan at the closure of accounting period?

Since from the format of the questions, it is evident that the issue raised by the Revenue is purely legal, we deem it unnecessary to state the facts. Suffice it to note that the question raised is whether for the purpose of depreciation allowance, an assessee is entitled to make adjustment in the original actual cost of the imported capital asset to him



when there is an increase or decrease in his liability for payment of the cost of the asset on account of fluctuation in the rate of foreign exchange.

We find from the impugned order that while accepting the view point of the assessee that in view of Section 43A of the Act, it is entitled to make such adjustments to arrive at the written down value of the asset on the basis of the foreign exchange rate as on the last date of previous year, the Tribunal has relied on the decisions of the Bombay & Gujarat High Courts, as also of the Supreme Court in C.I.T. Vs. Arvind Mills Ltd. 193 ITR 255 (SC). It is pertinent to note that the departmental representative had in fact conceded before the Tribunal that the issue stands concluded by the aforementioned decisions, referred to in para 7 of the Tribunal's order.

In support of his proposition that the order does involve a substantial question of law, Mr. Sabharwal, learned counsel for the Revenue, has vehemently contended that the Tribunal has gone wrong in coming to the conclusion that the issue stands concluded by the decision of the Supreme Court in Arvind Mills Ltd case (Supra). According to the learned counsel the issue raised in appeal has not yet been considered by this Court.

We do not agree. Section 43A of the Act specifically provides that the amount of increase or decrease in the liability due to fluctuation in



exchange rate should be adjusted against the actual cost of the capital expenditure or the cost of acquisition of capital asset. The Section opens with a non-obstante clause and, therefore, it overrides any other provision contained in the Act. When the terms of Sub-Section (1) of Section 43A are fulfilled, it is rather mandatory to take the actual cost, capital expenditure or the cost of acquisition at a higher or lower figure for the purposes of depreciation allowance irrespective of whatever might have been the position de hors the provision. A bare reading of the provision makes it clear that once the language of Section 43A(1) is attracted, the Section has to apply.

We are in agreement with the Tribunal that the issue raised in no more res integra. In Arvind Mills Ltd. case (supra), while explaining the scope of Section 43A of the Act, their lordships of the Supreme Court have held that the said Section lays down two things, namely: (i) the increase or decrease in the liability is to be taken into account to modify the figure of actual cost and, (ii) that such adjustment should be made in the year in which the increase or decrease in liability arises on account of fluctuations in the rate of exchange. It has been clearly held by the Apex Court that even in a case where the assessee has completely paid for the plant and machinery in foreign currency prior to the date of devaluation but the variation in exchange rate affects the liability of the assessee (as



expressed in Indian currency) for repayment of the whole or part of the monies borrowed by him from any person, directly or indirectly, in any foreign currency specifically for the purpose of acquiring the asset, adjustments in terms of Section 43A(1) can be made.

In view of the said authoritative pronouncement, no fault can be found with the view taken by the Tribunal. The impugned order does not involve any question of law, much less a substantial question of law.

Accordingly, we decline to entertain the appeal. Dismissed.


D.K. JAIN, J


MADAN B. LOKUR, J

NOVEMBER 21, 2003

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