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ITA No.447/2003**HIGH COURT OF DELHI : NEW DELHI**+ ITA No. 447 of 2003% Decided on: November 27, 2003# COMMISSIONER OF INCOME TAX
VIII, NEW DELHI

...Appellant

! Through: Ms. Prem Lata Bansal, Adv.

Versus

\$ IFFCO LIMITED,
34, NEHRU PLACE, 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 the order passed by the Income-tax Appellate Tribunal, Delhi Bench 'F' New Delhi (for short "the Tribunal") in ITA No.948/Del/86, in respect of Assessment Year 1991-92. According to the Revenue, the order involves the following substantial questions of law:-

- a) Whether ITAT was correct in confirming the order of CIT (A) and thereby holding that the depreciation of Rs.8,13,16,666/- is to be allowed to the assessee on the increased cost of plant and machinery due to fluctuation in the rate of exchange as on the last date of the accounting year?
- b) Whether ITAT was correct in allowing the increased depreciation on increased cost of plant and machinery, when the increased liability to pay did not accrue during the relevant year?
- c) Whether ITAT was correct in law in taking into consideration the fluctuation in the rate of exchange as on the last date of the accounting year for the purposes of computing the depreciation?
- d) Whether the order passed by ITAT is perverse in law when it placed reliance on the para quoted in the appellate order from 193 ITR 255 which does not deal with the issue arose in the present appeal?"



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, the assessee was entitled to make adjustment in the original actual cost of the imported capital assets when there was 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 that while accepting the stand 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.L.T. Vs. Arvind Mills Ltd. 193 ITR 255 (SC). It is pertinent to note from paragraph (5) of the impugned order that the departmental representative had in fact conceded before the Tribunal that the issue stood concluded by the aforementioned decisions.

Ms. Prem Lata Bansal, learned counsel for the Revenue, has vehemently contended that the Tribunal is not correct in holding that the issue stands concluded by the decision of the Supreme Court in Arvind Mills Ltd case (Supra). According to the learned counsel, Section 43A



does not permit of an adjustment on the basis of a notional increase in the liability. The submission is that it is the actual increase or decrease of the liability, which is to be taken into account.

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 Sub-Section (1) of Section 43A applies in terms, 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 is 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

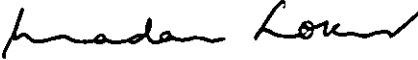


the year in which the increase or decrease in liability arises on account of fluctuations in the rate of exchange. It has been clearly held by the Apex Court that even in a case where the assessee has completely paid for the plant and machinery in foreign currency prior to the date of devaluation but 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 27, 2003

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