आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL , 'B' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V.DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./**I.T.A.Nos.34 & 35 /Chny/2020**
(निर्धारणवर्ष / Assessment Years: 2012-13 & 2013-14)

The Deputy Commissioner of Income Tax, Corporate Circle-2(1), Room No.511, Wanaparthy Block Chennai-600 034.	Vs	M/s. Green Star Fertilizers Ltd, No.8, SPIC House, Mount Road, Guindy, Chennai-600 032.
		PAN: AADCG 9451D
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. Suresh Periasamy, JCIT
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. B.Ramakrishnan,FCA & Ms.K.Hemalatha, CA

सुनवाईकीतारीख/Date of hearing	:	08.12.2020
घोषणाकीतारीख /Date of Pronouncement	:	31.12.2020

आदेश / O R D E R

PER G.MANJUNATHA, AM:

These two appeals filed by the Revenue are directed against common order of the learned CIT(Appeals)-5, Chennai dated 31.10.2019 and pertain to assessment years 2012-13 and 2013-14. Since, the facts are identical and issues are common, for the sake of convenience, they were heard together and disposed of by way of this consolidated order.

2. The Revenue has more or less raised common grounds of appeal for the said assessment years, therefore, for the sake of

brevity, grounds of appeal filed for the assessment year 2012-13 in ITA No.34/Chny/2020 are reproduced as under:-

> *"The order of the learned Commissioner of Income Tax (Appeals) is contrary to the Law and facts of the case.*
>
> *1. Whether the facts and circumstances of the case the CIT(A) erred in deleting the addition of Rs.2,19,97,490/- made by the Assessing Officer on account of disallowance of foreign exchange fluctuation under the head finance cost.*
>
> *1.1 Whether the facts and circumstances of the case, the CIT(A) failed to appreciate the fact that since the ECB loan was taken by the assessee for acquisition of indigenous assets, foreign exchange fluctuations loss on the same is not allowable as it is not revenue in nature.*
>
> *1.2 Whether the facts and circumstances of the case, the CIT(A) failed to appreciate the fact that there is no provision to adjust against the cost of asset and to claim the fluctuation loss on purchase of indigenous assets u/s 37 of the Act.*
>
> *2. Whether the facts and circumstances of the case, the CIT(A) erred in directing the AO to verify the claim and allow the interest expenses of Rs.1,61,42,938/- which was voluntarily offered by the assessee in its original return income.*
>
> *2.1 Whether the facts and circumstances of the case, the CIT(A) erred in ignoring the decision of Supreme Court in the case of Goetze (India)Ltd. wherein the claim of the assesse is not allowable even though the assesse had ample time to rectify the mistake by tiling a revised return as per the provisions of the Act.*
>
> *That the order of CIT(A) be vacated and that of the AO be restored.*
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> *For these and other grounds that may be adduced at the time of hearing. it is prayed that the Order of the learned Commissioner of Income Tax (Appears) be set aside and that of the Assessing Officer be restored."*

3. Brief facts of the case are that assessee company is engaged in the business of manufacture of phosphatic fertilizers like Di ammonium phosphate & chemicals like aluminum fluoride filed its

return of income for the assessment year 2012-13 on 29.11.2012 declaring total income of ₹ 16,83,96,000/-. During the year under consideration, the assessee has acquired phosphatic business as a going concern on slump sale basis u/s.50B of the Act vide business transfer agreement dated 19.10.2011 from M/s.Southern Petrochemical Industries Corporation Ltd. For this purpose, the assessee obtained ECB loan in foreign currency amounting to USD 15 million (INR 74.53 crores) vide agreement dated 14.10.2011 from AM International Holding Pte Ltd, Singapore. The assessee has restated its liability towards ECB loan as on 31.03.2012 and loss on restatement of liability has been debited to profit & loss account amounting to ₹2,19,97,490/- as revenue in nature and claimed deduction u/s.37(1) of the Act. The case was taken up for scrutiny and during the course of assessment proceedings, the Assessing Officer was of the opinion that forex loss on account of restatement of ECB loan as on 31.03.2012 is capital in nature and the same cannot be deductible u/s. 37(1) of the Act and accordingly, disallowed loss claimed towards ECB loan and added back to the total income. Similarly, the assessee has made a claim of deduction towards interest paid on forex loan amounting to ₹1,61,42,938/- on the ground that same has been inadvertently

added to total income, while filing regular return of income. The Assessing Officer rejected the claim of the assessee regarding deduction for interest paid on forex loan on the ground that assessee has made fresh claim of expenditure without filing revised return and hence, the claim made by the assessee for deduction of interest expenditure cannot be allowed. While doing so, the Assessing Officer has relied upon the decision of the Hon'ble Supreme Court in the case of Goetz (India) Ltd., reported in 157 taxman.com 1 (SC).

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT(A) . Before the learned CIT(A), the assessee has filed detailed written submissions which has been reproduced at para 8 on page 8 to 11 of learned CIT(A) order. The sum and substance of arguments of the assessee before the learned CIT(A) was that forex loss on ECB loan taken for purchase of asset in India is not covered by the provisions of section 43A of the Act and consequently, the same cannot be treated as capital in nature and added back to the cost of the asset. The assessee has relied upon the decision of Hon'ble Supreme Court in the case of CIT vs. Tata Iron & Steel Co.Ltd., (1998) 231 ITR 285

(SC) and the decision of ITAT., Chennai in the case of M/s.Hyundai Motor Company Ltd. Vs. DCIT reported in (2017) 81 Taxmann.com 5. The assessee has also challenged rejection of claim made towards deduction of interest paid on forex loan amounting to ₹1,61,42,938/- in light of decision of the Hon'ble Supreme Court in the case of Goetz (India) Ltd.(supra) and argued that restriction imposed by the Hon'ble Supreme Court on the Assessing Officer is not applicable to the appellate authorities and the appellate authority can admit any new claim made by the assesse, if the facts regarding said claim are already on record.

5. The learned CIT(A), after considering relevant submissions of the assessee and by following the decision of Hon'ble Supreme Court in the case of CIT vs. Tata Iron & Steel Co.Ltd. (supra) and CIT vs. Woodward Governor India P.Ltd. reported in (2009) 312 ITR 254 held that in the absence of applicability of section 43A of the Act to the foreign exchange loss arising out of foreign currency loans for acquisition of indigenous assets, the claim of exchange fluctuation loss in revenue account by assessee is in accordance with generally accepted accounting practices and mandatory accounting standards notified by ICAI and also in conformity with

CBDT notification cannot be faulted. The relevant findings of the Tribunal are as under:-

> "*12. That said in the above referred judgment of Jurisdictional Tribunal in the case Motor India Ltd (2017) 81 taxman.com 5 (Chennai-Trib) which followed the judgment of the co-ordinate bench in the case of Cooper Corporation Pvt Ltd in the background of the judgments of Apex Court in CIT vs TATA Iron and Steel Go- Ltd (1998)22 ITR 285 and CIT Vs Woodword Governor India PA Ltd 312 ITR 254(SC), it is concluded that in the absence of applicability of section 43A of the IT Act 1961 to the foreign exchange loss arisn9 out of foreign currency loans for acquisition of indigenous assets and in the absence of any other provision of the Income tax Act dealing with the issue, claim of exchange fluctuation loss in revenue account by the assessee in accordance with the generally accepted accounting practices and mandatory accounting standards notified by the ICAI and also in conformity with CBDT notification cannot be faulted. It is further ruled that the loss being on revenue account is an allowable expenditure u/s 37(1) of the IT Act 1961, This judgment is followed by the jurisdictional Tribunal in the case of DCIT Vs Hyundai Motor India Ltd in its order dated 27.04.2017. The facts of the appellant being similar to the facts of the above cited cases. respectfully following the judgment of the jurisdictional Tribunal in the case of Hyundai Motor India Ltd, I direct the assessing officer to allow the claim of foreign exchange loss arisen out of external commercial borrowings for acquisition of indigenous assets at Rs.2,19,97,400/- for the A.Y 2012-13 and Rs.5,54,38,500/- for the A.Y 2013-14 as revenue expenditure allowable u/s 37(1) of the IT Act 1961. The additions made on this count stands deleted in the respective assessment years. The grounds taken are allowed."*

6. As regards additional claim made towards deduction of interest expenses on forex loan, the learned CIT(A) noted that request made for deduction of interest expenses inadvertently added with memo of income do not constitute a fresh claim and what is claimed by the assessee is notified mistake of offering

particular income to tax, even though said income is not taxable to tax and hence, restriction imposed by the Hon'ble Supreme Court in the case of Goetz (India) Ltd. (supra) shall not applicable to the facts of the present case and accordingly, admitted the additional claim made by the assessee by filing revised total income and directed the Assessing Officer to verify the claim in accordance with law. The relevant findings of the learned CIT(A) are as under:-

> *"16. I have considered carefully the observation of the assessing officer and the contention o the appellant on this issue. As rightly pointed out by the appellant that the request made for deduction of interest expenses inadvertently added with the memo of income amounting to Rs.1,61,42,938/- do not constitute a fresh claim. The jurisdictional Tribunal in the case of R. Natarajan vs ACIT (2012) 19 taxmann.com 182 (Chennai) (TM) has said that the decision of Honble Supreme Court in the case of Goetze (India) Ltd shall apply to a case where a fresh claim is made for relief exemption but not in the case whore assessee notifies the AO of a mistake of offering a particular income to tax twice. Hence, bringing to the notice of the AO about a mistake during the assessment proceeding should not be considered as a fresh claim, as the income is already offered to tax and is not subject to tax for the AV in the first place. It is held that the appellate authorities are empowered to rectify the mistake apparent from record. It is further held that there is no provision in the Act to tax the income more than once. The particular income can be assessed only for once for a particular AY. The jurisdictional Tribunal has also observed that it is settled principle of jurisprudence that delivery of justice should not be fettered by technicalities. Where there is glaring instance of injustice writ large on the fact of the records it is the bounden duty of the appellate authorities to stand by the side of justice to readdress the grievance of a hapless assessee.*
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> *17. Also. Hon'ble Madras High court in the case of CIT vs Abhinitha Foundation Pvt ltd (2017) 396 ITR 251 (MID) dated 06.06.2017 has ruled that if a claim made by the assessee does not form part of the original return, it could still be considered if the relevant material was available on record, either by the appellate authorities by themselves or on remand by the Assessing Officer . The failure to advert to the claim in the original return or the*

revised return cannot denude the appellate authorities of their power to consider the claim, if the relevant materials available on record, and the claim is otherwise tenable in law. The appellant has also relied on the rulings of several Tribunals and Courts to buttress his point that the same income cannot be taxed twice and the deduction asked for is not any exemption or any other concession.

18. Relying on the judgments o jurisdictional Tribunal and jurisdictional High Court referred to in above. I am of the considered view that the claim of deduction of interest expenses inadvertently added with the memo of income to me tune of ₹ 1,61,42,938/- for the assessment year 2012-13 do not constitute any fresh claim in terms of the judgement of Goetze (India) Ltd. Accordingly I direct the assessing officer to verify the claim made for assessment year 2012-13 and if found correct, allow deduction in accordance with law. Ground taken is allowed for statistical purpose."

7. The first issue that came up for our consideration from ground no.1 to 1.2 of Revenue appeal is disallowance of expenditure on foreign exchange fluctuation loss incurred for acquisition of domestic asset. The learned AR for the assessee, at the time of hearing, submitted that this issue is squarely covered in favour of the assessee by the decision of ITAT., Chennai in the case of M/s.Hyundai Motor Company Ltd. Vs. DCIT (supra), where the Tribunal by following the decision of the Hon'ble Supreme Court in the case of CIT vs. Tata Iron & Steel Co.Ltd. (supra) and CIT vs. Woodward Governor India P.Ltd. (supra) has held that in the absence of applicability of section 43A of the Act, loss claimed by the assessee on account of restatement of ECB loan obtained for

purchase of assets in India cannot be treated as capital in nature and further cannot be disallowed u/s.37(1) of the Act.

8. The learned DR, on the other hand, fairly admitted that the issue is covered in favour of the assesse, however, strongly supporting order of the Assessing Officer argued that liability towards forex loss on ECB loan claimed by the assessee is a contingent liability, which was not ascertained at the end of the financial year and hence, the same cannot be allowed as revenue in nature.

9. We have heard both parties, perused materials available on record and gone through the orders of the authorities below. The issue of disallowance of expenditure on account of foreign exchange fluctuation loss incurred for acquisition of domestic asset is revenue in nature deductible u/s.37(1) or not has been considered by the co-ordinate Bench of this Tribunal in the case of M/s.Hyundai Motor Company Ltd. Vs. DCIT (supra), where the Tribunal considering ratio laid down by the Supreme Court in the cases of CIT vs. Tata Iron & Steel Co.Ltd. (supra) and CIT vs. Woodward Governor India P.Ltd. (supra) held that in absence of applicability of section 43A and in the absence of any other provision of the Income Tax Act

dealing with the issue of forex loss, the claim of exchange fluctuation loss taken by the assessee cannot be treated as capital in nature and added back to cost of assets. The relevant findings of the Tribunal are as under:-

> *"71. So far as this grievance of the assessee is concerned, the relevant material facts are like this. During the course of assessment proceedings, the Assessing Officer noted that the assessee has worked out an unrealized loss of Rs 49,63,29,426 on purchase of assets in India with the ECB loan of USD 100 million from Export Import Bank of Korea. It was claim of the assessee that section 43A applied only in the context of assets acquired outside India, this loss may be allowed as deduction under section 37(1). It was also pointed out that in the assessment years 2008-09, 2010-11 and 2011-12, the income offered to tax, on the same account, amounting to Rs 16.01 crores, Rs 25.69 crores and Rs 78.79 crores respectively has been accepted. The Assessing Officer did not agree. He relied upon Hon'ble Supreme Court's judgment in the case of CIT Vs Woodward Governor I.T.A. No. 739 and 853 /Chny/2014, 563 and 614 /Chny/2015, 842 and 761/Chny/16 and CO 73/Chny/16 Assessment years: 2009-10, 2010-11 and 2011-12 Page 39 of 55 India Pvt Ltd [(2009) 312 TR 254 (SC)] and held that the loss due to fall in value of foreign exchange cannot be adjusted in the value of asset. He was of the view that this is a notional loss and that too in capital field. He declined to allow the same. Aggrieved, assessee carried the matter before the DRP. In its brief order, the DRP held as follow:*
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> *We do not find anything wrong in AO's reliance on the Supreme Court decision in Woodward Governor's case. Merely restatement of the foreign currency loan cannot be considered a business transaction resulting into loss, particularly when no repayment was made during the year. The transaction even then will be capital in nature. Hence, we reject this objection.*
>
> *72. The Assessing Officer thus proceeded to make the disallowance of Rs 49,63,29,426 aggrieved by which the assessee is in appeal before us.*
>
> *73. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.*

74. We find that the issue in appeal is squarely covered by a coordinate bench decision in the case of Cooper Corporation Pvt Ltd Vs DCIT [(2016) 159 ITD 165 (Pune)], wherein the coordinate bench, in a very well reasoned and analytical order, has, inter alia, observed as follows:

10. …. The central issue involved in the present case is whether provision for loss in the hands of assessee on account of restatement of outstanding foreign currency loans necessitated by fluctuation in foreign exchange would be allowable as business loss or a loss of capital nature in the facts narrated above. While as per the revenue, the increased liability due to exchange fluctuation correspond with carrying costs of the fixed assets and thus capital in nature, the assessee seeks to submit that the loss is revenue in nature.

10.1 On consideration of facts, it is noticed that certain loans were held in Indian currency in the earlier years. The Assessee entered into an agreement with the lenders to convert the loans in foreign currency equivalents to take advantage of the lower rate of interest rate applicable to later. The assessee has factually demonstrated that the conversion into foreign currency loans have actually benefited the Assessee in terms of saving of interest costs. We also notice that there is no dispute on the fact that the acquisition of capital assets / expansion of projects etc. from the term loans taken are already complete and the assets so acquired have been put to use. As a consequence, the loss occasioned from foreign currency loans so converted is a post facto event subsequent to capital assets having been put to use. We simultaneously notice that there is no adverse finding from the Revenue about the correctness or completeness of accounts of assessee on the touchstone of section 145 of the Act. In other words, the profits/gains from the business have been admittedly computed in accordance with generally accepted accounting practices and guidelines notified.

10.2 The assessee has inter alia applied AS-11 dealing with effects of the changes in the exchange rate to record the losses incurred owing to fluctuation in the foreign exchange. AS-11 enjoins reporting of monetary items denominated foreign currency using the closing rate at the end of the accounting year. It also requires that any difference, loss or gain, arising from such conversion of the liability at the closing rate should be recognized in the profit & loss account for the reporting period. In the same vain, CBDT notification S.O. 892(E) dated 31-03-2015 referred to also inter alia deals with recognition of exchange differences. The notification also sets out that the exchange differences arising on

foreign currency transactions have to be recognized as income or business expense in the period in which they arise subject to exception as set out in Section 43A or Rule 115 of the Income Tax Rules, 1962 as the case may be.

10.3 The contention of the revenue that the loss is only contingent and notional and subsisting has been examined. As per section 209 of the Companies Act, 1956, the Assessee being a company is required to compulsorily follow mercantile system of accounting. S. 211 of the Companies Act, 1956 also, in terms, mandates that accounting standards as applicable is required to be followed while drawing statement of affairs. S. 145 of the Income Tax Act,1961 similarly casts obligation to compute business income either by cash or mercantile system of accounting. Thus, in view of the various provisions of the Companies Act and Income Tax Act, it was mandatory to draw accounts as per AS 11. Thus, in our considered view, the loss recognized on account of foreign exchange fluctuation as per notified accounting standard AS 11 is an accrued and subsisting liability and not merely a contingent or a hypothetical liability. A legal liability also exists against the assessee due to fluctuation and loss arising therefrom. Actual payment of loss is an irrelevant consideration to ascertain the point of accrual of liability. As a corollary, the revenue has committed error in holding the liability as notional or contingent.

10.4 Copious reference has been made to S. 43A by Assessee as well as revenue. Thus, it would be pertinent to examine the issue on the touchstone of S. 43A of the Act. Section 43A, to the extent relevant in the context, reads as under:

Notwithstanding anything contained in any other provision of this Act, where an assessee has acquired any asset in any previous year from a country outside India for the purposes of his business or profession and, in consequence of a change in the rate of exchange during any previous year after the acquisition of such asset, there is an increase or reduction in the liability of the assessee as expressed in Indian currency (as compared to the liability existing at the time of acquisition of the asset) at the time of making payment—

(a) towards the whole or a part of the cost of the asset; or
(b) towards repayment of the whole or a part of the moneys borrowed by him from any person, directly or indirectly, in any foreign currency specifically for the purpose of acquiring the asset along with interest, if any, the amount by which the liability as aforesaid is so increased or reduced during such previous year and which is taken into account at the time of making the payment,

irrespective of the method of accounting adopted by the assessee, shall be added to, or, as the case may be, deducted from—

(i) the actual cost of the asset as defined in clause (1) of section 43; or

(ii) the amount of expenditure of a capital nature referred to in clause (iv) of subsection (1) of section 35; or

(iii) the amount of expenditure of a capital nature referred to in section 35A; or

(iv) the amount of expenditure of a capital nature referred to in clause (ix) of subsection (1) of section 36; or

(v) the cost of acquisition of a capital asset (not being a capital asset referred to in section 50) for the purposes of section 48, and the amount arrived at after such addition or deduction shall be taken to be the actual cost of the asset or the amount of expenditure of a capital nature or, as the case may be, the cost of acquisition of the capital asset as aforesaid:

Provided that where an addition to or deduction from the actual cost or expenditure or cost of acquisition has been made under this section, as it stood immediately before its substitution by the Finance Act, 2002, on account of an increase or reduction in the liability as aforesaid, the amount to be added to, or, as the case may be, deducted under this section from the actual cost or expenditure or cost of acquisition at the time of making the payment shall be so adjusted that the total amount added to, or, as the case may be, deducted from, the actual cost or expenditure or cost of acquisition, is equal to the increase or reduction in the aforesaid liability taken into account at the time of making payment A bare reading of the aforesaid provision of Section 43A, which opens with a non-obstante and overriding clause, would show that it comes into play only when the assets are acquired from a country outside India and does not apply to acquisition of indigenous assets. Another notable feature is that S. 43A provides for making corresponding adjustments to the costs of assets only in relation to exchange gains/ losses arising at the time of making payment. It therefore deals with realised exchange gain/ loss. The treatment of unrealised exchange gain/ loss is not covered under the scope of S. 43A of the Act. It is thus apparent that special provision of S. 43A has no application to the facts of the case. Therefore, the issue whether, the loss is on revenue account or a capital one is required to be tested in the light of generally accepted accounting principles, pronouncements and guidelines etc.

10.5 Before we delineate on the allowability of loss based on generally accepted accountancy principles, it may be pertinent to examine whether the increased liability due to fluctuation loss can be added to the carrying costs of corresponding capital assets with reference to S. 43(1) of the Act. Section 43(1) defines the expression 'actual cost'. As per S. 43(1), actual cost means actual cost of the assets to the assessee, reduced by that portion of the costs as has been met directly or indirectly by any other person or authority. Several Explanations have been appended to S. 43(1). However, the section nowhere specifies that any gain or loss on foreign currency loan acquired for purchase of indigenous assets will have to be reduced or added to the costs of the assets. Thus, viewed from this perspective also, such increased liability cannot be bracketed with cost of acquisition of capital assets save and except in terms of overriding provisions of S. 43A of the Act.

10.6 We also simultaneously note here that the Hon'ble Supreme Court in the case of CIT vs. Tata Iron and Steel Co. Ltd. (1998) 22 ITR 285 held that cost of an asset and cost of raising money for purchase of asset are two different and independent transactions. Thus, events subsequent to acquisition of assets cannot change price paid for it. Therefore, fluctuations in foreign exchange rate while repaying installments of foreign loan raised to acquire asset cannot alter actual cost of assets. The relevant operative para is reproduced hereunder.

"Coming to the question raised, we find it difficult to follow how the manner of repayment of loan can affect the cost of the assets acquired by the assessee.

What is the actual cost must depend on the amount paid by the assessee to acquire the asset. The amount may have been borrowed by the assessee, but even if the assessee did not repay the loan it will not alter the cost of the asset. If the borrower defaults in repayment of a part of the loan, the cost of the asset will not change. What has to be borne in mind is that the cost of an asset and the cost of raising money for purchase of the asset are two different and independent transactions. Even if an asset is purchased with non-repayable subsidy received from the Government, the cost of the asset will be the price paid by the assessee for acquiring the asset. In the instant case, the allegation is that at the time of repayment of loan, there was a fluctuation in the rate of foreign exchange as a result of which, the assessee had to repay a much lesser amount than he would have otherwise paid. In our judgment, this is not a factor which can alter the cost incurred by the assessee for purchase of the asset. The assessee may have raised the funds to purchase the asset by borrowing but

what the assessee has paid for it, is the price of the asset. That price cannot change by any event subsequent to the acquisition of the asset. In our judgment, the manner or mode of repayment of the loan has nothing to do with the cost of an asset acquired by the assessee for the purpose of his business. We hold that the questions were rightly answered by the High Court. The appeals are dismissed. There will be no order as to costs. "

Thus, it is evident the variation in the loan amount has no bearing on the cost of the asset as the loan is a distinct and independent transaction as in comparison with acquisition of assets out of said loan amount borrowed. Actual cost of the corresponding fixed asset acquired earlier by utilizing the aforesaid loan will not undergo any change owing to such fluctuation.

10.7 The issue is also tested in the light of provision of S. 36(1)(iii) governing deduction of interest costs on borrowals. As stated earlier, manner of utilization of loan amount has nothing to do with allowability of any expenditure in connection with loan repayment. Both are independent and distinct transactions in nature. Similar analogy can be drawn from S. 36(1)(iii) of the Act which also reinforces that utilization of loan for capital account or revenue account purpose has nothing to do with allowablity of corresponding interest expenditure. A proviso inserted thereto by Finance Act, 2003, also prohibits claim of interest expenditure in revenue account only upto the date on which capital asset is put to use. Once the capital asset is put to use, the interest expenditure on money borrowed for acquisition of capital asset is also treated as revenue expenditure. As also noted, S. 43A specifically and categorically calls for adjustments in cost of assets for loss or gain arising out of foreign currency fluctuations in respect of funds borrowed in foreign currency for acquisition of foreign assets. However, the same rationale of a deeming provision of S. 43A cannot be applied to loss or gain arising from foreign currency loss utilized for purchase of indigenous assets. Needless to say, impugned currency fluctuation loss has emanated from foreign currency I loans. Besides AS-11, the claim of exchange fluctuation loss as revenue account is also founded on the argument that the aforesaid action was taken to save interest costs and consequently to augment the profitability or reduce revenue losses of the assessee. The impugned fluctuation loss therefore has a direct nexus to the saving in interest costs without bringing any new capital asset into existence. Thus, the business exigencies are implicit as well explicit in the action of the Assessee. The argument that the act of conversion has served a hedging mechanism against revenue receipts from export also portrays commercial expediency. Thus, We are of the opinion that the plea

of the assessee for claim of expenditure is attributable to revenue account has considerable merits.

10.8 Section 145 of the Income Tax Act deals with method of accounting and states that business income inter-alia has to be computed in accordance with cash or mercantile system of accounting. Sub-section (2) thereof authorizes the Central Government to notify accounting standards to be followed for determination of business income. Section 211 of the Companies Act also similarly casts a duty on a company to give a true and fair view of the profit and loss of the company for the financial year. It also requires the company to adhere the accounting standards for preparation of profit in the Profit & Loss Account and the Balance Sheet. A conjoint reading of section 145 of the Act and section 211 of the Companies Act leaves no room for doubt that the Assessee is obliged to follow the accounting standards prescribed to determine business income under the head "business or profession". We notice that the Hon'ble Supreme Court in the case of Woodward Governor India (P) Ltd. (supra) has observed that AS-11 is mandatory in nature. In the light of observations made in Woodward Governor India (P) Ltd. (supra), we are of the view that loss arising on foreign exchange fluctuation loss has been rightly accounted for as a revenue expense in the Profit & Loss account in accordance with accounting fiat of AS-11.

10.9 We find that the decision in the case of Sutlej Cotton Mills Ltd. (supra) relied upon by the Ld. Departmental Representative is of no assistance to the Revenue. The Hon'ble Supreme Court therein stated the principle of law that where any profit or loss arises to an assessee on account of depreciation in foreign currency held by him on conversion from another currency, such profit and loss would ordinary be trading loss if the foreign currency held by the assessee on revenue account as trading asset or as a part of circulating capital embargo in business. However, if the foreign currency is held as a capital asset, the loss should be capital in nature. The aforesaid principle of law is required to be applied to the facts of case to determine whether the foreign currency is held by the assessee on revenue account or as a part of circulating capital. In the present case, fluctuation loss inflicted upon the assessee bears no nexus or relation to the acquisition to the assets. The action of the assessee is tied up to its underlying objective i.e. saving in interest costs, hedging its revenue receipts etc. which are undoubtedly on I.T.A. No. 739 and 853 /Chny/2014, 563 and 614 /Chny/2015, 842 and 761/Chny/16 and CO 73/Chny/16 Assessment years: 2009-10, 2010-11 and 2011-12 Page 45 of 55 revenue account. Thus, the loss generated in impugned action bears the character of revenue expenditure. Similarly, decision of the Apex Court in the case of Tata Iron and

Steel co. (supra) also weighs in favour of the assessee. We also note that reliance placed by the CIT(A) on Elecon Engineering Co. Ltd. (supra) is misplaced. The decision concerns applicability of S. 43A in the facts of that case and thus clearly distinguishable.

11. For the aforesaid reasons, in the absence of applicability of section 43A of the Act to the facts of the case and in the absence of any other provision of the Income Tax Act dealing with the issue, claim of exchange fluctuation loss in revenue account by the Assessee in accordance with generally accepted accounting practices and mandatory accounting standards notified by the ICAI and also in conformity with CBDT notification cannot be faulted. No inconsistency with any provision of Act or with any accounting practices has been brought to our notice. Otherwise also, in the light of fact that the conversion in foreign currency loans which led to impugned loss, were dictated by revenue considerations towards saving interest costs etc. we have no hesitation in coming to the conclusion that loss being on revenue account is an allowable expenditure under S. 37(1) of the Act.

75. We are in considered agreement with the views so expressed by the coordinate bench. Respectfully following the same, we uphold the grievance of the assessee and delete this disallowance of Rs . 49,63,29,426/-."

10. In this view of the matter and by respectfully following the decision of co-ordinate Bench in the case of M/s.Hyundai Motor Company Ltd. Vs. DCIT (supra), which in turn followed the decision of M/s. Cooper Corporation Vs. CIT and also by following the decision of Hon'ble Supreme Court in the case of CIT vs. Tata Iron & Steel Co.Ltd. (supra), we are of the considered view that there is no error in the findings recorded by the learned CIT(A) that in absence of applicability of section 43A of the Act, loss claimed by the assessee on account of exchange fluctuation loss on ECB loan

availed for acquisition of indigenous assets revenue in nature deductible u/s.37(1) of the Act cannot be considered as capital in nature and added back to the cost of assets. Hence, we are inclined to uphold the findings of the learned CIT(A) and reject the grounds taken by the Revenue for both the assessment years.

11. The next issue raised by the Revenue in ground nos.2 to 2.1 of the Revenue appeal is with regard to disallowance of deduction against interest expenses which was voluntarily added in the statement of total income. The facts with regard to impugned dispute are that the assessee has inadvertently added a sum of ₹ 1,61,42,938/- being interest expenditure paid towards foreign currency loan. The said mistake was brought to the notice of the Assessing Officer vide letter dated 02.12.2015 during the course of assessment proceedings and by filing the revised memo of income. The Assessing Officer rejected the claim of the assessee by relying upon the decision of Hon'ble Supreme Court in the case of M/s. Goetz (India) Ltd Vs. CIT (supra) and held that in the absence of revised return, the Assessing Officer is not empowered to entertain fresh claim made towards deduction of interest expenditure. The learned CIT(A), on appeal admitted the additional

claim made by the assessee by following the decision of ITAT., Chennai in the case of R. Natarajan vs ACIT (2012) 19 taxmann.com 182 and remitted the issue back to the file of the Assessing Officer for verification and to decide in accordance with law.

12. The learned DR submitted that learned CIT(A) has erred in directing the Assessing Officer to verify the claim and allow interest expenditure which was voluntarily offered by the assessee in its original return of income as not allowable deduction. The learned D.R further submitted that the learned CIT(A) has erred in ignoring the decision of the Hon'ble Supreme Court in the case of M/s. Goetz (India) Ltd Vs. CIT (supra), where it was held that claim of assessee is not allowable unless such claim is made by filing revised return as per the provisions of the Act.

13. The learned A.R for the assessee supporting the order of the learned CIT(A) submitted that claim made by the assessee by filing revised memo of income is not a fresh claim because facts with regard to impugned disallowance of interest expenditure in the memo of income was very much available with the Assessing Officer and further the claim of interest expenditure is allowable

deduction and hence, the learned CIT(A) has after considering the relevant facts rightly directed the Assessing Officer to verify the claim of the assessee in accordance with law and the said finding cannot be faulted.

14. We have heard both the parties, perused the material available on record and gone through the orders of authorities below. There is no dispute with regard to the fact that Assessing Officer is not empowered to admit any fresh claim unless such claim is made by filing revised return of income as per the provisions of the Act, as held by the Hon'ble Supreme Court in the case of M/s. Goetz (India) Ltd Vs. CIT (supra). But, restriction imposed by the Hon'ble Supreme Court in the said case is not on the appellate authorities and appellate authorities are empowered to admit any fresh claim made by the assessee, if facts relating to such claims are already on record. Further, the Hon'ble High Court of Madras in the case of CIT vs Abhinitha Foundation Pvt Ltd (2017) 396 ITR 251 (MID) has held that if a claim made by the assessee does not form part of original return, it could still be considered if the relevant material was available on record either by the appellate authorities by themselves or on remand to the Assessing Officer. The failure to

advert to claim in original return or revised return cannot denude the appellate authorities of their power to consider their claim, if the relevant materials available on record and the claim is otherwise tenable in law. The learned CIT(A) after considering relevant facts and following the decision of Hon'ble Supreme Court in the case of M/s. Goetz (India) Ltd Vs. CIT (supra) and the decision of Hon'ble High Court of Madras in the case of CIT vs Abhinitha Foundation Pvt Ltd (supra) has rightly admitted the additional claim made by the assessee regarding deduction for interest expenditure on forex loan and remitted the issue back to the file of the Assessing Officer for verification of facts to decide in accordance with law. We do not find any error or infirmity in the findings recorded by the learned CIT(A) and hence, we are inclined to uphold the findings of the learned CIT(A) and reject the grounds taken by the Revenue.

15. In the result , the appeal filed by the Revenue is dismissed.

ITA No.35/Chny/2020 (A.Y:2013-14)

16. The facts and issues involved in this appeal are identical to the issue which we have considered in ITA No.34/Chny/2020 for the assessment year 2012-13. The reasons given by us insofar as,

the issue of forex loss on restatement on ECB loan in the preceding paragraphs of ITA No.34Chny/2020 shall *mutatis mutandis* apply to this appeal as well. Therefore, for the similar reasons, we are inclined to uphold the order of learned CIT(A) and dismiss the appeal filed by the Revenue.

17. In the result, the appeal filed by the Revenue for both the assessment years are dismissed.

Order pronounced in the open court on 31st December, 2020

Sd/-	Sd/-
(वी. दुर्गा राव)	(**जी. मंजुनाथ)**
(V.Durga Rao)	(G.Manjunatha)
न्यायिक सदस्य /Judicial Member	लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 31st December, 2020
DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant 2. Respondent 3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF.