

आयकर अपीलीय अधिकरण, दिल्ली न्यायपीठ “जी”, नई दिल्ली में

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH ‘G’, NEW DELHI**

सुश्री सुषमा चावला, उपाध्यक्ष एवं श्री प्रशांत महर्षि, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, V.P & SHRI PRASHANT MAHARISHI, AM

आयकर अपील सं. / ITA No.5743/Del/2017
निर्धारण वर्ष / Assessment Year 2014-15

Sitae Re Pvt.Ltd.,
27B, Prithviraj Road,
New Delhi-110001.
PAN-AACCN2500M

.....अपीलार्थी/Appellant

vs

The ITO,
Ward-23(4),
New Delhi.

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Sh.V.K.Garg, Advocate

प्रत्यर्थी की ओर से / Respondent by : Sh.H.K.Choudhary, CIT DR

सुनवाई की तारीख / Date of Hearing : 19.03.2020	घोषणा की तारीख / Date of Pronouncement: 14.05.2020
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आदेश / ORDER

PER SUSHMA CHOWLA, VP

The present appeal filed by assessee is against order of CIT(A)-30, New Delhi dated 20.06.2017 relating to assessment year 2014-15 against order passed under section 143(3) of the Income-tax Act, 1961 (in short ‘the Act’).

2. The assessee has raised following grounds of appeal:-

1. “That on the facts and law involved the Ld. Commissioner of Income Tax (Appeals) [Ld. CIT(A)] has erred in confirming the disallowance of Rs 2,59,97,240/- being the amount of exchange fluctuation loss provided at the year end on business advance received in foreign exchange.

1.1 That the said disallowance of exchange fluctuation loss as confirmed by the Ld.CIT(A) is against the binding precedents of the Apex court and jurisdictional Delhi High Court in the cases reported in 322 ITR 180 (SC) - Oil and Natural Gas Corporation Ltd. Vs. CIT, [2009] 312 ITR 0254 (SC) - CIT Vs. Woodward Governor India P. Ltd. and 311 ITR 475 (Del.) - CIT vs. Taiko Chander Nagar Chemicals P. Ltd. wherein such exchange fluctuation loss has been held allowable as business expenditure u/s 37(1) of the Act.

1.2 That the disallowance as confirmed by the Ld. CIT(A) is against the consistency principle in as much as in prior years i.e. in AY 2012-13, 2011-12, 2009-10 and 2008-09 similar claim of the assessee has been held allowable by the Ld. CIT(A).

2. That the above disallowance as confirmed by the Ld. CIT(A) is based on erroneous views and / or non-appreciation of the facts and law involved and without properly considering the submissions and material on record. As such too the disallowance is unwarranted and not capable of being sustained.

3. That the grounds of appeal as herein are without prejudice to each other.”

3. The Ld.AR for the assessee at the outset pointed out that the issue raised in the present appeal on account of treatment of exchange fluctuation loss on revaluation of business advances stand fully covered in favour of the assessee by the orders of the Tribunal in assessee's own case for the earlier years.

4. Briefly in the facts of the case during the year under consideration, the assessee company had claimed deduction on account of foreign fluctuation loss at Rs.2.59 crores (approx.) in its Profits & Loss A/c. The Assessing Officer show-caused the assessee as to why the said loss should be allowed in the hands of the assessee. The Assessing Officer noted the submissions of the assessee company and observed that it had claimed notional loss on this account. The Assessing Officer also noted that the additions were made in the earlier years and thus made addition of Rs.2.59 crores (approx.).

5. Before the CIT(A), the assessee pointed out that the appeals for the earlier years have been decided in favour of the assessee by the CIT(A) and written submissions were filed in this regard. However, the said submissions did not find favour with the CIT(A) on the ground that after lapse of considerable time when advance was first received in Financial Year 2007-08, no work has been rendered against the said advance. It was also observed that the said advance was received in India and the same was also accounted for in Indian Rupees only. The CIT(A) was of the view that the alleged advance shown in the books was a contingent liability against which no work had been carried out by the assessee nor the amount was refunded to M/s. Natural Energy Corporation GmbH till date.

6. Thus, the addition made by the Assessing Officer was upheld, against which the assessee is in appeal before us.

7. We have heard the rival contentions and perused the record. Briefly in the facts of the case during the year relevant to Assessment Year 2008-09, the assessee in the course of its business received 20,00,000 Euro equivalent to Rs.11.25 Crores from Natural Energy Corporation GmbH against services to be rendered. Pending adjustment, the said business advance was reflected as advance against services to be rendered in the books of account as on 31.03.2014. There being diminution in the value of Euro as on 31.03.2014, difference in exchange fluctuation on the said advance of 20,00,000 Euro amounting to Rs.2,60,00,000/- (wrongly taken as Rs.2,59,97,238/- being net of other amounts credited in Exchange fluctuation a/c) was provided in the books of accounts as revenue expense/exchange loss. The Assessing Officer

treated the said exchange fluctuation loss as notional loss and disallowed the claim of the assessee based on similar disallowance made in some prior years which was upheld by CIT(A).

8. The issue of disallowance of exchange fluctuation loss has been decided by the Tribunal in assessee's own case vide its consolidated order dated 29.07.2019 for Assessment Years 2008-09 and 2009-10 in ITA Nos.503/Del/2012 & 134/Del/2014.

9. Following the decision of Hon'ble Supreme Court in CIT vs Woodward Governor India P.Ltd. 312 ITR 254(SC) it was held as under:

“21. “So, following the decision rendered by Hon'ble Apex Court in CIT vs. Woodward Governor India P. Ltd. (supra), we are of the considered view that loss suffered by the assessee on account of foreign exchange rate fluctuation as on date of balance sheet is an item of expenditure u/s 37(1) of the Act and is not liable to be disallowed u/s 14A of the Act. So, the loss suffered by the assessee on account of fluctuation in the rate of foreign exchange is a revenue loss and not a capital loss as held by Id. CIT (A) in Assessment Year 2008-09 and contended by Id. DR for the Revenue. In view of what has been discussed above, we are of the considered view that claim of foreign exchange fluctuation loss is a revenue loss and not capital loss as has been held by the Id. CIT (A) in Assessment Year 2008-09.”

10. Further, the appeal of the Revenue against the order for Assessment Year 2012-13 was dismissed on account of low tax effect vide order dated 28.08.2019 in ITA No.330/Del/2017 & Others.

11. The issue arising in the present appeal has further been decided by the Hon'ble Supreme Court in Oil & Natural Gas Corporation Ltd. v CIT, 322 ITR 180 (SC) and also in the case of CIT vs Woodward Governor India P.Ltd. 312 ITR 254 (SC). The Hon'ble Delhi High Court in the case of Taiko Chander

Nagar Chemicals P.Ltd. reported in 311 ITR 475 (Del.) has held that exchange fluctuation loss in respect of business advances received in the course of business on account of reinstatement of outstanding balance at the year end is allowable as business loss.

12. Applying the said principle to the facts and circumstances of the case, we hold that the exchange fluctuation loss arising on account of the revaluation of business advances on the close of the year by the assessee is allowable as deduction in the hands of the assessee. Accordingly, we hold so and delete the addition of Rs.2.59 crores (approx.). Thus, grounds of appeal raised by the assessee are allowed.

13. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 14th May, 2020.

Sd/-

(PRASHANT MAHARISHI)
लेखा सदस्य / ACCOUNTANT MEMBER

दिल्ली / दिनांक Dated : 14th May, 2020 / * Amit Kumar *

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. मुख्य आयकर आयुक्त / The Pr. CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, दिल्ली / DR, ITAT, Delhi
6. गार्ड फाईल / Guard file.

Sd/-

(SUSHMA CHOWLA)
उपाध्यक्ष / VICE PRESIDENT

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक रजिस्ट्रार, आयकर अपीलीय अधिकरण ,दिल्ली

Assistant Registrar, ITAT, Delhi