

IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCHES "B"
KOLKATA

BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER
AND SHRI M.BALAGANESH, ACCOUNTANT MEMBER
ITA No. 1064/KOL/2012, (A. Y : 2009-10)

The ACIT, Cir-3,
8/2, Esplanade East,
Dwarli House, 2nd Floor,
Kolkata - 69

... Appellant

Vs.

M/s.Cosmomic Ferro Alloys Ltd.,
4th Floor, Sikim Commerce House,
4/1 Middleton Street,
Kolkata 400002
PAN:AACCC 1730C

... Respondent

Appellant by : Shri Niraj Kumar
Respondent by : Shri B.C.Jain

Date of hearing : 25/04/2016
Date of pronouncement : 31/05/2016

ORDER

PER MAHAVIR SINGH, J.M:

This appeal by Revenue is arising out of the order of CIT(A)-I, Kolkata in Appeal No. 930/CIT(A)-1/C-3/11-12 dated 03/04/2012. Assessment was framed by ITO, Cir-3, Kolkata under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') for the assessment year 2009-10 vide his order dated 27/12/2011.

2. The first issue in this appeal of Revenue is against the order of CIT(A) deleting the addition made by the Assessing Officer on account

of loss claimed on foreign exchange fluctuation holding the same as speculative in nature. For this Revenue has raised following Grounds

No. 1 & 2:-

1. That on the facts and circumstances of the case the Ld. CIT(A) erred in deleting the addition of Rs. 6,93,75,261/- made by the AO on account of 'Foreign Exchange Fluctuation loss' without appreciating the fact that such losses are not allowable being notional and speculative in nature and therefore, the order of the A O. be upheld.

2. That on the facts and circumstances of the case the Ld. CIT(A) erred in deleting the addition of Rs.6,93,75,261/- made by the A.O on account of 'Foreign Exchange Fluctuation loss' without appreciating the fact that such losses are not allowable as per the provision of section 43(5) (d) of the I. T. Act, 1961 and also in view of the CBDT Instruction No. 03/2010 dated 23.03.2010.

3. We have heard the rival contentions and gone through the facts and circumstances of the case. We find that the Assessing Officer has disallowed loss on account of revaluation of foreign exchange by treating the loss as notional loss amounting to Rs.1,76,53,946/-. Similarly, the Assessing Officer has also disallowed loss due to cancellation of forward contract by treating the transactions as speculative transaction under section 43(5) of the Act amounting to Rs.5,17,21,315/-. Aggrieved, assessee preferred an appeal before CIT(A), who after considering the submissions of the assessee allowed the claim of the assessee by observing as under:-

"After careful consideration of the assessment order and the written submission made by the assessee, it is noticed that the Assessing Officer made addition of Rs.6,93,75,261/- on account of cancellation of forward contracts and revaluation of term loan as on 21.03.2009 under section 43(5) (d) of the I. T. Act, 1961. The assessee as an exporter with the turnover of RS.194 crore and was consistently following Accounting Standard-11 in accounting of foreign currency transactions in accordance with the norms of RBI. In earlier year, the company has shown a profit of Rs.2.32 crore which was duly credited in profit & loss a/c in last year. The A/R further relied upon Supreme Court case CIT vs. Woodward Governer

India Pvt. Ltd. (179 Taxman 326) (SC) and Rule 115(1) Explanation 2{c} of the I. T. Rules, 1962 in support of its claim. Keeping in view these facts and circumstances, ground No.2 is allowed."

Aggrieved, now Revenue is in second appeal before the Tribunal.

3. At the outset, Ld. Sr. D.R stated that the assessee is unable to prove that the loss claimed by it on revaluation of term loan of US Dollar to the tune of Rs.1,76,53,946/- and further loss on account of cancellation of forward contract to the tune of Rs.5,17,21,315/- is to be treated as speculative loss in term of section 43(5)(d) of the Act and not business loss. Ld. Sr. D,R stated that assessee only claimed that the loss suffered on fluctuation, hedging against realizable or payable is speculative in nature but failed to adduce how these losses are on account of business of the assessee i.e. import of basic raw material i.e. Ferro Alloys and Allied Products. On this Ld. Counsel for the assessee drew our attention to assessee's Paper Book, wherein complete details abstract from sales account showing higher sales realization from the parties, abstract from bank statement showing loss of funds due to cancellation of foreign currency, details of loss on FCNR loans due to change in rupee value, copies of sanction letter of FCNR loans was provided at pages to 2 to 7. When a query was put to the ld. Counsel for the assessee whether transaction-wise co-relation of loss against hedging of particular transaction is co-related or not Ld. Counsel for the assessee fairly stated that it was not done as entire information was available with the Assessing Officer. We find that neither the Assessing Officer nor the CIT(A) has carried out the exercise of co-relation of hedging transaction with each contract of import and loss suffered on the same. However, Ld. Counsel for the assessee stated that the assessee is following this system of

accounting since beginning and which is allowed by Revenue since long. For the sake of consistency, Ld. Counsel for the assessee stated that this loss should be allowed.

4. We have considered the plea of both sides and noticed that principally the transaction of hedging and foreign exchange variation loss is to be allowed to the assessee. The assessee has to co-relate the transaction of hedging and foreign exchange variation with that of import transaction, which were cancelled and loss incurred on the same is not examined by lower authorities. In term of the above, we restore the matter back to the file of Assessing Officer and allow opportunity to the assessee as well as Revenue to co-relate the transaction of hedging with imports where loss has occurred to the assessee. In term of the above, the Assessing Officer will decide the issue afresh after allowing reasonable opportunity of being heard to the assessee. The matter is remanded back to the file of Assessing Officer.

5. In the result, appeal of the Revenue is allowed for statistical purposes.

Order is pronounced in the open court on 31 /05/ 2016.

Sd/-

(M. Balaganesh)
ACCOUNTANT MEMBER

Sd/-

(MAHAVIR SINGH)
JUDICIAL MEMBER

Kolkata, Dated 31/05/2016

Vm, Sr. PS

Copy of the order forwarded to:

1. The Appellant,
2. The Respondent,
3. The CIT(A)-
4. CIT
5. DR, ITAT, Kolkata
6. Guard file.

By ORDER

//True Copy//

(Dy./Asstt. Registrar
ITAT, Kolkata.