

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "B" KOLKATA**

Before **Shri Aby.T Varke, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA No.1156/Kol/2014 Assessment Year :2008-09

Pricewaterhousecoopers Pvt. Ltd. Y-14, Block EP & GP, Sector-V, Salt Lake, Kolkata-700 091 [PAN No.AABCP 9181 H]	V/s.	JCIT (OSD-CIT-I), Circle-2, P-7, Chowringhee Square, Kolkata-700 069
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri K.M. Gupta, Advocate & Shri Bikash Kr. Jain, AR
प्रत्यर्थी की ओर से/By Respondent	Shri Niraj Kumar, CIT-DR
सुनवाई की तारीख/Date of Hearing	31-01-2017
घोषणा की तारीख/Date of Pronouncement	17-03-2017

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-XX, Kolkata dated 27.02.2014. Assessment was framed by JCIT(OSD), CIT-1 Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 29.12.2011 for assessment year 2008-09.

Shri K.M. Gupta and Shri Bikash Kr. Jain, Ld. advocate appeared on behalf of assessee and Shri Nirj Kumar, Ld. Departmental Representative represented on behalf of Revenue.

2. In this appeal various grounds have been raised out of which grounds No. 2 and 3 are not pressed, therefore same are dismissed as not pressed. Ground No. 4 is of general nature and does not require separate adjudication. The other ground is as under:-

*“1(a) That on the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) [Ld. CIT(A)], erred in confirming the disallowance of foreign exchange loss of Rs.8,46,64,000/-
1(b) That the Ld. CIT(A) erred by confirming the disallowance of foreign exchange loss amounting to Rs.8,46,64,000/- arising out of restatement of its foreign currency hedging contracts as notional, without appreciating the fact that such loss was recognized on accrual basis and measured as per well accepted accounting policy, being consistently followed by the appellant.
1(c). That the Ld. CIT(A) failed to appreciate that such foreign exchange loss arising out of re-stat of year-end balance is allowable under section 37(1) read with section 145 of the Income Tax Act 1961 (“Act”)
1(d) That the action of the Ld. CIT(A) is in defiance of settled principles laid down by the Apex Court.”*

3. Only issue raised by assessee in this appeal is that Ld. CIT(A) erred in confirming the order of Assessing Officer by sustaining the disallowance of ₹8,46,64,000/- on account of foreign exchange loss due to fluctuation.

4. Briefly, the facts of the case are that assessee in the present case is a Private Limited Company and is engaged in consultancy business. The assessee in its computation of income has claimed loss of ₹8,46,64,000/- on account of foreign exchange fluctuation. The impugned aforesaid loss was representing the fees receivable in foreign currency. During the course of assessment proceedings, AO observed that fees receivable in foreign exchange have been duly hedged by way of taking forward contract. Therefore, such loss claimed by assessee is a notional loss and contingent in nature. Accordingly, AO treated the same as notional loss after having

reliance on CBDT instruction No. 3 of 2010 dated and added the same to the total income of assessee.

5. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that it has been following mercantile system of accounting on regular basis and accordingly the impugned loss was recognized in its books of account which is deductible u/s. 37(1) of the Act. The assessee further submitted that the impugned loss was recognized in the books of account in pursuance of provision of Accounting Standard-11 issued by the Institute of Chartered Accountant of India. As per AS-11, it is compulsory to give effect to the foreign currency transactions as per the foreign exchange rates as on the balance-sheet date. The assessee alternatively submitted before Ld. CIT(A) if such loss is not allowable on accrual basis then the effect of such loss arising in subsequent year on maturity of contracts should be allowed. However, Ld. CIT(A) confirmed the order of AO by observing as under:-

“4- Ground no. (i)(a) to (i)(c) relate to contention of the appellant against disallowance of Rs.8,46,64,000/- which was claimed by the appellant towards loss on foreign exchange. The fact of the case is that there was a loss of Rs.8,46,64,000/- to the appellant in respect of loss of foreign exchange. The appellant had entered into foreign currency derivatives with the objective of hedging its foreign currency exposures. On going through the various agreements undertaken by the appellant with the banks for hedging its foreign exchange exposure, the banks certified the net mark to market loss of Rs.846,64 laksh. Since, the loss was a notional loss as no sale of goods/settlement of contract had been taken place. Being notional loss/contingent liability, the AO disallowed the ape’s claim. Though the appellant claimed that the loss was claimed as per their system of accounting consistently was being followed by them and the loss was certified by the banks, the loss arose due to fall in the price below its cost. After going through the facts and circumstances of the case, I find that the liability was yet to be ascertained, the claim / certificate from the bank was on notional basis and not on ascertained/actual basis. Therefore, being contingent / notional liability, the AO was justified to disallow the claim of the appellant. However, the alternative plea of the appellant is that the loss should be allowed I the year of conclusion of the liability or in the year of maturity. I find merit in the alternative submission. Therefore, the AO is directed to allow the loss in the year in which the same becomes ascertained.”

Being aggrieved by this, assessee came in second appeal before us.

6. Before us Ld. AR for the assessee filed paper book which is running pages from 1 to 96 and submitted that the impugned loss was recognized in the books as per accounting standard 11 issued by the ICAI. The Id. AR also relied in the judgment of Hon'ble Apex Court in the case of *CIT Vs. Woodward Governor India (P) Ltd* reported in 312 ITR 254 (SC) and in the order of Hon'ble ITAT in the case of *DCIT Vs. Asian Tea & Exports Ltd.* in **ITA No. 1241/Kol/2013**. The Id. AR also submitted the banker's certificate in respect to the losses incurred by the assessee which are placed on pages 7 to 13 of the paper book.

On the other hand, Ld. DR submitted that the CBDT has issued instruction no. 3/2010 dated 23.3.2010 which is binding on Income Tax Authorities. The Id. DR further submitted that the Hon'ble Apex Court passed the judgment in the case of *Woodward Governor India (P) Ltd. (Supra)* dated 8th April 2009. Thus, it is clear that the said instruction was issued subsequent to the date of Hon'ble Apex Court judgment and so the said instruction was not considered by the Hon'ble Apex Court and other courts. The Id. DR vehemently relied on the order of Authorities Below.

7. We have heard rival contentions of both the parties and perused the materials available on record. The assessee-company had debited to its profit and loss account certain unrealized loss due to foreign exchange fluctuation in foreign currency transaction on revenue items, on the last date of the accounting year. The Assessing Officer held that the liability as on the last date of the previous year under consideration was not an ascertained liability, but a contingent liability and, consequently, it had to be added back to the total income of the assessee. On appeal, the Commissioner (Appeals) confirmed the order AO.

The facts in the instant case are undisputed that that the instant loss is arising in respect to the forward contracts which had not expired on the last day of the accounting year. It is also not disputed that the assessee is following mercantile system of accounting which requires to account for all the

expenses in the profit and loss account on accrual basis. Accordingly, the assessee has claimed the losses on the basis of mercantile system of accounting. Thus, in our considered view the assessee is very much eligible for the deduction of the impugned loss. In this connection, we find support and guidance from the judgment of the Hon'ble Supreme Court in the case of *Woodward Governor India (P) Ltd. (Supra)* wherein it was held as under:-

“It is important to note that foreign currency notes, balance in bank accounts denominated in a foreign currency, and receivables/payables and loans denominated in a foreign currency as well as sundry creditors are all monetary items which have to be valued at the closing rate under AS-11. Under para 5, a transaction in a foreign currency has to be recorded in the reporting currency by applying to the foreign currency amount the exchange rate between the reporting currency and the foreign currency at the date of the transaction. This is known as recording of transaction on initial recognition. Para 7 of AS-11 deals with reporting of the effects of changes in exchange rates subsequent to initial recognition. Para 7(a) inter alia states that on each balance sheet date monetary items, enumerated above, denominated in a foreign currency should be reported using the closing rate. In case of revenue items falling under s. 37(1), para 9 of AS-11 which deals with recognition of exchange differences, needs to be considered. Under that para, exchange differences arising on foreign currency transactions have to be recognized as income or as expense in the period in which they arise, except as stated in para 10 and para 11 which deals with exchange differences arising on repayment of liabilities incurred for the purpose of acquiring fixed assets, which topic falls under s. 43A. Para 9 of AS-11 recognises exchange differences as income or expense. In cases where, e.g., the rate of dollar rises vis-a-vis the Indian rupee, there is an expense during that period. The important point to be noted is that AS-11 stipulates effect of changes in exchange rate vis-a-vis monetary items denominated in a foreign currency to be taken into account for giving accounting treatment on the balance sheet date. Therefore, an enterprise has to report the outstanding liability relating to import of raw materials using closing rate of exchange. Any difference, loss or gain, arising on conversion of the said liability at the closing rate, should be recognized in the P&L account for the reporting period.—[CIT vs. Woodward Governor India \(P\) Ltd. & Ors. \(2007\) 210 CTR \(Del\) 354 affirmed.](#)”

The principles laid down by the Hon'ble Supreme Court are exactly identical to the facts of the instant case. Therefore the losses which are arising due to the foreign exchange fluctuation should be accounted for in the books of accounts and accordingly the assessee is eligible to claim the deduction of such losses. The argument of the Id. DR that the instruction issued by the CBDT has not

been considered by the Hon'ble Apex Court because it came subsequent to the verdict of Hon'ble Apex Court is not tenable. It is because the instructions issued by the CBDT are not binding on the courts and whether these are issued earlier or subsequently to the verdict do not matter. In view of the above we have no hesitation to reverse the order of authorities below. Hence this ground of appeal of the assessee is allowed.

8. In the result, assessee's appeal stands allowed.

Order pronounced in the open court 17/03/2017

Sd/-
(Aby. T. Varke)
(Judicial Member)
Kolkata,

Sd/-
(Waseem Ahmed)
(Accountant Member)

*Dkp

दिनांक:- 17/03/2017 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Pricewaterhousecoopers Pvt.Ltd., Y-14, Block EP & GP, Sector-V
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3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,
/True Copy/

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।