

आयकर अपीलीय अधिकरण, ' सी ' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI**

श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री, एस जयरामन लेखा सदस्य समक्ष
**BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./ I.T.A. No. 2754/Mds/2016

निर्धारण वर्ष/Assessment Year : 2012-13

Assistant Commissioner of Income Tax,
Corporate Circle -4(2),
Chennai – 600 034.

M/s. Nichias Industrial Products Pvt.
Ltd.,
Vs. K 3/2. Sipcot Industrial Park,
Phase –II, Mambakam Village,
Sriperumbudur Taluk 602 105.

[PAN: AACCN 3356M]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. N. Madhavan Addl. CIT

प्रत्यर्थी की ओर से/Respondent by

: Shri. S. Lakshminarasimhan, CA

सुनवाई की तारीख/Date of Hearing

: 23.10.2017

घोषणा की तारीख/Date of Pronouncement

: 27.12.2017

आदेश / O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The Revenue filed this appeal against the order of Commissioner of Income Tax (Appeals)-8, Chennai in ITA No. 22/2015-16 dated 30.06.2016 for assessment year 2012-13.

2. M/s. Nichias Industrial Products Pvt. Ltd., the assessee, is carrying on a business of manufacture and sale of Automotive Related Gaskets. In the assessment made for assessment year 2012-13, the Assessing Officer disallowed Rs. 1,38,44,368/- forex loss on loan account for the reason that forex loss of forex account have been wrongly debited in forex trading loss and claimed as deduction. Further, the Assessing Officer added Rs. 1,65,43,531/- as non-operating income compromising forex loss on loan Rs. 1,38,44,367/-, the opening balance provisions Rs. 7,63,502/- and forez loss on loans wrongly treated as forex trade loss Rs. 19,35,662/-. Aggrieved, the assessee filed an appeal before the CIT(A) and the CIT(A) allowed the appeal.

3. Aggrieved against the CIT(A) order, the Revenue filed this appeal with the following grounds:

"1. The order of the CIT(A) is contrary to the law and facts and circumstances of the case.

2. The CIT(A) erred in deleting the disallowance of Rs. 1,38,44,368/- on forex loss on loans made by the AO.

2.1 The CIT(A) erred in not appreciating the findings of the AO that the assessee utilized foreign loan for purchase of capital goods, and hence forex loss on loans is a capital loss and not loss on trade, hence it is not an allowable revenue expenditure in the P&L account.

2.2 Having regard to the Hon'ble Madras High Court's decision in the case of Tube Investments of India Ltd vs JCIT (2014) 45 taxmann.com 78, Hon'ble Punjab and Haryana High Court's decision in the case of Atlas Cycle Industries Ltd. v CIT [2004] 270 ITR 108 (P & H) and ITAT Mumbai A Special Bench's decision in the case of Poysha Industrial Co. Ltd., vs ITO (1983) 4 ITD 41(Bom)

(SB), wherein it is held assessee utilised foreign loan for purchase of capital equipment, and hence the loss incurred on said loan due to fluctuation in foreign exchange rate was to be regarded as capital in nature which could not be allowed as deduction, the CIT(A) ought to have upheld the disallowance on forex loss on loans made by the AO.

2.3 The CIT(A) failed to appreciate that the assessee has not produced any supporting material on its claim that the entire forex loss has been a result of trading activity and working capital repayment of the assessee before the AO and hence the same is treated as capital loss by the AO.

3. The CIT(A) erred in allowing the claim on provision for forex losses amounting to Rs. 7,63,502/-.

3.1 The CIT(A) failed to appreciate the fact that provision for losses created on foreign exchange contracts as on Balance Sheet dated does not constitute an ascertained liability and thus, deduction could not be allowed in respect of same as business loss as held by the ITAT, Bangalore 'B' Bench in the case of Shankara Infrastructure Materials Ltd. vs ACIT (2015) 53 taxmann.com 429

4. The CIT(A) erred in deleting the disallowance of Rs. 19,35,662/- with regard to wrong posting of entries made by the AO.

4.1 The CIT(A) erred in allowing the contention of the assessee that forex loss on loans of Rs. 19,35,662/- have been wrongly debited to Exchange Gain/Losses (imports) and hence the same is allowable as revenue expenditure.

4.2 Having regard to the Hon'ble High Court decisions and Hon'ble Tribunal decisions referred in ground no. 2.2, the CIT(A) ought to have upheld the disallowance of Rs. 19,35,662/- on forex loss on loans made by the AO.

5. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the Ld. CIT(A) may be set aside and that of the Assessing Officer restored."

4. The DR canvassed the case on the lines of the assessment order and on the grounds of appeal, supra. Per contra, the AR submitted that the Revenue wrongly averred that CIT(A) had allowed the claim on provision for forex losses amounting to Rs. 7,63,502. Actually, Rs. 7,63,502 is the entry relating

to provisional profit made on 31-03-2011 i.e. FY 2010-11 (AY 2011-12). This provisional profit entry is reversed in the beginning of FY 2011-12. The relevant ledger entries were produced before the learned CIT(A) and accepted as genuine entry. The Revenue has not understood the entries relating to Rs. 19,35,662. The assessee maintains separate ledger account relating to (a) Profit/Loss of Forex on Trade (imports and exports) and (b) Profit / Loss relating to Foreign Currency Loan Transactions. However, the appellant has not appreciated the fact that both these losses are actual losses and not provisional losses. The only error of the assessee with respect to Rs. 19,35,662 was Forex losses on Loans was wrongly debited to Forex Losses on Trade (Imports). But the fact remains that this amount of Rs. 19,35,662 is a genuine actual revenue loss which has been actually incurred by the assessee. The complete details of the break up of Rs. 19,35,662 together with the relevant pages of the Bank Statement were shown the learned CIT(A), discussed by him in detail in the appellate order. In the enclosed typeset, a statement of actual and Notional Exchange Loss on Forex Loans is given in Pages 95 and 96. Out of this, the items marked 124,121 total to Actual Loss of Rs. 19,35,662 for which evidences in the form of (a) Bank Debit Advice (b) Relevant Bank Statement Page (c) Book Entry passed in the books of the assessee are enclosed in nutshell, the assessee has four ledger accounts relating to Profit / Loss on Foreign Exchange. The break up of all the four

kinds of Profit/Losses are enclosed in the statements herewith. The summarized position is

Actual Profit / Loss on Forex (Trade)	(-) 75,70,776
Actual Profit / Loss on Forex (Loans)	(-) 1,54,85,150
Notional Profit / Loss on Forex (Trade)	12,81,816
Notional Profit / Loss on Forex (Loans)	<u>(-) 2,89,011</u>
	<u>(-) 2,20,63,121</u>
Opening Balance of Notional Profit	
Written Back	(-) 7,63,502
Error in Accounting Admitted	<u>(-) 6,960</u>
Total value shown in profit & loss statement	<u>(-) 2,28,33,583</u>

The AR drawn our attention to the audited financial statements of the assessee enclosed in Pages 127 to 139. Schedule 21 in Page No. 133 shows the Forex Losses accounted by the Assessee, totalling to Rs. 2,28,33,583. The notional profit of Rs. 9,92,805 (1281816 - 289011) has been earned, but actually incurred loss on forex is Rs. 2,30,55,926. Therefore the question of any notional loss being disallowed does not arise. The full statement showing actual losses as well as proof of the same in the form of Bank Statements/ Bank Advices and entries in the Books of Accounts of the assessee are enclosed in the typeset and submitted that the CIT(A) has on proper appreciation allowed the appeal and the same may be upheld.

5. We heard the rival contentions. The Assessing Officer holds that the forex loss on loan account has been wrongly debited to forex trade loss and claimed as deduction, on the other hand, the assessee contends that the entire forex loss has been a result of trading activity and working capital repayment. In support of its contention, the assessee is relying on the bank sanction statement. With regard to the other addition, the assessee pleads that it has maintained two ledger accounts for foreign exchange trade losses and foreign exchange losses on loan separately and by an error the former account was debited instead of the latter account, though both the accounts are only relating to foreign exchange losses actually incurred and they were separated for accounting reasons i.e., till the financial year 2010-11 under the old Schedule-VI of the Companies Act, 1956, the profits/losses on foreign exchange were grouped together under one heading for disclosure in the profit and loss account. The amendments of Schedule-VI mandated that foreign exchange transactions on trade account and loan accounts should be disclosed separately from the financial year 2011-12. These errors in posting of entries into the ledger accounts occurred while separating the accounts into two parts as per the new Schedule -VI. Thus, the issues essentially involve verification of facts with reference to the accounts and other materials. In the facts and circumstances, we deem it fit to set aside the order of the CIT(A) and remit the issues back to the AO for fresh examination and passing a due

order in accordance with law, after affording adequate opportunity to the assessee. The Revenue's appeal is treated as allowed for statistical purposes.

5. In the result, the Revenue's appeal is treated as allowed for statistical purposes.

Order pronounced on Wednesday, the 27th day of December, 2017 at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(एस जयरामन)

(S. JAYARAMAN)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 27th December, 2017

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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