

IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU BENCH 'B', BENGALURU

BEFORE SHRI. JASON P. BOAZ, ACCOUNTANT MEMBER

AND

SHRI. LALIET KUMAR, JUDICIAL MEMBER

I.T.A No.160/Bang/2017
(Assessment Year : 2009-10)

Asst. Commissioner of Income-tax,
Circle - 5(1)(1), Bengaluru .. Appellant

v.

M/s. Rohm India P. Ltd,
Registered Office # 9 & 10E, Pent House,
Jupiter Block Regency, Magnum Apartments,
Hennur Main Road, Bengaluru 560 043 .. Respondent
PAN : AADCR4975K

Assessee by : None
Revenue by : Smt. Padmameenakshi, JCIT

Heard on : 27.03.2018
Pronounced on : 04.04.2018

ORDER

PER LALIET KUMAR, JUDICIAL MEMBER :

This appeal is filed by the Revenue against the order of the CIT (A)-5, Bengaluru, dt.10.10.2016, for the assessment year 2009-10, on the following effective ground :

“2. Whether the CIT (A) is right in allowing the appeal of the assessee, despite the fact that the loss is in nature of notional loss. As Foreign Exchange Loss on the value of payments to be made has only been restated by the assessee on 31st March, 2009 and therefore is a Notional Loss. While the provisions of Section 32 to 36 of Income-tax Act, 1961 clearly lays down as to what is an admissible expenditure that may be allowed against an income, section 37 of Income-tax Act, 1961, clearly lays down as to what is an admissible expenditure that may be allowed against an income. Section 37 of Income-tax Act, 1962 is residuary in Nature.”

02. Brief facts are, the assessee is engaged in the business of machine tools trading. It has debited an amount of Rs.19,45,749/- as Net Foreign Exchange Loss. The AO on verification of the records found that the assessee has worked out the net foreign exchange loss, after netting of gross debit and credit of foreign exchange. Thereafter an amount of Rs.35,26,322/- was debited. The AO held that no work has been done by the assessee company towards the payment received by it from the holding company. Therefore the loss was not in the nature of revenue and hence AO held it as not an allowable expenditure. Feeling aggrieved by the decision of the AO the assessee preferred an appeal before the CIT (A).

03. The CIT (A) vide the impugned order had allowed the appeal by following the earlier order for the AY 2008-09, to the following effect :

6. I have considered the written submissions filed by the appellant and also gone through the order passed by the Assessing Officer. The appellant has raised two grounds, one is on the

foreign exchange loss disallowed on the ground that the said expenditure was on capital account and the other ground is on the addition made by invoking the provisions of Sec.40A(ia) for non-deduction of tax at source. As regards the first ground is concerned my predecessor for the A. Y. 2008-09 in the appellant's own case has adjudicated and decided in favour of the appellant. The relevant para is reproduced as under:

The issue relating to foreign exchange loss has been elaborately discussed in the judgement of CIT Vs. Woodward Governor of India Pvt. Ltd. The Apex Court has held that Sec. 37(l) has to be read with Sec. 145 for considering the meaning of 'expenditure' under the IT Act. After analysing various provisions the Court held that the expression 'expenditure' may cover 'loss' even though the said amount has not gone out from the pocket of the assessee. Profits for income tax purpose are to be computed in accordance with ordinary principles of commercial accounting unless such principles have been modified by legislature. U/s. 209 of the companies Act, mercantile system of accounting is mandatory for companies. Therefore, 'loss' suffered by an assessee on account of exchange difference as on the date of balance sheet is an item of expenditure u/s.37(1) of the IT Act, As per AS- II made mandatory by the Central Govt., revenue items include exchange differences in monetary items denominated in a foreign currency. These are to be taken into account for giving accounting treatment on the balance sheet date and should be recognized in P&L account for the reporting period except for liabilities covered u/s.43A. The court has held that with effect from 01.04.2003, according to Sec. 43A, liabilities is a condition precedent for making adjustment in the carrying amount of the fixed asset.

The Assessing Officer has not considered the unrealized loss in respect of restatement foreign exchange liabilities in accordance with the judgement of the Supreme Court. The Assessing Officer is directed to delete 'loss' on restatement of foreign exchange except for liabilities specifically incurred in respect of capital assets covered u/s.43A. The Assessing Officer is directed to verify the nature of liabilities and allow Deduction u/s.37(1) as per the

judgement in the case of CIT Vs. Woodward Governor t Ltd The disallowance of Rs.21,46,852/- made by the Assessing Officer is deleted to the extent it does not comprise of loss on account of foreign exchange fluctuation in respect of liabilities covered u/s.43a. Ground No.2 is allowed.

In view of the same, as the issue is same as in the A. Y. 2008-09, I hereby allow the grounds of appeal for this year also.

04. Before us the Revenue has submitted that the CIT (A) has wrongly appreciated the contention of the assessee and has merely relied upon the order passed by the CIT (A) for the earlier year, despite judgment rendered by the Hon'ble jurisdictional High Court in the matter of CIT v. Wipro Finance Ltd [351 ITR 153].

05. None was present on behalf of the assessee and a written submission has been filed on 26.12.2017. It was submitted therein that for AY 2008-09, the CIT (A) has granted the relief. Therefore, following the principle of consistency as laid down by the Hon'ble Supreme Court in the matter of Radhasoami Satsang v. CIT (193 ITR 321], this relief should be granted to the assessee and appeal of revenue be dismissed.

06. We have heard the Ld. DR and gone through the written submissions filed by the assessee. In our view, the matter is required to be remanded back to the file of the CIT (A) to revisit the decision in terms of the judgment rendered by the Hon'ble jurisdictional High Court in the matter of Wipro Finance Ltd (supra), without being influence by order passed by the CIT(A) for the earlier AY 2008-09, wherein it has been held by Court as under:

4. The view taken by the Supreme Court in this judgment is to the effect that while even a notional loss can be claimed by way of a business loss and as a deductible item in computing the income of the assessee for the year, as it is a computation on notional basis, it is made dependent on the manner of conduct of the assessee in respect of the earlier assessment period and particularly as to the assessee has been following this uniformly over a period of years and the test being when there was a notional gain as to whether it had been offered for tax etc. The Supreme Court took the view that such claim can be entertained subject to fulfilment of the following six conditions:

- (i) whether the system of accounting followed by the assessee is the mercantile system, which brings into debit the expenditure amount for which a legal liability has been incurred before it is actually disbursed and brings into credit what is due, immediately it becomes due and before it is actually received;*
- (ii) whether the same system is followed by the assessee from the very beginning and if there was a change in the system, whether the change was bona fide;*
- (iii) whether the assessee has given the same treatment to losses claimed to have accrued and to the gains that may accrue to it;*
- (iv) whether the assessee has been consistent and definite in making entries in the account books in respect of losses and gains;*
- (v) whether the method adopted by the assessee for making entries in the books both in respect of losses and gains is as per nationally accepted accounting standards;*
- (vi) whether the system adopted by the assessee is fair and reasonable or is adopted only with a view to reducing the incidence of taxation.*

5. In the wake of this judgment of the Supreme Court, it is now submitted that while the view of the tribunal that the assessee can claim such deduction has to be affirmed, the matter does not end with that, but such claim will have to be examined in the light of the fulfilment of the conditions as indicated by the Supreme Court, for

which purpose, the matter may have to go before the assessing officer, who has to apply this test to the claim made by the assessee and then either admit the claim or reject it depending upon the assessee being in a position to satisfy the fulfilment of the conditions.

07. In view of the above, matter is remanded back to the file of CIT (A) with the direction to examine the case of the assessee in the light of the observations of the Hon'ble High Court reproduced herein above in para 6 (supra) and decide the issue afresh.

08. In the result, appeal of the Revenue is allowed for statistical purpose.

Order pronounced in the open court on 4th day of April, 2018.

Sd/-

Sd/-

(JASON P. BOAZ)
ACCOUNTANT MEMBER

(LALIET KUMAR)
JUDICIAL MEMBER

Bengaluru

Dated : 4th April, 2018

MCN*

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.