

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I-2": NEW DELHI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 6688/Del/2015
(Assessment Year: 2003-04)

ACIT, Circle-9(1), New Delhi	Vs.	Escorts Mahle Ltd. (now known as M/s. Federal Mogul Goetze India Ltd), A-26/3, Mohan Cooperative, Industrial Estate, Mathura Road, New Delhi PAN: AAACE1749F
(Appellant)		(Respondent)

Revenue by :	Shri Sanjai Kumar Yadav, Sr. DR
Assessee by:	None
Date of Hearing	09/07/2018
Date of pronouncement	19/09/2018

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the revenue against the order of the Id CIT(A)-14, New Delhi dated 15.09.2015 for the Assessment Year 2003-04, wherein, following three effective grounds of appeal are raised:-
 - “1. On the facts and circumstances of the case and in law, the Id CIT(A) has erred in deleting the addition of Rs. 2,10,00,000/- made by the AO on account of provision for various disallowance.
 2. On the facts and circumstances of the case and in law, the Id CIT(A) has erred in deleting the addition of Rs. 47,60,000/- made by the AO on account of loss from foreign exchange fluctuation.
 3. On the facts and circumstances of the case and in law, the Id CIT(A) has erred in deleting the adjustment of Rs. 2,10,10,000/- added by the Id AO while computing the total income u/s 115JB of the Act.”
2. Brief facts of the case is that the assessee a company engaged in the business of manufacturing of automotive and industrial application components such as pistons for the vehicles. The assessee filed its return of income on 02.12.2003 declaring loss of Rs. 7.93 crores. The Id AO

assessed the income of the assessee at a total loss of Rs. 53390926/- under the normal provisions of the Act and u/s 115JB at a book loss of Rs. 338413500/-. The assessee challenged the order before the Id CIT(A) and certain reliefs were granted. The revenue is challenging some of the reliefs granted such as the

- 01 adjustment on account of Rs. 2,10,10,000/- under the computation of book profit as provision of expenses and further in the normal computation the addition on account of various disallowance of provisions of Rs. 2.10 crores and
- 02 additions of Rs. 47.60 laks on account of foreign exchange fluctuation loss

These are the additions/disallowances/ adjustments deleted by the Id CIT(A) and hence are contested by revenue.

3. The first ground is against the deletion of the addition of Rs. 2.10 crores on account of various provisions for expenses made by the assessee. During the course of assessment proceedings, it is noted by the Id AO that the assessee has claimed certain expenses on adhoc provisions for various expenses such as telephone, travelling etc. Based on the identical disallowances in Assessment Year 2001-02, the Id AO made this disallowance. While computing book profit u/s 115JB of the act, Id AO made addition of the same stating that it is an unascertained liabilities. On appeal, Id CIT(A) deleted the above addition vide ground No. 5 before him. The Id CIT(A) held that identical issue arose in the case of the assessee in Assessment Year 2001-02 in which the disallowance was deleted, so he deleted the disallowance in normal computation of total income. In AY 2001-02, the deletion of disallowance is also upheld by the coordinate bench.
4. The Id DR vehemently supported the order of the Id AO.
5. None appeared on behalf of the assessee despite notice and therefore, issue is decided on merits of the case as per information available on record.

6. We have carefully considered the contentions of the Id DR as well as perused the orders of the lower authorities. This issue is covered in favour of the assessee by the decision of the coordinate bench in assessee's own case for Assessment Year 2001-02, where coordinate bench dismissed the appeal of the revenue in ITA NO. 1088/Del/205 vide order dated 28.03.2008. The above facts are noted by the Id CIT(A) at page 8 and 9 of his order. The Id DR could not controvert that how this issue is not covered in favour of the assessee. On the facts it is apparent that the Id CIT(A) has given a finding in the previous year that all these liabilities are ascertained liabilities. In fact though assessee has made provisions for various expenses but as soon as the bills are received, any excess or shortage of such provision are reversed to the credit of the profit and loss account. Such corporate practice of accounting is an accepted method. It is not the case of the AO that these liabilities have been created by the assessee and has not been discharged in subsequent years. In view of above facts and the decision of the coordinate bench in assessee's own case for AY 2001-02, we do not find any infirmity in the order of the Id CIT(A) in deleting the above additions, so far as normal computation of income is concerned. Accordingly ground no 1 of the appeal is dismissed.
7. with respect to the computation of the book profit u/s 115JB the above expenditure have been considered by the assessee in its books of account as ascertained liability. The Id CIT(A) has deleted the above adjustment to the book profit relying upon the decision of the Hon'ble Supreme Court in 255 ITR 273. As the coordinate bench while dealing with the issue under the normal computation of total income has categorically held that all these provisions are ascertained liabilities and the Id AO is merely guided by the words provisions for narrating the expenses. We do not find any infirmity in the order of the CIT(A). In view of this we also do not find any infirmity in the order of the Id CIT(A) in deleting the above

adjustment u/s 115JB of the Act also. In view of this ground No. 3 of the appeal of the revenue are dismissed.

8. Coming to the ground No. 2 of the appeal of the revenue which is against the addition of loss on account foreign exchange fluctuation of Rs. 47.60 lakhs. The Id AO noted that it is merely a notional loss and therefore, it cannot be allowed as deductible expenditure. He further held that merely the accounting standard cannot over right the provision of the Act and Act does not recognized such expenditure. On appeal before the Id CIT(A) he deleted the above addition as per ground No. 4 at page 10 of his order as under:-

"Ground No.4:- That the Ld. AO has erred in law and on the facts and circumstances of me case in disallowing a sum of Rs. 47,60,000/- on account of loss of foreign exchange fluctuation. On the facts and circumstances of the case the Ld. AO may kindly be directed to delete the addition made by assessing offer on erroneous and untenable grounds.

The Ld. AO has disallowed a sum of Rs.47.60 lakhs on account of loss actually incurred by the assessee due to foreign exchange rates fluctuation on the ground that this loss represents only a notional loss. Hence, the ground of appeal.

During the course of appellate proceeding the Ld. AR submitted as under

"GROUND NO.4:

The Assessing Officer has disallowed a sum of Rs.47.60 lakhs on account of loss' actually incurred by the assessee due to foreign exchange rates fluctuation on the ground that this loss represents only a notional loss. Such observations of the A.O. are away from reality and from the actual facts. The loss on account of foreign exchange fluctuations is a actual liability incurred by the assessee during the year under consideration due to fluctuation in the foreign exchange rates on account of lower realization against the sales made by it or excess amount paid on account of raw material purchases by assessee and on account of revenue items. Therefore, the observations of the A.O. in the assessment order on this issue are not correct.

Your Honour would be aware that it is a settle proposition of law that loss incurred on account of foreign exchange is an allowable loss it is on revenue account. Hon'ble Delhi ITAT in the case of Oil and Natural Gas Commission Vs. Dy. Commissioner of Income Tax reported in 77 TTJ (Delhi), Special Bench 387 has held

that even provisions made for exchange rate fluctuation on revenue items is an allowable loss. Similarly, the Hon'ble Mumbai ITAT in the case of JCIT Vs. Abbot Laboratories India Ltd. has similarly held that provision made for exchange rates fluctuation loss on revenue item is an allowable expense.

We are filing herewith the details of exchange rates fluctuation loss incurred by the assessee along with copies of vouchers etc. which would clearly indicate that this loss has been actually incurred by the assessee during its bonafide business transactions on revenue account during the year under consideration. (Please refer page Nos. 16 to 103).

We may take this opportunity to also submit those copies of vouchers etc. which are being filed now were not filed with the A.O. In fact, as it would be apparent from the Asstt Order that the A.O. simply picked up this amount for disallowance directly from the Balance Sheet without asking the assessee in details about this item and therefore, the assessee was in no position to file any details etc. on this issue. Thus to that extent it is prayed that this additional evidence may kindly be admitted during the appeal proceedings under Rule 46A of the IT Rules and to that extent these submissions may be taken as an application for admission of additional evidence under the said rule."

The Hon'ble Supreme Court's-decision- the loss is actual and not notional - wood ward.

I have considered the submissions of the appellant as well as the findings of the Ld. AO., higher appellate authorities and the Hon'ble Courts . It is a settled proposition of law that loss incurred on account of foreign exchange is an allowable loss. The Hon'ble Jurisdictional ITAT in the case of Oil and Natural Gas Commission Vs. Dy. Commissioner of Income Tax reported in 77 TTJ (Delhi), Special Bench 387 has held even provisions made for exchange rate fluctuation on revenue items is an allowable loss. Similarly, the Hon'ble Mumbai ITAT in the case of JCIT Vs. Abbot laboratories India Ltd. has similarly held that provision made for exchange rates fluctuation loss on revenue item is an allowable expense. Accordingly, the disallowance of Rs.47,60,000/- on account of loss of foreign exchange fluctuation is deleted. This ground is allowed."

9. The Id DR vehemently supported the order of the Id CIT(A).
10. We have carefully considered the rival submission and perused the orders of the lower authorities. The Id Assessing Officer has held that loss on foreign exchange fluctuation is a notional loss. The Id CIT(A) has held

that loss is actual and not notional. He supported his contention by the decision of the Hon'ble Supreme Court in case of Woodward Governance. He also supported it by the various precedents of coordinate benches wherein, it has been held that reinstatement of assets and liabilities at the close of the year in the local currency is not a notional loss but an actual loss. It is not the case of the AO that accounting standard pertaining to foreign currency translation is not applicable to the assessee despite being a company. In view of the decision of the Hon'ble Supreme Court in 312 ITR 254, wherein, it is held that loss suffered by the assessee on account of fluctuation in the rate of foreign exchange as on the date of balance sheet is a item of expenditure u/s 37(1) of the Act, we do not find any infirmity in the order of the Id CIT(A) in deleting the above addition. Accordingly, ground No. 2 of the appeal of the revenue is dismissed.

11. Accordingly, appeal of the revenue is dismissed.

Order pronounced in the open court on 19/09/2018.

-Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 19/09/2018
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi