

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B' NEW DELHI**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**I.T.A. No.6096/Del/2015
Assessment Year: 2008-09**

**M/s Keihin Panalfa Ltd., vs Dy. Commissioner of Income-tax,
M-34, 2nd Floor, G.K. Circle 14(2), New Delhi.
II Market,
New Delhi.
(PAN: AAACK5968J)**

AND

**I.T.A. No.6404/Del/2015
Assessment Year: 2008-09**

**Dy. Commissioner of Income-tax, vs M/s Keihin Panalfa Ltd.,
Circle 14(2), New Delhi. M-34, 2nd Floor, G.K.
II Market,
New Delhi.
(PAN: AAACK5968J)**

(Appellant) (Respondent)

**Assessee by: Shri Pradeep Dinodia, CA
Respondent by: Ms Ashima Neb, Sr. DR**

**Date of Hearing: 01.10.2018
Date of Pronouncement: 04 .10.2018**

ORDER**PER BENCH**

ITA No.6096/Del/2015 is filed by the assessee and ITA No.6404/Del/2015 is filed by the Revenue challenging the order of the Commissioner of Income-tax (Appeals)-17 (hereinafter referred to as the "CIT(A)) dated 17.9.2015 in Appeal No.251/14-15 to 17/15-16.

2. Relevant facts, in brief, are that the assessee is a manufacturer of air conditioners for Automobiles, automobile components, electronic control units. For the Asstt. Year 2008-09, assessment u/s 143(3) read with 144C(1) of the Income-tax Act, 1961 (the Act) was completed by an order dated 22.11.2011 at an income of Rs.18,81,54,460/- as against the returned income of Rs.15,56,20,931/-. Subsequently, learned AO issued notice dated 11.3.2013 u/s 148 of the Act. Learned AO reopened the assessment on the ground that the loss of restatement of foreign exchange liability pertaining to capital assets represented a notional loss and the same was not allowable. Assessment was concluded by order dated 6.3.2014 u/s 143(3) read with Section 147 of the Act at Rs.19,87,61,813/- by making two additions, namely, Rs.23,79,903/- on account of foreign exchange loss arising out of purchase of

imported machinery from UBE Machinery Corporation Ltd. and Rs.1,05,99,687/- on account of foreign exchange loss pertaining to import of raw material.

3. When the assessee preferred appeal, learned CIT(A), by way of impugned order, confirmed the addition of Rs.23,79,903/- on account of purchase of machinery from UBE Machinery Corporation Ltd. by following the decision of the Learned Dispute Resolution Panel-I, Delhi in assessee's own case for the Asstt. Year 2009-10 on identical set of facts. However, learned CIT(A) granted relief to the assessee by deleting the addition of Rs.1,05,99,687/- the foreign exchange loss occurred on account of purchase of raw material holding it to be revenue loss and being actual loss, the same was claimed in the normal course of business and since the expenditure was revenue expenditure which were incurred wholly and exclusively for the purpose of business, learned CIT(A) found it allowable u/s 37(1) of the Act.

4. Challenging the confirmation of the addition of Rs.23,79,903/-, assessee preferred appeal in ITA No.6096/Del/2015 and challenging the deletion of the addition of Rs.1,05,99,687/- revenue preferred appeal in ITA No.6404/Del/2015.

5. First coming to the addition of Rs.23,79,903/-, learned CIT(A) following the decision of the learned DRP-1, Delhi in assessee's own

case for Asstt. Year 2009-10 on identical set of facts, sustained the same. However, it is brought to our notice by the learned AR that for the Asstt. Year 2009-10 in ITA No.1790 & 1201/Del/2014 vide paragraph no. 7.6 of the order dated 19.06.2018, a coordinate bench of this Tribunal held that the nature of loss remain a short term capital loss, which either to be adjusted against the existing block of assets or is to claimed separately as a short term capital loss but cannot be treated as business loss or expenditure so as to be allowable u/s 28 or 37 of the Act and on that premise, the Tribunal dismissed the ground of appeal raised by the assessee.

6. There is no dispute that insofar as this issue is concerned, the facts of the Asstt. Year 2009-10 and the year now under consideration are identical. For the Asstt. Year 2009-10 also, the assessee incurred the foreign exchange loss on purchase of imported machinery towards the value of the machinery that was damaged during the process of unloading in the Indian port was also for the Asstt. Year 2008-09, the assessee's claim of foreign exchange loss under this particular head stating that the machinery purchased from UBE Machinery Corporation Ltd. was damaged in transit.

7. In view of the similarity of facts and more particularly in the light of observations of the learned CIT(A) that while following the decision of the Id. DRP in assessee's own case in Asstt. Year 2009-10,

he was sustaining the disallowance, we find that the observations of the Tribunal in assessee's own case for the Asstt. Year 2009-10 are very much covering the case of the assessee for this year also. We, therefore, while respectfully following the decision of the Tribunal hold that the ground raised by the assessee in Appeal No.6096 of 2015 is liable to be dismissed and is accordingly dismissed.

8. Now coming to the deletion of addition of Rs.1,05,99,687/-, it could be seen from the impugned order that while placing reliance on the decision of the Hon'ble Apex Court in the case of CIT vs Woodward Governor (2009) 312 ITR 254 (SC) and ONGC Ltd. Vs CIT, Civil Appeal No.7223/2008 dated 15.3.2010, learned CIT(A) held that the expenditure was a revenue loss and is allowable u/s 37 of the Act. Revenue has not brought to our notice any change of circumstances or facts so as to show that the decision in the case of Woodward Governor (supra) has no application to the facts of the case. Since the learned CIT(A) followed the binding precedent of the Hon'ble Apex Court while reaching a conclusion that the addition of Rs.1,05,99,687/- cannot be sustained, we do not find any perversity or illegality in the impugned order on this aspect. We, therefore, while confirming the same dismiss the ground of appeal in revenue's appeal.

7. In the result, both the appeals of assessee and of revenue are dismissed.

Order pronounced in the Open Court on 4th October, 2018.

Sd/-

(N.K. SAINI)
ACCOUNTANT MEMBER

sd/-

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 4th October, 2018
'VJ'

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

By order

Asstt. Registrar

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