

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

BEFORE SHRI. JASON P. BOAZ, ACCOUNTANT MEMBER

AND

SHRI. LALIET KUMAR, JUDICIAL MEMBER

I.T.A No.590/Bang/2018
(Assessment Year : 2010-11)

M/s. Insilica Semiconductors India P. Ltd,
C/o. Resolve Business Services India P. Ltd,
No.231/236, Raheja Arcade,
Koramangala, Bengaluru 560 095 .. Appellant
PAN : AABCC9522F

v.

Deputy Commissioner of Income-tax,
Circle -11(4), Bengaluru .. Respondent

Assessee by : Shri. S. Sampath, Director of company
Revenue by : Dr. P. V. Pradeep Kumar, Addl. CIT

Heard on : 06.09.2018

Pronounced on : .09.2018

ORDER

PER LALIET KUMAR, JUDICIAL MEMBER :

The present appeal is filed by the assessee against the order of the CIT (A) -3, Bengaluru, dt.17.08.2017, for the assessment year 2010-11, on the following ground nos.6 and 7, which are pressed by the assessee :

6. It is contended that CIT (A) in Para 3.5 had concluded categorically that the Foreign Exchange Loss of Rs.47,23,020/- is on account of Invoices up to 31st August 2009. Accordingly, the entire loss should have been allowed and cannot form a part of 45%.

7. It is contended that Depreciation of Rs.8,47,270/- is to be allowed fully.

02. Brief facts are, the assessee filed the return of income for the year under consideration declaring total loss of Rs.4,26,91,901/-. Case of the assessee was selected for scrutiny. However the Ld. AR of the assessee before the AO had not filed the requisite document and has also not participated in the proceedings, as such the AO has passed the ex-parte order assessing the total income at Rs.69,81,252/-. While arriving at the above said income the AO has disallowed the expenses at 50% i.e., Rs.4,75,93,411/-. Feeling aggrieved by the order of the AO the assessee preferred appeal before the CIT (A).

03. The CIT (A) without seeking the remand report had allowed the ground of the assessee and has reduced the expenses from 50% to 45%. The Revenue filed appeal before the Hon'ble High Court and thereafter the matter was remanded back to the Tribunal to be decided afresh.

04. At the outset the ld. AR has drawn our attention to the condonation petition filed before the Tribunal for condonation of the delay in filing the appeal. It was submitted that on account of his incapacity due to ill health, he could not attend the job of filing the appeal on time. He has filed an affidavit to this effect. We are

convinced that the assessee was prevented with a reasonable cause from filing the appeal within the time. Hence, we deem it appropriate to allow the condonation petition and admit the appeal.

05. On merits, it is the contention of the Ld. AR that while restricting the disallowance to 45%, the CIT (A) had not allowed the depreciation as per the IT Act, in so much so it was submitted that as per the books of account the depreciation was Rs.10,62,392/- and 55% of the amount i.e., Rs.10,62,392/- is allowable as depreciation. In this regard the Ld. AR relies upon the decision of the Hon'ble Supreme Court in the matter of Nectar Beverages P. Ltd v. DCIT [CA No.5291 of 2004, dt.6.7.2009]. With respect to the second issue concerning foreign exchange loss, it was submitted that the exchange loss arose to the assessee up to August 2009, which is required to be allowed as per the profit and loss account for the year under consideration.

06. Per contra, the Ld. DR has drawn our attention to para 3.4 of the CIT (A) order wherein it was mentioned as regards depreciation, since the fixed assets were put to use only up to 01.09.2003, i.e., for a period less than 180 days, so depreciation can also not be claimed for the entire year. In respect of foreign exchange loss, he submitted all these are required to be verified.

07. We have gone through the record and perused the material. Considering the order passed by the lower authorities and the remand report of the AO, we are of the considered opinion that

despite the specific stand taken by the assessee before us and also before the CIT (A), grounds have not been properly adjudicated by the both the authorities with respect to depreciation and the order passed by the authorities is cryptic and non speaking .

08. In the light of the above, we deem it appropriate to remand the matter back to the AO to decide afresh in the light of the submission made by the assessee before us and on the basis of any other any submissions made in respect of the disallowance made by the AO to the extent of 50%. Needless to say, while deciding this issue the AO shall not only consider the judgment of the Hon'ble Supreme Court in Nectar Beverages (supra) but also consider the judgment rendered by the Hon'ble Supreme Court in the matter of CIT v. Woodward Governor India p. Ltd [179 Taxman 326], wherein the Hon'ble Supreme Court has held that the foreign exchange loss or gain arising on conversion of the liability at the closing rate should be recognised in the profit and loss account for the reporting period.. Accordingly the CIT(A) is directed to decide afresh the matter de-nova based on the observations made herein above.

09. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 28th day of September, 2018.

Sd/-

Sd/-

(JASON P. BOAZ)

(LALIET KUMAR)

AcCOUNTANT MEMBER

JUDICIAL MEMBER

Bengaluru

Dated : 28.09.2018

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.