

आयकर अपीलीय अधिकरण, पुणे न्यायपीठ “एक-सदस्य मामला” पुणे में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH “SMC”, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष  
BEFORE SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA No.2662/PUN/2017  
निर्धारण वर्ष / Assessment Year : 2012-13

Balaji Murlidhar Arakal,  
155/2A1, Akkalkot Road,  
Gandhi Nagar, Solapur.

PAN : AEBPA4354G

.... अपीलार्थी / Appellant

Vs.

ITO, Ward- 2(3),  
Solapur.

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri P. S. Shingte

प्रत्यर्थी की ओर से / Respondent by : Shri Rajesh Gawli

सुनवाई की तारीख / Date of Hearing : 01.11.2018
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घोषणा की तारीख / Date of Pronouncement: 20.11.2018
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**आदेश / ORDER**

**PER D. KARUNAKARA RAO, AM :**

This appeal is filed by the assessee against the order of CIT(A)-7, Pune dated 04.08.2017 for the Assessment Year 2012-13.

2. The effective ground raised by the assessee is extracted hereunder :-

*“The learned Hon’ble CIT(Appels)-7, Pune, erred, both in facts and law, in upholding the action of the A.O. in making disallowance of Rs.2,04,793/- by treating it is capital loss, which in fact, was allowable as business expenditure.”*

3. Briefly stated relevant facts include that the assessee is an individual and is engaged in the business of manufacturing of chaddars, towels and others. The assessee in his return of income declaring total income of Rs.90,000/-. During the course of assessment proceedings u/s 143(3) of

the Act, the Assessing Officer made addition of Rs.2,04,793/- on account of business loss (foreign exchange difference on interest paid on the loan). The Assessing Officer further observed that the assessee took loan of Rs.30,00,000/- from the Laxmi Co-operative Bank Ltd. on 12.05.2011 and 03.06.2011. The said loan was taken for import of weaving machinery from Turkey. The assessee paid the same to the supplier of machinery in foreign exchange. Subsequently, on finding of some technical objections, the proposal for import of the machinery stands cancelled. Consequently, there was correspondence between the assessee and the importer relating to the refund of the money consequent to the decision of cancellation of the order for import of the machinery. Eventually, the suppliers refunded the amount at that time when the foreign exchange is not favourable to Indian Rupees. This refund resulted into loss in terms of INR. That is how the assessee had to foot the losses. Further, on receipt of the refund from Turkey by 20<sup>th</sup> November, 2011, the loan taken from the Laxmi Co-operative Bank Ltd. was squared up. The Bank charged interest from May, 2011 to six months on the loan taken by the assessee which is source for such payment to the Turkey's supplier in foreign exchange. The interest amount for this period of Rs.30,00,000/- was claimed as allowable expenditure. The assessee claimed these two amounts are foreign exchange on one side on the interest income paid to the Bank on the other as the allowable business expenditure of the assessee. The Assessing Officer did not allow the same by holding that the same foreign exchange is of capital in nature. Per contra, the assessee submitted that these amounts constitute revenue expenditure. Considering the fact that the capital transaction for import of machinery did not materialize, the CIT(A) confirmed the disallowance made by the Assessing Officer.

4. Aggrieved with the same, the assessee is in appeal before the Tribunal with the grounds extracted above.

5. Before us, ld. Counsel for the assessee narrated the above facts of the case and submitted that the amount of Rs.2,04,793/- (Rs.80,890/- + Rs.1,23,903/-) is an allowable expenditure as this amounts are incurred in connection with the transaction of import of machinery. In this regard, he relied on various decisions including the decision of Hon'ble Bombay High Court in the case of Vassantram Mehta & Co. (P.) Ltd. vs. JCIT reported in 63 taxmann.com 102. This case is relevant for ratio that in case where the assessee forfeited the advances paid in connection with the pre-shipment packing credit facility, the same constitutes allowable as business expenditure, no disallowance u/s 36(1)(iii) of interest paid by the assessee on amount received is called for. Further, this case is relevant for another legal proposition that whether loss on account of foreign exchange rate fluctuation reported by the assessee in connection with cancellation of a contract constitutes an allowable expenditure. He also relied on another decision of Pune Bench of the Tribunal in the case of Saokar Developers Pvt. Ltd. vs. ITO vide ITA No.1561/PN/2005, order dated 30.06.2008. For the proposition in favour of the assessee, he also relied on another decision of Hon'ble Rajasthan High Court in the case of CIT vs. Anjani Kumar Co. Ltd. reported in 259 ITR 0114. Ld. Counsel mentioned that irrecoverable advance payment made by assessee for acquisition of a capital asset which did not materialize is allowable as business loss. Further, ld. Counsel filed a written submission explaining the above facts. For the sake of completeness, the relevant paragraphs of the written submission are extracted hereunder :-

*“The action of Learned Assessing Officer is not in consensus with legal principles in this regards. It is admitted fact that assessee has booked a machinery with foreign supplier and paid certain amounts, due to the quality issue it has cancelled the order and amounts has been refunded therefore assessee has not incurred any capital expenditure on asset which will give him any enduring benefit which is pre-requisite for showing any capital asset. Rather the amount which was incurred by assessee are clear revenue expenditure or at base it can be called as business loss as the relatable capital asset never came into existence.*

*In view of this fact it is most humbly submitted that the action of Learned Assessing Officer is incorrect on facts as well as in law rater since no capital came into existence such irrecoverable expenditure are in the nature of business loss. This proposition is supported by following judiciary proposition.*

1. *Decision Hon’ble Rajasthan High Court in case CIT vs. Anjani Kumar Co. Ltd. (2003) 259 ITR 0114 wherein it is conclude that (copy enclosed as annexure no.1).*

*“irrecoverable advance payment made by assessee for acquisition of a capital asset which did not materialize was allowable as business loss.”*

2. *Decision of Hon’ble ITAT, Pune in case of Saokar Developments Pvt. Ltd. vs. ITO in ITA No.1561/PN/2005 wherein it is conclude that (copy enclosed as annexure no.2).*

*“we hereby hold that the assessee was already in the business of development and in the course of the said business suffered the impugned loss. We hereby direct to allow the claim of the loss. Resultantly, the ground raised is allowed. Appeal allowed.”*

6. On the other hand, ld. DR for the Revenue heavily relied on the orders of the Assessing Officer and the CIT(A).

7. I heard both the sides on the issue of allowing of sum of Rs.2,04,793/- forex loss and interest expenditure and also considered the written submission filed by the assessee as well as decisions relied on by the ld. Counsel for the assessee. I find there are two limbs of this issue, (i) relating to the allowability of foreign exchange loss and (ii) relating to the interest paid to the financial institution who granted loan for import of machinery, which is stand cancelled due to some technical reasons. On perusal of the above decisions, I find both the limbs of this issue are

covered in favour of the assessee by the said decisions. Considering the legal proposition, which is already mentioned in the preceding paragraphs, the issue raised in the ground of appeal by the assessee is allowed.

8. In the result, the appeal of the assessee is allowed.

Order pronounced on this 20<sup>th</sup> day of November, 2018.

**Sd/-**  
**(D. KARUNAKARA RAO)**  
**लेखा सदस्य / ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक Dated : 20<sup>th</sup> November, 2018.

*Sujeet*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-7, Pune;
4. The Chief CIT, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "एक-सदस्य मामला" / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune