

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "E", MUMBAI

BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER  
AND  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA No. 1168/Mum/2016  
Assessment Year : 2011-12

M/s. Sejal Glass Ltd., 173/174, Sejal Encasa, 3 <sup>rd</sup> Floor, S.V. Road, Kandivali (West), MUMBAI [PAN : AADCS8659M]	Vs.	Dy.CIT-9(3), MUMBAI
(Appellant)		(Respondent)

Appellant By : Shri Prateek Jha, AR  
Respondent By : Shri Manoj Kumar Singh, DR

Date of Hearing : 17-12-2018	Date of Pronouncement : 01-02-2019
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**ORDER**

**Per G. Manjunatha, Accountant Member:**

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax(Appeals)-21, Mumbai, dated 11-12-2015 and it pertains to Y 2011-12. The assessee has raised the following grounds of appeal:

"1. *The Learned CIT(A) erred in confirming disallowance of Foreign exchange loss due to conversion of FCNR loan to Rupee loan of Rs. 43,98,054/- and treating it as capital expenditure.*

2. *The Learned CIT(A) erred in confirming the disallowance of loss on Foreign exchange fluctuation of Rs. 12,90,804/- on account of machinery purchased from M/s. Fire Stein.*

3. *The Learned CIT(A) erred in confirming the disallowance of loss on Foreign exchange fluctuation of Rs. 20,88,900/- on account of machinery purchased from M/s. Grenzebach Mchine Ball.*

4. *The Learned CIT(A) erred in confirming the disallowance of loss on Foreign exchange fluctuation of Rs. 27,31,381/- on account of machinery purchased from M/s Zippe Industrial GHMH.*

5. *The Learned CIT(A) erred in confirming the disallowance of loss on Foreign exchange fluctuation of Rs. 51,97,460/- on account of machinery purchased from M/s Stein Heuty France”.*

2. Brief facts of the case are that assessee-company is engaged in the business of processing of glass into toughed, insulated and laminated glass, filed its return of income for the AY. 2011-12 declaring loss of Rs. 211,46,57,525/-. Assessment for the AY. 2011-12 has been completed u/s. 143(3) of the Income Tax Act, 1961 (Act) on 26-03-2014, determining total loss at Rs. 2,09,85,93,755/- by making certain disallowances, including disallowance of loss on foreign exchange fluctuation incurred towards conversion of rupee loan into foreign currency term loan availed from Indian Overseas Bank.

2.1. Aggrieved by the assessment order, assessee filed an appeal before the CIT(A).

3. Before the CIT(A), assessee has challenged the additions made by the AO towards foreign exchange loss incurred due to conversion of FCNR loan to rupee loan along with loss on foreign exchange fluctuation on account of machinery purchased from certain suppliers. Assessee has filed elaborate written submissions on the issue in the light of the Accounting Standard 11, issued by the ICAI and also under the provisions of Section 43A of the Act. Ld. CIT(A) after considering the written submissions of the assessee, partly allowed the appeal, wherein he had confirmed the additions made by the AO towards foreign exchange loss incurred on conversion of rupee term loan to foreign currency loan and loss on foreign exchange fluctuation on account of purchase of machinery.

3.1. Aggrieved by the order of CIT(A), assessee filed an appeal before us.

4. Ld. AR for the assessee, at the time of hearing submitted that he does not want to press Ground Nos. 2 to 5 taken to challenge additions made by the AO towards disallowance of loss on foreign exchange fluctuation on account of machinery

purchased from certain parties. Therefore, Ground Nos. 2 to 5 are dismissed, as not pressed.

5. The next issue that came up for our consideration is disallowance of foreign exchange loss due to conversion of FCNR loan to rupee loan of Rs. 43,98,054/-. AO disallowed loss incurred of conversion of loan into foreign currency loan on the ground that the said expenditure is in capital nature which cannot be allowed as deduction u/s. 37(1) of the Act. It is the claim of the assessee before the lower authorities that the company had taken FCNR loan from 10B during the previous year for a specific period and on expiry of the said period, the said loan has been converted into a rupee loan. The difference amount paid on account of conversion of FCNR loan into rupee loan on account of fluctuation in foreign currency has been treated as loan on foreign exchange fluctuation and the same has been claimed as allowable business expenditure.

6. Ld. AR for the assessee at the time of hearing submitted that the assessee has contested the issue but could not file certain crucial evidences which is very much relevant to decide the issue whether particular amount is capital in

nature or revenue expenditure and such evidences could not be filed before the lower authorities due to the fact that the company has incurred huge losses and the accounting staff have left the services. He further submitted that the additional evidences filed by the assessee is very much relevant to decide the issue and therefore the issue may be set aside to the file of AO to give one more opportunity to the assessee.

7. Ld. DR on the other hand strongly supporting the order of the Ld. CIT(A) submitted that the assessee has not exercised option to file necessary details before the lower authorities when sufficient time has been furnished by the AO as well as the CIT(A). Therefore, there is no reason to give further opportunity to assessee to file evidences and hence the findings recorded by the Ld. CIT(A) may be confirmed.

8. We have heard both the parties, perused material available on record and gone through the orders of the authorities below. Assessee has filed certain additional evidences vide Paper Book dt. 14-12-2018 and contended that the said documents go to root of the matter and which are very relevant to decide the issue, i.e. whether foreign exchange loss incurred on conversion of FCNR loan into rupee loan is in

fact in the nature of revenue expenditure, which can be allowed as deduction. Assessee has given its own reason for not filing those documents before the lower authorities. According to the assessee, there was no accounting staff in the company to look after the issue at that time, when the appellate proceedings were going before the CIT(A). Therefore, the said documents could not be furnished. We find that the additional documents filed by the assessee in the form of letters issued by the Indian Overseas Bank for conversion of rupee term loan in to foreign currency loan is a crucial document to decide the particular issue whether the loss incurred on foreign exchange fluctuation is a capital or revenue in nature. Therefore, we are of the considered view that the issue needs to be set aside to the file of AO for fresh consideration in the light of additional evidences filed by the assessee. Hence, we set aside the issue to the file of the AO to decide the issue afresh in accordance with law.

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

*Order pronounced in the open court on 01<sup>st</sup> day of February, 2019*

**Sd/-**

(MAHAVIR SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

**sd/-**

(G. MANJUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/Mumbai; दिनांक/Dated : 01<sup>st</sup> February, 2019

TNMM

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1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai
4. आयकर आयुक्त / CIT, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asst. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai