

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 4814/Del/2015
(Assessment Year: 2003-04)

Rollatainers Ltd, C/o. M/s. RRA TAXINDIA, D-28, South Extension, Part-I, New Delhi PAN: AAACR0344K	Vs.	DCIT, Circle-15(1), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Somil Aggarwal, Adv
Revenue by:	Ms. Rinku Singh, Sr. DR
Date of Hearing	08/01/2019
Date of pronouncement	25/02/2019

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the ld CIT(A)-7, New Delhi dated 02.02.2015 for the Assessment Year 2003-04.
2. The assessee has raised the following grounds of appeal:-
 - “1. That having regard to tins facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AO in making disallowance of Rs. 10,82,477/- on account of loss on sales of Fixed Assets and that too by recording incorrect facts and findings and without giving adequate opportunity of hearing and without discharging his burden as envisaged under the provisions of the Act
 2. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld AO in making disallowance of Rs. 10,82,477/- on account of loss on sales

of Fixed Assets is bad in law and; against the facts and circumstances of the case.

- 3. That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AO in making disallowance of Rs.24,42,988/- on account of legal and professional charges debited in profit & loss account under the head Misc. expenses and that too by recording incorrect facts and findings and without giving adequate opportunity of hearing and without following the principles of natural justice.*
- 4. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making disallowance of Rs.24,42,988/- on account of legal and professional charges debited in profit & loss account under the head Misc. expenses is bad in law and against the facts and circumstances of the case.*
- 5. That having; regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AC) in making disallowance of Rs,5,331,000/- on account of fluctuation in foreign currency in respect of outstanding balances of customers and that too by recording incorrect facts and findings and without giving adequate opportunity of hearing and without following the principles of natural justice.*
- 6. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making disallowance of Rs.5,,33,,000/- on account of fluctuation in foreign currency in respect of outstanding balances of customers is bad in law and against the facts and circumstances of the case.*
- 7. That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in not reversing the action of Ld. AO in making disallowance of Rs. 16,75,480/- made by Ld. AO on account of miscellaneous balances written back and that too by recording incorrect facts and findings and without giving adequate opportunity of hearing and without following the principles of natural justice.*
- 8. That in any case and in any view of the matter, action of Ld. CIT(A) in not reversing me action of Ld. AO in making disallowance of Rs. 16,75,480/- made by Ld. AO on account*

of miscellaneous balances written back which is bad in law and against the facts and circumstances of the case.

9. *That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in not reversing the action of Ld. AO in making disallowance of Rs 10,86,094/- made by Ld. AO on account of amortization of leasehold land and that too by recording incorrect facts and findings and without giving adequate opportunity of hearing and without following the principles of natural justice.*
10. *That in any case and in any view of the matter, action of Ld. CIT(A) in not reversing the action of Ld. AO in making disallowance of Rs. 10,86,094/- made by Ld. AO on account of amortization of leasehold land which is bad in law and against the facts and circumstances of the case.*
11. *That in any case and in any view of the matter, action of Ld. CIT(A) in not quashing the impugned assessment order passed by Ld. AO and in not deleting various additions/disallowances made by Ld, AO as the assessment order is not sustainable on various legal and factual grounds.”*

3. Brief facts shows that the assessee, appellant company is engaged in the business of manufacturing of lined and flexible cartoons, duplex board, paper, automatic packaging machine and weighing machine and trading of machine spares et cetera. It filed its return of income on 2/12/2003 declaring loss of INR 1 24892067/- assessment under section 143 (3) of the income tax act was passed on 24/3/2006 wherein the following additions were made.

- a. Loss on sale of fixed assets INR 1 082477/-
- b. out of miscellaneous balances written back INR 1 675480/-
- c. amortization of leasehold land INR 1 086094/-
- d. provision for leave encashment INR 1 633000/-
- e. legal and professional charges disallowed INR 2 442988/-
- f. deferred interest Rs 3163000/-

g. foreign exchange fluctuation INR 5 33000/-

4. Accordingly the loss of the assessee was computed at INR 1 13276728/-. The assessee-preferred appeal before the Commissioner of income tax appeals who partly allowed the appeal of the assessee. Against the disallowance confirmed by the learned CIT – A assessee is in appeal before us.
5. The learned authorised representative submitted that ground number 1 and 2 of the appeal are with respect to the disallowance of INR 1 08 to 477/- on account of loss on sale of fixed assets. He submitted that this is the double addition made by the learned AO. He referred to the computation of the total income placed at page number 1 of the paper book to show the above fact that profit on sale of fixed assets of INR 3 0712634 has been reduced from the total income which includes the loss on the sale of the assets also and the above income reduced from the total income is only the net difference.
6. The learned departmental representative vehemently supported the order of the learned assessing officer as well as the learned CIT – A. She submitted that it cannot be said to be a double addition. She further referred to the order of the learned CIT – A wherein para number 6 the whole issue is covered.
7. We have carefully considered the rival contention and perused the orders of the lower authorities. On looking at the computation of the total income placed at page number 1 of the paper book the assessee has reduced from the taxable income profit on sale of fixed assets of INR 3 0712634/-. The assessee has also submitted the copy of the profit on sale of fixed assets account in the books of the assessee. It is placed at page number 44 of the paper book. On careful consideration of the

page number 44 which is the account of the profit and loss on sale of assets it is apparent that the assessee has taken the net difference between the profit and loss on sale of the fixed assets and same is found to be the profit and therefore same has been reduced from the total income in the computation of the total income. Therefore, we fully agree with the learned authorised representative that the above is a double addition as assessee itself as adjusted the business income/loss with the above disallowable item. On careful looking at the para number 6.1 of the learned CIT – A where the whole issue is considered. Not find that the learned CIT – A has correctly considered the claim of the assessee. The learned CIT – A has confused with the computation of the depreciation as well as the book entry of the loss on sale of fixed assets debited in the profit and loss account. Therefore, ground number 1 and 2 of the appeal of the assessee is allowed and the orders of the lower authorities are reversed accordingly.

8. Ground number 3 and 4 of the appeal is with respect to the disallowance of INR 2 442988/- on account of legal and professional charges debited in the profit and loss account under the head miscellaneous expenses. The learned assessing officer disallowed the above expenditure stating that during the course of assessment proceedings the assessee could not explain with evidence and agreed for the addition of the same. Assessee contested the same before the learned CIT – A however the assessee could not substantiate the above claim and therefore the learned CIT – A sustain the above addition.
9. The learned authorised representative submitted before us that assessee has submitted the detail of the legal and professional

fees, which is placed at page number 45 – 51 of the paper book. He submitted that all these are the pity expenditure incurred by the assessee company and are in the form of retainer ship charges. He submitted that the assessee has paid all the expenses by the account payee cheque and whenever possible and applicable assessee has deducted tax at source. He further referred to the various services rendered by the legal professional, which is with respect to the business of the assessee. He therefore submitted that the all the expenditure incurred by the assessee are allowable to the assessee under section 37 (1) of the income tax act as there wholly and exclusively incurred for the purposes of the business of the assessee stop is all these expenses are pity amount the assessee thought it fit that provision of the detail in the form of Ledger account where the complete narration has been provided would suffice for its allowability. He further stated that in past no such disallowance have been made. He further stated that assessee has nowhere agreed before the learned assessing officer otherwise it would not have been contesting the same before the higher forum.

10. The learned departmental representative vehemently supported the order of the learned lower authorities and submitted that the assessee has failed to justify the incurring of the above expenditure without producing any evidence before them and therefore the disallowance has been confirmed. She further stated that the assessee has agreed for the above disallowances before the assessing officer and therefore now it cannot contest the same.

11. We have carefully considered the rival contention and perused the orders of the lower authorities it is admitted that the before the lower authorities assessee could not produce the requisite detail therefore the addition has been made. However, before us the assessee submitted that it has produced the copy of the Ledger account of the legal and professional expenditure before the lower authorities, which adequately contain the nature of the expenditure incurred. He submitted that all these are the expenditure incurred for the retainer ship fees and the pity expenses of routine nature. It is also an admitted fact that the assessee has not substantiated the same before the lower authorities and by producing the basis of such professional fees. And therefore in the interest of the justice and to determine whether assessee has actually incurred these expenditure for the purposes of the business are not, the whole issue is set aside back to the file of the learned assessing officer with a direction to the assessee to substantiate the same with the production of the necessary evidences in the form of the appeal of the contract of the professionals. Accordingly, ground number 3 and 4 of the appeal of the assessee is allowed with above direction.
12. Ground number 5 and 6 of the appeal of the assessee is against the disallowance of INR 5 33000/- on account of fluctuation in the foreign currency in respect of outstanding balance of customers. The lower authorities have disallowed the above claim. The learned assessing officer noted that assessee did not explain the relevance of this expenditure with evidence and agreed for the addition of the same. The learned CIT – A also confirmed the above disallowance stating that appellant cannot claim that the amount of INR 5 33000 as forex loss on revenue

account without indulging in any transaction in the relevant year and without any revenue element to the transaction. He therefore held that the foreign exchange loss claimed by the appellant is not allowable as a loss under section 37 of the income tax act.

13. The assessee submitted before us that the exchange fluctuation has resulted into the loss with respect to the Ledger of various vendors and customers. He referred to page number 52 – 54 of the claim of the assessee wherein the customer buys debit and credit amount are determined. He further stated that the above loss is with respect to the accounting standard issued by the Inst of chartered accountants of India on accounting for the effect of change in the foreign exchange rates. He therefore submitted that above claim is allowable to the assessee as the above losses arise and because of the conversion of the outstanding balance of the customers and vendors with respect to the foreign exchange fluctuation at the end of the year.
14. The learned departmental representative vehemently supported the order of the lower authorities and submitted that the before the assessing officer the assessee could not submit any evidence and therefore the disallowance has been confirmed and assessee agreed to that. He further stated that before the learned CIT – A there is a specific finding given by the learned CIT – A that the above losses not on account of any business during the year. She therefore submitted that it is not allowable to the assessee.
15. We have carefully considered the rival contention and perused the orders of the lower authorities. The assessee has incurred the above loss as stated before us that is on account of the conversion of the vendor's account due to the foreign exchange

fluctuation as same is in accordance with the accounting standard 11 issued by the Inst of chartered accountants of India. It was also stated that the above issue is squarely covered by the decision of the honourable Supreme Court in case of Woodward governance. As before the learned assessing officer no information is provided by the assessee, we set aside this issue before the learned assessing officer with a direction to the assessee to show the amount of foreign exchange loss incurred by the assessee in terms of accounting standard 11 issued by the Inst of chartered accountants of India with respect to the vendor balances. The learned assessing officer is also directed to verify the detail and if the same is on account of the vendor's the claim of the assessee is allowable. The learned assessing officer then after verification may allow the loss of the foreign exchange fluctuation. Accordingly, ground number 5 and 6 of the appeal of the assessee is allowed with above direction.

16. Assessee did not press ground number 7, 8, 9, 10, 11 and 12 of the appeal and therefore there dismissed.
17. Accordingly, appeal of the assessee is partly allowed with above direction for statistical purposes.

Order pronounced in the open court on 25/02/2019.

-Sd/-

(H.S.SIDHU)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 25/02/2019
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT

4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi