

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

BEFORE SHRI. A. K. GARODIA, ACCOUNTANT MEMBER

AND

SHRI. LALIET KUMAR, JUDICIAL MEMBER

I.T(TP).A No.966/Bang/2015
(Assessment Year : 2010-11)

Deputy Commissioner of Income-tax,
Circle – 6(1)(1), Bengaluru .. Appellant

v.

Sami labs Ltd,
No.19/1 & 19/2, 1st Main, 2nd Phase,
Peenya Industrial Area, Bengaluru 560058
PAN : AADCS2549E .. Respondent

Assessee by : Shri. Cherian K Baby, CA
Revenue by : Smt. Neera Malhotra, JCIT

Heard on : 18.03.2019
Pronounced on : 22.03.2019

ORDER

PER LALIET KUMAR, JUDICIAL MEMBER :

This is an appeal filed by the Revenue against the order of the DCIT, Circle -6(1)(1), Bengaluru, dt.07.01.2015, passed u/s.143(3) r.w.s.144C of the Act, in pursuance to the directions of the DRP, for the assessment year 2010-11.

02. The Revenue has raised the following effective ground :

3. On the facts and in the circumstances of the case the Dispute Resolution Panel erred in directing to include forex gain / loss as operating in nature without ascertaining the nexus with the business activity of the assessee.

03. In this regard, the Ld. AR submitted that the issue was decided by the CIT (A) based on the order passed by the Tribunal for the assessment year 2009-10, and our attention was drawn to para 3 of CIT (A) order. Relying on previous year CIT (A) allowed the ground of the assessee.

04. Per contra, the Ld. DR submitted that the Tribunal in the matter of Mercedes Benz [(2018) 90 taxmann.com 300 (Bangalore Trib.) had recently decided the issue of forex gain and held that if the forex gain / loss are arising out of the fluctuations in the assessment year under consideration on account of international transactions for the same assessment year, then the assessee is entitled to treat it as operating in nature.

05. We have heard the rival contentions and perused the record. For ready reference, we are reproducing herein below para 6.1 and 6.2.1 of the decision of the Tribunal in Mercedes Benz (supra) :

6.1 In these grounds, the Revenue contends that the DRP has erroneously considered foreign exchange gain / loss as part of operating income when the TPO has excluded this item while computing the operating margins of the assessee. On the contrary, the assessee contends that the foreign exchange loss / gain are closely linked to its business operations and therefore should be considered as operational in nature as has been held by the DRP.

6.2.1 We have heard the rival contentions, perused and carefully considered the material on record. In the case on hand, the DRP has accepted the assessee's contention that foreign exchange loss / gain is operational in nature, by following the decision of the co-ordinate bench of this Tribunal in the case of SAP Labs Ltd. v. Asstt. CIT[2012] 134 ITD 253/17 taxmann.com 16 (Bang.) and of another co-ordinate bench of this Tribunal in the assessee's own case for Assessment Year 2007-08. We find that another co-ordinate bench of this Tribunal in the assessee's own case for Assessment Year 2010-11 in its order in IT(TP)A Nos.291 & 427/Bang/2015 dt.24.6.2016 has held that if foreign exchange gain / loss is operational in nature if it is linked to the exports / imports related to the particular year. To this extent, we find no infirmity in the order of the DRP. However, the facts related to the foreign exchange gain in this year, i.e. as to whether it is related to the business operations and whether they are in the capital or revenue field is not clear from the orders of the authorities below. The TPO has also not rendered any finding in this regard. In this factual matrix of the case, the finding of the DRP is being set aside and the matter is remanded to the file of the TPO for the limited extent of factual verification in this regard as observed above, before allowing it as operational in nature in keeping with the orders of the co-ordinate bench in the assessee's own case for Assessment Year 2010-11 (supra). Consequently, Revenue's grounds at S.Nos.2 & 3 are partly allowed for statistical purposes.

In view of the above, we remand the matter to the file of the TPO / AO with a direction to compute the forex gain / loss following the decision of the Tribunal in Mercedes Benz (supra) and decide the matter afresh.

06. In the result, appeal of the Revenue is allowed for statistical purpose.

Order pronounced in the open court on 22nd day of March, 2019.

Sd/-

Sd/-

(A. K. GARODIA)
ACCOUNTANT MEMBER

(LALIET KUMAR)
JUDICIAL MEMBER

Bengaluru

Dated : 22.03.2019

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

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore