

the course of assessment / appellate proceedings, is against law and facts of the case.

2. That having regard to the facts and circumstances of the case, the Ld. CIT(A) erred in law and on facts in confirming the action of AO in disallowing Rs. 35,23,309/- u/s. 37 of the Income Tax Act, 1961 on account of foreign exchange fluctuation loss on trade advance without appreciating the various facts and explanations provided by the assessee.

a) That the Ld. CIT(A) erred in confirming the action of AO without appreciating the fact that the nature of foreign exchange loss cannot depend upon the nature of purpose of the advance but on the actual utilization of such advance as held by the Apex Courts.

b) That the Ld. CIT(A) erred in ignoring the fact that the advance was ultimately been utilized by the appellant as circulating capital in its business and is of revenue nature.

2. The brief facts of the case are that the assessee e-filed its return of income on 29.11.2014 declaring loss of (-) Rs.14,18,064/-. The case of the assessee was selected for scrutiny assessment and accordingly, order u/s. 143(3) of the Income Tax Act, 1961 (in short "Act") was passed on 21.11.2016 by assessing the income at Rs. 21,05,250/- after disallowance of Rs. 35,23,309/- on account of disallowance of foreign exchange fluctuation loss u/s. 37 of the Act. Against the assessment order, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 24.1.2018 has dismissed the appeal of the assessee. Aggrieved with the impugned order dated 24.1.2018, assessee is in appeal before the Tribunal.

3. At the time of hearing, Ld. counsel for the assessee draw our attention towards the order passed by the Revenue Authority and stated that the issue no. 2 in dispute is squarely covered in favour of the assessee by the ITAT, 'C' Bench, New Delhi decision dated 14.5.2018, a copy thereof is attached in the Paper Book filed by the assessee at page no. 22-26 in ITA No. 2450/Del/2016 AY 2012-13 in assessee's own case vide order dated 14.5.2018. Hence, he requested to allow the

ground no. 2 of the assessee by following the precedent in assessee's own case.

4. On the contrary, Ld. DR relied upon the orders of the authorities below.

5. I have heard both the parties and perused the records, especially the orders of the revenue authorities as well as Paper Book filed by the assessee particularly page no. 22-26 wherein the copy of decision of ITAT decided in ITA No. 2450/Del/2016 AY 2012-13 in assessee's own case has been attached. I find that similar issue has been dealt and adjudicated by the Tribunal in assessee's own case wherein the Tribunal vide para no. 6 & 7 has held as under:-

"6. We have perused the submissions advanced by both the sides in the light of records placed before us. It is observed that the issue is covered by decision of Hon'ble Supreme Court in the case of CIT vs. Woodward Governor India Pvt. Ltd. (Supra). Ld. AO in assessment order has analysed factual background in case of Woodward Governor (supra) and still disallowed claim of the assessee, when it is an admitted position that amount received

by the assessee were trade advances. Ld. CIT(A) has also failed to appreciate that for AY 2015-16, assessee earned gains out of foreign exchange fluctuation, which has been taxed as income in the hands of assessee. It is also observed further that money received by assessee on account of share application has been specifically mentioned in FIRC against such receipts. thus, in our view such vague presumption of Ld. AO of the amount received to be in the nature of share capital without any support documentary evidences, cannot be relied upon. Accordingly, respectfully following decision of Hon'ble S.C. in the case of Woodward Governnor (Supra) we are inclined to allow the claim of the assessee of foreign exchange fluctuation loss earned due to the conversion of the trade receipts.

7. In the result appeal filed by assessee is allowed."

5.1 After perusing the aforesaid finding of the Tribunal in assessee's own case, I am of the considered view that the issue no. 2 is squarely covered by the aforesaid finding of the Tribunal wherein, the decision of the Hon'ble Supreme Court of

India in the case of Woodward Governor (Supra) has been followed. Hence, respectfully following the precedents as aforesaid, the addition in dispute is deleted.

6. In the result, the Appeal filed by the Assessee stands allowed

Order pronounced on 21/05/2019.

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Dated:21/05/2019

SR BHATNAGAR

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT TRUE COPY

By Order,

ASSISTANT REGISTRAR