



**आयकर अपीलीय अधिकरण "एफ" न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"F" BENCH, MUMBAI**

श्री शक्तिजीत दे, न्यायिक सदस्य एवं  
 श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।

**BEFORE SHRI SAKTIJIT DEY, JM AND**  
**SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ I.T.A. No.1324/Mum/2018  
 (निर्धारण वर्ष / Assessment Year: 2013-14)

<b>M/s. First Flight Couriers Ltd.</b> G-1001/02, Lotus Corporate Park Graham Firth Steel Compound Goregaon (East), Mumbai-400 063.	<b>बनाम/</b> Vs.	<b>DCIT-12(2)(1)</b> Room No.223, 2 <sup>nd</sup> floor Aaykar Bhavan, M.K. Road Mumbai-400 020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. <b>AAACF-0841-R</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

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आयकर अपील सं./ I.T.A. No.2439/Mum/2018  
 (निर्धारण वर्ष / Assessment Year: 2013-14)

<b>DCIT-12(2)(1)</b> Room No.223, 2 <sup>nd</sup> floor Aaykar Bhavan, M.K. Road Mumbai-400 020.	<b>बनाम/</b> Vs.	<b>M/s. First Flight Couriers Ltd.</b> G-1001/02, Lotus Corporate Park Graham Firth Steel Compound Goregaon (East), Mumbai-400 063.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. <b>AAACF-0841-R</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri Rajesh Agarwal-Ld.AR
<b>Revenue by</b>	:	Chaudhary Arun Kumar Singh-Ld.DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	07/05/2019
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	25/06/2019

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member): -**

1. Aforesaid cross appeals for Assessment Year [AY] 2013-14 contest the order of Ld. Commissioner of Income-Tax (Appeals)-20, Mumbai



CIT(A)], *Appeal No. CIT(A)-20/DCIT-12(2)(1)/IT-10270/16-17* dated 29/11/2017.

2.1 The grounds raised by the assessee read as under: -

1. On the facts and circumstances on law, the Learned Assessing Officer has erred and CIT(A)-20 further erred, in not admitting our claim and not allowing the deduction for Employee Contribution to PF of Rs. 24,02,980/- and ESIC of Rs. 13,01,980/- which were delayed but paid before due date of filling of Income Tax Return, which was disallowed by the Appellant itself in its computation/ original return of Income and claimed during Assessment Proceedings.
2. On the facts and circumstances on law, the Learned Assessing Officer has erred and CIT(A)-20 further erred, in considering the interest income of Rs. 3,73,78,956/- as Income from Other Sources as against the Income from business as claimed by the appellant.

The grounds raised by the revenue read as under: -

1. Whether on the facts and in circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of Rs.1,35,00,000/-on account of Foreign Exchange Fluctuation Loss without appreciating the fact that the nature of loss is in nature of contingent and such loss is not allowable as per statute of the Act?
2. Whether on the facts and in circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of Rs.1,46,303/-on account of Foreign Exchange Fluctuation Loss related to amount payable to creditors in foreign exchange without appreciating the fact that such provision is not allowable as per statute of the Act?
3. Whether on the facts and in circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition made to book profit of Rs.1,36,48,178/-without appreciating the fact that such provisions is to be increased as per explanation 1 of sub-section(2) of section 115JB of the Act?
4. The appellant prays that the order of the CIT (A) on the grounds be set aside and that of the Assessing Officer be restored.

2.2 The Ld. Authorized Representative for assessee [AR], at the outset, submitted that most of the issues in cross-appeals are covered by the earlier orders of this Tribunal in assessee's own case for other AYs, the copies of which has been placed on record. The Ld. DR placed reliance on the stand of Ld. AO. In the background, we proceed to dispose-off the issues raised in the cross-appeals.

2.3 Briefly stated the assessee being *resident corporate assessee* was assessed for impugned AY u/s 143(3) on 31/03/2016 wherein the income of



the assessee, under normal provisions, was determined at Rs.254.70 Lacs after certain additions / disallowances as against 'Nil' return filed by the assessee on 29/11/2013. The *Book Profits u/s 115JB* were determined at Rs.2218.88 Lacs as against Rs.2082.39 Lacs offered by the assessee.

### **ITA 1324/Mum/2018 : Assessee's Appeal**

3.1 During assessment proceedings, the assessee made a new claim towards delayed payment of Provident Fund [PF] & Employees' State Insurance [ESI] contribution for Rs.24.02 Lacs & Rs.13.01 Lacs respectively. The said expenditure was *suo-moto* disallowed by the assessee while filing the return of income and during assessment proceedings, the assessee pleaded for the allowance of the same. Both the lower authorities rejected the same relying upon the decision of Hon'ble Supreme Court rendered in **Goetz India Ltd. Vs. CIT 284 ITR 323**. Aggrieved, the assessee is in appeal before us by way of Ground No.1.

3.2 Keeping in view the fact that assessee's correct income was to be computed and keeping in view the decision of **Hon'ble Supreme Court** rendered in **Jute Corporation of India Ltd. V/s CIT [187 ITR 688]**, we admit the assessee's claim and restore the issue back to the file of Ld. AO to examine the same. The Ld. AO is directed to allow the same after verifying that the aforesaid contributions / payments were deposited before due date of filing of return of income and secondly, the deduction of the same was not claimed by the assessee in any other Assessment Year. The assessee is directed to substantiate the same. This ground stands allowed for statistical purposes.



4.1 In ground No. 2, the assessee is aggrieved by the fact that interest income of Rs.373.78 Lacs as offered by the assessee under the head *Business income* was assessed as *Income from Other Sources*. The said interest comprised-off of Interest on Bank deposits for Rs.218.01 Lacs and interest on income tax refund for Rs.155.77 Lacs. Before Ld. AO, the assessee submitted that the assessee was required to provide bank guarantees against business obligations and the fixed deposits were made as a security for issue of such bank guarantees. Therefore, the said deposits were kept for the purposes of assessee's business and accordingly, the interest earned thereupon was to be assessed as *Business Income*. However, the same could not convince Ld. AO, who treated the same as *Income from Other Sources*. The Ld. first appellate authority confirmed the stand of Ld.AO by observing that interest income was not inextricably linked to assessee's business and interest income had no nexus with assessee's business. Aggrieved, the assessee is in further appeal before us.

4.2 Before us, Ld. AR has placed reliance on the following judicial pronouncements: -

- i) CIT V/s Indo Swiss Jewels Ltd. [Hon'ble Bombay High Court 284 ITR 389]
- ii) CIT V/s Green Infra Ltd. [Hon'ble Bombay High Court ITA No. 1162 of 2014]
- iii) Powai Labs Tech. P. Ltd. V/s ITO [Mumbai Tribunal ITA No.3352/Mum/2011]
- iv) Global Inf. Services Ltd. V/s DCIT [Mumbai Tribunal ITA No.3290/Mum/2010]
- v) Sujay Trading P. Ltd. V/s JCIT [Mumbai Tribunal 111 ITD 249]

4.3 We have carefully considered the same. At the outset, it is observed that interest component include interest on income tax refund for Rs.155.77



Lacs, which is, undoubtedly, assessable as *income from other sources*. Therefore, the decision of lower authority, to that extent, stand confirmed.

4.4 The balance interest component of Rs.281.01 Lacs is stated to be earned by the assessee from Bank deposits. We have carefully perused the aforesaid decisions. We find that the above decisions have been rendered on peculiar facts of each case wherein the assessee was able to demonstrate that the surplus funds kept as deposits had some business nexus with those deposits and the dominant objective was to achieve some business purposes. However, in the present case, we find that, except for assessee's submissions, the aforesaid facts are not forthcoming. The Ld. AR has submitted that the fixed deposits were kept to facilitate issuance of bank guarantees and to meet certain business obligations. These facts require examination & verification by Ld. AO. Therefore, we deem it fit to restore the matter back to the file of Ld.AO for re-adjudication in the light of these submissions. The assessee is directed to substantiate the same and demonstrate the business nexus of these deposits and justify assessability of the same as *business income*. The ground stands partly allowed for statistical purposes.

5. Resultantly, the assessee's appeal stands partly allowed for statistical purposes.

### **ITA 2439/Mum/2018: Revenue's Appeal**

6.1 The first ground of revenue's appeal is *qua* deletion of disallowance of Rs.135 Lacs on account of foreign exchange fluctuation loss. During the course of assessment proceedings, it was submitted by the assessee that the loss was crystallized liabilities due and payable in respect of termination



of leases of earlier years. The total outstanding as on 01/04/2012 was Rs.22 Crores which increased to Rs.23.35 Crores as on 31/03/2013 which necessitate the provisions of the differential amount in the books of accounts. Since there was ascertained liability in foreign exchange as at the Balance Sheet date, it was necessary to account for such liability at the prevailing rate of foreign exchange at the close of the financial year. Accordingly, loss of Rs.135 Lacs was debited to Profit & Loss Account and claimed as expenditure. The entire claim was stated to be fully paid in AY 2015-16. However, not convinced, Ld. AO treating the same as contingent liability, disallowed the same.

6.2 The second ground is similar to ground no.1. It was noted that the assessee debited an amount of Rs.1.46 Lacs in the Profit & Loss Account towards provision for foreign exchange fluctuation on account of closing creditors at year end. However, the same was disallowed by Ld. AO, on similar reasoning.

6.3 Upon further appeal, the Ld. first appellate authority, relying upon the decision of Hon'ble Apex Court rendered in **Woodward Governor [312 ITR 254]** allowed the same. Aggrieved, the revenue is in appeal before us.

6.4 The Ld. AR has submitted that the issue stood covered by the order of this Tribunal in assessee's own case for AY 2010-11 which has been followed in AYs 2011-12 & 2012-13 also. Upon perusal of order for AY 2010-11, ITA No. 3436/Mum/2014 dated 10/08/2016, we find that ground no.1 stood covered in assessee's favor vide *para-9* wherein the Tribunal, after considering the factual matrix, has allowed the assessee's claim treating the expenditure as crystallized liability. This decision has



subsequently been followed in AYs 2011-12 & 2012-13 vide ITA Nos.5398-99/Mum/2016 dated 26/04/2018.

6.5 In the aforesaid circumstances, we direct Ld. AO to ascertain that the facts in this AY are *pari-materia* the same as in earlier years. The Ld. AO is directed to examine the fact that the aforesaid liabilities have crystalized during impugned AY as per the terms of the settlement and these liabilities has fully been discharged by the assessee by making actual payment. Further, similar treatment has been given by the assessee to resultant gain, if any, arising out of these transactions in subsequent years. Both these grounds stand allowed for statistical purposes.

6.6 Ground No. 3 is consequential ground and contest deletion of adjustment of foreign exchange losses from Book Profits u/s 115JB. The said matter also stands restored back to the file of Ld. AO. The same may be re-adjudicated in terms of the stand taken against ground nos. 1 & 2. Needless to add that if the liabilities are found to be allowable, no adjustment thereof would be warranted u/s 115JB. This ground stand allowed for statistical purposes. Ground No. 4 is general in nature.

7. The revenue's appeal stands allowed for statistical purposes.

### **Conclusion**

8. The revenue's appeal ITA No.2439/Mum/2018 stands allowed for statistical purposes whereas the assessee's appeal ITA No.1324/Mum/2018 stands partly allowed for statistical purposes.



*Order pronounced in the open court on 25<sup>th</sup> June, 2019.*

**Sd/-  
(Saktijit Dey)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-  
(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 25/06/2019

*Sr.PS:-Jaisy Varghese*

**आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :**

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

**आदेशानुसार/ BY ORDER,**

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