

आयकर अपीलीय अधिकरण "सी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, PUNE

BEFORE SHRI R.S.SYAL, VP AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.854/PUN/2018

निर्धारण वर्ष / Assessment Year : 2010-11

The Deputy Commissioner of Income Tax,
Circle-3, Pune.

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Oshung Electronics India
Pvt. Ltd.
A 6/8, M.I.D.C. Ranjangaon,
Tal : Shirur, Pune-412 220

PAN: AAACO7389R

.....प्रत्यर्थी / Respondent

प्रत्याक्षेप सं./CO.No.37/PUN/2019

निर्धारण वर्ष/Assessment Year: 2010-11

(Arising out of ITA No.854/PUN/2018)

M/s. Oshung Electronics India
Pvt. Ltd.
A 6/8, M.I.D.C. Ranjangaon,
Tal : Shirur, Pune-412 220

PAN: AAACO7389R

..... प्रत्याक्षेपक/ Cross objector

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Circle-3, Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Ajit Kumar Jain
Revenue by : Ms. Neha Deshpande

सुनवाई की तारीख / Date of Hearing : 21.11.2019
घोषणा की तारीख / Date of Pronouncement : 21.11.2019

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the Revenue and cross objection (CO No.37/PUN/2019) preferred by the assessee emanates from the order of the Ld.CIT(Appeal)-13, Pune dated 20.02.2018 for the assessment year 2010-11 as per the grounds of appeal on record.

2. At the very outset, the Ld. AR of the assessee apprised the Bench that so far the ground Nos. 3 and 4 are concerned in the Revenue's appeal, they are conceding those grounds. That with regard to ground Nos. 1 and 2 which relates to the determination of ALP of foreign exchange income, the Ld. AR of the assessee stated that if these grounds are dismissed, in that scenario, cross objection filed by the assessee will become infructuous.

3. The Ld. DR conceded to the arguments put forth by the Ld. AR of the assessee.

4. Having heard the submissions of the parties herein since ground Nos.3 and 4 in the Revenue's appeal, the assessee concedes these grounds and therefore, **ground Nos. 3 and 4 of the Revenue's appeal are allowed.**

5. Now, we would adjudicate the issue in ground Nos. 1 and 2 of the Revenue's appeal which pertains to the determination of ALP of Forex.

6. The Ld. CIT(Appeal) on this issue held that the Transfer Pricing Officer (TPO) calculated the PLI of the assessee as negative (3.26%) as against the PLI computed by the assessee at 2.95%. There was a difference of opinion of the TPO and the assessee with respect to foreign exchange gain on operating transactions as non-operating income. The Ld. CIT(Appeal) further opined that the result of foreign exchange fluctuation (gain/loss) on operating transactions should be considered as operating in nature and therefore, the contention of the assessee in this regard are allowed.

7. The Ld. AR of the assessee invited our attention to the decision of the Pune Bench of the Tribunal in the case of INA Bearings India Pvt. Ltd. Vs. DCIT, Circle 1(2), Pune in ITA No.43/PUN/2017 for the assessment year 2010-11 and ITA No.100/PUN/2017 for the assessment year 2010-11 decided on 07.06.2019 wherein the question before the Tribunal was as follows:

"2. The first issue raised by the assessee in its appeal is against the computation of Arm's Length Price (ALP) of the Manufacturing as well as Trading segment by excluding Foreign Exchange Gain/Loss (forex)."

The Tribunal on this issue has held as follows:

"6. We find merit in the contention raised on behalf of the assessee about the inclusion of foreign exchange gain/loss in the operating revenue/costs of the assessee as well as that of the comparables. When we advert to the nature of such foreign exchange gain earned by the assessee, it has not been controverted by the ld. DR that the same is in relation to the trading items emanating from the international transactions. If the foreign exchange gain/loss directly results from the trading items, we fail to appreciate as to how such foreign exchange fluctuation gain/loss can be considered as non-operating."

7. *The Special Bench of the Tribunal in ACIT Vs Prakash I. Shah (2008) 115 ITD 167 (Mum)(SB) has held that the gain due to fluctuations in the foreign exchange rate emanating from export is its integral part and cannot be differentiated from the export proceeds simply on the ground that the foreign currency rate has increased subsequent to sale but prior to realization. It went on to add that when goods are exported and invoice is raised in currency of the country where such goods are sold and subsequently when the amount is realized in that foreign currency and then converted into Indian rupees, the entire amount is relatable to the exports. In fact, it is only the translation of invoice value from the foreign currency to the Indian rupees. The Special bench held that the exchange rate gain or loss cannot have a different character from the transaction to which it pertains. The Bench found fallacy in the submission made on behalf of the Revenue that the exchange rate difference should be detached from the exports and be considered as an independent transaction. Eventually, the Special Bench held that such exchange rate fluctuation gain/loss arising from exports cannot be viewed differently from sale proceeds.*

8. *The reliance of the ld. DR on Safe Harbour rules to contend that foreign exchange gain or loss be taken as non-operating, is not sustainable. There is no doubt that in such rules, forex gain/loss has been treated as non-operating. However it is pertinent to note that such rules are not applicable to the assessment year under consideration. Even the reliance of the ld. DR on certain decisions taking cognizance of safe harbour rules for the period anterior to their insertion in other contexts, does not improve the case of the Department. Following the judgment in Principal Commissioner of Income Tax Vs. Ameriprise India Private Limited (ITA 206/2016) decided on 23.03.2016, holding foreign exchange gains earned by the assessee, which is in relation to trading items and emanating from international transactions, cannot be treated as non-operating losses and gains, the Hon'ble Delhi High Court in Pr. CIT VS. B.C. Management Services Pvt. Ltd. (2018) 403 ITR 45 (Del) reiterated held that foreign exchange fluctuation in relation to trading transactions, prior to safe harbor rules from 2013, is operating gain or loss. In view of the foregoing discussion, we are of the considered opinion that the amount of foreign exchange gain/loss arising out of trading transactions is required to be considered as an item of operating revenue/ cost, both for the assessee as well as the comparables. The ground taken by the assessee is, therefore, allowed."*

8. We have perused the case records and considered the judicial pronouncement placed before us. We find that the view taken by the Ld. CIT(Appeal) is in conformity with the view taken by the Tribunal in the case of INA Bearings India Pvt. Ltd. Vs. DCIT, Circle 1(2), Pune (supra.) that the foreign exchange fluctuation (gain/loss) on operating transactions should be considered as operating in nature. Therefore, in view of the decision of the Tribunal as stated hereinabove on this issue, we respectfully following our

decision, sustain the relief provided to the assessee on this issue by the First Appellate Authority. Thus, **ground Nos. 1 and 2 of the Revenue's appeal are dismissed.**

9. Ground No.5 is general in nature and hence, requires no adjudication.

10. Now coming to the arguments put forth by the Ld. AR of the assessee that if ground Nos. 1 and 2 of the Revenue's appeal are dismissed, in that scenario, cross objection filed by the assessee become infructuous and liable to be dismissed.

After taking into consideration of the submission of the Ld. AR of the assessee since the said grounds are answered in favour of the assessee, **cross objection filed by the assessee becomes infructuous and hence, dismissed.**

11. In the combined result, **appeal of the Revenue in ITA No.854/PUN/2018 is partly allowed and cross objection (CO No.37/PUN/2019) filed by the assessee is dismissed.**

Order pronounced on 21st day of November, 2019.

Sd/-
R.S.SYAL
VICE PRESIDENT

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 21st November, 2019.

SB

आदेश की प्रतिलिपि अग्रहित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-13, Pune.
4. The Pr. CIT-5, Pune.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "सी" बेंच,
पुणे / DR, ITAT, "C" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	21.11.2019	Sr.PS/PS
2	Draft placed before author	21.11.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		