

आयकर अपील अाधिकरण, अहमदाबाद ँयायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
"C" BENCH, AHMEDABAD

BEFORE, SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

And

SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1798/AHD/2017

अाधरण वष/Asstt. Year: 2013-2014

D.C.I.T, B.K. Circle, Palanpur.	Vs.	M/s Forever Gems Pvt. Ltd. Bharat Desai Company, Pitryu Chhaya, Swastik Society, NS Road No.2, Vile Parle, Mumbai-400 056. PAN: AABCF1997K
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(Applicant)		(Respondent)
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Revenue by :	Shri O.P. Sharma, C.I.T. D.R
Assessee by :	Shri S.N. Soparkar & Ms. Urvashi Shodhan, A.Rs

सुनवाई क ताराख/Date of Hearing : 12/06/2019

घोषणा क ताराख /Date of Pronouncement: 26/06/2019

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)-4, Ahmedabad [Ld.CIT(A) in short], dated 18/05/2017 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dated 23/03/2016 relevant to Assessment Year (AY) 2013-14.

The revenue has failed the following ground of appeal:

1. *“that the "Ld.CIT(Appeal) erred in law and on facts in deleting the Addition of Rs.11,61,18,652/- made by the AO on account of provision of exchange difference”.*
2. *“that the applicant craves leave to reserve its rights to add alter, delete or amend any of the grounds or prayers as may be necessary to in future.”*

The only effective issue raised by the Revenue is that the learned CIT (A) erred in deleting the addition made by the AO for 11,61,18,652.00 on account of the deduction claimed by the assessee for the provision of foreign currency exchange.

2. Briefly stated facts are that the assessee in the present case is a private limited company and engaged in the business of Imports, Exports, and manufacturing of Diamonds, Precious & Semi Precious Stones. The assessee in the year under consideration has claimed provision for the exchange difference in respect of import of the goods amounting to 11,61,18,652.00 only. However, the AO was of the view that the assessee is not eligible for deduction such amount for the two reasons. Firstly, the deduction for the provisions relating to the import of goods on account of exchange fluctuation is available only on the actual payment as per the provisions of section 43A of the Act. Secondly, such provision on account of currency fluctuation is representing the unascertained liabilities which is not allowable as a deduction under section 37(1) of the Act. Accordingly, the AO disallowed the deduction of 11,61,18,652.00 and added to the total income of the assessee.

3. The aggrieved assessee preferred an appeal to the learned CIT (A) who deleted the addition made by the AO.

Being aggrieved, by the order of the learned CIT (A), the Revenue is in appeal before.

4. Both the learned DR and the AR before us relied on the order of the authorities below as favorable to them.

5. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the assessee created the provision in respect of the revenue transactions. This fact can be verified from the annual accounts of the assessee which is available on pages 31-69 of the paper book. There was no long-term loan liability, and the fixed assets were of negligible value. Therefore, the provisions of section 43A of the Act cannot be applied in the present facts and circumstances as it deals with the capital account transaction. Accordingly, we hold that the AO erred in applying the provisions of section 43A of the Act.

5.1 The next controversy arises whether the impugned transaction is representing the unascertained liabilities. The assessee created such provision in respect of the current liabilities represented in foreign currency at the end of the financial, i.e. 31st March 2013 based on the rate of currency prevailing at the relevant time. Therefore, we are of the considered opinion that such liabilities cannot be treated as unascertained liabilities.

5.2 We also note that the Honorable Apex court involving identical facts and circumstances in the case of CIT versus Woodward Governor India Private Ltd. reported in 312 ITR 254 has held as under:

“15. For the reasons given hereinabove, we hold that, in the present case, the "loss" suffered by the assessee on account of the exchange difference as on the date of the balance sheet is an item of expenditure under section 37(1) of the 1961 Act.”

From the above, it is clear that the trading liability arising on account of currency fluctuation is ascertained liability, and therefore, it is eligible for deduction.

5.3 We also note that the assessee has been adjusting the books of accounts consistently on account of currency fluctuation, which has been accepted by the Revenue in the earlier years. Therefore, we are of the view that the assessee is also entitled to the deduction of such provision as per the principles of consistency. In view of the above, we do not find any reason to interfere in the finding of the learned CIT (A). Hence, the ground of appeal of the Revenue is dismissed.

6. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the Court on 26/06/2019 at Ahmedabad.

**-Sd-
(MAHAVIR PRASAD)
JUDICIAL MEMBER**

**-Sd-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

(True Copy)
Ahmedabad; Dated 26/06/2019
Manish