IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI

BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, HON'BLE ACCOUNTANT MEMBER

ITA.NO. 6367/MUM/2017 (A.Y:2001-02)

Dy. Commissioner of Income-tax – 1(1)(2) 579, Aayakar Bhavan, M.K. Road Mumbai – 400 020	*v.*	M/s. Forbes & Company Ltd Ground Floor, Forbes Building Charanjitrai Marg, Fort Mumbai – 400 001 **PAN: AAACF1765A**
(Appellant)		**(Respondent)**

Assessee by	**:**	**Shri Girish Dave &** **Shri Nikhil Sangtani**
Department by	**:**	**Shri Harkamal Sohi Sandhu**
Date of Hearing	**:**	**17.09.2019**
Date of Pronouncement	**:**	**18.12.2019**

O R D E R

PER C.N. PRASAD (JM)

1. This appeal is filed by the revenue against the order of the Learned Commissioner of Income Tax (Appeals) – 2, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 04.08.2017 for the A.Y. 2001-02.

2. Revenue has raised following grounds in its appeal: -

"1. Whether on the facts and circumstances of the case and in law, the Id CIT(A) was justified in allowing relief of Rs 2,90,302/- pertaining to earlier year even though the same was not accounted in the earlier year as a provision especially as assessee is following mercantile method of accounting.

2. Whether on the facts and circumstances of the case and in law, the Id. CIT(A) was justified in allowing relief on account of addition made as deemed Short term capital gain arising on sale of depreciable assets without considering the fact that the WDV as on 01.4.2000 of Rs 6,25,06,409 (as claimed by assessee) was not made before the AO nor was it part of the additional ground filed which was subject matter of remand report.

3. Whether on the facts and circumstances of the case and in law, the Id. CIT(A) was justified in allowing relief on account of addition made as deemed STCG activity on sale of depreciable assets without considering the fact that the WDV as on 1.4.2000 (as claimed by assessee before Ld.CIT(A)) is not reflected in Form 3CD."

3. Ground No.1 of grounds of appeal relates to deletion of disallowance made towards prior period expenses by the Assessing Officer while completing the assessment. Briefly stated the facts are that, the assessment u/s. 143(3) of the Act was completed on 19.03.2004 disallowing prior period expenses of ₹.2,90,302/- by the Assessing Officer. Assessee carried the matter before the Ld.CIT(A) and the Ld.CIT(A) sustained the disallowance made by the Assessing Officer. A further appeal was filed before the Tribunal by the assessee and the Tribunal in ITA.No. 9500/Mum/2004 by order dated 25.09.2006 restored back the issue of disallowance of prior period expenses and also the addition made on account of capital gains to the file of the Assessing Officer. Assessing Officer in the proceedings giving effect to the order of the Tribunal once

again disallowed the prior period expenses against which order an appeal was filed by the assessee before the Ld.CIT(A). The Ld.CIT(A) by order dated 04.08.2017 deleted the disallowance of prior period expenses considering the submissions of the assessee and the decision of the Tribunal in ITA.No. 9500/Mum/2004. Against this order the revenue is in appeal before us.

4. Ld. DR while supporting the order of the Assessing Officer submits that prior period expenses were not crystalized during this assessment year and therefore the Assessing Officer has rightly disallowed the said expenses.

5. On the other hand, the Ld. Counsel for the assessee Shri Girish Dave submits that the assessee during the assessment year paid an amount of ₹.5,33,604/- to Goodlass Nerolac Paints Ltd., [GNPL] towards secretarial services provided by one of its employee namely Mrs. Silo Katrak. The Ld. Counsel for the assessee further submits that the said employee of GNPL was also simultaneously functioning as a personal secretary of Dr. F.A. Mehta, Chairman of the assessee company. Learned Counsel for the assessee submitted that out of the total expenses of ₹.5,33,604/- the Assessing Officer while completing the assessment allowed deduction for expenses of ₹.2,40,000/- and balance amount of

₹.2,90,032/- was disallowed observing that since the assessee is following mercantile system of accounting the expenses pertaining to A.Y. 2000-01 cannot be allowed in the assessment year under consideration. The Assessing Officer observed that the liability was crystallized when the services were availed as per mercantile system, the same should have been accounted for in the assessment year concerned. The Ld. Counsel for the assessee inviting our attention to the order of the Tribunal submitted that when the matter was carried before the Tribunal by the assessee, the Tribunal in fact observed that the liability was crystalized during the year under appeal i.e. A.Y. 2001-02. However, the Tribunal restored the matter back to the file of the Assessing Officer to examine the rendering of services as the lower authorities failed to examine this aspect of the matter. Ld. Counsel for the assessee submits that on examining the evidences furnished by the assessee the Ld.CIT(A) deleted the disallowance as these expenses were incurred by the assessee wholly and exclusively for the purpose of business of the assessee. Ld. Counsel for the assessee further submits that part of the expenses were in fact allowed by the Assessing Officer as he has examined the rendering of services and there is no doubt or dispute about rendering of services by the Assessing Officer. The expenses were merely disallowed on the ground that the debit notes were issued in the subsequent accounting

year and therefore liability was not crystallized in the current assessment year.

6. We have heard the rival submissions, perused the orders of the authorities below. On a perusal of the order of the Tribunal in ITA.No.9500/Mum/2004 dated 25.09.2006, we observe that the Tribunal restored this issue to the file of the Assessing Officer to examine the evidences rendering services by the assessee. In fact, the Tribunal observed that the liability was crystallized during the A.Y. 2001-02 only. The Ld.CIT(A) on examining the order of the Tribunal and the submissions of the assessee deleted the disallowance observing as under: -

> *"5.3 I have considered the facts and circumstances of the case, submissions and arguments of the appellant, the Tribunal order providing specific directions to the assessing officer, assessment order passed by the assessing officer and the remand report.*
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> *5.4 The appellant submitted that the debit notes in respect of the services utilized during the period from 1 April 1999 to 31 March 2000 were received by the appellant only in October 2000 i.e. during the above assessment year 2001-02 and accordingly the liability towards these expenses were crystallized only during the assessment year under consideration and these expenses are therefore allowable as deduction to the appellant.*
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> *5.5 The appellant further argued that the Hon'ble ITAT vide its order dated 25 September 2006 has accepted the contention of the appellant that the liability towards the expenses were crystallized during the assessment year under review and are therefore allowable to the appellant. The relevant portion of the ITAT "J" Bench order No. 9500/Mum/04 dtd. 25.09.2006 in the appellant's own case is as under:*
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> > *"We have considered rival submissions and have gone through the facts. In so far as the expenditure of Rs. 2,40,000 is concerned, it relates to the assessment year under appeal and cannot be categorized as prior period expenditure.*

Further in our view, the expenditure of Rs.2,90,032/- is based on the debit note issued on 11.10.2000 and therefore, the liability is crystallized during the year under appeal. Therefore, on this basis the aforesaid expenses will be allowable but for the finding of the learned CIT(A) that there is no evidence of services rendered and that the expenditure was not incurred for business purpose of the assessee company. As mentioned above, the assessing officer never examined the issue from this angle. Even the learned CIT(A) apparently, did not allow any opportunity to the assessee to establish the genuineness or business purpose of the expenditure. In these circumstances, we deem it proper to restore this issue to the Assessing Officer to allow opportunity to the assessee to establish he business purpose of the expenditure. If the assessing officer is satisfied, ... expenditure shall be allowed."

Further, the appellant vehemently contested that ITAT had restored this issue to the file of the assessing officer with a specific direction to allow an opportunity to the appellant to establish that the services were rendered for business purpose. However, the learned ACIT in the above order dated 27 December 2011 without following the said directions of the Hon'ble ITAT had reviewed this ground afresh, exceeded his jurisdiction and disallowed the expenses treating it to be prior period expenditure.

The AR of the appellant during the course of the hearing explained that the above expenditure incurred was being wholly and exclusively for the purpose of business and should be allowable under section 37 of the Act and there should be no disallowance in absence of specific matter on record. The appellant further argued that the out of the total expenses of Rs.5,33,604, the learned ACIT in the order dated 27 December 2011 had allowed the deduction for expenses of Rs.2,40,000; It is submitted that when a portion of expense is allowed the balance having same nature cannot be disallowed.

The AR further contented that the accounts of the appellant have been duly audited and that the auditor has not provided any qualification to the accounts and are free from any qualifications reported in the tax audit report. Based upon the above discussions and respectfully following the Directions given by the Hon'ble ITAT, I am of the opinion that the said expenditure being incurred wholly and exclusively for the purpose of the business of the appellant should be allowed, accordingly, I direct the learned AO to allow the amount of Rs. 2,90,032.

*Hence this ground of appeal is allowed**."***

7. On a careful observation of the order of the Ld.CIT(A), we do not see any infirmity in the order passed by the Ld.CIT(A) in deleting the disallowance for prior period expenses. This ground of the revenue is rejected.

8. Coming to Ground Nos.2 and 3 of grounds of appeal, relating to the addition made towards short term capital gain we observe that this issue also came up before the Tribunal and the Tribunal accepted the contention of the assessee that insurance money received should be deducted from the value of block of assets and the depreciation should be allowed only on the balance. While accepting such contention of the assessee the Tribunal for verification of the submission of the assessee, restored the matter to the file of the Assessing Officer for re-adjudication as per law. In the set-aside proceedings the Assessing Officer once again computed the short term capital gain as was done in the Assessment Order passed u/s.143(3) of the Act ignoring the observations of the Tribunal. Against this order of the Assessing Officer assessee preferred an appeal before the Ld.CIT(A) and the Ld.CIT(A) deleted the disallowance on examining the contention of the assessee as well as the evidences produced and also the order of the Tribunal.

9. Ld. Counsel for the assessee referring to Page No. 12 of the order of Ld.CIT(A) submitted that assessee has furnished the breakup of the depreciation claimed on the block of assets excluding the insurance claim as per schedule of depreciation under I.T. Act and demonstrated that the insurance claim received by the assessee is not in excess of amounts referred to in section 50(1) of the Act and therefore the question of deemed capital gains u/s. 50 of the Act will not arise.

10. On the other hand, Ld. DR supported the order of the Assessing Officer.

11. We have heard the rival submissions, perused the orders of the authorities below. On a perusal of the order of the Tribunal we observe that the Tribunal held that as per the requirement of sub-section (1) of section 50 of the Act if there is any excess after the adjustments stipulated in sub-section (1) such excess shall be deemed to be the short term capital gains. As the assessee submitted that the insurance money received is not in excess of the amounts referred to in sub-section (1) of section 50 and therefore such insurance money should be deducted from the value of block of assets and depreciation should be allowed only on the balances, for the purpose of verification it was restored to the file of the Assessing Officer. However, the Assessing Officer once again

computed the short term capital gain as was done in the assessment order while computing u/s. 143(3) of the Act ignoring the observations of the Tribunal. The Ld.CIT(A) after examining the computation of depreciation as furnished by the assessee and since the assessee successfully demonstrated before the Ld.CIT(A) that insurance money received is not in excess of amounts referred to in sub-section (1) of section 50 of the Act, he has held that there shall not be any capital gains observing as under: -

> *"6.1 I have considered the facts and circumstances of the case, submissions and arguments of the appellant, the Tribunal order providing specific directions to the assessing officer, assessment order passed by the assessing officer and the remand report.*
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> *The appellant during the course of the hearing submitted that during the year under consideration, the assets 'Universal Thread Grinding' and 'Haux Flute Grinding' forming part of the block of plant and machinery (rate of depreciation -25%) were destroyed by fire and the appellant received an insurance claim.*
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> *The AR of the appellant submitted that the learned AO for calculating short term capital gain as per provision of Sec 50(1) should have considered the WDV of the block as on 1 April 2000 Rs. 6,25,06,409 along with additions during the year amounting to Rs. 5,71,73,612 instead of the opening WDV of the two individual assets aggregating to Rs. 24,91,537. The Hon'ble ITAT vide its order dated 25 September 2006 has accepted the contention of the appellant and stipulated that such insurance money should be deducted from the value of block of assets and depreciation should be allowed only on the balance further the claim of the assessee to be verified by the assessing officer and the issue should be re-decided as per the provisions of law.*
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> *The relevant portion of the ITAT "J" Bench order No. 9500/Mum/04 dtd. 25.09.2006 in the appellant's own case is as under :*
>
> > *"As per the requirement of sub-section(l) if there is any excess after the adjustments stipulated in sub section such excess shall be deemed to be the short term capital gains. In the present case, the learned counsel argued that the insurance*

money received is not in excess of the amounts referred to in sub section (1) and therefore such insurance money should be deducted from the value of block of assets and depreciation should be allowed only on the balance. This claim of the assessee has to be verified by the assessing officer and the issue should be re-decided as per the provisions of law."

The AR of the appellant further submitted that since the applicability and mode of computation are governed by the provisions of section 50 of the Act r.w.s. 45(1A) of the Act, This aspect is not in dispute in view of the ITAT's directions, In view of this there should be no reason why the learned assessing officer considered the amount of WDV different than the WDV of the block of asset. Based upon the above discussions and respectfully following the Directions given by the Hon'ble ITAT, in my opinion, there are no deemed short-term capital gain under section 50 of the Act, Further, I direct the learned AO to allow the depreciation on the closing WDV of Rs.8,02,27,321. Hence this ground of appeal is allowed."

12. On a careful consideration of the order of the Ld.CIT(A), we do not find any infirmity in the order passed by the Ld.CIT(A). None of these findings have been rebutted with evidences by the revenue. Grounds raised by the revenue on this issue are rejected.

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

Order pronounced in the open court on the 18th December, 2019

Sd/-	Sd/-
(N.K. PRADHAN)	**(C.N. PRASAD)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai / Dated 18/12/2019
Giridhar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum