

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एम बाला गणेश, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.2503/Chny/2018
निर्धारण वर्ष /Assessment Year: 2015-16

M/s. Ninestars Information Technologies Pvt. Ltd.,
No.72, Greams Road,
Thousand Lights,
Chennai – 600 006.

Vs. The Dy. Commissioner of
Income Tax,
Corporate Circle-4(2),
Chennai.

[PAN: AABCN 0949B]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri R. Viswanathan, C.A
प्रत्यर्थी की ओर से /Respondent by : Mrs. Vijayaprabha, JCIT
सुनवाई की तारीख/Date of Hearing : 25.02.2020
घोषणा की तारीख /Date of Pronouncement : 28.02.2020

आदेश / ORDER

PER M. BALAGANESH, ACCOUNTANT MEMBER:

This appeal of the assessee arise out of the order of the Ld. Commissioner of Income Tax (Appeals)-8, Chennai vide proceedings in ITA No.70/17-18, dated 28.06.2018 against the order passed by the DCIT, Corporate Circle-4(2), Chennai (AO) u/s. 143(3) of the Income Tax Act, 1961 (hereafter 'the Act') dated 27.12.2017 for the Assessment Year (A.Y) 2015-16.

2. Though the assessee has raised the several grounds of appeal, we find that only effective ground to be decided is as to whether the exchange difference arising on the loan transaction with foreign subsidiary company could be considered as a notional loss in the facts and circumstances of the case.

3. We have heard the rival submissions and perused the material available on record. The undisputed facts are that the assessee had given loan to its foreign subsidiary company in the year 2013 and the said loan was received back during the year under consideration. Pursuing to the same, the assessee incurred foreign exchange fluctuation loss. The assessee in A.Y 2014-15 earned exchange gain in respect of the same transaction and had offered the same to tax. The Ld. A.O in the scrutiny assessment proceedings completed u/s. 143(3) dated 29.12.2016 had also assessed the said exchange gain as a taxable receipt. During the year under consideration on receipt of the loan from the foreign subsidiary, pursuant to the conversion of the amounts received in foreign currency into Indian currency, the assessee incurred exchange fluctuation loss and claimed the same as a revenue loss u/s.37(1) of the Act in the return of income. This loss was considered to be notional in nature and capital expenditure by the Ld. A.O and accordingly, the same was disallowed in the

assessment. We find that the Ld. CIT(A) had considered this exchange fluctuation loss as "mark to market" loss for treating the same as exchange loss incurred on some forex-derivatives and accordingly by placing reliance on the CBDT Circular Instruction No.3 to 2010 dated 23.03.2010 held that the said exchange fluctuation loss is capital in nature and also contingent expenditure. With this observation, he upheld the action of the Ld. AO. We find that the Revenue had not understood the transaction carried out by the assessee in the instant case. This is a simple case of loan given by the assessee to its foreign subsidiary in the earlier years and at the time of re-statement of the said loans in earlier years at the exchange rate prevailing at the end of the year, it had resulted in exchange gain which has been duly offered to tax by the assessee voluntarily and assessed as such by the Revenue in the scrutiny assessment proceedings completed u/s. 143(3) of the Act. During the year under consideration, when the said loans were received back by the assessee and the assessee had actually incurred exchange loss, the revenue had considered the same as transaction carried out in forex-derivatives and treating the same as "mark to market" loss, which in our considered opinion, is against the facts of the assessee and material available on record. We find that the issue is squarely covered by the decision of Hon'ble Supreme Court in the case of CIT

vs. Woodward Governor India (P.) Ltd. reported in [2009] 312 ITR 254(SC) and respectfully following the same, we hold that the exchange fluctuation loss incurred by the assessee during the year under consideration is a regular revenue loss and is squarely allowable as deduction. Accordingly, the grounds raised by the assessee are allowed.

4. In the result, the appeal of the assessee is allowed.

Order pronounced on 28th day of February, 2020 in Chennai.

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

Sd/-

(एम बाला गणेश)

(M. BALAGANESH)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai, दिनांक/Dated: 28th February, 2020.

EDN, Sr. P.S

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF