

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.3150/CHNY/2018
(निर्धारण वर्ष / Assessment Year: 2013-14)

M/s. M.L. Exports,
C/o. M/s. Umamaheswara Rao &
Co., Chartered Accountants,
D.No.3-26-2, Plot No.B1-59,
1st Line, Ravindra Nagar, New
Pattabhipuram, Guntur,
Andhra Pradesh – 522 006.

Vs **The ACIT,**
Non-Corporate Circle-1,
Chennai.

PAN: AAAFM9451B
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Ms. Lavanya.M, CA
प्रत्यर्थी की ओर से/Respondent by : Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of hearing : 06.10.2020
घोषणा की तारीख /Date of Pronouncement : 07.10.2020

आदेश / ORDER

Per S.JAYARAMAN, AM:

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)-2, Chennai, in ITA No.323/2016-17/A.Y.2013-14/CIT(A)-2 dated 06.09.2018 for the assessment year 2013-14.

2. M/s. M.L. Exports, the assessee, a firm engaged in the business of tobacco trading and exports, incurred losses on Foreign Currency (FC) utilization, FC cancellation & FC revaluation in the return filed for the AY 2013-14. In the assessment made, the AO allowed all the losses except the loss on account of FC revaluation which was a marked to market (MTM) loss, holding that such loss is a notional loss and contingent in nature. Therefore, he disallowed the assessee's claim and completed the assessment. Aggrieved against that order, the assessee filed an appeal before the CIT(A). The Ld.CIT(A), relying on the CBDT instruction dated 23.03.2010, held that the MTM losses on account of foreign derivatives were a difference between the purchase price and the value as on the valuation date, which is a notional loss and therefore, not an allowable expenditure and thus upheld the disallowance. Aggrieved, the assessee filed this appeal.

3. The case was heard through video conferencing. The Ld.AR submitted that the impugned loss was quantified in accordance with AS-11 on the Foreign Exchange forward contracts. The assessee has been consistently following this method of accounting and admitted the profits on revaluation of FCs from AYs 2011-12 onwards. The lower authorities are not justified in treating the loss as notional one

and not allowing it. The Ld.AR placed reliance on the decision reported in CIT Vs. Woodward Governor India Pvt. Ltd., 312 ITR 254 SC and the Tribunal decision in the case of Emmsons International Ltd., Vs. ACIT, Circle 8(1), New Delhi, in ITA No.4603/Del/2019 for the AY 2012-13 dated 14.10.2019 (Delhi), took through the order and invited our attention to Para 13, which is extracted as under:-

“13. On a careful consideration of the facts involved in this case, we are of the considered opinion that the decision in the case of Woodward Governor P Ltd (supra) and ONGC vs CIT (supra) are applicable, and the line of judicial view is that the Revenue cannot be permitted to contend that there is a CBDT instruction No.03/2010 dated 23/3/2010 to the contrary. No CBDT circular or instruction can be contrary to the decision of the Hon’ble Apex Court, even subsequent to the decision of the Hon’ble Apex Court. We, therefore, accept the contention of the assessee and hold that the addition is unsustainable. We, accordingly, direct the Assessing Officer to delete the same.”

Per contra, the Ld.DR supported the order of the lower authorities.

4. We heard the rival submissions and gone through the relevant material. In this case, the pending forward contracts were restated on the basis of foreign exchange rate as on 31.03.2013. There is no dispute on the details furnished by the assessee. The losses are booked by the assessee in compliance of mandatory accounting standard AS-11 from AY 2011-12 onwards and it admitted the

corresponding profits as income in the respective year. Since, the facts of this case are similar to the case decided by the Delhi Bench of this Tribunal, *supra*, following it, we hold that the addition is unsustainable. We, accordingly direct the AO to delete the same.

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

Order pronounced in the court on 7th October, 2020 at Chennai.

Sd/-

(धुव्वुरु आर एल रेड्डी)
(Duvvuru R.L Reddy)

न्यायिक सदस्य/Judicial Member

Sd/-

(एस जयरामन)
(S. Jayaraman)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 7th October, 2020

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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