आयकर अपीलीय अधिकरण, **''**बी**''** न्यायपीठ**,** चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
Before Shri Duvvuru RL Reddy, Judicial Member &
Shri S. Jayaraman, Accountant Member

आयकर अपील सं./**I.T.A. Nos.07 & 08/Chny/2019**
निर्धारण वर्ष/**Assessment Years:2013-14 & 2014-15**

M/s. Modine Thermal Systems Pvt. Ltd. K7, SIPCOT Industrial Park, Sunguvarchatram, Mambakkam Village, Kanchipuram District, Tamil Nadu 602 105. **[PAN: AAECM9438K]**	Vs.	The Deputy Commissioner of Income Tax, Corporate Circle 4(1), Nungambakkam, Chennai 600 034.
(**अपीलार्थी /Appellant**)		(**प्रत्यर्थी/Respondent**)

अपीलार्थी की ओर से / Appellant by	:	Shri S.P. Chidambaram, Advocate
प्रत्यर्थी की ओर से/Respondent by	:	Ms. R. Anita, JCIT
सुनवाई की तारीख/ Date of hearing	:	28.10.2020
घोषणा की तारीख /Date of Pronouncement	:	27.11.2020

आदेश /O R D E R

PER DUVVURUL RL REDDY, JUDICIAL MEMBER:

Both the appeals filed by the assessee are directed against the common order of the ld. Commissioner of Income Tax (Appeals) 8, Chennai dated 10.10.2018 relevant to the assessment years 2013-14 & 2014-15. The only effective ground raised in the appeal of the assessee is relating to entertain the claim of unrealised forex fluctuation loss on reinstatement of ECB utilized for purchase of assets within India, which was not made in the original return or revised return by the assessee.

2. Brief facts of the case are that the assessee filed its return of income for the assessment year 2013-14 on 29.11.2013 declaring loss of ₹.18,31,08,772/-. Similarly, the return of income for the assessment year 2014-15 was filed on 29.11.2014 admitting loss of ₹.1,01,23,584/-, which was revised by filing revised return of income on 03.11.2015 admitting loss of ₹.1,11,92,638/-. During the course of assessment proceedings, the AR of the assessee vide letter dated 17.11.2016 requested for allowance of the unrealized foreign exchange loss pertaining to the assets purchased within India by relying on the decision of Pune Benches of the Tribunal in the case of Cooper Corporation (P) Ltd. v. DCIT 69 Taxmann.com 244. However, since the above claim of the assessee was not made in the return of income filed, but only during the course of assessment, by following the decision in the case of Goetze (India) Ltd. v. CIT 284 ITR 323 (SC), the Assessing Officer denied the claim of the above deduction. On appeal, the ld. CIT(A) also confirmed the denial of deduction.

3. On being aggrieved, the assessee is in appeal before the Tribunal. The ld. Counsel for the assessee vehemently argued that the inadvertent omission to make a claim in the return of income and by taking advantage, the assessee cannot be denied which is otherwise allowable as deduction under section 37(1) of the Act and prayed for suitable directions.

4. Per contra, while supporting the orders of authorities below, the ld. DR has submitted that in the absence of any revised return filed by the assessee within

the time stipulated under section 139 of the Act, the authorities below have constrained to allow deduction under section 37(1) of the Act.

5. We have heard both sides, perused the materials available on record and gone through the orders of authorities below. While filing the return of income for both the assessment years, the assessee has not claimed the unrealized foreign exchange loss pertaining to the assets purchased within India. During the course of assessment proceedings, the AR of the assessee vide letter dated 17.11.2016 requested for allowance of the above deduction. Therefore, the Assessing Officer denied the claim of deduction under section 37(1) of the Act only on the ground that the claim was not made in the return of income or revised return of income, which was confirmed by the ld. CIT(A).

6. In this case, the authorities below have not given any findings as to whether the assessee is eligible or not to claim deduction under section 37(1) of the Act towards unrealized foreign exchange loss pertaining to the assets purchased within India, but, merely because the said claim was not made in the return filed by the assessee, the claim of deduction was denied. The Income Tax Act/Rule cannot be used as a weapon to put tax burden on the assessee. Vide Circular No. 14(XL-35) of 1955, dated April 11, 1955, the CBDT directed the Department 'to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs…. When there is a clear cut

provision for claiming deduction, the assessee should have been guided appropriately rather than denying the exemption/ deduction.

6.1 Both the authorities below have relied on the decision in the case of Goetze (India) Ltd. v. CIT 284 ITR 323 (SC). We have carefully gone through the judgement of the Hon'ble Supreme Court and found that the decision of the Hon'ble Supreme Court is relating to the restriction of making the claim through a revised return was limited to the powers of the Assessing Authority and the said judgment does not impinge on the power or negate the powers of the appellate authorities to entertain such claim. Further, in the case of Shri Chandrashekhar J. Bahirwani vs. ACIT in ITA Nos.7810/M/2010 & 6599/M/2012 vide order dated 17.06.2015, by following the decision in the case of CIT v. Pruthvi Brokers and Shareholders Pvt. Ltd." (2012) 349 ITR 336 (Bom.) as well as in the case of Gujarat Gas Ltd. vs. JCIT 245 ITR 84 (Guj.), the Mumbai Benches of the Tribunal has observed as follows: "Moreover, if the assessee is, otherwise, entitled to a claim of deduction but due to his ignorance or for some other reason could not claim the same in the return of income, but has raised his claim before the appellate authority, the appellate authority should have looked into the same. The assessee cannot be burdened with the taxes which he otherwise is not liable to pay under the law."

6.2 Under the above facts and circumstances and respectfully following the decisions referred hereinabove, we set aside the orders of authorities below on

this issue and direct the Assessing Officer to examine the claim of the assessee and allow deduction in accordance with the law after allowing an opportunity of being heard to the assessee by keeping in mind the decisions of the Tribunal in the case of Cooper Corporation (P) Ltd. v. DCIT (supra) as well as in the case of The Madras Silks India Pvt. Ltd. v. DCIT in I.T.A. No. 180/Mds/2017 dated 31.10.2017. Thus, the ground raised by the assessee is allowed for statistical purposes for both the assessment years.

7. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced on the 27th November, 2020 at Chennai.

Sd/-	Sd/-
(S JAYARAMAN)	(DUVVURUL RL REDDY)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Chennai, Dated, the 27.11.2020

Vm/-

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.