

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B": HYDERABAD  
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 569/H/2018 Assessment Year: 2009-10		
Dy. Commissioner of Income-tax, Circle - 17(1), Hyderabad.	Vs.	VST Industries Ltd., Hyderabad.  PAN - AAACV 6799C
(Appellant)		(Respondent)
Revenue by:		Shri YVST Sai
Assessee by:		Shri TS Ajai
Date of hearing:		17/03/2021
Date of pronouncement:		22/04/2021

**ORDER**

**PER L.P. SAHU, A.M.:**

This appeal filed by the Revenue is directed against CIT(A) - 5, Hyderabad's order dated 31/01/2018 for AY 2009-10 involving proceedings u/s 143(3) rws 147 of the Income Tax Act, 1961 ; in short "the Act", on the following grounds of appeal:

2. Briefly, the facts of the case are that the assessee company engaged in the business of manufacture of

cigarettes and trading of tobacco filed its return of income for the AY 2009-10 on 25/09/2009 declaring total income of Rs. 54,12,64,260/-. Scrutiny assessment was completed u/s 143(3) of the Act on 30/11/2011 assessing the total taxable income of the assessee at Rs. 55,81,16,656/-.

2.1 Thereafter, the AO observed as under:

*“(a) The assessee has claimed foreign exchange fluctuation loss of Rs.15,61,37,788/-. This includes loss of Rs.4,54,05,100/- on account of debtors/creditors reinstatement. It is seen from the explanatory notes on debtors/creditors reinstatement that debtors/creditors are reinstated based on exchange rate prevailing at the end of the year and to reflect the correct position as on date, this provision was created. From this, it is clear that this is nothing provision for diminution in value of rupee. As the actual transaction has not been completed, this needs to be treated as a provision for diminution in value of rupee i.e. unascertained liability. Hence, notional foreign exchange fluctuation loss of Rs.4,54,05,100/- needs to be disallowed.*

*(b) The assessee has also claimed R&D expenses of Rs.2,33,36,909/-. The assessee stated vide its explanation that R&D was carried out to (a) develop new blends, (b) develop new brands in various segments (c) work closely with international suppliers of tobacco and (d) introduced new technology etc. The R&D expenses incurred by the assessee and the achievements thereon emphasizes that it has given enduring benefit to the assessee. As this particular R&D expenditure gives enduring benefit, the same needs to be capitalized and not to be allowed as Revenue Expenditure.”*

2.2 In view of the above observations, the AO reopened the assessment u/s 147 of the Act by issuing notice u/s 148 of the Act dated 21/01/2016 to the assessee, against which, the assessee submitted letter dated 08/02/2016 requested to treat the original return filed in response to the notice u/s 148 of the Act.

2.3 The AO issued notices u/s 142(1) and 143(2) on 09/05/2016 to the assessee requiring it to show cause as to why, a) foreign exchange fluctuation loss of Rs. 4,54,085,100/- should not be disallowed out of Rs. 15,61,37,788/- and b) R&D expenses of Rs. 2,33,36,809/- should not be disallowed being capital in nature.

2.4 After considering the submissions, which according to AO that there is nothing new in these submissions which were already submitted during the assessment proceedings, the AO completed the reassessment as under:

*7. The assessee has claimed Rs.15,61,37,788/- towards Foreign exchange fluctuation loss. This includes loss of Rs.4,54,05,100/- on account of debtors/creditors reinstatement. It is seen from the explanatory notes on debtors/creditors reinstatement that debtors/creditors are reinstated based on exchange rate prevailing at the end of the year and to reflect the correct position as on date, this provision was created. From this, it is clear that this is nothing provision for diminution in value of rupee. As the actual transaction has not been completed, this needs to be treated as a provision for diminution in value of rupee i.e. unascertained liability. Hence, notional foreign exchange fluctuation loss of*

*Rs.4,54,05,100/- is disallowed and added back to the income returned.*

*8. Assessee has claimed R&D expenses of Rs.2,33,36,909/-. The assessee stated vide its explanation that R&D was carried out to (a) develop new blends, (b) develop new brands in various segments (c) work closely with international suppliers of tobacco and (d) introduced new technology etc. The R&D expenses incurred by the assessee and the achievements thereon emphasizes that it has given enduring benefit to the assessee. As this particular R&D expenditure gives enduring benefit, the same needs to be capitalized and not to be allowed as Revenue Expenditure. Therefore, the amount of Rs. 2,33,36,909j- is disallowed and added back to the income returned.*

3. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A) challenging the validity of the reopening of assessment u/s 147 of the Act after 4 years.

4. After considering the submissions of the assessee, the CIT(A) elaborately discussed the issues at length and quashed the reassessment order passed by the AO u/s 147 of the Act.

5. Aggrieved by the order of CIT(A), the revenue is in appeal before us.

6. The ld. DR vehemently objected to the action of the CIT(A) in quashing the reassessment order passed by the AO u/s 147 of the Act, while the ld. AR relied on the order of the CIT(A).

7. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. While quashing the order passed by the AO u/s 147 of the Act, the CIT(A) observed as under:

*1. There is no case to have a different opinion on the basis of the details called for during the course of original assessment proceedings and even on facts there is no case as most the of the expenses are recurring and incurred by the appellant year after year as evident from certain agreements filed.*

*2. While passing the original order u/s 143(3), the AO did not ask for any further evidences from the appellant and proceeded not to take any adverse view in the matter as discussed above pertaining to R &D expenses Therefore, it is very clear in view of the detailed explanation filed by the appellant the AO had formed an opinion before passing the original assessment order and the appellant had discharged the evidences to the satisfaction of the assessing officer. Therefore in view of the above compliance the appellant was not in default within the proviso to section 147 with regard to R&D expenses. Therefore the second limb of the reasons recorded under section 147 for reopening fails the test of the said section.*

*3. The assessee has claimed its objections to the notice u/s 148 were not disposed off by the AO even after the onus cast on the AY by the Apex Court in the case of CIT Vs. GKN Driveshafts.*

7.1 In view of the above observations of CIT(A), we do not find any infirmity in the order of the CIT(A) in quashing the order of AO passed u/s 147 of the Act, as the CIT(A)

elaborately discussed and analysed the issue in dispute with various case law at length in his order. Accordingly, upholding the order of the CIT(A), we dismiss the grounds raised by the revenue on this issue.

8. In the result, appeal of the revenue is dismissed.

Pronounced in the open court on 22<sup>nd</sup> April, 2021.

Sd/-  
**(S.S. GODARA)**  
**JUDICIAL MEMBER**

Sd/-  
**(L. P. SAHU)**  
**ACCOUNTANT MEMBER**

Hyderabad, Dated: 22<sup>nd</sup> April, 2021.

Kv

*copy to :*

1	<i>DCIT, Circle – 17(2), 9<sup>th</sup> Floor, Signature Towers, Opp. Botanical Gardens, Kondapur, Hyderabad – 84</i>
2	<i>M/s VST Industries Ltd., 1-7-1063/1065, Azamabad, Musheerabad, Hyderabad.</i>
3	<i>CIT(A) – 5, Hyderabad.</i>
4	<i>Pr. CIT - 5, Hyderabad</i>
5	<i>ITAT, DR, Hyderabad.</i>
6	<i>Guard File.</i>

S.No.	Details	Date
1	Draft dictated on	
2	Draft placed before author	
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5	Approved Draft comes to the Sr. PS/PS	
6	Kept for pronouncement	
7	File sent to Bench Clerk	
8	Date on which the file goes to Head Clerk	
9	Date on which file goes to A.R.	
10	Date of Dispatch of order	