

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री वी.दुर्गा राव, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.No.46/Chny/2018
(निर्धारणवर्ष / Assessment Year: 2013-14)

M/s. Abirchand Galada (HUF) By Kartha Shri Surendra Kumar Galada, 10, Nageswaran Road, T.Nagar, Chennai-600 017.	Vs	Assistant Commissioner of Income Tax, Non-Corporate Circle-1 Chennai-34.
PAN: AAAHA 3567L		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. G.Baskar, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Dr. I.P. Roopa, JCIT

सुनवाईकीतारीख/Date of hearing	:	06.01.2022
घोषणाकीतारीख /Date of Pronouncement	:	07.02.2022

आदेश / ORDER

PER G. MANJUNATHA, AM:

This appeal filed by the assessee is directed against order passed by the learned Commissioner of Income Tax (Appeals)-2, Chennai, dated 29.09.2017 and pertains to assessment year 2013-14.

2. The assessee has raised following grounds of appeal:-

"1. The order in ITA No. 102/CIT (A) 2/2016-17 dated 29-09-2017 passed under section 250 (6) of the Income-tax Act, 1961 by the Commissioner of Income-tax (Appeals) 2, Chennai, is erroneous, opposed to law and facts of the appellant's case.

2. The learned Commissioner of Income-tax (Appeals) erred in dismissing the appeal filed by the appellant.

3. The learned Commissioner of Income-tax (Appeals) erred in upholding the Assessing Officer's finding that the loss due to foreign exchange fluctuation in respect of the foreign currency loan availed by the appellant for working capital is not an allowable deduction.

4. The learned Commissioner of Income-tax (Appeals) similarly erred in upholding the Assessing Officer's finding that the loss due to foreign exchange fluctuation in respect of gold loans is not an allowable deduction.

5. The learned Commissioner of Income-tax (Appeals) erred in confirming the disallowance of entire travelling expenses incurred by the appellant for the purpose of business carried on by the appellant.

6. The learned Commissioner of Income-tax (Appeals) erred in confirming the estimated disallowance of Rs. 7,11,978/- out of general expenses incurred by the appellant for its business.”

3. Brief facts of the case are that the assessee is a HUF, which is engaged in the business of retail trading in gold jewellery filed its return of income for assessment year 2013-14 u/s.139 of the Income Tax Act, 1961. The case was taken up for scrutiny and assessment has been completed u/s.143(3) of the Income Tax Act, 1961, on 26.09.2013 and determined total income of Rs.2,51,04,350/- by making various additions, including additions towards disallowance of foreign exchange loss on restatement of loans, disallowance of travelling expenses and further disallowance of 25% general expenses

on the ground that the assessee has failed to file necessary evidence in support of various expenses. The assessee carried the matter in appeal before first appellate authority, but could not succeed. The learned CIT(A) for reasons stated in his appellate order dated 29.09.2017 sustained additions made by the Assessing Officer towards foreign exchange fluctuation loss on restatement of foreign currency loans, disallowance of travelling expenses and also ad-hoc disallowance of general expenses. Aggrieved by the learned CIT(A) order, the assessee is in appeal before us.

4. The first issue that came up for our consideration from ground No. 2 to 4 of assessee appeal is disallowance of foreign exchange loss on restatement of working capital loans and gold loans. The assessee has borrowed foreign currency working capital loan from Indian Overseas Bank. The assessee had also borrowed gold loan for purchase of gold. The assessee has restated its liability towards foreign currency working capital loan and gold loan on the basis of certificate issued by bank, as per which there is a loss due to fluctuation in foreign currency at the end of the relevant assessment year

amounting to Rs.5,17,700/- in respect of foreign currency working capital loan. Similarly, there is a loss due to variation in foreign currency in respect of gold loan taken for purchase of gold which resulted in loss of 25 lakhs in respect of various gold loans taken by the assessee. The assessee has debited difference in foreign currency fluctuation loss into profit & loss account and claimed as business expenditure. The Assessing Officer has disallowed foreign currency loss incurred by the assessee on the ground that loss claimed by the assessee is in the nature of 'notional loss' on account of restatement of the liability in books of account. Therefore, he opined that 'marked to market' loss arises on account of restatement of liability is a notional loss which cannot be allowed as deduction.

5. The learned A.R for the assessee submitted that the learned CIT(A) has erred in not appreciating fact that loss incurred by the assessee on account of fluctuation in foreign currency on account of working capital loan borrowed from banks is revenue expenditure which can be allowed as deduction. The learned A.R for the assessee referring to certificate issued by the Indian Overseas Bank submitted that

as per certificate of banker, there is increase in rate of US \$ which resulted in increase in value of loan borrowed by the assessee and hence, the assessee has provided difference between outstanding loan liability as per books of account and certificate issued by the bank. Therefore, same cannot be considered as notional loss. Similarly, the learned AR for the assessee referring to gold delivery challan and sale invoice issued by bank submitted that when the assessee has taken gold loans, value of gold has been fixed at Rs.30 lakhs per kg., whereas when delivery has been taken, value has been increased which resulted in loss of Rs.25 lakhs. Since the assessee has taken gold loan for trading purpose, which is in the nature of working capital and hence, any increase or decrease in repayment due to fluctuation in foreign currency is in the nature of revenue loss which can be allowed as deduction. In this regard, he relied upon certain judicial precedents, including decision of the Hon'ble Supreme Court in the case of CIT Vs. Woodward Governor India Pvt. Ltd. 312 ITR 254 and Sulej Cotton Mills Ltd. Vs. CIT (116 ITR 1) (SC),

6. The learned DR, on the other hand, supporting order of the learned CIT(A) submitted that loss claimed by the assessee on account of restatement of existing loan liability is notional loss which was recognized due to change in foreign currency rate, but not loss arises on account of repayment of foreign currency loan. Therefore, the Assessing Officer has rightly disallowed notional loss claimed by the assessee and hence, argument of the assessee that foreign currency loss claimed in books of account is ascertained liability which can be allowed is not correct.

7. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The facts borne out from records clearly indicate that the assessee has taken foreign currency working capital loan from Indian Overseas Bank against hypothecation of inventory such as gold jewellery etc. The assessee had also taken gold loan for a period of not exceeding 180 days for purchase of gold. As per certificate issued by bank as on 31.03.2013, outstanding balance in foreign currency working capital loan was at Rs.6,81,21,400/- which is higher by Rs.5,17,700/-, when

compared to loan liability shown in books of account of the assessee. The assessee has restated its loan liability in the books of account as per certificate issued by bank which resulted in loss of Rs.5,17,700/-. The assessee has debited loss arisen on account of restatement of loan liability and claimed as expenditure. Therefore, we are of the considered view that when the assessee has taken foreign currency working capital loan for business purpose, then loss on account of any appreciation or depreciation in the value of foreign currency at the end of the relevant accounting year is in the nature of revenue expenditure which can be allowed as deduction. This principle is supported by the decision of the Hon'ble Supreme Court in the case of M/s. Sulej Cotton Mills Ltd. (supra), where it was categorically held that profit or loss arises to an assessee on account of appreciation or depreciation in the value of foreign currency held by it, on conversion into another currency, such profit or loss would ordinarily be a trading profit or loss, if foreign currency is held by the assessee on revenue account or as a trading asset or as a part of capital embarked in the business. A similar issue has been considered by the Hon'ble Supreme Court in the case of

CIT Vs. Woodward Governor India Pvt. Ltd (supra) . In this case, the assessee has taken foreign currency working capital for the purpose of business of the assessee and thus, profit or loss arisen on account of restatement of such loan is in nature of revenue expenditure which can be allowed as deduction. The learned CIT(A), without appreciating those facts has simply confirmed additions made by the Assessing Officer. Hence, we set aside order of the learned CIT(A) and direct the Assessing Officer to allow deduction towards foreign exchange loss claimed by the assessee on account of restatement of foreign currency working capital loan and gold loan taken from Indian Overseas Bank.

8. The next issue that came up for our consideration from ground no. 5 of the assessee appeal is disallowance of travelling expenses of Rs.4,65,893/-. The assessee has claimed travelling expenses, however, failed to file necessary evidences before the Assessing Officer to justify for travelling expenses claimed in books of account with reference to nexus between expenses and business activities of the assessee. Therefore, the Assessing Officer has disallowed travelling

expenses claimed by the assessee by holding that various travelling expenses incurred by members of HUF to various destinations are tourism centres and also without any proof for any business transactions.

9. The learned AR for the assessee submitted that the learned CIT(A) has erred in confirming disallowance of entire travelling expenses incurred by the assessee for purpose of business. The learned DR, on the other hand, supported order of the learned CIT(A) .

10. Having heard both sides and considered material available on record, we find that although the assessee has claimed that travelling expenses claimed in the books of account is related to business purposes, but failed to file necessary evidences to justify expenses with business activity. At the same time, though the Assessing Officer has disallowed entire travelling expenses incurred by the assessee as has not incurred for business purposes, but failed to give any reason how total expenditure incurred by the assessee is not for the purpose of business. It is well settled position of law that

businessmen are required to incur travelling expenses. Therefore, it cannot be said that total expenditure incurred by the assessee is for personal purposes, but not for business purposes. At the same time, the assessee has also not filed necessary evidences to prove that total expenditure incurred for travelling purpose is for purpose of business. Therefore, we are of the considered view that both parties have failed to justify their cases with necessary reasons. Hence, to settle dispute between the parties, we deem it appropriate to direct the Assessing Officer to restrict disallowance of travelling expenses to 50% of expenses claimed by the assessee for relevant assessment year. Hence, we direct the Assessing Officer to restrict disallowances to 50% of total travelling expenses claimed by the assessee.

11. The next issue that came up for our consideration from ground no.6 of the assessee appeal is 25% ad-hoc disallowance of general expenses. The Assessing Officer has disallowed 25% expenses like sale promotion expenses, incentives, vehicle expenses, business promotion expenses etc. on the ground that the assessee has failed to file necessary

supporting bills and vouchers to prove expenses incurred for purpose of business of the assessee. It was explanation of the assessee before the Assessing Officer that various expenses debited into profit & loss account are supported by self-made vouchers and which are genuine in nature and also incurred for the purpose of business of the assessee.

12. Having heard both the sides and considered material available on record, we find that both parties have failed to justify their cases with necessary evidences and reasons. Although, the assessee claims to have incurred those expenditure for purpose of business, but failed to justify those expenditure with necessary evidences. At the same time, the Assessing Officer has made 25% ad-hoc disallowance of expenses, but failed to give proper reasons for making such ad-hoc disallowances. It is well settled principle of law that unless the Assessing Officer points out specific defects in books of account maintained by the assessee for certain expenditure, then he cannot make ad-hoc disallowance of expenses. Since both the parties have failed to justify their cases, we are of the considered view that the possibility of incurring certain

expenses for personal purposes cannot be ruled and therefore, to resolve dispute between the parties, we direct the Assessing Officer to restrict disallowance of those expenses to 10% of total expenses incurred by the assessee for the assessment year.

13. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 7th February, 2022

Sd/-
(वी. दुर्गा राव)
(V. Durga Rao)
न्यायिक सदस्य /Judicial Member

Sd/-
(जी. मंजुनाथ)
(G. Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 7th February, 2022.
DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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