

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

आयकर अपीलसं./I.T.A.No.2816/Chny/2019

(निर्धारणवर्ष / Assessment Year: 2011-12)

Deputy Commissioner of Income Tax , Corporate Circle-3(2) Chennai.	Vs	M/s. Ucal Fuel Systems Ltd. Unit No.705, Delta Wing Raheja Towers, 177,Anna Salai Chennai-600 002.
		PAN: AAACU 0541K
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Mr. G.Johnson, Addl.CIT
प्रत्यर्थीकी ओरसे/Respondent by	:	Mr. R.Sivaraman, Advocate

सुनवाईकी तारीख/Date of hearing	:	04.04.2022
घोषणाकी तारीख /Date of Pronouncement	:	12.04.2022

आदेश / ORDER

PER G.MANJUNATHA, AM:

This appeal filed by the Revenue is directed against order passed by the learned Commissioner of Income Tax (Appeals)-11, Chennai dated 08.07.2019 and pertains to assessment year 2011-12.

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

"1. The order of the learned CIT(A) is contrary to law and facts and circumstances of the case.

2. The Id. CIT(A) erred in deleting disallowance of loss on claim of Foreign Exchange loss by overlooking the fact that notional loss in Foreign Exchange rate

claimed by the assessee in the instant case was not incurred in connection with loan for revenue purposes so as to allow the deduction as revenue expenditure as per the decision of Hon'ble Supreme Court in M/s. Woodward Governor Pvt. Ltd.

3. The Id. CIT(A) erred in not appreciating the fact that investment made in a foreign subsidiary company as advance is only capital in nature and hence loss due to fluctuation in Foreign Exchange rate is only a capital loss on investment."

3. Brief facts of the case are that the assessee company is engaged in the business of manufacturing of carburetors, fuel pumps for two wheelers and four wheelers filed its return of income for the assessment year 2011-12 on 30.11.2012 declaring total income of Rs.22,27,62,820/-. The assessment has been completed u/s.143(3) of the I.T. Act, 1961, on 29.01.2016 by making various additions. The case has been subsequently revised u/s.263 of the Act vide order dated 28.03.2018. The Assessing Officer in pursuant to directions of the CIT has completed assessment u/s.143(3) r.w.s. 263 of the Income Tax Act, 1961, and determined total income at Rs.24,96,10,196/- and made additions towards disallowance of

forex loss on restatement of loan liability amounting to Rs.1,78,19,870/-.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT(A). Before the learned CIT(A), the assessee submitted that the assessee has borrowed external commercial borrowings for the purpose of its working capital requirement and has restated its loan liability as on the balance sheet date which resulted in forex loss and the same has been treated as revenue in nature and debited into profit & loss account. The learned CIT(A), after considering relevant submissions of the assessee and also by relied upon certain judicial precedents, including decision of the Hon'ble Supreme Court in the case of CIT Vs Woodward Governor India Pvt. Ltd (2009) 179 taxmann.com 326(SC) deleted additions made by the Assessing Officer towards disallowance of forex loss on the ground that loss incurred by the assessee for restatement of its loan liability is revenue in nature, because external commercial borrowings availed by the assessee is for working capital requirements, but not for acquisition of any

asset in India or outside India. The relevant findings of the learned CIT(A) are as under:-

“5. The submissions of the assessee are examined, As per the submissions, it is seen that the assessee company had claimed a net exchange loss of Rs. 177.48 lakhs during the year on account of foreign exchange fluctuation loss. The external commercial bank loans which had been taken for the purpose of fulfilling the working capital loans of the assessee had been restated by taking the prevailing exchange rate as on 31.3.2011. The resultant loss has been claimed by the assessee as revenue expenditure for the year. The forex loss claimed by the assessee is entirely on revenue account. It is further submitted that no part of the ECB has been utilised for the purchase of any capital goods, imported or domestic. The exchange fluctuation loss is also claimed on revenue account by the assessee. In this regard, the assessee company has submitted copy of the decision of the Honble Supreme Court of India in Wood Ward Governor India Pvt.Ltd. as under:

21.In conclusion, we may state that in order to find out if an expenditure is deductible the following have to be taken into account (i)whether the system of accounting followed by the assessee is mercantile system, which brings into debit the expenditure amount for which a legal liability has been incurred before it is actually disbursed and brings into credit what is due, immediately it becomes due and before it is actually received; (ii) whether the same system is followed by the assessee from the very beginning and if there was a change in the system, whether the change was bona fide; (iii) whether the assessee has given the same treatment to losses claimed to have accrued and to the gains that may accrue to it; (iv) whether the assessee

has been consistent and definite in making entries in the account books in respect of losses and gains; (v) whether the method adopted by the assessee for making entries in the books both in respect of losses and gains is as per nationally accepted accounting standards; (vi) whether the system adopted by the assessee is fair and reasonable or is adopted only with a view to reducing the incidence of taxation.

6. The decision of the Hon'ble Supreme Court as well as the decisions of the ITAT Pune Tribunal in M/s. Cooper Corporate Pvt. Ltd. and Chennai Tribunal in M/s. Hyundai Motor India Ltd. are examined. The assessee company has consistently followed the practice of restating its gain and liability by restating the present value of the ECB loan. This regular accounting practice of the assessee needs to be accepted. The decision of Hon'ble Supreme Court in M/s. Woodward Governor Pvt. Ltd. is conclusive on this issue. Considering the same, the Assessing Officer is directed to allow this expenditure claimed of Rs. 1,78,19,870/-. Grounds of appeal on this issue are allowed."

5. The learned DR submitted that the learned CIT(A) has erred in deleting additions made by the Assessing Officer towards disallowance of forex loss on restatement of loan liability as on balance sheet date without appreciating fact that the assessee has not filed any evidences before the Assessing Officer to prove that loan availed from external borrowings is not for acquisition of any asset and further, loss incurred by the assessee does not come under the provisions of section 43A of

the Income Tax Act, 1961. Therefore, the learned DR requested to set aside the issue to the file of the Assessing Officer to verify facts with regard to nature of loan liability and its utilization.

6. The learned AR, on the other hand, supporting order of the learned CIT(A) submitted that the assessee has filed various details, including financial statements and proved that external commercial borrowings availed by the assessee is for working capital requirement, but not for acquisition of any asset in India or outside India. The learned CIT(A), after considering relevant facts has rightly deleted additions made by the Assessing Officer and his order should be upheld.

7. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The learned CIT(A) has recorded categorical finding that external commercial borrowings availed by the assessee is for the purpose of working capital requirements and thus, restatement of said loan liability as on date of balance sheet on the basis of prevailing exchange rate is revenue in nature

which cannot be disallowed. The learned CIT(A) recorded further finding that forex loss claimed by the assessee is in the nature of revenue account, because no part of external commercial borrowings has been utilized for the purpose of purchase of any capital goods, imported or domestic. Therefore, the learned CIT(A) opined that loss claimed by the assessee on account of restatement of loan and resultant loss is revenue in nature, which cannot be disallowed as capital in nature or comes under provisions of section 43A of the I.T Act, 1961. The learned CIT(A), while allowing relief to the assessee, has followed decision of the Hon'ble Supreme Court in the case of M/s. Woodward Governor India Pvt.Ltd. (supra) and also decision of the ITAT., Pune Bench in the case of Cooper Corporate Pvt.Ltd. vs. DCIT in ITA No.866/Pn/2014. The learned CIT(A) has also followed decision of the coordinate Bench of ITAT. Chennai, in the case of M/s.Hyundai Motor India Ltd in ITA No.842/Chny/2016. We further noted that the learned CIT(A) had also relied upon decision of the Hon'ble Jurisdictional High Court of Madras in the case of CIT Vs. Celebrity Fashion Ltd. (2020) 119 taxmann.com 426. The Hon'ble High Court had considered an identical issue and held

that in case of the assessee, not being dealer in foreign exchange, but exporter of cotton, loss incurred on account of cancellation of forward contract would not be speculative losses falling within the provisions of section 43(5) of the Act and the assessee would be entitled to claim deduction in respect of loss suffered by it as business loss. The sum and substance of ratio laid down by various courts, including the Hon'ble Supreme Court is that if loss incurred on account of fluctuation of foreign currency, whether it is on account of revenue account or capital account, same needs to be allowed as deduction, unless loss comes under provisions of section 43(5) of the Act. In this case, the revenue fails to bring on record any evidence to prove that loss incurred by the assessee on account of restatement of loan liability is capital in nature and further, it comes under the provisions of section 43A of the Income Tax Act, 1961, Therefore, we are of the considered view that there is no reason to interfere with the findings of the learned CIT(A) to delete additions made by the Assessing Officer towards disallowance of forex loss. Hence, we are inclined to uphold findings of the learned CIT(A) and reject grounds taken by the revenue.

8. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 12th April, 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 12th April, 2022

DS

आदेश की प्रतिलिपि अद्येषित/Copy to:

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