

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"H" BENCH, MUMBAI**

**BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT AND**  
**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.2010/Mum./2021**  
**(Assessment Year : 2012-13)**

**ITA no.2011/Mum./2021**  
**(Assessment Year : 2013-14)**

K. Uttamlal And Company  
1<sup>st</sup> Floor, Bhagwan Bhuvan  
196-198, Samuel Street  
Musjid Bunder, Mumbai 400 009  
PAN – AAIFK9976H

..... Appellant

v/s

Asstt. Commissioner of Income Tax  
Circle-17(2), Mumbai

..... Respondent

Assessee by : Shri Sunil Hirawat  
Revenue by : Shri Dinesh Chourasia, Sr. AR

Date of Hearing – 20/04/2022

Date of Order – 14/06/2022

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeals have been filed by the assessee challenging the separate impugned order of even date 20/01/2020, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals)-57, Mumbai [*learned CIT(A)*], for the assessment year 2012-13 and 2013-14.

2. Since both the appeals pertain to the same assessee and issue involved is also common, therefore, these appeals were heard together as a matter of convenience and are being adjudicated by way of this consolidated order. Further, as the basic facts in both the appeals are same, except with variance in figures, we have elaborately mentioned only the facts for the first assessment year (i.e. 2012-13) before us for the sake of brevity.

3. Both the appeals filed before us are delayed by 560 days. In the present case, the impugned orders of even date 20/01/2020, for both the assessment years, were received by the assessee on 28/01/2020. Thus, as per section 253(3) of the Act, assessee was required to file appeals within 60 days from the date of receipt of order. However, assessee filed appeals, for the years under consideration, on 29/10/2021. We find that the Hon'ble Supreme Court vide order dated 10.01.2022, in M.A. no.21 of 2022, in M.A. no.665 of 2021, in Suo-Motu Writ Petition (Civil) no.3 of 2020, directed that the period from 15.03.2020 till 28.02.2022, shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial and quasi judicial proceedings. As the due date for filing present appeals was falling within the aforesaid time-period, in view of the order passed by the Hon'ble Supreme Court, there is no delay in filing the present appeals and we proceed to decide the appeals on merits.

4. In both the appeals, assessee is aggrieved by addition on account of foreign exchange loss due to re-statement of buyer's credit payable.

5. The brief facts of the case, as emanating from the record are: The assessee is a firm and is engaged in the business of purchase and sale of chemicals. For assessment year 2012 - 13, assessee filed its return of income on 27/09/2012 declaring total income of Rs. 73,72,654. During the course of assessment it was noticed that assessee has debited an amount of Rs. 1,58,19,171 as foreign exchange loss. On verification of records, it was ascertained that from the above amount of Rs. 1,58,19,171, an amount of Rs. 13,62,115 has been attributed towards the following foreign exchange on purchase:

(i) Payable on import	Rs. 8,46,206
(ii) Buyer's Credit Payable	<u>Rs. 5,15,909</u>
Total	<u>Rs. 13,62,115</u>

It was further noticed that foreign exchange loss on the value of payments to be made has only been restated by the assessee as on 31/03/2012 and thus the assessee firm has debited the transaction in its books in rupee terms by converting the same at the prevailing rate of exchange. The Assessing Officer vide order dated 04/03/2015 passed under section 143 (3) of the Act treated the loss of Rs. 13,62,115 as notional loss and added the same to the total income of the assessee.

6. In appeal before learned CIT(A), assessee submitted that the transactions entered during the year, which were settled in subsequent year and outstanding as on 31/03/2012 have been restated at the exchange rate as on 31/03/2012 after setting off the gain and thus the loss of Rs. 13,63,115 has been claimed as per the Accounting Standard-11. The assessee further placed reliance upon the decision of Hon'ble Supreme Court in CIT vs Woodward Governor India Private Limited (312 ITR 254) in support of the submission that the monetary items have to be translated using the closing date at each balance sheet date. The learned CIT(A) vide impugned order granted partial relief to the assessee and deleted the disallowance in respect of payment on imports by treating the same as revenue expenditure. However, learned CIT(A) upheld the addition in respect of buyer's credit payable on the basis that assessee has failed to demonstrate as to how the same is related to any revenue expenditure. Being aggrieved, the assessee is in appeal before us.

7. During the course of hearing, learned Authorised Representative ("*learned AR*") submitted that assessee collated the details pertaining to buyer's credit payable to show that the same was in respect of the import of industrial chemicals, solvents intermediaries, i.e. the items in which assessee trades. However, such details could not be filed before the Assessing Officer in time. The learned AR further submitted that such details were filed before the learned CIT(A), however, the same were not taken into account while deciding assessee's appeal. The assessee has

filed the rectification application before the learned CIT(A) in respect of same, which is currently pending.

8. On the other hand, learned Departmental Representative vehemently relied upon the orders passed by the lower authorities.

9. We have considered the rival submissions and perused the material available on record. The only issue arising for our consideration in present appeal is with regard to disallowance of foreign exchange loss in respect of buyer's credit payable by the assessee. As per the assessee, the foreign exchange loss has arisen on amount payable as buyer's credit, which was restated at the exchange rate as on 31/03/2012, after setting off the gain, as per AS-11. Further, it is the case of the assessee that the buyer's credit was in respect of import of items traded by the assessee and the assessee is having import letter or credit (buyer credit) limit of Rs. 14 crores with the bankers. Whenever the assessee needs funds under buyer's credit, it requests its bank for arranging the same on behalf of assessee and request the bank to make payment of their import bills. The assessee also referred to the details in respect of its claim, which are forming part of the paper book. As these details, due to delay in filing, were not considered by the Assessing Officer and also has not been taken note by the learned CIT(A), while upholding the addition, we deem it appropriate to remand this issue to the file of Assessing Officer for *de novo* adjudication after consideration of the details filed by the assessee.

Thus, sole ground raised by the assessee in its appeal for the assessment year 2012–13 is allowed for statistical purpose.

10. As stated earlier, the facts for assessment year 2013–14 are exactly identical with the assessment year 2012–13, except with variance in figures. Hence, the decision rendered hereinabove for assessment year 2012–13 shall apply *mutatis mutandis* to assessment year 2013-14 and accordingly, sole ground raised by the assessee in its appeal for the assessment year 2013–14 is also allowed for statistical purpose.

11. In the result, both the appeals by the assessee are allowed for statistical purpose.

Order pronounced in the open court on 14/06/2022

**Sd/-**  
**PRAMOD KUMAR**  
**VICE PRESIDENT**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 14/06/2022**

*Copy of the order forwarded to:*

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The CIT(A);*
- (4) The CIT, Mumbai City concerned;*
- (5) The DR, ITAT, Mumbai;*
- (6) Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai