

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI

(DELHI BENCH 'E' : NEW DELHI)

**BEFORE SH. G.S.PANNU, HON'BLE PRESIDENT
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.1592/Del/2018
(Assessment Year : 2012-13)

Income Tax Officer, Ward-15(3), New Delhi	Vs.	M/s. Lloyd Housing Pvt. Ltd. 283, A.G.C.R Enclave, Karkardooma, Delhi-110092 PAN : AABCL2796G
(APPELLANT)		(RESPONDENT)

Assessee by	Sh. S. Krishnan, Adv. And Sh. V. Rajkumar, Adv.
Revenue by	Ms. Garima Sharma, Sr. DR

Date of hearing:	25.05.2022
Date of Pronouncement:	30 th .06.2022

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been preferred by the Revenue against the First Appellate order dated 12/10/2017 in appeal no. 219/2016-17 for assessment year 2012-13 passed u/s 250 of the Income Tax Act, 1961 (hereinafter

referred to as 'the Act) by Commissioner of Income Tax (Appeals)-32, New Delhi (hereinafter referred as the Ld. First Appellate Authority or in short Ld. F.A.A), in appeal before it against order dated 24.03.2015 u/s 143(3) of the Act passed by the Assessing, Assistant Commissioner of Income Tax, Circle-15(2), New Delhi(Officer or hereinafter referred to as ' Ld. AO).

2. The facts in brief are the assessee is engaged in the business of purchase of sale of immovable properties and a filed a return declaring income of Rs. 2,06,22,970/-. The case was selected for scrutiny. The ld. AO noticed that assessee had debited an amount of Rs. 75,58,000/- under the head "Compensation due to Rate difference". Assessee claimed that certain expenditures likely to be incurred for a removal of high tension electric wire were likely to be incurred, therefore a provision was created in the books of account by debiting the proposed expenditure to Profit & Loss account. However, Ld. AO was not satisfied and considered it to be an unascertained liability. The Ld. AO believed that assessee should have created this provision in its balance sheet. Further even after 3 years no such compensation has been paid to anybody, therefore, this amount was disallowed. Further, in regard to an amount of Rs. 4,82,15,440/- booked under the head "Loss in Currency F & O" as a part of the Revenue from operation was disallowed as Ld. AO considered forward trading of the foreign exchange being not the business of the assessee. The foreign trading transactions were not said to be genuineness, therefore, loss was considered to be not a genuineness loss.

3. The Ld. CIT(A) had deleted both the additions and therefore Revenue has come in appeal raising following grounds :-

“1. On the facts and the circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition of Rs. 75,58,000/- made by AO on account of unascertained liability as the assessee could not establish the justification with evidence & nature of liability.

2. On the facts and circumstances of the case the ld. CIT(A) has erred in law in deleting the addition of Rs. 4,82,15,440/- made by AO on account of loss claimed in trading in foreign exchange as the assessee could not establish the genuineness thereof with evidence without giving any appropriate facts.

3. On the facts and the circumstances of the case the Ld. CIT(A) has erred in law in deleting both the additions without appreciating the facts of the case.

4. That the order of the ld. CIT(A) is erroneous and is not tenable on facts and in law.

5. That the grounds of appeal are without prejudice to each other.

6. The appellant craves leave to add, alter, amend or forego any grounds of the appeal raised above at the time of hearing.”

4. Heard and perused the record.

5. On behalf of the revenue, Ld. DR submitted that Ld. AO had taken into consideration all the aspects of the nature of business of the assessee while making the additions. It was submitted that the compensation provision was not based on any agreement and the liability was unascertained. It was submitted that the currency loss in derivatives was beyond the ordinary course of business and that as a matter of fact, no prudent person would continue to make losses by such investments which were beyond the ordinary course of business.

6. On the other hand, Ld. Counsel for the assessee defended the orders of Ld. CIT(A). It was submitted that the liability was based on an expected expenditure. It was submitted that there was dispute with regard to amount which had to be paid and finally after a settlement, sum of Rs. 1,51,00,000/- was paid in the F.Y 2015-16. It was further submitted that the assessee was not making any false claim of loss from trading in Forex derivatives as it continued to make such transactions in the next year also. It was submitted

that all the necessary documents in the form of contract bills and brokerage were submitted and Ld. CIT(A) has rightly observed that there was no evidences to show that losses claimed by the assessee in Forex trading is sham.

7. **Ground no 1;** Giving thoughtful consideration to the matter on record in regard to the ground no. 1 it can be observed that at page no. 10 to 13, of PB, assessee has placed the copy of a cheque of Rs. 1,51,00,000/- in favour of the MD of Army Welfare Housing Organisation. There is communication on record that there was a dispute in regard to HT line in land sold by the assessee to AWHO. It can be observed that Ld. AO has not doubted this possible liability but considered it to be unascertained. The matter of fact is that instead of Rs. 75,58,000/- provision made the assessee ended making a payment of Rs. 1,51,00,000/- for this disputed liability after settlement. Considering the evidences before it Ld. CIT(A) had found the findings of ld. AO based on surmises or suspicion alone and same require no interference. The ground no 1 is disallowed.

8. **Ground no 2;** In regard to ground no. 2 it can be observed that on behalf of the assessee voluminous record has been placed in the paper book and also before Ld. CIT(A). The copy of MOA of the company at page no 145 of PB, clause number B(14) and at page no 146 of the PB clause C(3) establish that establish that Assessee company had incorporated in its MOA that it may make investment as its business. So the finding of Ld AO that these investment were beyond ordinary business of Company is not correct. Further the time stamped contract notes of the authorized brokers operating through recognized stock exchange alongwith unique client code substantiate the claim of assessee that the transactions were genuine and ld. CIT(A) has rightly considered the same. Merely by introducing the rule of

human prudence that no person would continue to make loss on day to day basis the documents reflecting the transactions cannot be alleged to be sham. No ground of interference is made out. The ground no 2 is disallowed.

9. As a consequence of aforesaid determination of grounds no 1 and 2 against the Revenue, the other grounds are also determined against the Revenue and **the appeal of Revenue is dismissed.**

Order pronounced in the open court on 30th June, 2022.

Sd/-
(G.S.PANNU)
PRESIDENT

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Date:-30 .06.2022

Binita, Sr.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI