

**आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"B" BENCH, CHENNAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ **ITA No. 257/Chny/2020**  
(निर्धारण वर्ष / **Assessment Year: 2010-11**)

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आयकर अपील सं./ **ITA No. 258/Chny/2020**  
(निर्धारण वर्ष / **Assessment Year: 2013-14**)

&

आयकर अपील सं./ **ITA No. 259/Chny/2020**  
(निर्धारण वर्ष / **Assessment Year: 2014-15**)

<b>ACIT (Pondicherry Circle)</b> Kannaiah Business Centre, No. 378-386, M.G. Road, Puducherry – 605 001.	<b>बनाम/</b> Vs.	<b>M/s. Integra Software Services P. Ltd.</b> 100 Feet Road, Pakkamudaiyanpet, Pondicherry – 605 008.
स्थायी लेखा सं./ जी आइ आर सं./ <b>PAN/GIR No. AAACI-6193-B</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी/ <b>Respondent</b> )

अपीलार्थी की ओर से/ <b>Appellant by</b>	:	Shri R Bhoopathi (JCIT) – Ld. DR
प्रत्यर्थी की ओर से/ <b>Respondent by</b>	:	Shri N. Arjunraj (CA) for Shri. S. Sridhar (Advocate) – Ld. AR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	06-09-2022
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	21-10-2022

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeals by revenue for Assessment Years (AYs) 2010-11, 2013-14 & 2014-15 arises out of common order passed by learned Commissioner of Income Tax (Appeals), Puducherry [CIT(A)] on 20.11.2019 in the matter of separate assessments framed by Ld. Assessing Officer [AO]. These appeals were heard along with assessee's appeal for AY 2012-13 which has separately been disposed-off by us. It was admitted position that the adjudication of AY 2012-13 shall apply to these appeals also.

2. The sole grievance of revenue in AY 2010-11 is deletion of disallowance u/s 40(a)(i). The ground relating to mark-to-market losses as raised in this year do not emanate from assessment order. The issue of disallowance u/s 40(a)(i) is in second round of appeal before us since the same were remitted back by the Tribunal to the file of Ld. AO for fresh consideration vide ITA No.1099/Mds/2015 order dated 28.02.2017. In the said background, the issue is adjudicated as under: -

**3. Disallowance u/s 40(a)(i)**

3.1 This issue was remitted back vide para 6.0 of the order dated 28.02.2017 for fresh consideration and to verify the satisfactory compliance of Form 15CA / CB. Accordingly, an assessment order has been passed on 31.12.2018. The assessee submitted that there was no requirement to file Form 15CA / CB in this year by making reference to the amendments to Sec.195(6) r.w.r.37BB. Since Form 15CA / CB were not filed, Ld. AO upheld the disallowance.

3.2 The Ld. CIT(A) deleted the disallowance by relying upon Tribunal's order for AY 2011-12, ITA No.2189/Chny/2017 order dated 11.10.2019. In para-21 of the order, it was held by the Tribunal that the violation of provisions of Sec.195(6) and failure to file certificates in Form No.15CA and 15CB is liable for penalty which Ld. AO could initiate. However, there could not be any disallowance u/s 40(a)(i). Aggrieved, the revenue is in further appeal before us.

4. We find that the adjudication of Ld. CIT(A) is in line with the order of the Tribunal in assessee's own case for AY 2011-12. The said order is not shown to have been reversed in any manner. Therefore, no fault could be found in the impugned order, on this issue. The appeal of the revenue stand dismissed.

#### **5. Appeal for AY 2013-14**

In this year, the grievance of the revenue is two-fold i.e., (i) Disallowance u/s 40(a)(i); (ii) Mark-to-Market Losses on forex derivatives. The same is adjudicated as under: -

#### **6. Disallowance u/s 40(a)(i)**

6.1 In this year, an assessment has been framed by Ld. AO on 20.02.2017. The Ld. AO made disallowance u/s 40(a)(i) for want of TDS on foreign payments. In the alternative, the payments were disallowed u/s 37(1) for want of documentary evidences. The Ld. CIT(A) deleted the disallowance by relying upon Tribunal's order for AY 2011-12, ITA No.2189/Chny/2017 order dated 11.10.2019. Aggrieved, the revenue is in further appeal before us.

6.2 We have adjudicated similar issue in assessee's appeal for AY 2012-13, ITA No.735/Chny/2017 as under: -

4.3 It emerges that the assessee could not file any documentary evidences in support of the payment so made to foreign entities. The claim of the assessee has to cross the hurdles of Sec.37(1) as well as the provisions of Sec.40(a)(i). We find that similar payments were made by the assessee in AY 2011-12 and adjudication of this issue was done by Tribunal in ITA No.2189/Chny/2017 order dated 11.10.2019. In Para-20 of the order, it was held that the services were not technical in nature. Considering the facts of this year, this issue stand restored back to the file of Ld. AO for fresh consideration with a direction to the assessee to file requisite evidences in support of the claim. The decision of this Tribunal as rendered for 2011-12 shall be duly considered by Ld. AO. The corresponding grounds stands allowed for statistical purposes.

Facts being pari-materia the same, this issue stand restored to the file of Ld. AO on similar lines. The corresponding grounds urged by the revenue stand allowed for statistical purposes.

## **7. Disallowance of forex losses**

7.1 The assessee entered into forward contracts to hedge against currency fluctuations for its export business. However, relying upon CBDT instruction No.03 of 2010 dated 23.03.2010, the loss was held to be notional loss as well as speculative loss u/s 43(5). The Ld. CIT(A) upheld the stand of Ld. AO but directed him to allow the loss in the year in which it was actually incurred. Aggrieved, the revenue is in further appeal before us.

7.2 We have adjudicated similar issue in assessee's appeal for AY 2012-13, ITA No.735/Chny/2017 as under: -

5.3 The Ld. AR explained that the assessee was exposed to foreign exchange risk which was sought to be covered by forex derivatives. Accordingly, these transactions could not be termed as speculative or notional loss in nature. The Ld. AR submitted that the quantum of transactions is commensurate with the forex exposure of the assessee and represented by underlying assets. Considering the same, we restore this issue back to the file of Ld. AO for fresh consideration with a direction to the assessee to substantiate its claim.

Accordingly, we direct Ld. AO to take a consistent stand in the matter.

7.3 The revenue's appeal stand partly allowed for statistical purposes.

## **8. Appeal for AY 2014-15**

It is admitted position that the facts as well as issues in this year are identical to revenue's appeal for AY 2013-14. Accordingly, our adjudication as for AY 2013-14 would mutatis mutandis apply to this appeal also. The appeal stands partly allowed for statistical purposes.

## **Conclusion**

9. The appeal for AY 2010-11 stand dismissed whereas the other two appeals stand partly allowed for statistical purposes.

Order pronounced on 21<sup>st</sup> October, 2022.

**Sd/-**  
**(MAHAVIR SINGH)**  
**उपाध्यक्ष / VICE PRESIDENT**

**Sd/-**  
**(MANOJ KUMAR AGGARWAL)**  
**लेखासदस्य / ACCOUNTANT MEMBER**

चेन्नई/ Chennai; दिनांक/ Dated : 21-10-2022

*JPV*

## **आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF