

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" DELHI**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.4596/DEL/2019
Assessment Year 2014-15

Asstt. Commissioner of Income Tax, Circle-5(1), New Delhi.	v.	M/s. Bumi Highway India Pvt. Ltd., A-1/292, Ground Floor, Front Portion, Pankha Road, Janakpuri, New Delhi.
TAN/PAN: AABCB5995M		
(Appellant)		(Respondent)

CO No.134/DEL/2019
Assessment Year 2014-15

M/s. Bumi Highway India Pvt. Ltd., A-1/292, Ground Floor, Front Portion, Pankha Road, Janakpuri, New Delhi.	v.	Asstt. Commissioner of Income Tax, Circle-5(1), New Delhi.	
TAN/PAN: AABCB5995M			
(Appellant)		(Respondent)	
Assessee by:	Mrs. Shashi M Kapila, Adv. Shri Parvesh Sharma, Adv Shri RR Maurya, Adv.		
Department by:	Shri Kanav Bali, Sr.DR		
Date of hearing:	03	11	2022
Date of pronouncement:	03	11	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned Appeal and the Cross Objection has been filed by the Revenue and the Assessee respectively against the order of the Commissioner of Income Tax (Appeals)-II, New Delhi

['CIT(A)' in short] dated 27.02.2019 arising from the assessment order dated 30.11.2016 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2014-15.

2. The grounds of appeal raised by the Revenue read as under:

“1. Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the disallowance to 50T on account of reinstated foreign exchange loss.

2. The appellant craves leave for reserving the right to amend, modify, alter add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”

3. The assessee has also filed Cross Objection in the matter. The Grounds of appeal raised in the Cross Objection reads as under:

“1. That the Ld. CIT(Appeal) has erred in law in upholding the 50% of disallowance made by the Assessing Officer towards foreign exchange fluctuation loss of Rs.6,54,43,978/- without applying his mind to the merits of the case, and on ad-hoc basis as not being incurred wholly and exclusively for the purpose of the Respondent.

2. That the Ld. CIT(Appeals) failed to appreciate that the gain on revaluation of foreign exchange booked this year has already been taxed s income in earlier years by the Respondent following mercantile system of accounting and in accordance with the accounting policy prescribed in Accounting Standard 11 – ‘Accounting for the Effects of Changes in Foreign Exchange Rates.

3. *The grounds of appeal, as submitted, are notwithstanding each other. The Respondent craves to amend, alter or add fresh grounds of appeal during the course of proceeding before your goodself.*”

4. Briefly stated, the assessee-company states to have taken advances from its group companies, namely, Bhumi Hiway Ventures Berhad, Bumi Hiway (M) Sdn Bhd and Bumi Hiway (Mauritius) Ltd. The assessee claims to have utilized the funds for business purposes and since the advance are claimed to have received in foreign currency, it has revalued in accordance with Accounting Standard - 11 issued by ICAI on following accrual system of accounting. The assessee-company has revalued loans and funds in foreign currency as per AS-11 and loans amounting to Rs.6,54,43,978/- was computed as attributable to revaluation which was claimed as business expenditure. Likewise, gains on revaluation of such loans and funds were recognized as income by the assessee in the past as claimed. The Assessing Officer in the course of the assessment however held that loans have been utilized for non business purposes, i.e., investment in equity shares and accordingly denied deduction claimed on account of foreign exchange fluctuation loss. The assessed income was accordingly increased by such currency losses.

5. In the first appeal, the CIT(A) however scaled down the disallowance to 50% of the loss claimed. The relevant paragraph of the order of the CIT(A) dealing with issue reads as under:

“6. *Decision: - I have gone through the assessment order, grounds of appeal and the submission filed by the appellant. Grounds of appeal are adjudicated as under:*

6.1 Ground no. 1, 2 & 3:- These grounds are directed against addition of Rs.6,54,43,978/- on account of disallowance of foreign exchange, fluctuation loss. The AO has made the addition on the ground that the appellant has taken loan on which fluctuation loss has been claimed but the loan has been utilized for making investment in equity shares and not for its business purpose. As such it does not qualify as business deduction. The AO also mentions that the appellant had not proved by any evidence that the above mentioned investment was for business purpose.

6.2 The AO also mentions that there is a history of identical additions having been made in A.Y. 2010-11, 2011-12, 2012-13 and 2013-14. Therefore, the AO has disallowed the same and made the addition.

6.3 In appeal, the appellant submitted paper book dt. 22.03.2018 and written submission dt. 04.01.2019 and 15.02.2019 in which it has mentioned that -

(i) It follows consistent method of accounting for recognizing foreign exchange gain/loss. The revaluation of foreign exchange liability in accordance with AS-11 issued by the ICAI and is incurred wholly and exclusively for business purpose.

(ii) In case of exchange gain, the same has been accepted whereas in case of loss, the same is not accepted.

(iii) The CIT(A) and ITAT have accepted the submissions of the appellant and restricted the disallowance to 50% of reinstated foreign exchange loss in A.Y. 2009-10.

(iv) In the order of ITAT dt. 15.02.2018 for A.Y. 2009-10, it is mentioned that the CIT(A) looking to the facts and nature of transactions held that the entire sum could not be said to be expended wholly and exclusively for the business purpose. Therefore, following the decision of the Supreme Court in CIT Vs Woodward Governor India P. Ltd. 312 ITR 254, the CIT(A) allowed the claim of the assessee to the extent of 50%. The ITAT upheld the decision of the CIT(A) on the ground that there was absence of complete details provided before the AO and the AR could not show that the whole funds were used for business purpose. Similarly, the DR could not show that the fluctuation was capital in nature. Therefore, the restriction of exchange loss to 50% was upheld by the ITAT.

6.4 As the issue is identical and all the facts and circumstances of the case are the same in the impugned year, the decision of

the higher appellate authority in the appellant's case is respectfully followed. The disallowance of exchange loss is, therefore, restricted to 50%. The appellant gets relief of Rs. 3,27,21,989/-. These grounds are partly allowed."

6. We have considered the rival submissions on the issue. We find that the Co-ordinate Bench of Tribunal in ITA No.489/Del/2018 order dated 05.03.2021 relevant to Assessment Year 2013-14 in assessee's own case, has set aside the matter to the file of the Assessing Officer for suitable verification to ascertain the nature of transaction and whether the loss were utilized for business purpose or otherwise. The relevant operative paragraph of the order of the ITAT reads as under:

"We have gone through the order of the Co-ordinate bench of the Tribunal for the earlier years in ITA No.5871/Del/2013 and in CO Nos.239 & 240/Del/2016 wherein the matter has been referred to the file of Assessing Officer for verification of the utilization of the loan for business purpose by taking into account the amount of the loan raised, the quantum of the own capital and the reserves & surplus, utilization off the amount for day-to-day running of the business and utilization off the amount for investment in the equity shares of the subsidiary company or the amount invested for infusion of the capital in any other company."

7. In consonance with the approach adopted by the Co-ordinate Bench in Assessment Year 2013-14, we consider it expedient to restore the matter back to the file of the Assessing Officer on the issue in respect of Assessment Year 2014-15 in question as well. In parity, the directions applicable in Assessment Year 2013-14 shall apply *mutatis mutandis*. In the light of the above discussions,

the appeal of the Revenue as well as Cross Objection of the assessee is allowed for statistical purposes.

8. In the result, the appeal of the Revenue as well as Cross Objection of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 03/11/2022.

Sd/-

**[CHANDRA MOHAN GARG]
JUDICIAL MEMBER**

DATED: **03/11/2022**

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**