

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 582/Del/2022
(Assessment Year: 2018-19)

Constructora Sanjose SA, Unit No. 602, Global Foywer Building Gold Course Road, Gurgaon -122002 (Appellant) PAN: AAFCC6553Q	Vs. DCIT/ ACIT-Int-Tax, Haryana (Respondent)
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Assessee by :	Shri Ved Jain, Adv Ms. Supriya Mehta, CA
Revenue by:	Shri Sukesh Kumar Jain, CIT-DR

Date of Hearing	16/02/2023
Date of pronouncement	21/03/2023

ORDER

PER ANUBHAV SHARMA, J. M.:

1. The present appeal has been preferred by the Assessee against the order dated 21.02.2022 of ld AO, Gurgaon (hereinafter referred as Ld. AO).
2. Brief facts of the case is that the assessee filed its return of income declaring income of Rs. 1,81,58,260/- and claimed refund of Rs. 71,68,750/-. The case of the assessee was selected for scrutiny and during

the assessment proceedings the Id AO noticed that the assessee company has claimed for unrealized foreign currency losses amounting to Rs. 1,70,54,269/-, in Profit and Loss Account for Assessment Year 2018-19 for which the Id AO raised query and direct the assessee company to furnish details of foreign currency losses along with vouchers and details of dealing. The Id AO was not satisfied with the response and made addition with following findings as per para 4 of the draft order:-

“4. The reply of the assessee company is considered but not acceptable on ground that the assessee company did not provide the complete details regarding Foreign Exchange Loss. The assessee company was asked to furnish the details of transaction for which this loss on foreign exchange has been generated but no submission was received from the assessee company to explain the said loss. The Purpose of foreign currency loss was also to be determined by the assessee company which has remained unexplained as the assessee company failed to state the purpose of the loss in all its submissions. The assessee company was also asked to state the Business expediency for incurring this expenditure and provide all invoices related to it. However, the assessee company has not provided/furnished complete documents nor has it submit a valid explanation for the queries or information sought in the matter of the foreign currency loss. In absence of complete documentary evidence the claim of the assessee is not sustainable. Therefore in absence of complete documentary evidence the claimed loss amounting to Rs. 1,70,54,269/- on account of Foreign Exchange Loss is disallowed and the same is added to the business income of the assessee.”

3. The assessee company approached the Id. DRP wherein, the Id DRP called for the records and also remand report from the Id AO and there upon the Ld. Panel was not satisfied with the response and refused to interfere with the draft assessment order.

4. The assessee is in appeal raising following grounds:-

1. *On the facts and circumstances of the case, the final assessment order passed by the learned Assessing Officer under Section 143(3) read with Section 144C(13) of the Act is bad both in the eye of law and on facts.*

2. *On the facts and circumstances of the case, the learned AO has erred both on facts and in law in passing the order without providing reasonable opportunity to the assessee in clear violation of the principle of natural justice.*

3. *On the facts and circumstances of the case, the learned AO has erred both on facts and in law in making the assessment at the income of Rs. 3,52,14,160/- as against the returned income of Rs. 1,81,59,890/- declared by the assessee.*

4(i) *On the facts and circumstances of the case, the learned AO has erred both on facts and in law in making the disallowance of Rs. 1,70,54,270/- on account of foreign exchange loss claimed by the assessee in respect of reinstatement of closing balance of outstanding liabilities:*

(ii) *That the above said disallowance has been made despite the detailed submissions and explanation along with the evidences brought on record justifying the claim made by the assessee.*

(iii) *That the above disallowance has been made ignoring the settled position of law that the foreign exchange reinstatement loss incurred in the regular course of business is an allowable expenditure under the Income Tax Act.*

(iv) *That the above disallowance has been made ignoring the principle of consistency despite there being no change in the facts of the current year.*

5. *On the facts and circumstances of the case, the learned AO has erred both on facts and in law in charging the interest under section 234A, 234B and 234C of the Income Tax Act.”*

5. Heard and perused the record.

6. On behalf of the appellant it was submitted that for the purpose of execution of the highway road project and for day to day running of the business, assessee has availed various services from time to time in the

nature Technical support services, Business Support Services, Sundry expenses and for the services so availed, the assessee company received invoices from its suppliers and the amount outstanding at the end of the financial year is shown under the head current liabilities. That, being foreign currency transactions, the balance outstanding as on the year end was reinstated by the assessee company as per the provisions of section 145(2) of the Income Tax Act as well as per the guidelines contained in AS-11. It was contended that both these are in parity with the accounting and disclosure requirement and the foreign currency (loss)/ gain arising on such reinstatement is claimed/ booked in the profit & loss account while computing income under head Profits and gains of business or profession'. Accordingly, in order to adhere to the provisions of section 145 and AS-11, the balance outstanding as on 31.03.2018 was reinstated by the assessee company, which resulted in foreign exchange loss of Rs. 1,70,54,269/- and the same was claimed by the assessee in its P&L A/c while computing income under the head 'Profits and gains of business or profession.

7. It was submitted that during the course of assessment proceedings, the Ld. AO issued notices u/s 142(1) of the Act dated 19.02.2021 and 25.02.2021, copy of which is placed at PB Page no. 71-74, wherein along with few other details, the Ld. AO required the assessee to furnish the following information/ documents:

“Details of foreign currency loss along with vouchers and details of dealing.”

7.1 It is submitted that in response to the above notices, the assessee vide reply dated 25.02.2021 (PB Page no. 75-78) submitted the details of exchange fluctuation as on 31.03.2018. Thereafter, the Ld. AO vide notice dated 17.03.2021, copy placed at PB Page no. 79- 81, show caused the

assessee that as assessee failed to provide the details of foreign currency loss along with vouchers and details of dealing, therefore, as to why not the foreign currency loss be disallowed. In response to the above show cause notice, assessee vide reply dated 22.03.2021 (PB Page no. 82-116) furnished the following details and documents in respect to the foreign exchange loss claimed by it:

- Copy of debit notes/ invoices of the expenses (PB Page no. 88-105)
- Excel sheets showing working of foreign exchange loss (PB Page no. 106-115)
- Details of exchange fluctuation as on 31.03.2018 (PB Page no. 116)

7.2 Thereafter, the Ld. AO vide notice dated 01.04.2021 (PB Page no. 117-118) required the assessee to re-file the reply dated 22.03.2021 as the same was not visible on the tax portal due to some technical fault. In this response, assessee again filed all the details and documents (as furnished vide reply dated 22.03.2021) vide another reply dated 02.04.2021. Copy of the reply is placed at PB Page No. 119-151.

8. It is submitted that foreign exchange re-instatement losses incurred in the regular course of business is an allowable expenditure and adhering to the provisions of section 43AA read with section 145 of the Act and Accounting Standards-II, the balance of outstanding as on 31.03.2018 was reinstated by the assessee company and it is established that assessee categorically brought to the knowledge of the Tax Authorities below, but they have failed to appreciate the same.

9. The Id AR referred to the applicability of ICDS for the purpose of treatment of transaction in foreign currency and submitted that ICDS are in

parity with accounting standards prescribed in AS-II and accordingly justified the exchange losses reinstatement claimed as expenses.

10. It was also submitted that the ld AO has not considered the expenditure to be doubtful or suspicious and once they are not doubted the exchange losses arriving out of reinstatement of foreign currency payable at the end of the financial year could not have been disallowed.

11. The ld AR referred to the following judgment in support of this contentions:-

1. CIT Vs. M/S WOODWARD GOVERNOR INDIA P. LTD. & M/S HONDA SIEL POWER PRODUCTS LTD. 2009 (4) TMI 4. Dated: 8-4-2009- SC
2. OIL & NATURAL GAS CORPORATION LTD. VERSUS COMMISSIONER OF INCOME TAX 2010 (3) TMI 81 dated 15.03.2010-SC
3. ASSTT. COMMISSIONER OF INCOME TAX CIRCLE- 16 (1), NEW DELHI VERSUS M/S TIMEX WATCHESLTD. AND VICA-VERSA 2016 (7) TMI 999 dated 21.06.2016- ITAT Delhi
4. DY. COMMISSIONER OF INCOME TAX CIRCLE-6 (3) (1), MUMBAI VERSUS ISAGRO (ASIA) AGROCHEMICALS PVT. LTD. AND (VICE-VERSA) 2020 (5) TMI 20 dated 26.02.2020-ITAT Mumbai
5. RADHASOAMI SATSANG Vs. COMMISSIONER OF INCOME-TAX 1991 (11) TMI 2 dated 15.11.1991 (SC)
6. COMMISSIONER OF INCOME TAX VERSUS M/S EXCEL INDUSTRIES LTD AND MAFATLAL INDUSTRIES P. LTD 2013 (10) TMI 324 dated 08.10.2013 (SC)
7. M/S UNIPARTS INDIA LTD. VERSUS THE DY. C.I.T. CIRCLE-18 (1) NEW DELHI 2021 (10) TMI 276 dated 30.09.2021- ITAT Delhi

12. On the other hand the Id DR submitted that there is no deficiency in the order of the Tax Authorities below and the assessee has failed to justify the expenses by leading appropriate evidence. Making reference to the remand report, the Id DR submitted that in the remand proceedings the Id AO had called for specific replies which was not furnished and the Id DRP has accordingly sustained the draft assessment order.

13. Appreciating the matter on record it can be observed that the Id AO has fundamentally passed the draft assessment order on account of being not satisfied by evidence and explanation from the assessee as to what was the purpose of losses and the business expediency for incurring this expenditure. Ld. DRP has followed the same status while rejecting the objections.

14. The matter on record brought by the appellant however, shows that the assessee company had responded to every notice of the Id AO during assessment proceedings by providing relevant and desired information and documents. Thus giving sufficient opportunity to Ld. A.O. to give findings on merit of submissions.

15. In this context from the order of the Id DRP itself it can be observed that in para 4, the Id DRP observes as follows:-

“4. Case records including submissions of the assessee dated 22.03.2021/02.04.2021 were perused in the light of above findings of the AO. It is seen that the assessee had submitted an excel sheet containing computation of foreign exchange fluctuation loss alongwith some debit notes/invoices. However, no justification/rationale of incurring the said expenditure was provided by the assessee. A perusal of draft assessment order reveals that the disallowances was made because the assessee could not justify the purpose and business expediency of the said expenditure. It is seen that submissions dated 22.03.2021/02.04.2021 have already been considered by the AO.”

16. The bench is of considered opinion that the observations of the ld
DRP that the ld AO considered the submissions of 22.03.2021 and
02.04.2021 seems to be incorrect as the draft order does not reflect the
same.

17. What rather comes up from the record is that Ld. AO in para no.3
and 4 of its order has tried to make a case that the assessee company had
failed to provide information and documents to the satisfaction of Ld. AO
but DRP on appraisal of record has found submissions dated 22.03.2021
and 02.04.2021 available on assessment record.

17.1 The submissions dated 22.03.2021 available at page no. 86 to 87
along with enclosure up to page no. 116 show that these submissions were
in response to notice u/s142(1) dated 17.03.2021.

17.2 The paper book further reflects that after this submission of
22.03.2021 another notice u/s 142(1) of the Act dated 01.04.2021 was
issued to the assessee and where the annexure issued by the Ld. AO
mentions;

*“it is informed that due to some technical error the reply filed by
you could not be down loaded, therefore, you are again requested
please provide the reply of notice u/s 142(1)/ questionnaire dated
17.03.2021”.*

The paper book shows that in response to this notice dated 01.04.2021
submissions dated 02.04.2021 were made by the assessee which are similar
in content to one dated 22.03.2021. Then at page no. 120 of PB, a
screenshot of the Revenue’s portal is filed which mentions that in response
to the query dated 01.04.2021 the response was filed and a part of this has
been reproduced by Ld. AO in para no. 3 of the assessment order as
follows.

“Sir we have submitted the details of Foreign, as per agreement with NHAI”.

17.3 If these submissions dated 22.03.2021 and 02.04.2021 are considered the same reflect that assessee had provided an excel worksheet along with copies of invoice and debit notes explaining foreign exchange loss. The justification on the basis of disclosure norms as per AS-7 was pleaded and detail of expenditures was also provided.

17.4 The order of Ld. DRP shows that Ld. AO had submitted a remand report again pleading of non-submission of necessary information while in fact submissions dated 22.03.2021 and 02.04.2021 along with annexures were exhaustive and would certainly have helped the Ld. AO in drawing a reasonable conclusion as to on what account the foreign exchange loss is claimed and justified by the assessee.

18. Further relevant is to observe that Ld. DRP also observes in para no. 3.2 of its order that ***“before the panel the assessee submitted certain details as well as copies of certain debit vouchers which was remanded to the Assessing Officer”***. Then in regard to remand proceedings it, the Ld. DRP observed from the remand report of the AO;

“5. Since earlier submissions of the assessee did not provide for purpose behind the transactions, agreements/contracts governing such transactions and their business expediency, vide email dated 08.12.2021, the assessee was requested to provide the following information:

In this connection, it is informed that Hon'ble DRP has remanded the proceedings in your case to this office as you have claimed that you have filed all the submissions regarding Foreign Exchange Loss to this office during the assessment proceedings. In this regard, you are requested to

provide the following information to this office on or before 10.12.2021:

(i) Supporting evidences for payments made/booked for which foreign fluctuation loss has been claimed

(ii) Copy of agreements/contract for services availed

(iii) Copy of bills/invoices raised by Head Office for such services

(iv) Nexus of the said services with business carried out by Project Office in India.

The assessee filed its response through email dated 10.12.2021 wherein copies of submissions dated 22.03.2021 and 02.04.2021 have been attached. However, the assessee did not provide any response to the specific queries raised above. Instead the assessee resubmitted copies of earlier submission dated 02.04.2021 which are already part of the record and duly considered by the AO but not found acceptable.

6. In this regard, it is noted that the assessee had not submitted details regarding underlying transactions which led to foreign exchange fluctuation loss, their business connection with Indian operations etc. The assessee was also provided fresh opportunity to provide the relevant information viz. copy of contract/agreement, nexus with Indian operations of PO of the assessee, bills/invoice etc. However, no details were submitted by the assessee and the assessee sent his earlier submissions only.

It may be noted that the assessee neither during the assessee proceedings nor during the remand proceedings could furnish any reasons for undertaking transactions which resulted in foreign exchange loss, nexus of such transactions with Indian business operations of the PO and copy of contract/agreement for services availed by the assessee. Thus, the assessee has failed to explain the rationale of transactions and its nexus with business of the assessee in India. Thus, submissions of the assessee dated 22.03.2021/02.04.2021 which are part of record, were not found to be satisfactory by the AO and disallowances were made accordingly. 7. In view of the foregoing, it is requested that

additions made by the AO may be sustained for the reasons mentioned in the draft assessment order and also for reasons discussed above."

18.1 Then Ld. DRP took notice of the rejoinder of the assessee to the remand report and observed.

"3.3 The assessee in his rejoinder, however, stated as follows:

"1.5 In para 4 it has been stated that the reply of the assessee company is not acceptable as the assessee did not provide the complete details of the transactions for which the loss of foreign exchange has been generated. The purpose of foreign currency loss was also to be determined which has remained unexplained. It has been concluded in para 4 that in absence of complete documentary evidence, the claim of loss on account of foreign exchange loss is disallowed.

1.6 In our written submissions along with the paper book filed, we have invited attention of the Hon'ble Panel that assessee vide reply dated 7-11-2020 placed at paper book Pg. nos. 59 to 64 and reply dated 12-2-2020 placed at paper book Pg. no. 69-70 submitted the complete details with documentary evidence. In response to the notice issued u/s 142(1) dated 19-2-2021 and 25-2-2021 placed at at paper book Pg. no. 71 to 74, asking for details of foreign currency loss along with vouchers, the assessee vide reply dated 25-2-2021 placed at paper book Pg. no. 75 to 78, submitted the complete details of exchange fluctuation. The Assessing Officer, thereafter, vide notice dated 17-3-2021 at paper book Pg. no. 79-81 again issued a letter asking for details of foreign currency loss. In response thereto the assessee filed a letter dated 22-3-2021 placed at paper book Pg. no. 82 to 116, relevant page 86, where reference was invited to the details already submitted. Not only that, assessee submitted further details placed at paper book Pg. no. 88 to 105, which are the invoices of the creditors due in foreign currency outstanding as on 31-3-2018.

1.7 Further the chart placed at paper book Pg. no. 116, contained the details of the invoices outstanding, the amount stated in the Indian rupees in the books of account and the conversion of this amount at the prevailing exchange rate as on the last date of the

accounting year i.e. 31-3-2018. As per this detail, a total amount of € 14,88,469 was outstanding with the book value in Indian rupees at Rs. 10,38,05,111/-. Applying the Euro rate of 80.622 as on 31-3-2018 the value of this Euro comes to Rs. 12,00,03,381/- and thus there was an exchange loss of Rs. 1,61,98,269/-, which after adjusting the exchange loss of Rs. 55,400/- booked earlier, the net loss came to Rs. 1,62,53,669/-. There was a further outstanding of € 77,940/- and against which after conversion of these Euro at the prevailing rate a further loss of Rs. 8,00,600/- was there. Thus, the total exchange loss was Rs. 1,70,54,269/-.

1.8 It may be relevant to point out here that there is no dispute in respect of the credit in respect of each of these invoices. The Ld. AO has disallowed the foreign exchange loss on the pretext that details were not filed. The letter along with complete vouchers and explanation and the computation are self-speaking. Not only this, at paper book pages 106 to 115 each of the invoices number, the amount in Euro and the conversion of the same in the Indian rupees has been stated.

1.9 Despite filing of the above details the Assessing Officer issued another letter dated 1-4-2021 placed at paper book Pg. no. 117-118. On going through page 118 it can be acknowledged that the Ld. AO has asked to re-file the details submitted earlier, where the Ld. Assessing Officer has stated that, "It is informed that due to some technical error, the reply filed by you could not be downloaded. Therefore, you are again requested to please provide the reply of notice u/s 142(1) questionnaire dated 17th March, 2021". In response thereto, the assessee again filed these details vide letter dated 02-4-2021, duly acknowledged on the Income Tax Portal, placed at paper book Pg. no. 119 to 151, relevant pages, 121-122 reply, invoices at pages 123 to 140. Complete details were again submitted. The Ld. AO, ignoring the above replies has made observations in paras 3 & 4 of the impugned draft assessment order that the details have not been submitted. 1.10 At the time of the last hearing, when these facts were brought to the notice before your honours, your honours has sought reply from the Ld. Assessing Officer in view of these evidences placed on record and that is why a remand report was called for. In the remand report the Ld.

Assessing Officer has not been able to rebut the contention of the assessee that these documents are on record. The Ld. Assessing Officer has simply stated that the assessee has not submitted details regarding transactions which led to foreign exchange fluctuation loss, their business connection and purpose of incurring such loss. In this regard we would like to the following before your honours:

Purpose and business connection of foreign currency exchange loss

1.11 Your honour the only purpose for recognizing the foreign currency loss/gain in the financial statements of the assessee company was to give a true and fair picture of the financials of the assessee as on the balance sheet date i.e. as on 31.03.2018. Your honours, the only reason for the foreign exchange loss is change in the currency rate as on the last date. In this regard, ongoing through the details submitted along with this letter and the computation sheet placed at PB Pg. no. 116, your honours will acknowledge that the reasoning for loss incurred is Euro going up to Rs. 80.622.

1.12 Your honour, being a law abiding entity, the only purpose of assessee company, behind reinstatement of foreign currency transactions are as under:

- i. To adhere with the guidelines issued by Institute of Chartered Accountant of India under Accounting Standard-11, which deals with 'The Effects of Changes in Foreign Exchange Rates' and are required to be mandatorily followed while preparing the financial statements of the company.*
- ii. To adhere with the provisions of section 43AA r.w.s. 145(2) of the Income Tax Act, wherein Income Computation and Disclosure Standards (ICDS) has been specified by the Central Government, which are to be mandatorily followed by the assessee while computing income under the head 'Profits and gains of business or profession'. The ICDS relevant in the case under consideration is ICDS-VI, which deals with the 'Effects of Changes in Foreign Exchange Rates'.*

1.13 Your honour our detailed submission in this regard has been discussed vide our submission dated 26.10.2021 (from para 1.6 on page no. 9 till para 1.22 on page no.28) filed before your honours.

1.14 Your honour, in addition to the above issue, Ld. AO in the remand report has also alleged that assessee has failed to substantiate the nexus of the foreign currency transactions with the business of the assessee company. In this regard, we would like to submit before your honour, that the allegation made by the Ld. AO is against the actual facts of the case under consideration, since your honour, vide reply dated 22.03.2021 (placed at PB Pg. no. 82-116) assessee company had duly submitted the copy of invoices (relevant pages are PB Pg. no. 88-105) received from its creditors. Your honours, had the Ld. AO gone through the copy of invoices, he would have himself acknowledged the nexus of the foreign currency transactions with the business of the assessee company.

Conclusion

1.15 In view of the above submission it can be concluded that in the remand report the Ld. Assessing Officer has not been able to rebut the contention of the assessee that the documents/details pertaining to foreign currency exchange loss were already on record. Accordingly, your honours, the disallowance made by the Ld. AO by alleging that assessee has failed to substantiate its claim via documentary evidences has no legs to stand upon and hence the disallowance made is liable to be deleted.

1.16 In view of the above rejoinder, it is prayed before your honours to grant necessary relief to the assessee."

18.2 The Ld. DRP, however, unimpressed made following conclusions and findings;

"3.4 The Panel has considered the submission. It is noticed that in the remand proceedings, the Assessing Officer had specifically requested the assessee to furnish the supporting evidences for payments made/booked for which foreign fluctuation loss has been claimed, copy of agreements/contract for services availed and copy of bills/invoices raised by Head Office for such services and also prove the nexus of the said services with business carried out by Project Office in India. However, the

assessee in its response through email dated 10.12.2021 did not provide any response to the specific queries raised by the AO and merely resubmitted copies of earlier submission dated 02.04.2021 which were already part of the AO's record, duly considered by the AO and rejected. 3.5 Before this Panel, it was stated by the assessee that the letter along with complete vouchers and explanation were filed and the computation was self-speaking. Not only this, each of the invoice's number, the amount in Euro and the conversion of the same in the Indian rupees has been stated, but the AO ignored the above replies and made observations in paras 3 & 4 of the impugned draft assessment order that the details have not been submitted. It was also stated that the only purpose for recognizing the foreign currency loss/gain in the financial statements of the assessee company was to give a true and fair picture of the financials of the assessee as on the balance sheet date i.e., as on 31.03.2018, and that the only reason for the foreign exchange loss is change in the currency rate as on the last date. Thus, the Panel is of the opinion that when specific documents, requisition by the AO such as details regarding underlined transactions which led to foreign exchange fluctuation loss, the Assessing Officer was correct in disallowance the same. The invoices and the debit notes are merely self-seeking and unilateral documents and in the absence of specific agreements for services avail and the corresponding copies of invoices from the head office, they cannot be accepted as evidence. The Panel, therefore, finds no infirmity in the order of the Assessing Officer. The assessee's objections are accordingly dismissed.

4. The objections of the assessee are dismissed as above. The Assessing Officer is directed to incorporate the findings of the Panel in respect of various objections suitably in the final order. The Assessing Officer shall also place a copy of the Panel Directions as Annexure to the final order.”

19. The aforesaid establish that Ld. DRP seems to have also not shown interest in examining the material on record and give a conclusive finding on issue. The provisions of Section 144C of the Act with sub-section 7 provides that DRP before issuing any directions under sub-section 5 of Section 144C can make such inquiry as it feels or call for any inquiry to be made by any Income Tax Authority. It is a settled proposition of law

that the process before the DRP is continuation of the assessment proceedings as only thereafter would a final appealable assessment order be passed. The proceeding before the DRP is not an appeal proceeding but a corrective mechanism in the nature of a second look at the proposed assessment order by high functionaries of the revenue keeping in mind the interest of the assessee. It is a continuation of the assessment proceeding till such time a final order of assessment which is appealable is passed by the Assessing Officer. The DRP thus is an authority expected to exercise its power more extensively than actually available with First Appellate Authority, CIT(A).

20. The Bench is of considered opinion that Ld. DRP has fallen in error in not exercising its exhaustive powers within the scope of Section 144C of the Act and to give a finding on the merits of the objections of the assessee on the basis of record before it. Too much stress has been laid by Ld. DRP on the non-satisfaction of Ld. AO about the lack of information provided to the Ld. AO. As a quasi judicial authority, the Ld. AO and Ld DRP, both were supposed to examine the claim on merits on the basis of whatever matter was before it. Brushing aside all the submission without any marshaling of whatever evidence or submissions are available and stressing on a particular information, is not justified.

21. As on merits of the claim, the bench is of considered opinion that judgments relied by the Ld. AR in the case of **CIT vs. M/s. Woodward Governor India P. Ltd. (supra)** and **ONGC Ltd. vs. CIT (supra)** extensively deal with the question as to what factors should be taken into account in order to find out if an expenditure on account of fluctuation in the foreign currency rates, when the assessee is following mercantile system of accounting, is deductible and as for convenience para no. 10 of the judgment in **ONGC vs. CIT (supra)** is reproduced :-

“10. Having carefully perused the decision of this Court in Woodward's case [2009] 312 ITR 254, we are of the opinion that both the issues stand concluded by the said decision. Dealing with the said issues extensively, speaking for the Bench, S.H. Kapadia, J. summarised the following factors which should be taken into account in order to find out if an expenditure on account of fluctuation in the foreign currency rates, when the Assessee is following mercantile system of accounting, is deductible:

(i) whether the system of accounting followed by the assessee is the mercantile system, which brings in the debits of the amount of expenditure for which a legal liability has been incurred even before it is actually disbursed and credits, what is due, immediately it becomes due even 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.

Applying these factors on the facts of that case, it was held that the "loss" suffered by the Assessee, maintaining accounts regularly on mercantile system and following accounting standards prescribed by the Institute of Chartered Accountants

of India (ICAI), on account of fluctuation in the rate of foreign exchange as on the date of balance-sheet was an item of expenditure under Section 37(1) of the Act, notwithstanding that the liability had not been discharged in the year in which the fluctuation in the rate of foreign exchange occurred.

We are of the opinion that the ratio of the said decision, with which we are in respectful agreement, squarely applies to the facts at hand and, therefore, the loss claimed by the Assessee on account of fluctuation in the rate of foreign exchange as on the date of balance-sheet is allowable as expenditure under Section 37(1) of the Act. ”

22. Thus, the bench is of considered opinion that the issue requires to be remanded back to the Ld. AO with directions to take into consideration the submissions of assessee dated 22.03.2021 and 02.04.2021 along with its enclosures / annexures and to pass afresh draft assessment order. Needless to say that Ld. AO will be in it's right to call for any further information from the assessee.

23. Accordingly, while setting aside the impugned orders of Ld. Tax Authorities below, the appeal of assessee is allowed for statistical purposes.

Order pronounced in the open court on 21/03/2023.

Sd/-

(N. K. BILLAIYA)

ACCOUNTANT MEMBER

Dated: /02/2023

A K Keot/ Binita

Sr. PS

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

Sd/-

(ANUBHAV SHARMA)

JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, New Delhi