

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं /ITA No.293/Hyd/2023 (निर्धारण वर्ष/Assessment Year:2017-18)		
M/s. HSBC Electronic Data Processing India Pvt. Ltd., Hyderabad-500 081 PAN: AAACH8235M	Vs.	Asst. Commissioner of Income Tax, Circle-2(2), Hyderabad.
(Appellant)		(Respondent)
आ.अपी.सं /ITA No.347/Hyd/2023 (निर्धारण वर्ष/Assessment Year:2017-18)		
Asst. Commissioner of Income Tax, Circle-2(2), Hyderabad.	Vs.	M/s. HSBC Electronic Data Processing India Pvt. Ltd., Hyderabad-500 081 PAN: AAACH8235M
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri Rajan Vora, C.A. & Shri Shyam Agrawal, C.A.	
राजस्व द्वारा/Revenue by::	Shri Kumar Pranav, CIT-DR	
सुनवाई की तारीख/Date of hearing:	21/11/2024	
घोषणा की तारीख/Pronouncement:	29/11/2024	

आदेश/ORDER

PER SHRI MADHUSUDAN SAWDIA, A.M.:

These cross appeals filed by M/s. HSBC Electronic Data Processing India Pvt. Ltd. ("assessee") and Revenue are against the order dated 28/03/2023 of the Learned

Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (“Ld. CIT(A)”) relating to A.Y.2017-18. For the sake of convenience, these two appeals were heard together and decided by way of this consolidated order.

2. First, we take up appeal of the assessee in ITA No.293/Hyd/2023. The grounds of appeal raised by the assessee read as under:

“ 1. The Hon'ble CIT(A) has erred in law in upholding the adjustment undertaken by Ld. AO without appreciating the amendment brought in by way of Section 43AA under the Act and Income Computation Disclosure Standard (ICDS) - VI which states that premium, discount or exchange differences arising on forward contracts that are entered into to hedge the foreign currency risk of firm commitment or highly probable forecast transaction shall be recognised only at the time of settlement.

2. Without prejudice to the above ground, the Hon'ble CIT(A) has erred in law by upholding the adjustment, without appreciating the fact that the Appellant had already disallowed an amount of Rs. 77,67,99,323 on account of year-end valuation to comply with the ICDS, thereby the net disallowance to the return of income of Appellant should be restricted to INR 20,62,59,427 (i.e. INR 98,30,58,750-77.67,99,323).

3. The Hon'ble CIT(A) has erred in law, in upholding the disallowance on the unrealised gain relating to foreign exchange fluctuation. arising out of forward contract on future receivables amounting to Rs. 98,30,58,750 by wrongly placing reliance on the Hon'ble ITAT ruling in the own case of Appellant without considering the provisions of the Act applicable for AY 2017-18.

4. The Ld. CIT(A) has erred in not considering the claim of refund of excess Dividend Distribution Taxes (DDT) paid under section 115-0 (@ 20.358% under the provisions of the Act) to its non-resident shareholders HSBC Holdings BV Netherlands, UK (a tax resident of United Kingdom), HSBC Finance, Netherlands (a tax resident of United Kingdom) and HSBC Group Nominees UK Limited (a tax resident of United Kingdom) during the subject AY, which is in excess of the rate provided under Article 11 under the India - United Kingdom DTAA (i.e. 10%), and thus the tax paid over and above the rate provided in the DTAA is eligible for refund. 5. The Hon'ble CIT(A) has erred in remitting the issue relating to refund of excess DDT deposited to the file of Ld. AO without considering the fact that Hon'ble CIT(A) does not have the power to remand the issue to the Ld. AO.”

3. Facts of the case, in brief are that the assessee company filed Return of Income for A.Y. 2017-18 on 30.10.2017 declaring total income of Rs.529,81,54,180/- under normal provisions and book profit of Rs.576,45,18,668/- u/s.115JB of the income tax Act,1961 (“ the Act”). The learned Assessing Officer (Ld. AO) completed assessment u/s.143(3) of the Act assessing the total income under normal provisions of the Act at Rs.631,44,51,980/- and u/s.115JB of the Act at Rs.576,45,18,668/-.

4. At the outset, the Learned Authorised Representative (“Ld. AR”) submitted that there are only two effective grounds involved in their appeal. First one is related to refund of excess dividend distribution tax (“DDT”) and the second one is related to

addition of Rs.98,30,58,750/- on account of unrealised gain from contract of foreign currency (in short “FC gain”).

5. As far as the refund of excess DDT is concerned, the Ld. AR fairly accepted that in the similar issue in assessee's own case, the co-ordinate bench of ITAT, Hyderabad for A.Y. 2016-17 vide order dated 17.10.2024 relying on the decision of Special Bench in the case of DCIT-11(3)(1), Mumbai Vs. Total Oil India Private Limited dated 20.04.2023, has decided the issue against the assessee. The Ld. AR submitted that they are not pressing this ground of appeal. Therefore we dismiss this ground of appeal of the assessee as not pressed.

6. The brief facts with regard to the other ground of the assessee regarding addition of Rs.98,30,58,750/- on account of unrealised FC gain is that, the Ld. AO observed that, during the year under consideration the assessee had reduced an amount of Rs.98,30,58,750/- on account of unrealised FC gain from the total income while calculating the taxable income under the Act. The Ld. AO also observed that the assessee had claimed unrealised FC loss as expenditure u/s.37 of the Act in A.Y. 2014-15. Therefore the Ld. AO was of the view that if the assessee has been regularly claiming the unrealised FC loss as expenditure,

the assessee should pay tax on unrealised FC gain also. The Ld. AO contended that not considering the unrealised gain as income is change of stand by the assessee from his stand in earlier years and therefore he added the amount of Rs.98,30,58,750/- to the total income of the assessee.

7. Aggrieved with the order of Ld. AO, the assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) relying on the decision of co-ordinate bench of ITAT in assessee's own case in ITA No.2388/Hyd/2018 and the decision of Hon'ble Supreme Court in the case of CIT Vs. Woodward Governor India Pvt. Ltd. (2009) 179 taxman 326 (SC), dismissed the appeal of the assessee.

8. Aggrieved with the order of Ld. CIT(A), the assessee is in appeal before us. The Ld. AR submitted that the assessee has prepared its financial statement of accounts and computed the book profit in accordance with the provisions of Indian Accounting Standard. Therefore the assessee has recorded the FC gain/loss on Mark to Market ("MTM) in their books of account. The Ld. AR further submitted that till last year i.e. A.Y. 2016-17, there was no difference in the treatment of FC gain/loss as per books of accounts and as per the provisions of the Act.

However, the treatment of FC gain / loss has been changed under the Act w.e.f. A.Y. 2017-18. To demonstrate the changes, the Ld. AR drew our attention to the section 36(1)(xviii), section 43AA and ICDS-VI of the Act. He further submitted that w.e.f. A.Y. 2017-18 the FC gain/loss as per the amended provisions of the Act are to be considered on actual settlement basis instead of MTM basis. As there was no corresponding change under Indian Accounting Standard, the assessee prepared its financial statement and calculated the book profit by following the MTM basis. Therefore, the assessee has offered the unrealised FC gain of Rs.98,30,58,750/- in the books of account and accordingly the same is included in the amount of book profit also. However due to change in the Act w.e.f. 2017-18, the FC gain / loss are to be worked out on actual settlement basis, the assessee deducted the unrealised FC gain of Rs.98,30,58,750/- from his taxable income while computing the total income as per the provisions of the Act. Finally the Ld. AR prayed before the bench to delete the addition made by the Ld. AO.

9. Per contra, the Learned Department Representative (“Ld. DR”) relying on the order of the revenue authority, reiterated to dismiss the appeal of the assessee.

10. We have heard the rival contentions and also gone through the record in the light of the submissions made by either side. As per the submission of the Ld. AR, the assessee has prepared their financial statement and calculated the book profit in accordance with the Indian Accounting Standard and therefore the unrealised FC gain of Rs.98,30,58,750/- has been included in the book profit. We have gone through the provisions contained in section 36(1)(xviii), section 43AA and ICDS-VI of the Act and found that, the amendment has been brought under the Act qua treatment of FC gain / loss w.e.f. A.Y. 2017-18. Therefore w.e.f. A.Y. 2017-18, the FC gain/loss has to be considered on the basis of actual settlement instead of MTM basis. Therefore, we are of the considered opinion that the amount of unrealised FC gain included in the book profit of the assessee are liable to be reduced while calculating the taxable income under the Act. Accordingly, the addition made by the Ld. AO on this account is deleted.

ITA No.347/Hyd/2023

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

“1) Whether on facts and circumstances of the case and in law, the CIT(A) is correct in disallowing the expenditure incurred on ESOP and ESPP ?

2) Whether the CIT(A) is correct in law in holding that expenditure on issue of ESOPs and ESPPs is allowable even when such loss is capital and notional ?

3) Any other ground that may be urged at the time of hearing.”

12. The solitary ground of appeal of the Revenue is with regards to allowability of discount on issue of ESOP/ESPP as deduction in computing the income under the head profit and gains of business. The brief facts with regards to this ground are that, the assessee had claimed Rs. 2,84,79,000/- as expenditure in computing the income under the head profit and gains of business on account of discount on issue of ESOP/ESPP. The Ld. AO during the assessment u/s 143(3) of the Act disallowed the said expenditure and added the same to the total income of the assessee, contending that it was notional and capital in nature. However during the appellate proceeding before Ld. CIT(A), the Ld. CIT(A) deleted the addition made by the Ld. AO. Aggrieved by such deletion of Ld. CIT(A), the revenue is in appeal before us.

13. Ld. DR simply placed his reliance on the order of the Ld. AO.

14. Per Contra the Ld. AR relying on the decision of the Ld. CIT(A) submitted that the coordinate bench of Hyderabad Tribunal in assessee's own case for AY 2012-13 dated 16/04/2021, AY 2014-15 dated 17/07/2019, AY 2010-11 dated 05/08/2024 and AY 2016-17 dated 17/10/2024 has decided the same issue in favour of the assessee. Hence the Ld. AR prayed before the bench to sustain the order of Ld. CIT(A) and to dismiss the appeal of the Revenue.

15. We have heard the rival contentions and gone through the record in the light of submissions made by the either side. As submitted by the Ld. AR the coordinate bench of Hyderabad Tribunal in assessee's own case for AY 2012-13 dated 16/04/2021, AY 2014-15 dated 17/07/2019, AY 2010-11 dated 05/08/2024 and AY 2016-17 dated 17/10/2024 has decided the same issue in favour of the assessee. Hence respectfully following the decisions of coordinate bench of Hyderabad Tribunal in assessee's own case for AY 2012-13 dated 16/04/2021, AY 2014-15 dated 17/07/2019, AY 2010-11 dated 05/08/2024 and AY 2016-17 dated 17/10/2024, we hold that the discount on issue of ESOP/ESPP is an allowable expenditure in computing the income under the head profit and gains of business. Therefore,

upholding the order of Ld. CIT(A), we dismiss the appeal of the Revenue. Accordingly, the appeal of the Revenue is dismissed.

16. To sum up, the appeal filed by the assessee is partly allowed for statistical purposes and the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 29th Nov., 2024.

Sd/-

(VIJAY PAL RAO)
VICE PRESIDENT

Sd/-

(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER

Hyderabad.

Dated: 29.11.2024.

** Reddy gp*

Copy of the Order forwarded to :

1. M/s. HSBC Electronic Data Processing India Pvt. Ltd.,
Plot Nos.3 & 4, Survey No.64, Hitech City, Hyderabad-
500 081
2. ACIT, Circle 2(2)/Circle 2(1), Hyderabad.
3. Pr. CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. Guard file.

BY ORDER,

