

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH
MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA 3996/MUM/2024
(A.Y. 2014-15)**

Om Prakash Daulatram Nogaja D Wadia Building, Cawasji Patel Street Fort Maharashtra- 400001	v/s. बनाम	Income Tax Officer-17(2)(5) Mumbai Maharashtra 400001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAAPN7532L		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Vanesh Kumar Nadar
Respondent by :	Shri Mahesh Pamnani (SR DR)

Date of Hearing	10.02.2025
Date of Pronouncement	18.02.2025

आदेश / ORDER

PER PRABHASH SHANKAR [A.M.] :-

The present appeal emanating from the appellate order dated 12.06.2024 is filed by the assessee against the appellate order of the Learned Commissioner of Income-tax (Appeals) ADDL/JCIT (A)-1, Delhi [hereinafter referred to as "CIT(A)"] pertaining to assessment order u/s. 143(3) r.w.s. 147 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] dated 27.09.2014- passed by the Income Tax Officer-17(2)(5), Mumbai for the Assessment Year [A.Y.] 2014-15.

2. The assessee has raised following grounds of appeal:



1. That the Learned CIT (Appeals), ADDL/JCIT (A)-1 DELHI is wrong, unjust and has erred in law in confirming, that the action of Learned Assessing Officer in holding that Foreign Exchange Loss accounted for as per Accounting Standard -11 is not an allowable expense.
2. That the Learned CIT (Appeals), ADDL/JCIT (A)-1 DELHI is wrong, unjust and has erred in law in confirming, that the action of Learned Assessing Officer in holding that the Assessee has closed his business.
3. That the Learned CIT (Appeals), ADDL/JCIT (A)-1 DELHI is wrong, unjust and has erred in law in validating the initiation of proceedings u/s 147 of the Income-tax Act, 1961.
4. That the Learned CIT(A), AddI/JCIT (A)-1, Delhi, erred in Jaw and on facts by not verifying the documents and replies submitted by the Assessee during the assessment proceedings.
5. That the Learned CIT(A), AddI/JCIT (A)-1, Delhi, erred in law and on facts by upholding the charging of interest under sections 234B and 234C of the Income-tax Act, 1961, which are consequential in nature and should be reconsidered based on the outcome of the primary grounds of appeal.
6. That the Learned CIT(A), AddI/JCIT (A)-1, Delhi, erred in law and on facts by initiating penalty proceedings under section 271(1)(c) of the Income-tax Act, 1961, without any substantive basis or final order.”

3. Brief facts of the case are that the assessee is an individual who filed return of income declaring income of Rs 81,750/-. During the course of assessment proceedings, the AO observed that he claimed deduction u/s 37 of the Act of an amount of Rs 29,91,425/-, being expenditure on account of Exchange rate difference debited to the profit and loss account. According to him, as the liability arose on 31.03.2007 and no payment was made during the current year, claiming the expenditure toward exchange rate difference was not in order. The assessee also admitted there was no business from 01.04.2007. As such the amount claimed as exchange rate difference was disallowed.



4. In the subsequent appeal, the Id.CIT(A) observed that business of the appellant was closed down since 01.04.2007 and there was no income under the head business income, thus any expenditure u/s 37(1) of the Act was not allowable. It was stated by the Ld.CIT(A) that the question whether expenditure u/s 37(1) of the Act could be allowed in a case, where business was closed down before the commencement of the relevant financial year was considered by the **Hon'ble Supreme Court in the case of LM Chhabra vs CIT, 65 ITR 638**, wherein it was held

“For income of a business to be taxable 10 of the Act it is one of the conditions that the assessee must carry on the business in the relevant year of account. If the business is discontinued before the commencement of the accounting year, the income attributable to that business received in the year cannot be taxed under section 10, because the source of income had ceased to exist. If the Income of a business is not taxable under section 10 as income of a particular year because the business was not carried on in that year, the assessee can obviously not seek to debit the expenditure incurred for carrying on that business, against his other income, for the outgoings are chargeable only against the income of a business which was carried on in the previous year. It follows that if an assessee carries on several distinct and independent business, and one of such business closed before the previous year, the cannot claim allowance under section 10 of the Act of an outgoing attributable to the business which is closed against the income of his other business in that year.”

4.1 In written submissions made before him, the appellant contended that he was following mercantile system of accounting and the loss on account of foreign exchange fluctuation was being allowed in earlier years. However, it was observed by the Id.CIT(A) that the expenditure u/s 37 of the Act was not allowable in respect of business, which was closed before the commencement of the relevant financial year, irrespective of the fact that the appellant was following mercantile system of accounting. Regarding contention of the appellant that the loss on account of



foreign exchange fluctuation was being allowed in earlier years, it was observed that an assessment year under the Act is a self contained assessment period and a decision in one assessment year does not ordinarily operate as res judicata in respect of matters decided in any subsequent year as held by the Hon'ble Supreme Court in case of Dwarkadas Kesardeo Morarka vs CIT, 44 ITR 529. Hence, Accordingly, he upheld the action of the AO.

5. In the course of hearing before us, the ld. DR relied on the orders of lower authorities. The ld. Authorized Representative, reiterated the same contentions as made before them. Apart from it, a written submission is also made. It is submitted that in its case, business activities were constrained to undergo temporary suspension due to unavoidable circumstances. Necessary expenses including the foreign exchange loss were incurred to maintain the continuity of the obligations arising from business operations of earlier years. The audited financials and accounting standards(AS-11) duly reflect the recognition of exchange fluctuation loss. It is further stated that the ld.CIT(A) did not appreciate the observations of the AO that the assessee was engaged in the business of cutting of timber, security and commission business. Therefore, there was no complete closure of business. As such the cited decision in the case of L.N.Chhablra(supra) was not applicable to the facts of the case. Rather, he relied on the case of CIT vs Bangalore Transport Co.Ltd (1967) 66 ITR 373(SC) wherein it was held that it was not necessary that the business need to be actively carried on for the entire year to allow business expenditure. He further relied on the case of Hindustan Fertilizer



Corporation Ltd ITA No,409/Del/2013 in which it was held that even where business was closed, necessary operational expenses were allowable. It is also stated that similar expenses were being allowed by the Revenue in earlier assessment years. The Id.AR has also assailed the reopening by claiming that it is a case of change of opinion and was therefore, liable to be quashed.

6. We have carefully considered all the relevant facts of the case as borne from records. It is noticed that as per para 5 of the assessment order, the assessee had submitted a detailed reply before the authorities below in support of the claim that the deduction the firm could not make the payments due to reasons beyond its control. The amount was seized by the Narcotics department and was lying with banks for which suit was filed with Trial court to release the freezed amount. The exchange rate difference depends on prevailing rate at the end of the financial year. Accordingly, provisions was made in the profit and loss account. The claim related to the business and arose due to exchange rate movement. The accounting of this amount was as per ICA guidelines and the expenses were genuine. It is further stated that the firm had made payment to supplier as and when any payment was received. It paid Rs 76.49 lakh in FY 2008-09 and Rs 50.40 lakh in FY 2012-13 to Megha International P.Ltd, Singapore out of recovery from debtors during respective years. The AO, however, brushed aside the entire contentions of the assessee by merely stating that the same was not unacceptable as there was no business activity. It is noticed from the copies of financials submitted that the business activities were still being carried on by the assessee though on lower



scale. It had disclosed sale income from Sawing business and also other income of Rs 2,10,768/- and Rs 43,96,112/- respectively during the year. It is quite evident the none of the Revenue authorities considered the issue in correct perspective appreciating the facts of the case properly.

6.1 Considering the totality of the facts and the circumstances of the case, we find it appropriate and in the interest of natural justice to remand the issue back, as agreed to by both the sides, to the Id.AO by setting aside the assessment order with a direction to him to consider the submissions of the assessee in an objective manner and decide the matter in accordance with the provisions of the Act after allowing the assessee reasonable opportunity of hearing. The assessee is also directed to attend the de novo proceedings and make necessary compliance for fair and substantive adjudication of all the relevant issues by the Id. Assessing Officer.

7. In the result, the appeal of the assessee is **allowed for statistical purposes.**

Order pronounced in the open court on 18/02/2025.

Sd/-

NARENDER KUMAR CHOUDHRY

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकार सदस्य / ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 18.02.2025

Poonam Mirashi,
Stenographer



आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.

