

**आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ , मुंबई ।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "J" BENCH, MUMBAI**

**BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER AND**

**SHRI ASHWANI TANEJA, ACCOUNTANT MEMBER**

**आयकर अपील सं /I.TA No. 3546/Mum/2014**

**(निर्धारण वर्ष / Assessment Year: 2009-10**

The DCIT. Cir.6(1), Aayakar Bhavan, Mumbai-400 020	<b>बनाम/</b> Vs.	M/s. JIP Fashion & Restaurants India Pvt. Ltd., 404, Palm Spring, Link Road, Malad (W), Mumbai-400 064
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AABCJ 7149K		
<b>(अपीलार्थी /Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
अपीलार्थी ओर से/ <b>Appellant by:</b>		Shri Ashish Heliwal
प्रत्यर्थी की ओर से/ <b>Respondent by:</b>		None

सुनवाई की तारीख / **Date of Hearing** : **07.03.2016**

घोषणा की तारीख /**Date of Pronouncement** : **29.04.2016**

**आदेश / ORDER**

**PER C.N. PRASAD, JM:**

This appeal is filed by the Revenue against the order of the Ld. CIT(A)-14, Mumbai dated 13.03.2014 pertaining to assessment year 2009-10.

2. In spite of issue of notice, none appeared on behalf of the assessee nor filed any adjournment petition, therefore, we proceed to dispose of the appeal on merit.

3. The first issue in the appeal of the Revenue is that the Ld. CIT(A) erred in deleting the disallowance of loss claimed by the assessee on account of foreign exchange fluctuation rate without appreciating the fact that such loss was only a notional loss as the liability has not been discharged/settled during the year.

4. The Ld. Departmental Representative submits that the loss arising on foreign exchange fluctuation is only contingent in nature as no payment is made by the assessee and it is only a revaluation on the closer of the accounting year and therefore he submits that the liability did not crystallize during the previous year relevant to the assessment year. He supports the order of the Assessing Officer in disallowing the foreign exchange fluctuation loss.

5. We have perused the assessment order and the order of the Ld. CIT(A). The Ld. CIT(A) following the decision of the Hon'ble Supreme Court in the case of CIT Vs Woodward Governor (312 ITR 254) held that foreign exchange fluctuation is on Revenue account and is an allowable expenditure. As the Ld. CIT(A) by following the Hon'ble Supreme Court decision held that the foreign exchange fluctuation is on revenue account, we do not find any infirmity in the order and his conclusion. This ground of the Revenue is dismissed.

6. The second issue in the appeal of the Revenue is that the Ld. CIT(A) erred in deleting the addition of Royalty payment accepting the claim of the assessee that the details of such payments were submitted before the Assessing Officer during assessment proceedings when in reality details of royalty payments and TDS

thereupon was not filed before the Assessing Officer as alleged before the CIT(A).

7. Similarly the last ground raised by the Revenue is that the Ld. CIT(A) erred in deleting the disallowance made by the Assessing Officer on account of interest on overdraft and term loan amounting to Rs. 80,49,206/- accepting the claim of the assessee that the details of such payments were submitted before the Assessing Officer during the assessment proceedings when in reality details of interest on overdraft and term loan amounting to Rs. 80,49,206/- accepting the claim of the assessee that the details of such payments were submitted before the Assessing Officer during assessment proceedings when in reality details of interest on overdraft and term loan were not filed before the Assessing Officer.

8. In both these grounds, the Revenue also contended that Ld. CIT(A) has admitted the fresh evidence contravening the provisions of Rule 46A without giving an opportunity to the Assessing Officer for examining the additional evidences .

9. The Ld. DR submits that the Ld. CIT(A) has never called for the remand report also. The Ld. DR submits that both these issues may be restored to the file of the Assessing Officer for fresh adjudication.

10. We have perused the order of the Ld. CIT(A) and find that the CIT(A) deleted the disallowance u/s. 40(a)(ia) in respect of royalty paid to Papa John International Inc. He also gave a finding that the assessee has made these submissions before the Assessing Officer on

30.9.2011 and further held that payment of royalty is found in order. In the case of interest on overdraft and term loan, the Ld. CIT(A) observed that the Assessing Officer made the disallowance for want of furnishing of details by the assessee. In the course of proceedings before him, it appears that details were called for from the assessee and found by the CIT(A) that interest paid to bank on overdraft and term loan is in order as it was paid for the purpose of business. We also find that the Ld. CIT(A) has not given any reasons in holding that interest paid was for the purpose of business. The order is very cryptic on both issues. Therefore, in the interest of justice, we restore both these issues to the file of the Assessing Officer --who shall decide afresh in accordance with law after providing adequate opportunity of being heard to the assessee.

11. In the result, the appeal filed by the Revenue is partly allowed for statistical purpose.

Order pronounced in the open court on 29<sup>th</sup> April, 2016.

Sd/-

Sd/-

**(ASHWANI TANEJA)**

**(C.N. PRASAD )**

लेखा सदस्य / ACCOUNTANT MEMBER

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 29<sup>th</sup> April, 2016

व.नि.स./ Rj , Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,  
मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार**

(Dy./Asstt. Registrar)

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**