

आयकर अपीलीय अधिकरण, मुंबई "सी" खंडपीठ
Income-tax Appellate Tribunal " C "Bench Mumbai
सर्वश्री जोगिन्दर सिंह, न्यायिक सदस्य एवं राजेन्द्र, लेखा सदस्य
Before S/ShJoginder Singh, Judicial Member & Rajendra, Accountant Member
आयकर अपील सं./I. T. A./4676/Mum/2013, निर्धारण वर्ष /Assessment Year: 2009-10

The DCIT, Circle-8(2) Room No.216-A, Aayakar Bhavan, M.K. Road Mumbai-400 020.	Vs.	M/s. Parekh Platinum Ltd. 50, Bank of India Building, 2 nd Floor 185, Sheikh Menon Street, Zaveri Bazar Mumbai-400 002. PAN:AAACP 1996 R
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by: Shri M. Dayasagar –CIT-DR

Assessee by: None

सुनवाई की तारीख / **Date of Hearing: 31.05.2016**

घोषणा की तारीख / **Date of Pronouncement: 29.06.2016**

आयकर अधिनियम, 1961 की धारा 254(1)के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act)

लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-

Challenging the order, dt.02.11.2012, of the CIT(A)-17, Mumbai, the Assessing Officer (AO) has filed the present appeal. Assessee-company, engaged in the business of manufacturing of chemicals, catalysts, engineering products from precious metals, pre alloys and jewellery products etc., filed its return of income on 30.9.09 declaring income of Rs. (-) 9,46,11,350/-. The AO completed the assessment, u/s. 143(3) of the Act, on 14.12.2012 determining the income of the assessee at Rs. Nil.

2. First effective ground (GOA.s1-2) is about deleting the disallowance of bad debts amounting to Rs.49.86 crores. During the assessment proceedings, the AO found that the assessee had written off an amount of Rs.49,86,23,627/- for the reason that the subsidiary namely M/s. Gulf Metals and Chemicals, FZE had ceased to be in existence. As per the AO the assessee had not filed any details in that regard. He held that onus lied on the assessee to prove that the amount receivable from its subsidiary had become bad, that the idea of amount of subsidiary being irrecoverable was illogical and against common prudence. He disallowed the claim made by the assessee u/s.36(1)(vii) of the Act.

3. Aggrieved by the order of the AO the assessee preferred an appeal before the First Appellate Authority (FAA). After considering the submission of the assessee and the assessment order, FAA referred to the case of TRF Ltd. (323ITR397) and held that position of law had changed after 1.4.89, that it was not necessary for the assessee to establish that

debts had become recoverable, that it was enough if the bad debt had been written off in the books of account of the assessee, that the assessee had written off the amount, due from its subsidiary, in its books. Finally, he deleted the disallowance made by AO.

4. Before us, Departmental Representative (DR) supported the order of the AO. As stated earlier none appeared on behalf of the assessee.

5. We have heard the DR and perused the material available on record. We find that the assessee had written off an amount of Rs.49.86 crores due from its subsidiary, that necessary entries were made in the books of account, that the FAA had deleted the disallowance made by the AO. Following the judgment of TRF Ltd., we are of the opinion that if an assessee makes necessary entries in the books of account and writes off the bad debts there was no justification on part of the AO to disallow the claim made in that regard. The decision to write off a particular item during a particular year is the prerogative of a businessman. The departmental authorities are not supposed to enter into the shoe of a businessman. Therefore, in our opinion, the order of the FAA does not suffer from any legal or factual infirmity. Confirming his order, we decide the first effective ground raised by AO in his favour.

6. The second effective Ground of appeal (GOA.s3-5) is about deleting the disallowance of Rs.55.93 lakhs on account of unrealised foreign exchange loss on exports outstanding.

We find that, while deciding the appeal, the FAA had relied upon the case of Woodward Governor India (P) Ltd. (312ITR254). We find that the Hon'ble Apex Court had held that loss suffered by an assessee on account of fluctuation in the rate of foreign exchange as on the date of balance sheet was an item of expenditure u/s. 37(1) of the Act. It is further found that loss in the instant case is a trading loss computed and claimed by the assessee by following the accrual system of accounting. Considering the fact that the FAA had relied upon the judgment of Hon'ble Supreme Court in the case of Woodward Governor India (P.) Ltd. (supra), we decide second effective ground of appeal against the AO.

As a result, appeal filed by the AO stands dismissed.

फलतः निर्धारिती अधिकारी द्वारा दाखिल की गई अपील नामंजूर की जाती है।

Order pronounced in the open court on 29th June, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक 29 जून, 2016 को की गई।

Sd/-

Sd/-

जोगिन्दर सिंह /Joginder Singh)

(राजेन्द्र / RAJENDRA)

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 29 .06.2016.

Jv.Sr.PS.

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

- 1.Appellant /अपीलार्थी 2. Respondent /प्रत्यर्थी
3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त 5.DR "G "
Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अधि.मुंबई
6.Guard File/गार्ड फा

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**
उप/सहायक पंजीकार **Dy./Asst. Registrar**
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.