

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री अब्राहम पी.जॉर्ज, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.1299, 996, 997, 1302 & 1301/Mds/2016

&

C.O. Nos.87, 71, 72, 88 & 89/Mds/2016

(in ITA Nos.1299, 996, 997, 1302 & 1301/Mds/2016)

निर्धारण वर्ष / Assessment Years : 2009-10, 2008-09, 2011-12, 2010-11 &
2012-13

The Deputy Commissioner of
Income Tax,
Corporate Circle 6(2),
Chennai - 600 034.

v. M/s Sundaram Brake Linings Ltd.,
B-1, MTH Road, Padi,
Chennai - 600 050.

(अपीलार्थी/Appellant)

PAN : AADCS 4888 E

(Respondent & Cross-Objector)

अपीलार्थी की ओर से/Appellant by : Shri R. Durai Pandian, JCIT

प्रत्यर्थी की ओर से/Respondent by : Sh. N. Devanathan, Advocate
Sh. K. Ramakrishnan, CA

सुनवाई की तारीख/Date of Hearing : 29.03.2017

घोषणा की तारीख/Date of Pronouncement : 31.05.2017

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

All the appeals of the Revenue are directed against the respective orders of the Commissioner of Income Tax (Appeals)-15, Chennai, for the assessment years 2009-10, 2008-09, 2011-12, 2010-11 and 2012-13. The assessee has also filed cross-

objections against the very same orders of the CIT(Appeals). Therefore, we heard all the appeals of the Revenue and cross-objections of the assessee together and disposing of the same by this common order.

2. Shri R. Durai Pandian, the Ld. Departmental Representative, submitted that the assessee is engaged in the business of manufacturing of brake linings for export. During the year under consideration, the assessee exported the brake linings and also entered into forward contract in foreign exchange in order to protect the assessee from foreign exchange fluctuation. According to the Ld. D.R., forward contract in foreign exchange for the purpose of protecting the assessee from loss in foreign exchange fluctuation is nothing but a hedging transaction. The assessee-company, in fact authorized two of its employees to deal with banks for entering into forward contract. According to the Ld. D.R., the assessee claimed before the Assessing Officer that the two employees authorized by the assessee-company, in fact, exceeded their authority and entered into the transaction which was not in the normal course of business. In fact, the entire transaction was done by the employees as per the authority given by the assessee-company.

Moreover, according to the Ld. D.R., the employees claimed before the Assessing Officer that they entered into transaction only with authorisation of the company and the Managing Director of the assessee-company himself entered into such a facility with Kotak Mahindra Bank. Both the employees were available for cross examination by the assessee-company. Therefore, according to the Ld. D.R., the claim of the assessee that the employees entered into unauthorized transaction was found to be not correct.

3. The Ld. Departmental Representative further submitted that the employees of the assessee entered into a transaction which was very much authorized by the assessee-company. Therefore, at the best, the transaction can be described as speculative loss incurred by the employees. Hence, according to the Ld. D.R., the Assessing Officer disallowed the claim of the assessee and made addition for all the years. The CIT(Appeals), however, by placing reliance on the order of this Tribunal in *Majestic Exports v. JCIT* (2015) 62 Taxmann.com 307, allowed the claim of the assessee. According to the Ld. D.R., the Department has already filed an appeal before the High Court and the same is pending for adjudication. The Ld. D.R. further submitted that the loss on

derivative transaction is a speculative loss. When no actual delivery was taken place, the transaction has to be treated as speculative transaction as provided in Section 43(5) of the Income-tax Act, 1961 (in short 'the Act'). Therefore, according to the Ld. D.R., the CIT(Appeals) is not justified in allowing the claim of the assessee.

4. On the contrary, Sh. N. Devanathan, the Ld.counsel for the assessee, submitted that the assessee in the course of its business activity, exported brake linings manufactured by it. In order to protect the assessee from expected losses due to foreign exchange fluctuation, the assessee entered into forward contract. In fact, one of the employees, namely, M.S. Subramanian, Deputy Financial Controller and Secretary and G. Manikandan were authorized by the company to enter into transaction with any bank or foreign exchange dealer. According to the Ld. counsel, the said employee exceeded the power in entering into transaction after obtaining signature of the managers in blank paper which was not normal in the course of business activity of the assessee. Therefore, the assessee was forced to settle the dispute with banks. In fact, the assessee after negotiations, entered into settlement with banks on

15.08.2008. As per this agreement, the assessee had incurred heavy loss in settling the dues with banks.

5. The Ld.counsel for the assessee further submitted that the company has also initiated criminal proceeding against both the employees who had involved in the transactions. In fact, disciplinary proceeding was also initiated against Shri M.S. Subramanian and Shri G. Manikandan, the employees of the assessee-company, which shows that they exceeded the authority. In fact, the employees were not authorized to enter into any derivative transaction. Therefore, the loss suffered by the assessee-company for settling the so-called derivative transaction, which was entered into by the employees in unauthorized manner, against the interest of the assessee, has to be allowed as business loss. Even otherwise, according to the Ld. counsel, for the purpose of protecting the assessee from loss that may be suffered due to foreign exchange fluctuation, the assessee entered into the transaction, therefore, it has to be allowed in view of the decision of this Bench of the Tribunal in Majestic Exports (supra). According to the Ld. counsel, moreover, mere pending of appeal before the High Court cannot be a reason to disallow the claim of the assessee.

6. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee admittedly is engaged in the business of manufacturing of brake lining and exporting of same. In order to protect the assessee-company from loss due to foreign exchange fluctuation, a forward contract was entered into. The assessee claims that two of its employees, namely, Shri M.S. Subramanian and Shri G. Manikandan exceeded their authority and entered into forward contract by obtaining some of the signatures of manager in blank paper. The assessee-company appears to have settled the dispute by paying heavy amounts after negotiations. From the orders of the lower authorities it appears YES Bank initiated proceeding before Debt Recovery Tribunal for recovery of money from assessee-company. The assessee-company ultimately had given bank guarantee to the extent of ₹99 lakhs. Kotak Mahindra Bank also invoked arbitrary proceeding.

7. From the order of the Assessing Officer it appears Shri G. Manikandan gave a statement before the Assessing Officer admitting that the act done by them was unauthorized. It is also not in dispute that disciplinary proceeding was initiated against both the

employees. The fact remains that in the course of business activity, the assessee entered into forward contract for the purpose of insulating the assessee from losses that may be suffered due to foreign exchange fluctuation. In settling the forward contract permanently, the assessee suffered a loss. Therefore, this Tribunal is of the considered opinion that the loss suffered by the assessee is in the course of business activity, hence, the CIT(Appeals) has rightly deleted the addition made by the Assessing Officer by placing reliance on the order of this Tribunal in Majestic Exports (supra). Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

8. For the assessment year 2011-12, the Revenue has raised one more ground with regard to foreign agent commission.

9. Shri R. Durai Pandian, the Ld. Departmental Representative, submitted that the CIT(Appeals) by following the decision of this Tribunal in ACIT v. M.M. Forging Ltd. in I.T.A. No.2679/Mds/2014 dated 19.06.2015, allowed the claim of the assessee. According to the Ld. D.R., the Revenue has already filed an appeal against the order of this Tribunal in M.M. Forging Ltd. before the High Court and

the same is pending for adjudication, therefore, the Revenue has filed this appeal before this Tribunal.

10. We have heard Sh. N. Devanathan, the Ld.counsel for the assessee also. The CIT(Appeals) found that all the recipients of the commission are non-residents and they have no permanent establishment in India. The commission was paid to foreign agents for procuring orders. The assessee has also placed its reliance on the order of this Tribunal in the assessee's own case for the assessment year 2008-09 in I.T.A. No.143/Mds/2012. This Tribunal is of the considered opinion that when the services were rendered outside the country for procuring orders, as rightly observed by the CIT(Appeals), it cannot be considered to be either for technical services or managerial services. Therefore, the CIT(Appeals) has rightly deleted the addition of ₹87,15,000/-. This Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

11. The Revenue has also raised another ground with regard to disallowance of ₹8,36,000/- under Section 35(2AB) of the Income-tax Act, 1961 (in short 'the Act').

12. Shri R. Durai Pandian, the Ld. Departmental Representative, submitted that the assessee claims ₹6,02,42,000/- under Section 35(2AB) of the Act. The Assessing Officer, however, disallowed the claim of the assessee to the extent of ₹8,36,000/-. According to the Ld. D.R., the deduction claimed by the assessee with prescribed Form 3CL comes to nearly ₹5,94,06,000/-. Therefore, the difference of ₹8,36,000/- was disallowed. The CIT(Appeals), however, without any basis directed the Assessing Officer to restrict the disallowance to 50%. According to the Ld. D.R., the CIT(Appeals) is not justified in allowing the claim of the assessee to the extent of ₹4,18,000/-.

13. On the contrary, Sh. N. Devanathan, the Ld.counsel for the assessee, submitted that the assessee claimed weighted deduction of ₹6,02,42,000/- under Section 35(2AB) of the Act. The Assessing Officer, however, restricted the claim to the extent of ₹5,94,06,000/- as per Form 3CL issued by Department of Scientific and Industrial Research. The assessee claimed before the Assessing Officer that the disallowance should be restricted to 50% of claim. Referring to the tabular column in the order of the CIT(Appeals), more particularly at para 5.4.1 at page 15, the Ld.counsel submitted that

the assessee claimed at the rate of 200% under Section 35(2AB) of the Act. The eligible claim as per Form 3CL is 50%. Therefore, the disallowance can be made only at ₹4,18,000/-. The entire expenditure was added back in the tax computation statement, therefore, according to the Ld. counsel, the CIT(Appeals) has rightly found that the disallowance should be restricted to only ₹4,18,000/- and not ₹8.36 lakhs.

14. We have considered the rival submissions on either side and perused the relevant material available on record. We have carefully gone through the orders of both the authorities below. The CIT(Appeals) found that the assessee added back the entire expenditure in the tax computation statement while computing the taxable income. Therefore, the difference in Form 3CL shall be restricted to ₹4.18 lakhs. The fact that the entire expenditure was added back for computation of total income is not in dispute. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

15. Now coming to the cross-objections, all the five cross-objections are only to support the orders of the CIT(Appeals). The assessee has also raised a ground with regard to reopening of

assessment. Since the appeals of the Revenue are decided in favour of the assessee on merit, this Tribunal is of the considered opinion that it may not be necessary to go into the issue of reopening of assessment raised in the cross-objections.

16. In the result, all the appeals of the Revenue and cross-objections of the assessee are dismissed.

Order pronounced on 31st May, 2017 at Chennai.

sd/-
(अब्राहम पी.जॉर्ज)
(Abraham P. George)
लेखा सदस्य/Accountant Member

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 31st May, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-15, Chennai-34
4. आयकर आयुक्त/CIT-6, Chennai-34
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.