**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.499/Bang/2020
Assessment Year: 2014-15

M/s. TRC Engineering India Pvt. Ltd. No.109, 5th Block, 4th C Cross Koramangala Industrial Layout Bengaluru **PAN NO : AABCT0472H**	**Vs.**	ITO Ward-7(1)(1) Bengaluru
APPELLANT		**RESPONDENT**

Appellant by	:	Shri Anil Rao, A.R.
Respondent by	:	Shri Kannan Narayanan, D.R.

Date of Hearing	:	11.11.2020
Date of Pronouncement	:	11.11.2020

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by the assessee is directed against order of CIT(A)-7 dated 30.01.2020 for the A.Y. 2014-15.

2. The facts of the case are that the appellant filed return of income for A.Y. 2014-15 on 28.11.2014 declaring total income of Rs.2,81,34,070/- and the same was accepted in the scrutiny assessment completed u/s 143(3) of the Income-tax Act,1961 ['the Act' for short] on 30.12.2016. It appears during assessment proceedings the appellant made a fresh claim before the A.O. for allowance of a deduction of forex loss to the tune of Rs.62,60,285/-, which was not originally claimed in the return of income. This claim,

according to the appellant was made before the A.O. through letter dated 12.9.2016, the contents of which are as below:

> *"The proceedings u/S 143(3) are in progress and the details called for by you have been submitted online and in the tappal. It has recently come to our notice that we have not restated the liability in foreign currency to our overseas creditor as required under our accounting policy. Consequent thereto our income under normal provisions would reduce by Rs.62,60,285/- from Rs.2,81,34,070/- as per the return to Rs.2,18,73,780/-. However, as the accounts have been laid before the shareholder and approved, there will be no change to the book profit in terms of the SC decision in Apollo Tyres Cases (2002) 122 Taxmann 562 and the tax which is now being paid under Section 115JB will remain the same. Only the computation of MAT credit carried forward for set off would change from Rs.34,37,847/- to Rs.54,68,998/-.*
> *The claim is the line with AS-11 of the Companies (Accounting Standards)Rules, 2006 and Income Disclosures Standard No.VI "Relating to the Effects of Changes in Foreign Exchange Rates" notified by the CBDT".*
> *A copy of revised computation is enclosed and we request you to consider and allow the same while completing the assessment."*

The A.O, without making any mention of this claim in the assessment order completed the assessment.

3. On appeal, CIT(A) observed that the appellant is not entitled to it because this is not akin to statutory deduction/relief which has to be allowed even when such deduction was not originally claimed in the return. This loss is solely an accounting loss, worked out on restatement of forex liabilities as per AS-11 which was infact accounted in the books for the year ended 31.3.2016. The appellant failed to comply with AS-11 and thereby failed to book the forex loss in the relevant financial year. The appellant was very much aware of its transactions in foreign exchange with its associated concerns and liabilities in respect of these transactions were reflected in the balance sheet for the relevant previous year i.e. year ended 31.3.2014. The financial statements were subjected to audit also. As per notes to the accounts for the year ended 31.3.2014, a specific mention that has been made about recognition of foreign currency transactions is as below:

"24.7.1 Initial recognition
Foreign currency transactions are recorded in the reporting currency, by applying to the foreign currency amount the exchange rate between the reporting currency and the foreign currency at the date of the transaction.

24.7.2. Conversion
Foreign currency items are reported using the closing rate. Non monetary items which rate carried in terms of historical cost denominated in a foreign currency are reported using the exchange rate at the date of the transaction; and non monetary items which are carried at fair value or other valuation denominated in a foreign currency are reported using the exchange when the values were determined.

24.7.3.Exchange differences
Exchange differences arising on the settlement of monetary items or on reporting monetary items of company at rates different from those at which they were initially during the year, or reported in previous financial statements, are recognized as income or as expenses in the year in which they arise except those arising from investments in non integral operations."

4. Despite the above policy, for reasons best known to the appellant, forex liabilities have not been restated and no loss was recognized in the books for this year. It was only after two years the appellant recognized forex loss in its books for the first time and makes a claim for deduction of a portion of such loss on the ground that it relates to restatement of forex liabilities as on 31.3.2014. Whether intentional or otherwise, it is the appellant's failure to account for the forex loss in this year though income (loss) recognition policy of the appellant as well as AS-11 mandate it. The appellant cannot take advantage of its own failure for reducing its total income for this year and claim refund of tax. If the claims of this nature are allowed without any time limitations, there is no finality to the assessment of income. Further, what is being claimed as forex loss is not the loss pertaining to this year. It is the loss on account of restatement of forex liabilities as on 31.3.2014 which means it includes such liabilities brought forward from the previous years. The CIT(A) did not find substance in the AR's argument that such loss having been accepted and allowed in the later years (on processing the returns), the same should be allowed in the instant

year also. For those years, the returns were filed within the permissible time u/s 139 and they were only processed u/s 143(1). A scrutiny assessment cannot be placed on the same footing as that of summary assessment u/s 143(1) which allows only adjustments on account of arithmetical errors and apparent incorrect claims. In the light of the above discussion, the CIT(A), rejected the appellant's claim for deduction of forex loss amounting to Rs.62,60,285/- and dismissed the assessee's appeal.

5. Against this assessee is in appeal before us. Ld. A.R. submitted that by inadvertently assessee failed to claim this deduction in its return of income filed on 28.11.2014. However, the deduction was claimed before A.O. vide letter dated 12.9.2016. This was not allowed by lower authorities on the reason that deduction claimed belatedly and also this was not relating to the assessment year under consideration. He drew our attention to page 32 of the paper book showing the quantification of loss on balance sheet at Rs.62,60,284/- and also submitted that in assessment year 2013-14, it was Rs.20,63,782/- and in assessment year 2014-15 it was reached to Rs.62,60,284/- and same to be allowed for the assessee as it failed to claim the same in the original return of income. He submitted that the assessee is entitled to claim this kind of deduction and the appellate authorities have the discretion whether or not to permit such addition issue claimed to be raised.

6. It was submission of the Ld. A.R. that the necessary evidence in respect of claim is made, such claims through a letter to be accepted by the A.O. Further, he submitted that even if it is not accepted by the A.O. on account of no claim in return of income, same to be considered by the appellate authorities and officers of the department must not take the advantage of ignorance of the assessee and it is their duty to assess the tax payer in every reasonable way. Alternatively, he pleaded that loss of atleast Rs.41,96,702/-, which is relating to assessment year 2014-15 to be considered.

7. On the other hand, Ld. D.R. submitted that the assessee has not made this claim in its return of income and the A.O. has no authority to entertain new claim without revised return of income and he supported the order of the lower authorities.

8. We heard the parties, perused the record and gone through the orders of the authorities below. It is normal that assessee sometime failed to claim certain deductions or exemptions in its return of income and the assessee may analyse the mistake/error subsequently and additional claim could have been made on account of various reasons after filing the revised return. Sometimes, time limit to file revised return has already expired and return cannot be revised. In such circumstances, the assessee may make revised claim by way of filing letter before the authorities at various level. Now the question before us is whether authorities could consider such additional claim by way of letter, which are not claimed in the return of income by the assessee. As per Article 265 of Constitution of India, which lays down that no tax shall be levied except by authority of law. Hence, only legitimate tax can be recovered and even a concession by a tax payer does not give authority to the tax collector to recover more than what is due from him under the law. In line with there was a circular by CBDT vide No.14(XL35) dated 11.4.1955 on this regard stating that department must not take advantage or ignorance of an assessee as to its rights. It is one of their duties to assess the tax payer in every reasonable way. Inter-alia, it was stated that the authorities shall draw their attention to any refunds or relief to which they appear to be clearly entitled to which they have omitted for some reason or other and free advise to be given on this regard. It is also observed by Hon'ble Supreme Court in the case of National Thermal Power Company Ltd. Vs. CIT 229 ITR 383 that it was open to assessee to raise points of law even before the Tribunal. It was held that claim of deduction not made in the return cannot be entertained by assessing officer otherwise than by filing

revised return. However, it was held that the reason does not impinge upon the power of the Tribunal u/s 254 of the Act. Further, it was held in the case of Goetze India Ltd. Vs. CIT 284 ITR 323 (SC) that claims need not be accepted by A.O. when made by assessee through a letter, if same is not claimed in return filed u/s 139 of the Act. However, this is not applicable to the appellate authorities. The first appellate authorities could have considered the claim of the assessee in view of the judgement of NTPC cited (supra). There is a distinction between revised return and correction of return. If the assessee files some application for correcting the return filed or making amends therein, it would not mean that he has filed a revised return. It will retain the character of the original return. But once a revised return is filed, the original return must be taken to have been withdrawn and could have been substituted by a fresh return for the purpose of assessment. In the present case, the assessee filed a letter seeking the deduction towards forex loss. The A.O. outrightly rejected it without discussing anything about it. On the contrary the CIT(A) observed that the claim is not relates to the assessment year under consideration and it relates to the earlier assessment year. We have gone through the computation statement of forex loss furnished by the assessee, which is placed in paper book page 32 as per which, loss up to 31.3.2013 is at Rs.20,63,782/- and for the year ended 31.3.2014 cumulatively it is Rs.62,60,284/-. Thus, it mean that the loss relate to the assessment year under consideration is only Rs.41,96,702/-. The Ld. A.R. placed reliance on the Income Computation Disposal Standard-6 and submitted as follows:

> *"Transitional Provisions*
>
> *9.(1) All foreign currency transactions undertaken on or after 1st day of April, 2016 shall be recognized in accordance with the provisions of this standard.*
>
> *(2) Exchange differences arising in respect of monetary items or non-monetary items, on the settlement thereof during the previous year commencing on the 1st day of April, 2016 or on conversion thereof at the last*

day of the previous year commencing on the 1st day of April, 2016 shall be recognized in accordance with the provisions of this standard after taking into account the amount recognized on the last day of the previous year ending on the 31st March, 2016 for an item, if any, which is carried forward from said previous year.

(3) The financial statements of foreign operations for the previous year commencing on the 1st day of April, 2016 shall be translated using the principles and procedures specified in this standard after taking into account the amount recognized on the last day of the previous year ending on the 31s March, 2016 for an item, if any, which is carried forward from said previous year.

(4) All forward exchange contracts existing on the 1st day of April, 2016 or entered on or after 1st day of April, 2016 shall be dealt with in accordance with the provisions of this standard after taking into account the income or expenses, if any, recognized in respect of said contracts for the previous year ending on or before the 31st March, 2016."

9. In our opinion, the above standard has relevance to the year under consideration and the placing of reliance by A.R. on this standard is misplaced. Coming to the allowability of deduction, in our opinion, assessee is entitled for forex loss relevant to the assessment year under consideration only to the tune of Rs.41,96,702/- and not entire amount of Rs.62,60,285/-. Accordingly, we direct the A.O. to grant deduction towards forex loss to the tune of Rs.41,96,702/- only. This ground of assessee is partly allowed.

10. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 11th Nov, 2020.

Sd/-	**Sd/-**
(N.V. Vasudevan)	**(Chandra Poojari)**
Vice President	**Accountant Member**

Bangalore,
Dated 11th Nov, 2020.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.