

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : 'A' NEW DELHI

BEFORE SHRI G.E. VEERABHADRAPPA, VICE PRESIDENT

AND

SHRI RAJPAL YADAV, JUDICIAL MEMBER

I.T.A No. 4976/Del/02

Asstt. Year : 1998-99

M/s. Perfetti India Ltd.

Vs. ACIT,

A-10, Green Park,

Special Range-15,

New Delhi.

New Delhi.

(Appellant)

(Respondent)

Appellant by: Shri Ajay Vohra, Ms. Shikha Sharma,  
Advocate

Respondent by: Ms. Anusha Khurana, Sr.DR

ORDER

PER RAJPAL YADAV : JM

The assessee is in appeal before us against the order of Ld. CIT(A) dated 31<sup>st</sup> October, 2002 passed for asstt. year 1998-99. The appeal of the assessee was decided by the Tribunal vide its order dated 22<sup>nd</sup> April, 2004. Assessee carried the matter in appeal before

the Hon'ble High Court vide ITA No. 650/2004. Hon'ble High Court has dismissed the appeal of assessee vide order dated 6.12.2004. The assessee had filed miscellaneous application bearing number 133/D/2005. This miscellaneous application was also dismissed by the Tribunal vide its order dated 15<sup>th</sup> June, 2005. The assessee had filed a SLP before the Hon'ble Supreme Court challenging the orders of the Tribunal as well as of the Hon'ble High Court. Hon'ble Supreme Court has set aside the orders of the Hon'ble High Court as well as of the Tribunal and remitted the issue back to the Tribunal for deciding the issue denovo. The order passed by the Hon'ble Supreme Court on 2<sup>nd</sup> December, 2010 in civil appeal No. 10219 of 2010 read as under

*“Heard learned counsel on both sides.*

*Leave granted.*

*Having examined the facts and circumstances of the case, which pertains to Assessment year 1998-1999, and particularly in the light of the orders passed for the earlier assessment years 1996-97 and 1997-98 as also having regard to the Assessment orders passed in the following year [1999-2000] and in view of the judgment of this court in the case of Commissioner of Income Tax vs. Woodward Governor India Private Limited, reported in [2009] 312 ITR 254, we are of the view that the Income Tax Appellate Tribunal [‘Tribunal’, for short] was wrong in refusing to rectify it's own order under section 254(2) of the Income Tax Act, 1961, particularly when it has failed to appreciate that, in any event, the expenditure could have fallen on the Capital Account, which was specifically pleaded by the assessee as an alternate submission. [See page 73 of the SLP Paper Book]*

*For the afore-stated reasons, the impugned judgment of the High Court is set aside and the matter is remitted to the Tribunal. We direct the Tribunal to decide the matter de novo in accordance with the law laid down*

*by this Court in the case of Woodward Governor India Private Limited [supra] as well as on the merits of this case.*

*The civil appeal is, accordingly, allowed.*

*No order as to costs”*

2. The solitary issue required to be adjudicated by us is whether assessee is entitled for a deduction of ₹ 38,30,000/- representing the loss incurred by the assessee on account of fluctuation in the foreign exchange rates in respect of outstanding foreign currency loan obtained and utilised exclusively for working capital purpose.

3. Ld. Counsel for the assessee submitted that it has raised a loan of 1 million US \$ from Perfetti SPA Italy in August, 1995. During the year under appeal, there was an increase in the liability in respect of the loan because of fluctuation in the foreign exchange rate due to which the assessee was liable to increase the loss of ₹ 38,30,000/-. In the course of asstt. proceeding, the assessee brought these facts to the notice of AO and contended that since the loan amount forms part of the circulating capital of the assessee, exchange loss is in nature of revenue and allowable. This claim was disallowed to the assessee and appeal to the Ld. CIT(A) did not bring any relief. Ld. Counsel for the assessee at the very outset, contended that on account of exchange rate fluctuation, the loss suffered by the assessee was

allowed by the AO himself in asstt. year 1996-97. He pointed out that though AO has not made elaborate discussion on the issue but he has accepted the computation made by the assessee on this issue in a scrutiny assessment. In asstt. year 1997-98, a similar loss of ₹ 25,98,166/- occurred to the assessee but it was disallowed by the AO in a scrutiny assessment. The dispute travelled to the Ld. CIT(A) and Ld. CIT(A) deleted the disallowance. The revenue challenged the order of Ld. CIT(A) before the Tribunal in ITA No. 4688/2002. The Tribunal while following the special bench decision in the case of Oil and Natural Gas Corporation Ltd. reported in 83 ITD 159 upheld the order of Ld. CIT(A). The revenue challenged the order of the Tribunal before the Hon'ble Delhi High Court in ITA No. 1014/2007 and the appeal of the revenue was dismissed. He further contended that in asstt. year 1999-2000 again assessee claimed a deduction of ₹ 27,40,000/- on this account. This was disallowed to the assessee and the matter travelled to the Tribunal in ITA No. 1765/D/2003. The Tribunal following the order of the special bench in the case of ONGC allowed the claim of assessee. On the strength of these details, he submitted that in this year also it was a revenue loss. It was disallowed to the assessee by the Ld. AO as well as Ld. CIT(A) on the

ground that it is a notional loss. The tribunal confirmed the disallowance on the ground that assessee failed to produce evidence exhibiting the utilization of the loan for working capital. He pointed out that there is no change in the facts and circumstances. Loan was taken in 1995. It was considered by the AO in earlier years as well as subsequent years that it was utilised for the purpose of working capital. It became part of circulating capital of the assessee. It is established that a loss occurred to the assessee on account of exchange rate fluctuation and such loss is in the revenue account then it is allowable as held by the Hon'ble Supreme Court in the case of CIT Vs. Woodward Governor India Private Ltd. reported in 312 ITR 254. Alternatively, he contended that if it is not allowable as a revenue deduction then depreciation on this amount be granted by including it in the capital of the assessee. Ld. DR on the other hand relied upon the order of Ld. CIT(A). She pointed out that factually assessee failed to prove the utilization of the loan in this year. Therefore, it cannot be said that it is a revenue loss to the assessee.

4. We have duly considered the rival contention and gone through the record carefully. The assessee has placed on record copies of the asstt. order as well as Tribunal's order in asstt. year 1997-98 and

1999-2000. He has placed on record all the details in a tabular form on pages 93-94 of the paper book. In these details, it has been highlighted by the assessee that in asstt. year 1996-97 a loss on account of fluctuation in exchange rate was accrued at ₹ 32,20,000/-. It was allowed by the AO. In 1997-98, it was ₹ 14,20,000/-. It was disallowed by the AO but allowed by the Ld. CIT(A). This view has been upheld upto the Hon'ble High Court. In asstt. Year 1999-00 ₹ 27,40,000/- was claimed by the assessee. It was disallowed by the AO and Ld. CIT(A) but allowed by the Tribunal. The loan was taken in 1995. Its character was ascertain as a working capital in asstt. Year 1996-97 by the AO himself. According to the assessee, it has become part of circulating capital. Considering all these aspects and principle of consistency propounded by the Hon'ble Supreme Court in the case of Radha Swami Satsand vs. ITO reported in 193 ITR 321, we are of the opinion that loss suffered by the assessee on account of exchange rate fluctuation is allowable expenditure in this year also. The assessee may not be able to produce evidence of the utilisation of the capital before the AO but from the orders of the AO in earlier years and in subsequent years impliedly, it is ascertainable that it is used for the working capital which is in a revenue account.

Respectfully following the decision of Hon'ble Supreme Court in the case of CIT Vs. Woodward Governor India Private Ltd. and the past history of the dispute on this issue, we allow this ground of appeal and delete the disallowance. This is the only issue remitted before us for our adjudication.

5. In the result, appeal of the assessee is allowed on this issue.

Order pronounced in the open court on 6<sup>th</sup> May, 2011.

Sd/-

sd/-

[G.E.VEERABHADRAPPA]

[RAJPAL YADAV]

VICE PRESIDENT

JUDICIAL MEMBER

Dated: 6<sup>th</sup> May, 2011

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Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Deputy Registrar, ITAT, Delhi Benches