

IN THE INCOME TAX APPELLATE TRIBUNAL,
"D" BENCH, MUMBAI.

Before Shri D.K.Agarwal, Judicial Member and
Pramod Kumar, Accountant Member

I.T.A No.2090/ Mum/2011
Assessment year: 2007-08

Dy. CIT, Cent. Circle -39
Aayakar Bhavan, M.K. Road,
Mumbai.

.....

Appellant

Vs

Diamond 'R' US
1110, Prasad Chambers, Opera House,
Mumbai-04
Pa No.AAAFD 4507 H

.....

Respondent

Appearances:

C.G.K. Nair, *for the appellant*
None, *for the respondent*

Date of Hearing : 2.1.2012
Date of pronouncement : 2 -1-2012

O R D E R

Per Pramod Kumar:

1. By way of this appeal, the Assessing Officer has called into question correctness of CIT(A)'s order dated 5.01.2011, in the matter of assessment under section 143(3) of the Income tax Act, 1961, for the assessment year 2007-08 on the following ground:

"1. Whether on the facts and in the circumstances of the case and in law, the ld CIT(A) was right in directing the AO to allow the exchange rate difference when the advance received from customers were not used by the assessee firm for the business purpose.

2. Whether on the facts and in the circumstances of the case and in law, the Id CIT(A) was justified in ignoring the fact that the advances received from customers were actually used by the partner for his personal purpose.”

2. Facts in brief are that during the course of assessment proceedings, the Assessing Officer noticed that the assessee has claimed deduction of Rs.64,41,673 on account of loss being exchange difference on refund of customer's advance. It was also noticed by the AO that the debit balance of capital account was shown at Rs.63,15,25,818.39 as compared to debit balance of capital account of Rs.46,27,95,079.33 in the immediately preceding year i.e. an amount of Rs.26,95,71,400 was withdrawn through capital accounts during the year by the partners. Therefore, the assessee has received total advance of Rs.53,35,39,319 as compared to advances received from customers amounting to Rs.43,07,33,215 in the immediately preceding year. The AO also noticed that Shri Nirav D Modi had withdrawn of Rs.26,95,71,400 through its capital account during the period. It was in this backdrop that the AO was of the view that the advances received from customers have not been used for the purposes of business and, accordingly, disallowed Rs.64,41,673. Aggrieved by the stand so taken by the Assessing Officer, assessee carried the matter in appeal before the CIT(A), who following the order of the Tribunal for the assessment year 2006-07 in assessee's own case, deleted the addition made by the AO. The Assessing Officer is aggrieved and is in appeal before us.

3. None appeared on behalf of the respondent-assessee, when the matter was called on for hearing. We, therefore, decide the appeal of the revenue qua respondent assessee after hearing learned Departmental Representative and on the basis of material available on record.

4. Learned Departmental Representative fairly agrees that the issue is covered in favour of the assessee, by Tribunal's order in assessee's own case for the assessment year 2006-07, but still relies vehemently on the order of the Assessing Officer.

5. Having heard the learned Departmental Representative, we find that in assessee's own case for the assessment year 2006-07, the Tribunal has dismissed the appeal of the revenue, observing as follows:

"Having given our careful consideration to the rival submissions and having perused the material on record, we are of the considered view that so far as the exchange loss on refund of advances received from the customers is concerned, the same indeed constitutes admissible deduction irrespective of whether or not the amount so received were diverted to use by partners. It is so for the elementary reason that the proximate cost of loss having been incurred is receipt of advances from the customers and refunding the same-an exercise which is clearly in the course of normal business operations. As the ld counsel for the assessee very appropriately puts it, the deduction for exchange loss cannot be influenced by the usage of funds received in respect of which loss has been incurred because unlike in the case of interest on borrowings which requires related funds being used for the purposes of business, the exchange loss on refund of business advances has no such usage requirements. As long as the moneys are received in the course of business and as long as the moneys are refunded in the course of business, exchange loss on the same will constitute an admissible expenditure being incidental to the business operations. In other words, it is a fact of receiving and refunding the advances which is required to be for the purposes of business rather than the use of funds so received and subsequently refunded "for the purposes of business". The requirement of sec.37 thus ends with transactions for the purposes of business and it is not essential that the funds received during the course of such transactions must also be used for the purposes of business. It is important to bear in mind that the loss which is claimed as deduction is in the course of the business operations and is not in the nature of cost of funds and for this reason the use of funds is not really relevant for the purpose of deciding deductibility of such loss. In view of this discussion, we uphold the stand of the CIT(A) and decline to interfere in the matter."

6. We see no reasons to take any other view of the matter than the view taken by the coordinate bench in assessee's own case for immediately preceding year and which has only been followed by the CIT(A). In our considered view, therefore, CIT(A)

was quite justified in following Tribunal's order. We approve the action and decline to interfere in the matter.

7. In the result, appeal is dismissed.

Pronounced in the open court on 2nd January, 2012

Sd/-
(D.K.Agarwal)
Judicial Member

Sd/-
(Pramod Kumar)
Accountant Member

Mumbai, Dated 2nd January, 2012
Parida

Copy to:

1. The appellant
2. The respondent
3. Commissioner of Income Tax (Appeals),41, Mumbai
4. Commissioner of Income Tax,Cent.III , Mumbai
5. Departmental Representative, Bench 'D' Mumbai

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BY ORDER

ASSTT. REGISTRAR, ITAT, MUMBAI