

आयकर अपीलिय अधिकरण, मुंबई "जी" खंडपीठ
Income-tax Appellate Tribunal -"G"Bench Mumbai
सर्वश्री राजेन्द्र,लेखा सदस्य एवं, राम लाल नेगी, न्यायिक सदस्य
Before S/Shri Rajendra,Accountant Member and Ram Lal Negi,Judicial Member
आयकर अपील सं./ITA/2346/Mum/2015,निर्धारण वर्ष /Assessment Years: 2010-11

Asth.CIT-14(2)(1) 432, Aayakar Bhavan,4 th Floor M.K. Marg Mumbai-400 020.	Vs.	M/s. Leighton India Contractors Private Ltd. 7/F, Tower-3, Equinox Business Park, (Peninsula Techno Park) Off-Bandra-Kurla Complex, LBS Marg Kurla (W), Mumbai-400 070. PAN:AAECL 3338 D
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by: Ms. Vidisha Kalra-(CIT-DR)

Assessee by: Shri Sunil Moti Lala &

Shri Tushar Hathiramani-AR

सुनवाई की तारीख / **Date of Hearing: 25.08.2016**

घोषणा की तारीख / **Date of Pronouncement: 14.09.2016**

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 directions of the Dispute Resolution Panel-III,Mumbai,dated 30.12.2014, the Assessing Officer (AO), has filed the present appeal.Assessee -company engaged in the business of construction contracts executing facilitiesand the construction of off shore pipelines,filed its return of income on 15.10.2010,declaring the income of Rs.180.61 Crores. The mater was selected for scrutiny and was referred to the Transfer Pricing Officer(TPO), who recommended TP adjustment of Rs.702.01 crores.The AO,in the draft assessment order, made the addition as suggested by the TPO,besides making an addition of Rs.13,00,34,360/- on account of marked to market losses(MTML).

2.Aggrrieved by the draft order the assessee filed objection before the DRP.With regard to the MTNL it was argued that the AO had relied upon the instruction no.3/2010 dated 23.03.2010 for making the addition,that the instruction referred to by him was against the decision of Woodward Governor(312ITR254)of the Hon'ble Apex Court.Considering the said judgment of the Hon'ble Court the DRP directed the AO to delete the proposed addition.

3.Before us,the Departmental Representative(DR)stated that the matter could be decided on merits.The Authorised Representative(AR)supported the order of the DRP and relied upon

four cases delivered by the various benches of the Tribunal wherein judgment of Woodward Governor(supra) was referred to in the cases of MTML.

We find that the issue of loss on marked to market losses has been conclusively decided by the Hon'ble Apex Court in the matter of Woodward Governor(supra) as under:

““Loss” suffered by the assessee on account of fluctuation in the rate of foreign exchange as on the date of the balance-sheet is an item of expenditure under section 37(1) of the Income-tax Act, 1961.

For valuing the closing stock at the end of a particular year, the value prevailing on the last date is relevant. This is because profit/loss is embedded in the closing stock. While anticipated loss is taken into account, anticipated profit in the shape of appreciated value of the closing stock is not brought into account, as no prudent trader would care to show increase in profits before actual realization. This is the theory underlying the rule that closing stock is to be valued at cost or market price whichever is lower.

The expression “any expenditure” has been used in section 37 of the Income-tax Act, 1961, to cover both “expenses incurred” as well as an amount which is really a “loss” even though such amount has not gone out from the pocket of the assessee.

Profits and gains of the previous year are required to be computed in accordance with the relevant accounting standard. On general principles of commercial accounting, the value of the stock-in-trade at the beginning and at the end of the accounting year should be entered in the profit and loss account at cost or market price, whichever is lower the market value being ascertained on the last date of the accounting year, not at any intermediate date. No gain or profit can arise until a balance is struck between the cost of acquisition and the proceeds of sale. The word “profits” implies a comparison between the state of business at two specific dates, usually separated by an interval of twelve months. Stock-in-trade is an asset : it is a trading asset. Therefore, the concept of profits and gains made by a business during the year can only materialize where a comparison of the assets of the business at two different dates are taken into account.

Under the mercantile system of accounting, what is due is brought into credit before it is actually received : it brings into debit an expenditure for which a legal liability has been incurred before it is actually disbursed.

The accounting method followed by an assessee continuously for a given period of time has to be presumed to be correct till the Assessing Officer comes to the conclusion for reasons to be given that the system does not reflect true and correct profits.

AS-11 deals with giving of accounting treatment for the effects of changes in foreign exchange rates. AS-11 deals with effects of exchange differences. Under paragraph 2, reporting currency is defined to mean the currency used in presenting the financial statements. Similarly, the words “monetary items” are defined to mean money held and assets and liabilities to be received or paid in fixed amounts, e.g., cash, receivables and payables. The word “paid” is defined under section 43(2). This has been discussed earlier. Similarly, it is important to note that foreign currency notes, balance in bank accounts denominated in a foreign currency, and receivables/payables and loans denominated in a foreign currency as well as sundry creditors are all monetary items which have to be valued at the closing rate under AS-11. Under paragraph 5, a transaction in a foreign currency has to be 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. This is known as “recording of transaction on initial recognition”. Paragraph 7 of AS-11 deals with reporting of the effects of changes in exchange rates subsequent to initial recognition. Paragraph 7(a), inter alia, states that on each balance-sheet date monetary items, enumerated above, denominated in a foreign currency should be reported using the closing rate. In case of revenue items falling under section 37(1), paragraph 9 of AS-11 which deals with recognition of exchange differences, needs to be considered. Under that paragraph, exchange differences arising on foreign

currency transactions have to be recognized as income or as expense in the period in which they arise, except as stated in paragraph 10 and paragraph 11 which deals with exchange differences arising on repayment of liabilities incurred for the purpose of acquiring fixed assets, which topic falls under section 43A of the 1961 Act. At this stage, we are concerned only with paragraph 9 which deals with revenue items. Paragraph 9 of AS-11 recognises exchange differences as income or expense. In cases where, e.g., the rate of dollar rises vis-a-vis the Indian rupee, there is an expense during that period. The important point to be noted is that AS-11 stipulates effect of changes in exchange rate vis-a-vis monetary items denominated in a foreign currency to be taken into account for giving accounting treatment on the balance sheet date. Therefore, an enterprise has to report the outstanding liability relating to import of raw materials using the closing rate of exchange. Any difference, loss or gain, arising on conversion of the said liability at the closing rate, should be recognized in the profit and loss account for the reporting period.”

Respectfully following the above judgment, we hold that the directions of the DRP does not suffer from any defect. Confirming the same, we decide the effective ground of appeal against the AO.

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

फलतः निर्धारित अधिकारी द्वारा दाखिल की गई अपील नामंजूर की जाती है.

Order pronounced in the open court on 14th September, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक 14 सितंबर, 2016 को की गई।

Sd/-

(राम लाल नेगी / R.L.Negi)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 14 .09.2016.

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, **जी** खंडपीठ, आ.अ.न्याया.मुंबई
- 6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.