

HIGH COURT OF KARNATAKA

Commissioner of Income-tax, Central Circle

v.

Wipro Finance Ltd.

IT APPEAL NO. 106 OF 2007

JANUARY 7, 2013

JUDGMENT

D.V. Shylendra Kumar, J. – Appeal by the revenue under Section 260A of the Income Tax Act, 1961 [for short, the Act], had been admitted to examine the following substantial question of law:

Whether the Appellate Authorities were correct in holding that a sum of Rs. 80,04,000/- claimed as a foreign exchange loss on account of restatement of CDC loan should be treated as a revenue loss despite the same not having actually arisen and was only notional?.

2. Assessee is a financial company and the assessment year in question is 2000-01. Assessee had claimed certain deductions by way of loss in its business income, due to fluctuations in the rate of exchange on the outstanding dues payable in foreign exchange, which the assessee had raised for the purpose of buying its stock-in-trade. While the assessing officer rejected the same, on the premise that it is notional loss and therefore not allowable, the appellate Commissioner and the tribunal opined otherwise. It is in this background, the revenue is in appeal.

3. Sri K V Aravind, learned standing counsel for the appellants-revenue and Sri R B Krishna, learned counsel for respondent-assessee submit before us that the question is now concluded by the judgment of the Supreme Court in the case of *CIT v. Woodward Governor India (P.) Ltd.* [2009] 312 ITR 254.

4. The view taken by the Supreme Court in this judgment is to the effect that while even a notional loss can be claimed by way of a business loss and as a deductible item in computing the income of the assessee for the year, as it is a computation on notional basis, it is made dependent on the manner of conduct of the assessee in respect of the earlier assessment period and particularly as to the assessee has been following this uniformly over a period of years and the test being when there was a notional gain as to whether it had been offered for tax etc. The Supreme Court took the view that such claim can be entertained subject to fulfilment of the following six conditions:

(i) whether the system of accounting followed by the assessee is the mercantile system, which brings into debit the expenditure amount for which a legal liability has been incurred before it is

actually disbursed and brings into credit what is due, immediately it becomes due and before it is actually received;

(ii) whether the same system is followed by the assessee from the very beginning and if there was a change in the system, whether the change was *bona fide*;

(iii) whether the assessee has given the same treatment to losses claimed to have accrued and to the gains that may accrue to it;

(iv) whether the assessee has been consistent and definite in making entries in the account books in respect of losses and gains;

(v) whether the method adopted by the assessee for making entries in the books both in respect of losses and gains is as per nationally accepted accounting standards;

(vi) whether the system adopted by the assessee is fair and reasonable or is adopted only with a view to reducing the incidence of taxation.

5. In the wake of this judgment of the Supreme Court, it is now submitted that while the view of the tribunal that the assessee can claim such deduction has to be affirmed, the matter does not end with that, but such claim will have to be examined in the light of the fulfilment of the conditions as indicated by the Supreme Court, for which purpose, the matter may have to go before the assessing officer, who has to apply this test to the claim made by the assessee and then either admit the claim or reject it depending upon the assessee being in a position to satisfy the fulfilment of the conditions.

6. In view of the joint submission made by both counsel, the question is apparently answered in favour of the revenue, in the sense, that though the view of the tribunal is to be affirmed on the principle that being further made subject to the fulfilment of the conditions, the matter has to go back to the assessing officer for examination. In this view of the matter, the appeal is allowed in these terms. The claim of the assessee to be reexamined by the assessing officer and in respect of the assessment year applying the test of fulfilment of the six conditions mentioned above. The assessing officer to issue notice to the assessee, fixing a date of hearing the assessee or its counsel and then pass orders.