

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.216/Del/2014
Assessment Year: 2009-10**

**Sparrowhawk International
Channels India P. Ltd.,
602, Antriksh Bhawan,
New Delhi.
PAN: AAACH6943E**

**vs Dy.Commr. of Income-tax
Circle-9(1), New Delhi.**

Appellant

Respondent

**Assessee by
Revenue by**

**Shri Sunil Bakshi, CA
Shri N.K. Bansal. Sr. DR**

Date of Hearing

19.2.2019

Date of Pronouncement

25.02.2019

ORDER

PER K. NARASIMHA CHARY, JM

Challenging the order dated 3.10.2013 in Appeal No.331/11-12/101/13-14 for the Assessment Year 2009-10 by the learned Commissioner of Income-tax (Appeals)-XI, New Delhi, {hereinafter referred to as "the CIT(A)"}, assessee preferred this appeal.

2. Brief facts of the case are that the assessee has been taking working capital loan in External Currency Borrowings (ECB) from its holding company in year 2001 and 2002, to meet its administrative expenses with the due permission of Reserve Bank of India. The said

loan restated in Indian rupees at the exchange rates prevailing at the close of each financial year. The last such restatement was done on 31st March, 2008. The Profit/Loss on such restatement was shown in the profit and loss account as an income or as an expense and was accepted and assessed as such. The loan was converted into Equity Shares on 9th February, 2009 based on exchange rate prevailing on 9th February, 2009. The loss on account of difference in exchange rate between 1st April, 2008 and 9th February, 2009 was accounted as revenue loss as was being in earlier years on restatement. The said loss has been disallowed by the ld. AO on the grounds that it is not a revenue loss.

3. During the scrutiny of the return of income filed by the assessee on 29.9.2009 declaring the loss of Rs.5,40,16,818/-, Learned AO found that the assessee claimed foreign exchange loss of Rs.4,67,05,830/- in the profit and loss account for the FY 2008-09. Assessee submitted that the foreign exchange loss was on account of conversion of ECB denominated in foreign exchange to share capital and the same has been charged to profit and loss account. Assessee further submitted that the conversion of dollar denominated ECB into rupee denominated share capital is comprised to two distinct transactions, namely, one is the allotment of 2,45,37,990 equity shares to the overseas company at Rs.10 per equity share on 9th February, 2009 and the second one is the repayment of ECB of US \$49,79,300 on 9.2.2009 at the exchange rate prevailing on that date.

4. Learned AO, however, did not accept the contention of the assessee and held that the act of repayment of ECB and allotment of equity shares to the overseas company are not two separate transactions but only one, as there is no separate inflow or outflow of funds for the above two transactions, as such, the conversion of ECB into share capital cannot be

held to be of revenue nature. On that premise, learned AO disallowed the foreign exchange loss of Rs.4,67,05,830/- and added back to the income of the assessee.

5. Aggrieved by the said addition, assessee preferred an appeal to the CIT(A). Learned CIT(A) recorded a finding that the external borrowings were not meant for day to day working of the company and, therefore, were being charged to revenue account during the earlier years which the assessee had been following even on converting the ECB into share capital. However, raising the share capital of the company is the activity which is capital in nature as ultimately through such capital the company acquires capital assets which help in running the business and generate revenue, therefore, expenditure incidental to raising the capital shall be governed by the principle as if the company had acquired the fixed assets. On this premise, learned CIT(A) held that instead of Section 37(1) of the Income-tax Act, 1961 (“the Act”), Section 43 of the Act shall be applicable to such circumstances. While proceeding so, learned CIT(A) dismissed the appeal.

6. The assessee is, therefore, before us in this appeal contending that it is stated in Section 227(1A)(f) of the Companies Act, 1956 that where it is stated in the books and papers of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and, if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading. It is further argued by the learned AR that the Institute of Chartered Accountants of India in paragraphs 8.5 and 8.6 of the ‘Statement on Auditing Practices’ compliance with which has been mandatory that shares subscribed for in cash should include the account of subscription where the amount is adjusted against a bona fide

debt payable in money at once by the company. Learned AR further argued that where shares allowed against the adjustment of amount, which is a bonafide debt by the company then shares are shown deemed to have been allowed for cash. He brought to our notice that in paras 2.29 and 2.30 of the mandatory statement on qualifications in Auditor's Report issued by the Institute of Chartered Accountants of India, wherein it is stated in the books and papers of the company that any shares have been allotted for cash, whether cash has actually been so received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading. Lastly, he brought to our notice Circular No.8/32(75)77-CL/V dated 13th March, 1978 by which Company Law Department has clarified that the allotment of shares by a company to a person in lieu of a genuine debt due to him is in perfect compliance of the provisions of Section 75(1) and in this connection, it is clarified that the act of handing over cash to the allottee of shares by a company in payment of the debt and the allottee in turn returning the same cash as payment for the shares allotted to him is not necessary for treating the shares as having been allotted for cash. What is required is to ensure that the genuine debt payable by a company is liquidated to the extent of the value of the shares.

7. We are satisfied that the allotment of shares by a company in lieu of a genuine debt is in perfect compliance of Section 75(1) the Companies Act, 1956. Handing over cash to the allottee of shares by a company in payment of the debt and the allottee in turn returning the same cash as payment for the shares allotted to him is not necessary for treating the shares as having been allotted for cash. We, therefore, agree with the submissions made on behalf of the assessee that the conversion

of dollar denominated ECB into rupee denominated share capital is comprised of two distinct transactions, namely, allotment of 2,45,37,990 equity shares to the overseas company at Rs.10 per equity share and the second transaction of repayment of ECB of US \$49,79,300 at the exchange rate prevailing, both the transactions on 9.2.2009.

8. We, therefore, do not agree with the observations of the authorities below that the conversion of ECB into share capital is of revenue in nature and consequently, we find that the disallowance of Rs.4,67,05,830/- cannot be sustained. We accordingly direct the learned AO to delete the addition made by this disallowance.

9. In the result, appeal of the assessee is allowed.

Order pronounced in the Open Court on 25th February, 2019.

Sd/-

sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**(K. NARASIMHA CHARY)
JUDICIAL MEMBER**

Dated: 25th February, 2019.

VJ

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

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