

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F': NEW DELHI  
(Through Video Conferencing)**

**BEFORE,  
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.6173/Del/2015  
(ASSESSMENT YEAR 2010-11)**

R. System International Ltd., B-104 A, Greater Kailash-I, New Delhi. PAN-AAGBCR 9541B <b>(Appellant)</b>	Vs.	Dy. CIT, Circle-15(1), New Delhi. <b>(Respondent)</b>
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Appellant By	<b>Sh. Satyen Sethi, Adv. Sh. AT Panda, Adv.</b>
Respondent by	<b>Sh. Atigu Ahmed, Sr. DR</b>
Date of Hearing	<b>01.12.2020</b>
Date of Pronouncement	<b>25.02.2021</b>

**ORDER**

**PER SUDHANSHU SRIVASTAVA, JM:**

This appeal is preferred by the assessee against order dated 27.08.2015 passed by the Learned Commissioner of Income Tax (Appeals)-44, New Delhi {CIT(A)} for Assessment Year 2010-11.

2.0 The brief facts of the case are that the assessee is engaged in the business of software development and information technology enabled services. The return for the year under consideration was filed declaring income at Rs.1,88,91,468/-. The return was subsequently revised declaring loss of Rs.2,39,69,400/-. The assessment was completed at a loss Rs.1,06,39,645/-. In computing the income, the Assessing Officer (AO) restricted the assessee's claim of deduction u/s 10A of the Income Tax Act, 1961 (herein after called 'the Act'). The deduction u/s 10A was allowed at income of Rs.25,81,03,269/- as against the claim at income of Rs.26,02,89,625/-. While allowing the deduction u/s 10A, net foreign exchange gain of Rs.4,80,613/- was reduced from the net profit of the undertaking for the reason that the same was capital in nature. Apart from this, adjustment of Rs.1,11,43,436/- was also made as Transfer Pricing Adjustment with respect to interest. Aggrieved, the assessee approached the Ld. First Appellate Authority. The Ld. CIT (A) partly allowed the assessee's appeal by deleting the adjustment on account of Transfer Pricing but upheld

the net exclusion by the Assessing Officer of Rs.4,80,613/- while computing the exemption u/s 10A.

2.1 Aggrieved, the assessee has now approached the Tribunal and has raised the following grounds of appeal:

*“1. Whether under the facts and circumstances of the case and in law, the learned CIT(A)-44, New Delhi was justified in upholding the findings of the AO as below-*

*Disallowing Foreign Exchange Fluctuation (Cr.) Rs.4,80,613/- (Net) for the purpose of calculating deduction u/s. 10A in view of the restrictions under the provisions of sec.10A(4) of the Act, considering the same as of capital nature and at the same time charged to tax as business income.*

*2. The appellant craves to be allowed to add any fresh/additional grounds of appeal and/or withdraw any of the grounds of appeal either before or at the time of hearing of appeal”*

3.0 At the outset, the Ld. Authorized Representative submitted that the assessee had also filed an application under

Rule-11 of the Income Tax Tribunal Rules, 1963 for admission of additional ground. The additional ground reads as under:

*“That on the facts and in the circumstances of the case and in law, the CIT(A) ought to have held that net foreign exchange gain of Rs.4,80,613/- was a capital receipt and as such was not liable to tax as business income.”*

3.1 The Ld. Authorized Representative (AR) submitted that this ground was also raised before the Ld. CIT (A) as ground No.3 and that this additional ground deserves to be admitted. It was submitted that this ground relates to the issue of taxability of Rs.4,80,613/- and was duly examined by the Assessing Officer and was, thus, not an altogether fresh issue. Reliance was placed on the judgment of Hon'ble Apex Court in the case of NTPC Ltd. vs. CIT [1998] 299 ITR 383, for the proposition that the purpose of assessment proceedings before the Taxing Authorities is to assess correctly the tax liability of an assessee in accordance with law and if during the pendency, it is found that a non-taxable item is taxed or a permissible deduction is denied, the assessee is not prevented from raising the ground before the Tribunal. The

Ld. Authorized Representative prayed that the additional ground should be allowed.

4.0 The Ld. Sr. Departmental Representative (DR) had no objection to admitting the additional ground.

5.0 Having heard both the parties we admit the additional ground as raised by the assessee as the ground relates to Ground No.1 of the original appeal memo and no fresh issue is being raised in this additional ground.

6.0 The Ld. Authorized Representative submitted a chart that depicted the working of foreign exchange fluctuation loss/gain. This chart is reproduced herein under for a ready reference:

Working of exchange fluctuation loss/gain

	Realized		Total	Remarks
EC Net Loan Account	-	(2,30,380)	(2,30,380)	Notional debit entry on account of loan to EC net
Payable to EC Net Shareholders	-	3,00,522	3,00,522	Notional credit entry payable to erstwhile shareholders.
Payable to Web Converse Shareholders	(12,15,955)	16,26,426	4,10,471	Rs.12,15,955/- was actual loss of capital in nature being the liability payable to erstwhile shareholders. Notional credit entry payable to erstwhile shareholders.
Total	(12,15,955)	16,96,568	4,80,613	

5.1 The Authorized Representative submitted that Net credit of Rs.16,96,568/- under the head 'reinstatement' was not real income and that these were notional entries on capital account. It was further submitted that actual loss of Rs.12,15,955/- on account of payment to shareholders of Web-Converse was also on capital account. It was further submitted that, thus, the net foreign exchange fluctuation gain of Rs.4,80,613/- was on account of capital account and not on revenue account. The Ld. Authorized Representative drew our attention to the finding of the Ld. CIT (A) on the issue as contained in pages 8 and 9 of the impugned order wherein the Ld. CIT (A) has given a categorical finding that this foreign exchange fluctuation adjustments were not related to the acquisition of assets and, therefore, section 43A (1) of the Act was not applicable. The Ld. Authorized Representative submitted that the Assessing Officer had relied on provision of section 43A and had concluded that the net amount of Rs.4,80,613/- being capital in nature was not to be considered for the purposes of deduction u/s 10A of the Act. The Ld. Authorized Representative submitted

that the provisions of section 43A (1) of the Act are applicable only where there is an increase or decrease in the liability of the assessee specifically for the purposes of acquiring the assets and, therefore, this section had no application unless the assets are acquired and liability exists. It was submitted that the entry pertaining to reinstatement amounting to Rs.16,96,568/- was only a notional entry which was reversed immediately in the ensuing financial year and did not attract the mischief of section 43A of the Act. With respect to the transactions of Rs.12,15,255/- it was submitted that it was actual loss suffered by the assessee on account of change in the rate of foreign currency while discharging the payment obligation towards shareholders of Web-Converse. Thus, it was virtually in the nature of payment of interest. The Ld. Authorized Representative submitted that, accordingly, the foreign exchange fluctuation gain of Rs.4,80,613/- (Net) should be excluded from the computation of business income as admittedly the same was on capital account.

6.0 Per contra, the Ld. Sr. Departmental Representative (DR) placed heavy reliance on the concurrent

findings of the Assessing Officer and the Ld. CIT (A) and submitted that the issue had already been duly considered by the two Lower Authorities and that they had arrived at the right conclusion in this regard.

7.0 We have heard the rival contentions and have also perused the material on record. The only grievance of the assessee before us is that the Assessing Officer, while allowing assessee's claim of deduction u/s 10A of the Act, has reduced an amount of Rs.4,80,613/- from the net profit of the undertaking, it being the net foreign exchange gain, for the reason that the same was capital in nature. There is no dispute that the said income is capital in nature as the Ld. CIT (A) has given a categorical finding on the same. The Department has not disputed it and neither is the assessee challenging it. The only prayer of the assessee is that if the same is not included in the net profit of the undertaking for the purposes of computation of claim of deduction u/s 10A of the Act, the same should also be excluded from the computation of business income. In this regard, we are in complete agreement with the submissions of the Ld. Authorized Representative. If the

net foreign exchange of gain of Rs.4,80,613/- is excluded from the computation of claim of deduction u/s 10A of the Act for the reason that it is on capital account, the same should also not be included while computing the net profit of the assessee. The same is directed to be excluded from the computation of business income as well. Accordingly, the additional ground raised by the assessee stands allowed.

10.1 In the final result, the appeal of the assessee stands allowed.

Order pronounced on 25<sup>th</sup> February, 2021.

Sd/-

**(N.K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

Dated: 25/02/2021

PK/PS

Copy forwarded to:

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

Sd/-

**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI