

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

**BEFORE : SHRI I.C. SUDHIR, JUDICIAL MEMBER &  
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

**ITA No. 2976/Del./2013  
Asstt. Year : 2009-10**

Silicon Graphics Systems (India) Pvt. Ltd.,  
Regus Business Centre, Level 15,  
Eros Corporate Towers, Nehru Place,  
New Delhi (PAN: AAACS 4104 N).  
(Appellant)

vs.

DCIT, Circle 8(1),  
New Delhi.

(Respondent)

Appellant by	:	Sh. Piyush Kaushik, Advocate
Respondent by	:	Sh. B. Raman Janeylily, Sr. DR
Date of hearing	:	11.08.2016
Date of pronouncement	:	24.08.2016

**ORDER**

Per L.P. Sahu, Accountant Member:

This is an appeal filed by the assessee against the order of ld. CIT(A)-XI, New Delhi dated 28.02.2013 for the assessment year 2009-10 on the following grounds :

*"1. That on the facts and circumstances of the case and in the Law, the CIT(A) has grossly erred in confirming disallowance on account of foreign exchange fluctuation loss of Rs.12,41,11,179.*

*1.1 That on the facts and circumstances of the case and in the law, the CIT(A) has seriously erred in failing to appreciate that foreign exchange fluctuation loss arising consequent to restatement of current liabilities as per the year end rates in accordance with the requirements of Accounting*

*Standard-11 is clearly allowable as a deduction being a well settled position as upheld in various decisions from the Apex Court.*

*1.2. That on the facts and circumstances of the case and in the Law, the CIT(A) has committed a gross impropriety by not following the decision of ITAT in assessee's own cases on the claim of foreign exchange fluctuation loss payment and also the mandate laid down by the Hon'ble Apex Court in this regard."*

2. From the above grounds of appeal, it transpires that the only question involved in this appeal is whether the Id. Authorities below are justified in disallowing the foreign exchange fluctuation loss to be set off against the business income of the assessee or not.

3. The brief facts of the issue are that the appellant had claimed foreign exchange fluctuation loss of Rs.12,41,11,179/- in the Profit & Loss account. The appellant was required to provide the details along with documentary evidences in support of its claim and to show cause as to why foreign exchange fluctuation loss of Rs.12,41,11,179/- should not be disallowed in view of the instruction No. 3/2010 dated 23.03.2010 issued by the CBDT. In response, the appellant explained that the foreign exchange fluctuation loss of Rs.12,41,11,179/- was on account of restatement of the foreign currency payables as per the year end rates in accordance with the provisions of Accounting Standard-11 (AS-11) issued by the ICAI. The details of such loss

were also furnished before the AO. It was explained that since the CBDT Instruction No. 3/2010 relates to the transactions of forex derivatives, and that the appellant has not undertaken any such transaction of derivatives in the subject year, the same is not applicable in appellant's case. Reliance was also placed on the decisions of Hon'ble Supreme Court in the case of CIT vs. Woodward Governor India P. Ltd. 312 ITR 254 SC and Oil & Natural Gas Corp. Ltd. vs. CIT, 322 ITR 180 and also the decision of ITAT on the same issue in assessee's own case for previous year which was not challenged by the department before the Hon'ble High Court. The AO, however, disallowed the loss as claimed by appellant on the ground that the assessee did not furnish any evidence/details of restatement of foreign currency and at the time of passing the decision by ITAT in assessee's own case, Instruction No. 3 of 2010 was not in existence. He further observed that the losses claimed by the assessee are based on forex derivatives in the form of currency swaps, forex forwards etc. It was also observed that now, in view of the change in law, the decisions of Hon'ble Supreme Court are not applicable to the case of assessee. She accordingly concluded that the foreign exchange fluctuation loss of Rs.12,41,11,179/- is a speculative loss and disallowed the same to be set off against the business income of the assessee as per section 43(5) of the Act and CBDT Instruction No. 3/2010 dated 23.03.2010. The appellant challenged the

assessment order in appeal before the Id. CIT(A) who confirmed the disallowance, but on different reason that the assessee has claimed foreign exchange fluctuation loss on the entire amount of current liabilities and not on the transactions pertaining to the current year. Aggrieved by the order of Id. CIT(A), the assessee is in appeal before the Tribunal.

4. During the course of hearing, the Id. AR of the assessee furnished a brief synopsis before us containing various arguments of assessee which read as under :

It is respectfully submitted that the ensuing submissions of the assessee be in the interest considered in the disposal of the matter:

#### **1. Background Facts.**

##### **1.1 Nature of business of assessee:**

As noted by the AO herself in detail vide para 2 of its order, the assessee is a reseller of Silicon Graphics products. It imports computers (hardware & software) from Silicon Graphics Inc US (SGI being the parent entity) and sells to end customers. The assessee also undertakes warranty and post warranty maintenance services for SGI products in the country. In addition it also provides consultancy services to SGI. **Thus, it is abundantly clear as per the noting by AO himself that assessee is engaged in Information technology (IT) line of business by providing IT related purchase/sales / services. The assessee does not at all deals in forex derivatives (i.e. shares/scrips/bonds/stocks in foreign currency) which is a matter of fact and record. As per the audited accounts on record (pages 1-19 PB) there is not even a single rupee income or expenditure accounted for by the assessee on account of forex derivatives.**

**1.2 Assessee's policy on Accounting for Inter Company payables / receivable in foreign currency & exchange differences:** As noted by the AO herself the assessee undertakes import transactions on account of computer hardware & software from its parent entity in US & also provides services to its parent entity. Pursuant to business transactions on revenue account with the parent entity there are intercompany payables / receivables in foreign currency. As per the disclosed accounting policy of the company the

outstanding foreign currency monetary items (receivables / payables on revenue account) are reported as per the closing exchange rate and the exchange differences arising there from vis a vis the opening balance of same is accounted for as income or expense as the case may be. This accounting policy is in view of the requirements of Accounting Standard 11 issued by Institute of Chartered Accountants of India (ICAI). The exchange differences arising on capital account i.e. pertaining to fixed assets are adjusted in the cost of fixed assets.

**1.3 Accounting policy consistently followed by the assessee company:** The aforesaid accounting policy is consistently followed by the assessee company. **Wherever there is a gain arising pursuant to the aforesaid reporting of receivables / payables in foreign currency the same is duly offered to tax. The Chart outlined at page 31 of CIT(A) order outlines the year wise details wherein the gains arising consequent to conversion at closing exchange rate has been duly offered to tax.** During the subject year pursuant to the aforesaid accounting policy there was an exchange loss of Rs. 124,111,179 which was consequently claimed as a deduction. The item wise working of such exchange loss was duly submitted before the AO & CIT(A) duly acknowledged by the AO enclosed at page 27 of PB. It is a matter of fact that both the lower authorities could not find any default / lacuna on the same.

**1.4 Exchange loss claim is pursuant to intercompany payables / receivables on revenue account only:** As per the disclosed accounting policy of the company (supra) the exchange loss / gain on conversion of intercompany payables / receivables as per the closing rate which is claimed as a deduction or offered to income pertains to transactions on revenue account only. The exchange loss / gain arising on transactions pertaining to fixed assets i.e. on capital account are not accounted for as expense / income but adjusted in the carrying cost of fixed assets as per the disclosed accounting policy. **It was submitted before the lower authorities and noted at various places (for instance page 30 of CIT(A) order) that intercompany payables are on revenue account only. This position is not disputed by any of the lower authorities i.e. AO & CIT(A).**

**1.5 International transactions with parent entity accepted on an arm's length basis by the department:** As submitted before the CIT(A) and noted at internal page 30 & 31 of order of CIT(A) the international transactions undertaken by assessee with its parent entity in the past have been accepted to be on an arm's length basis in the transfer pricing scrutiny assessment orders on record, **This position is not disputed by any of the lower authorities i.e. AO & CIT(A).**

## **2. Decision of AO.**

The AO by essentially invoking the Instruction No. 3 of 2010 of CBDT held vide para 7.5 of its order that the claim of foreign exchange fluctuation loss is a speculative loss and accordingly disallowed to be set off against business income u/s 43(5). The AO had invoked the said instruction which is on altogether a different thing i.e. trading in derivatives whereas on the facts of assessee's case the assessee is in Information Technology line of business (as admitted by AO herself vide para 2 of her order] and had never done any

trading in derivatives in past, present or till date. These facts were submitted before the AO (noted by AO herself at para 7.1) but briskly ignored by her.

### 3. Submissions before CIT(A) & Decision of CIT(A).

3.1 Vide various detailed written submissions before the CIT(A) the following submissions were made as acknowledged by CIT(A) herself vide her order:

- i. There has not even been a single transaction in derivatives undertaken by assessee and therefore the approach of AO in applying Instruction No. 3/2010 is grossly misplaced - noted at page 17 of CIT(A) order,
- ii. Assessee is following a consistent policy on re-statement of foreign currency payables and whenever there is a gain the same is duly offered to tax - noted at pages 77; 18 of CIT(A) order along with a chart outlined at page 31 of CIT(A) order giving the year wise details wherein the gains arising consequent to conversion at closing exchange rate have been duly offered to tax',
- iii. Inter company payables have arisen only on account of revenue transactions in the past. Transactions undertaken by assessee with its parent entity on expense and income side have been detailed in the Transfer Pricing Documentation on record which have been accepted in the past and also in the current year without any reference to TPO u/s 92CA;
- iv. During the current year there was a high fluctuation in rupee dollar rate by more than 25% i.e. there was a high decline in value of rupee;
- v. Clarifications required by the CIT(A) vide its order sheet entry dated 19/02/13 were duly submitted by the assessee vide its submissions as reproduced in the order of CIT(A) itself at pages 30 & 31.

### 3.2 Decision of CIT(A)

**The CIT(A) does not disputes the aforesaid position and submissions. In fact unlike the view taken by the AO the CIT(A) does not uphold the disallowance of foreign exchange fluctuation loss on the ground that it is a speculative loss as held by the AO.**

The sole reason framed by the CIT(A) in confirming the disallowance is that the assessee has claimed foreign exchange fluctuation loss on the entire amount of current liabilities and not on the transaction pertaining to the current year.

### 4. Assessee's Submissions:

4.1 **There is a manifest lack of understanding on part of AO & CIT(A) in disallowing assessee's claim on account of foreign exchange fluctuation loss of Rs. 12,41,11,179. In fact they have committed a judicial impropriety in not following the decision in assessee's own cases on the same issue and the decisions of Apex Court which have settled this issue.**

4.2 Firstly the reason framed by the AO to the effect that pursuant to CBDT Instruction No. 3 of 2010 the loss claimed by assessee is a speculative loss is manifestly incorrect. At the cost of repetition the said instruction is applicable only where there is a trading in forex derivatives which is not at all the situation on the facts of present case. The nature of business of assessee as noted by the AO herself vide para 2 of its order being that the assessee is a reseller of Silicon Graphics products. It imports computers (hardware & software) from Silicon Graphics Inc US (SGI being the parent entity) and sells to end customers. The assessee also undertakes warranty and post warranty maintenance services for SGI products in the country. In addition it also provides consultancy services to SGI. **Thus, it is abundantly clear as per the noting by AO himself that assessee is engaged in Information technology (IT) line of business by providing IT related purchase/sales / services The assessee does not at all deals in forex derivatives (i.e. shares/scrips/bonds/stocks in foreign currency) which is a matter of fact and record. As per the audited accounts on record (pages 1-19 PB) there is not even a single rupee income or expenditure accounted for by the assessee on account of forex derivatives. In fact it is also not the case of AO that the assessee has undertaken transaction in forex derivatives still very wrongfully the AO applies the said instruction.**

4.3. **The item wise working of foreign exchange loss of Rs. 12,41,11,179 on outstanding inter company payables / receivables was duly submitted before the AO & CIT(A) duly acknowledged by the AO & CIT(A) enclosed at page 27 of PB. It is a matter of fact that both the lower authorities could not find any default / lacuna on the same. Though the AO herself acknowledges vide para 7.1 of its order that the assessee has submitted the details of foreign exchange loss on outstanding balances but still the AO very wrongfully observes vide para 7.2 of its order that the assessee has not given details of foreign exchange loss. In fact the CIT(A) does not holds that the assessee has not given said details, the solitary reason framed by CIT(A) in confirming AO's decision is totally different outlined in para 3.2 supra. The outstanding intercompany payables / receivables arising as a result of transactions with the parent entity are as per the audited accounts of the current year and past years. Assessments for all the past years have been done u/s 143(3) and in none of the past assessments it is the case of the AO that the inter company payables are not genuine or bogus. During the current year also it is not the case of AO that the inter company payables are not genuine. Further it is a matter of fact and record that the international transactions with the parent entity have been accepted to be on an arm's length basis by the TPO itself in the Transfer Pricing orders for the preceding years. In the current year the AO has not considered necessary and expedient to make a reference to the Transfer Pricing Officer.**

4.4 The CIT(A) unlike AO does not upholds the disallowance of foreign exchange fluctuation loss on the ground that it is a speculative loss as held by the AO.

The sole reason framed by the CIT(A) in confirming the disallowance is that the assessee has claimed foreign exchange fluctuation loss on the entire amount of current liabilities and not on the transaction pertaining to the current year. **This is a very elementary fallacy in the understanding of the CIT(A). The CIT(A) had just failed to understand a very**

**basic thing that pursuant to the requirements of AS-11; the mandate from Apex court & the decisions in assessee's own cases the entire current liabilities outstanding as at the balance sheet date has to be re-instated as per the closing rate and any foreign exchange gain / loss arising thereby has to be accounted for as an income or expense.**

**4.5 Entire amount of current liabilities outstanding as at the balance sheet date is to be re-instated as per the closing rate as required by AS-11: decisions from Supreme Court & as held in assessee's own cases on same issue:** The CIT(A) has just failed to understand and appreciate that it is the entire amount of current liabilities outstanding as at the balance sheet date which has to be re-instated as per the closing rates otherwise the accounts will not give a true and fair view.

The AS-11 in a very crystal clear manner provides that at each balance sheet date the outstanding foreign currency monetary items should be reported using the closing rates. Further the said AS-11 in a very clear manner provides that when the transaction is not settled in the same accounting period in which it had occurred then in all the intervening period uptill when the transaction is settled the exchange differences have to be duly accounted for.

In this regard it would be important to quote the following extract from AS-11:

***"When the transaction is settled within the same accounting period as that in which it occurred, all the exchange differences is recognized in that period. However, when the transaction is settled in a subsequent accounting period, the exchange difference recognized in each intervening period upto the period of settlement is determined by the change in exchange rates during that period."***

Thus as per the very clear mandate of AS-11 the exchange differences arising in each subsequent accounting period uptill the settlement of transaction have to be duly accounted for.

Similarly it has been held by the Supreme Court in its decision in the case of **CIT Vs Woodward Governor India P. Ltd. 312 ITR 254 SC** vide para 18 of its decision in the following words:

***"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."***



Thus, as per the clear mandate from Apex Court the monetary items have to be translated using the closing rate **at each balance sheet date i.e. in every subsequent period.** Similarly it has been held by Supreme Court in its decision in the case of **Oil and Natural Gas Corporation Ltd. Vs CIT 322 ITR 180 SC** in the following words:

*"12. Applying these factors on the facts of that case, it was held that the "loss" suffered by the assessee, maintaining accounts regularly on mercantile system and following accounting standards prescribed by the Institute of Chartered Accountants of India (ICAI), on account of fluctuation in the rate of foreign exchange as on the date of balance-sheet was an item of expenditure under section 37(1) of the Act, **notwithstanding that the liability had not been discharged in the year in which the fluctuation in the rate of foreign exchange occurred.**"*

To similar effect it has been held by the co-ordinate bench of ITAT in assessee's own case vide its decision in assessee's case for the preceding years reported in 105 TTJ 191 in the following words:

*"As regards the question whether the loss can be allowed in the year under consideration even though the time for repayment of the loan has not come, the order of the Special Bench (Delhi) in the case of Oil & Natural Gas Corpn. Ltd. vs. Dy. CIT(2002) 77 TTJ (Del)(SB) 387: (2003) 261 ITR 61 (Del)(SB)(AT) : (2002) 83 ITD 151(Del)(SB) provides the answer. In this case, it was held that the loss cannot be called notional since the fall in the exchange rate has already taken place in the accounting year. **The Special Bench has a/so made a reference to the accounting standards (AS-11) in which it has been stated that the long-term liabilities should be restated and the loss should be charged to the P&L a/c of each year.**"*

**In the aforesaid case of assessee for AY 2001-02 the restatement was with respect to liabilities incurred in the past as noted in para 2 of ITAT order. Thus the facts in the current year are exactly identical with the facts in assessee's own case for AY 2001-02.**

To similar effect it has been so held in another case of assessee for the preceding year AY 1999-00 under exactly identical fact situation.

4.6 **Assessee's claim of foreign exchange fluctuation loss under identical circumstances has been accepted by the department itself in the subsequent years in the course of sec 143(3) scrutiny proceedings;** It is submitted that in the latest scrutiny assessment order issued by the AO u/s 143(3) for AY 2013-14 dated 30/03/16 the department itself in the course of scrutiny assessment proceedings had pursuant to a specific deliberation with the assessee on assessee's claim of foreign exchange loss of Rs. 2,35,97,638 accepted the same and did not made any addition on said account in the assessment order u/s 143(3). In the assessment proceedings for AY 2013-14 the assessee had raised similar arguments as in the present year to defend its claim of foreign exchange fluctuation loss which have been accepted by department in the scrutiny assessment proceedings.

Thus, in view of the foregoing facts and circumstances and the legal position, it is respectfully submitted that the assessee's claim on account of foreign exchange fluctuation loss is squarely covered by the provisions of AS-11 and the decisions from Apex Court including assessee's own cases for the preceding years which have been ultimately accepted by department itself in the course of section 143(3) scrutiny proceedings for the subsequent years.

Thus, it is respectfully submitted that the addition made by the AO with respect to foreign exchange fluctuation loss as sustained by the CIT(A) deserves to be deleted forthwith.

5. On the other hand, the ld. DR strongly relied upon the orders of the authorities below.

6. Having heard the rival submissions and perused the material available on record, we find considerable substance in the contentions of the assessee. The observation of the AO that the assessee did not furnish any evidence/details of exchange loss due to restatement of foreign currency is found factually wrong inasmuch as item wise working of foreign exchange loss of Rs. 12,41,11,179/- on outstanding inter company payables / receivables was duly submitted before the AO & CIT(A) duly acknowledged by the AO & CIT(A). The written reply of assessee given vide letter dated 25.11.2011 reproduced by AO in her order also shows that such details were annexed by assessee with the said reply. Even the ld. CIT(A) has not recorded any finding that no such details were furnished by assessee/appellant. Besides, the outstanding intercompany payables/receivables arising as a result of transactions with the parent entity are as per audited accounts of the

current year and past years and the assessments for all the past years had been done u/s. 143(3) wherein the intercompany payables are not found bogus or non-genuine. A perusal of assessment order further reveals that the AO has not given concrete findings on the explanation of assessee that Instruction No. 3 of 2010 issued by CBDT is applicable only where there is trading in forex derivatives, which situation does not exist in the instant case, as the AO herself has mentioned the nature of appellant's business as that of Information Technology line, i.e., IT related purchase/sales or services. Therefore, the conclusion of the AO derived on the basis of CBDT Instruction No. 3 of 2010 in the above circumstances is not fit to be supported that the foreign exchange fluctuation loss is a speculative loss. The Id. CIT(A) has confirmed the disallowance on altogether different count that the assessee has claimed foreign exchange fluctuation loss on the entire amount of current liabilities and not on the transactions pertaining to the current year. In this context, it is notable that as required by AS-11 and as also held by Hon'ble Supreme Court in the case of CIT vs. Woodward Governor India Pvt. Ltd. (supra) and Oil and Natural Gas Corporation Ltd. (supra, the entire amount of current liabilities outstanding as at the balance sheet date was to be reinstated by the assessee, which has been done by assessee in the instant case. The accounting standard-11 provides that at each balance sheet date the

outstanding foreign currency monetary items should be reported using the closing rates. It clarifies that that when the transaction is not settled in the same accounting period in which it had occurred then in all the intervening period till the transaction is settled, the exchange differences have to be duly accounted for. Moreover, the issue in dispute stands decided in the decisions of ITAT Delhi Benches in assessee's own cases for A.Y. 1999-2000 and 2001-02 in favour of the assessee, as reported in (2007) TTJ 1153 and (2006) 105 TTJ 591 respectively. The special Bench of ITAT, Delhi also in the case of Oil & Natuyral Gas Corpn. Ltd. vs. DY. CIT (2002) 77 TTJ (Del.)(SB) 387 has held that the loss cannot be called notional since the fall in the exchange rate has already taken place in the accounting year. The Special Bench has also referred to the Accounting Standards-11 where it has been provided that the long-term liabilities should be restated and the loss should be charged to the Profit and Loss account of each year. In view of these principles of law, the finding of the Id. CIT(A) that the assessee has claimed foreign exchange fluctuation loss on the entire amount of current liabilities and not on the transactions of the current year, in our opinion, does not stand on sound footings and is liable to be set aside. In the assessment year 2013-14, the department itself has accepted foreign exchange fluctuation loss under identical circumstances vide assessment order u/s. 143(3) dated 30.03.2016

(copy placed on record). Not only this, the assessee has been following a consistent policy on re-statement of foreign currency payables and whenever there is a gain the same is duly offered to tax as also noted by Id. CIT(A) in a chart at page 31 of the impugned order wherein the gains arising consequent to conversion at closing exchange rate have been duly offered to tax by the assessee. Therefore, the Id. Authorities below are not justified to take different view in the instant year. In view of these discussions, we do not find any justification to support the orders of the authorities below. Accordingly, the appeal of the assessee is found to have merit and deserves to be allowed.

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

Order pronounced in the open court on 24.08.2016.

Sd/-  
**(I.C. SUDHIR)**  
Judicial Member

Sd/-  
**(L.P. SAHU)**  
Accountant Member

Dated : 24.08.2016

\*aks/-

*Copy of order forwarded to:*

(1) The appellant	(2) The respondent
(3) Commissioner	(4) CIT(A)
(5) Departmental Representative	(6) Guard File

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Delhi Benches, New Delhi*