$~4

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 93/2018 & CM Appl. 3490/2018

COMMISSIONER OF INCOME TAX(LTU) ..... Appellant
Through: Mr.Ruchir Bhatia, Advocate

versus

POWER FINANCE CORPORATION LTD. ..... Respondent
Through: Mr.Mayank Nagi, Mr.Hardeep Singh Chawla & Mr.Tarun Singh, Advocates

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

<u>O R D E R</u>
% **22.01.2019**

1. The Revenue claims that it is aggrieved by part of the ITAT's order in so far as it has directed the AO to verify whether the assessee had in fact taken into account the losses and gains on account of foreign exchange fluctuation with regard to the several transactions each particular year.

2. The AO and the CIT(A) in this case had added back certain amounts, for Assessment year 2005-2006 premised upon the decision of the Supreme Court in *Commissioner of Income Tax vs. Woodward Governor* [(2009) 312 ITR 254 (SC)]. The ITAT, however, directed a remand and at the same time made the following observations:-

> *12. As far as the merits of the issue is considered, Ld. AR submitted that translation loss or gain is due to a result from conversion of foreign currency liability which are purely notional in nature. It has been submitted that assessee has not been considering the same while computing taxable income. Ld.AR referred to the computation placed at page 2 of paper book for the year under consideration. Ld. AR has been*

submitting that on the issue, all necessary details were filed before assessing officer during original assessment proceedings vide reply dated 20/02/06 and 08/03/06. In the paper book at page 106 letter dated 08/03/2006 has been placed along with Annexure II. The letters referred by Ld.AR do not have any acknowledgment of having been submitted before Ld. AO. Ld. AO has also not analysed this submission advanced by Ld. AR.

We are therefore, inclined to set aside this issue back to Ld. AO to verify whether Assessee has actually not taken into consideration the translation less due to conversion of foreign exchange while computing taxable income. If that is the case, the disallowance would stand deleted."

3. It is contended by the Revenue that the observation of the ITAT is to the fact that the assessee had actually not taken into consideration the transactions loss, due to conversion of foreign exchange, which might result in prejudice to the Revenue. On the other hand, learned counsel for the assessee urged that the reading of the previous part of the paragraph would show that the details of the gains/losses and whether they were real or notional was a matter of record.

4. This Court is of the opinion that given the decision in *Woodward Governor* (surpa), the AO has to necessarily undertake a task of verification whether the loss or gain incurred as the case may be, for any given year, actually resulted in a taxable event.

5. In these circumstances, the AO while carrying out the verification process shall not be bound by any observation, perceived to be an impediment to the task. In other words, AO shall carry necessary and consequential verification having regard to the principles applied in *Woodward Governor* (supra) decision, including all the aspects of adjustments of claim for the assessment year 2005-2006 & 2009-2010.

6. The appeal is disposed of in the above terms.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

JANUARY 22, 2019
'hkaur'