Forex loss couldn't be considered while computing ALP of purchases if sale/purchase wasn't at pre-determined rates

Summary – The Chennai ITAT in a recent case of NSK India Sales Co. (P.) Ltd., (the Assessee) held that where assessee-company having purchased bearings and other products from its AE located abroad, sold said products to Indian customers, in absence of any documentary evidence to show that purchases and sales were made against pre-determined rates, foreign exchange fluctuation loss could not be adjusted in hands of assessee

Facts

- The assessee-company was engaged in the distribution and marketing of bearings and other products.
- It purchased bearings and other products from its AEs by way of imports and sold them in Indian market. The customers were unrelated to the assessee-company. In certain cases, the AEs also made direct sales to the customers procured by the assessee, in India.
- In transfer pricing proceedings, the assessee accounted for a loss of Rs. 2.45 crores in the nature of foreign exchange rate fluctuation loss between INR and Japanese Yen. The assessee-company claimed said foreign exchange loss as an item of adjustment inducing the financial result into an operating loss. But the TPO did not accept the said adjustment as claimed by the assessee company.
- The argument of the assessee before the DRP was that the assessee fixed the sale and purchase price in advance and, therefore, the foreign exchange fluctuation loss had to be borne by the assessee.
- The DRP held that the assessee could not produce any documentary evidence in support of its proposition. In the absence of documentary evidence, the DRP held that it was not possible to allow the adjustment for the foreign exchange fluctuation loss as claimed by the assessee-company.
- On appeal:

Held

- The argument of the assessee regarding the advance pricing of sales is somewhat a proposition difficult to accept. The assessee is importing bearings and other items from its AEs and selling the same to the Indian customers. The purchase cost of the materials is automatically increased by the de-valuation of rupees against Japanese yen. If that de-valuation is not absorbed by the AEs of the assessee-company, the assessee company should adjust its selling price so as to absorb the devaluation loss. Even if that position is waived for a minute for the sake of argument or for the sake of extreme business circumstances, still the DRP has made it very clear that the assessee-company has not produced any sort of evidence to show that the assessee had pre-determined the sale price.

- When advance fixation of sale price is not proved by any documentary evidence, it is not possible to accept the contention of the assessee that the de-valuation loss is a *fait accompli*. That foreign exchange fluctuation loss could be adjusted in the hands of the assessee company, only if the assessee-company has successfully proved with documentary evidence that the sales were made against pre-determined rates. In the absence of any such evidence, as rightly held by the DRP, it is not possible to accept the adjustment of that loss.
- Moreover, as already observed that AEs also make direct sales to the customers procured by the assessee, in India. In the case of such direct sales, the exchange fluctuation loss are naturally loaded to the price and borne by the customers. The loss is not absorbed either by the AEs or the customers only in the case of import sales made by the assessee. This contradictory position has not been explained.
- The finding of the DRP is thus confirmed. Accordingly, the ground raised by the assessee is liable to be dismissed.