

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, 'जी', मुंबई।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES, 'G' MUMBAI**

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं  
श्री मनोज कुमार अग्रवाल, लेखा सदस्य, के समक्ष

**Before Shri Joginder Singh, Judicial Member, and  
Shri Manoj Kumar Aggarwal, Accountant Member**

**ITA No.4484/Mum/2012  
Assessment Year:2009-10**

ACIT-16(3), R. No.206, 02 <sup>nd</sup> Floor, Matru Mandir, Tardeo Road, Mumbai-400007	<b>बनाम/ Vs.</b>	M/s Sanghvi & Sons, 308, Prasad Chambers, Opera House, Mumbai-400004
(राजस्व /Revenue)		(निर्धारिती /Assessee)
<b>PAN. No. AAASF3192F</b>		

राजस्व की ओर से / Revenue by	Miss. Anupama Singla-DR
निर्धारिती की ओर से / Assessee by	Shri K.A. Vaidyalingan

सुनवाई की तारीख / <b>Date of Hearing :</b>	<b>31/01/2017</b>
<b>आदेश की तारीख /Date of Order:</b>	<b>31/01/2017</b>

**आदेश / O R D E R**

Per Joginder Singh(Judicial Member)

The Revenue is aggrieved by the impugned order dated 30/04/2012 of the Ld. First Appellate Authority, Mumbai. The only ground raised by the Revenue pertains in holding that mark to mark loss of Rs.2,75,11,085/- arising on valuation of forward exchange contract on closing date of accounting year is not a notional loss, therefore, allowable.

2. During hearing, at the outset, the ld. counsel for the assessee, Shri K.A. Vaidyalingan, claimed that the impugned issue is covered in favour of the assessee by the order of the Hon'ble jurisdictional High Court in the case of CIT vs M/s D. Chetan & Company (ITA No.278 of 2014) order dated 01/10/2016 and DIT vs Citibank NA (ITA No.330 of 2013) order dated 11/03/2015. This factual matrix was consented to be correct by the Ld. DR, Miss. Anupama Singla.

2.1. We have considered the rival submissions and perused the material available on record. In view of the above, we are reproducing hereunder the relevant portion from the order dated 01/10/2016 of Hon'ble jurisdictional High Court for ready reference and analysis:-

*“This appeal under Section 260A of the Income Tax Act, 1961(Act) challenges the order dated 14 August 2013 passed by the Income Tax Appellate Tribunal (Tribunal). The impugned order relates to assessment for Assessment Year 2009-10.*

2. *The Revenue has urged the following question of law for our consideration :*

*“Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the addition of 'Mark to Market' Loss of Rs.78,10,000/ made by the Assessing Officer on account of disallowance of loss on foreign exchange forward contract loss and not appreciating the fact that the said loss was a notional loss and hence cannot be allowed.?”*

3. *The Respondent Assessee is engaged in the business of import and export of diamonds. During the assessment proceedings, the Officer found that Respondent assessee explained that the amount of Rs.78.10 lakhs claimed as loss was on account of having entered into hedging transactions to safeguard variation in exchange rates affecting its transactions of import and export by entering into forward contracts. The Assessing Officer by order of Assessment dated 27th December 2011 disallowed the claim on the ground that it is notional loss of a contingent liability debited to Profit and Loss Account. Resultantly, the same was added to the Respondent-assessee's total income.*

4. *Being aggrieved, the Respondent-assessee carried the issue in appeal to the commissioner of Income Tax (CIT (Appeals)). By order dated 27 April 2012, the CIT(Appeals) allowed the Respondent assessee's appeal inter alia relying upon the decisions of Tribunal in Bhavani Gems vs. ACIT and the Special Bench decision in the case of DCIT vs. Bank of Bahrain and Kuwait. The CIT (Appeals) on facts found that the transaction of forward contract was entered into during the course of its business. It held it was not speculative in nature nor was it the case of the Assessing Officer that it was so. Thus the loss incurred as forward contract Incurred as forward contract was allowed as a business loss.*

5. *Being aggrieved, the Revenue preferred an appeal to the Tribunal. The impugned order of the Tribunal upheld the finding of the CIT (Appeals) that the loss incurred by the Respondent Assessee was a revenue loss and not connected with*

*any speculation activities. The Tribunal found that the transaction of forward contract had been entered into for the purpose of hedging in the course of its normal business activities of import and export of diamonds. Thus, the Revenue's appeal was dismissed by the impugned order of the Tribunal.*

*6. Mr. Malhotra, learned Counsel appearing for the Revenue submits that this appeal had to be admitted as the impugned order has ignored its order in the case of S. Vinodkumar Diamonds Pvt. Ltd. vs. Addl.CIT rendered on 3 May 2013 which on similar facts is in favour of the Revenue. He further submits that the impugned order of the Tribunal is suspect because it accepts the Respondent assessee's claim without calling upon it to prove that the same was not speculative. Lastly, he sought to place reliance upon Accounting Standard-11 to claim that such a loss is not allowable thereunder.*

*7. The impugned order of the Tribunal has, while upholding the finding of CIT(Appeals), independently come to the conclusion that the transaction entered into by the Respondent assessee is not in the nature of speculative activities. Further the hedging transactions were entered into so as to cover variation in foreign exchange rate which would impact its business of import and export of diamonds. These current finding of facts are not shown to be perverse in any manner. In fact, the Assessing Officer also in the Assessment Order does not find that the transaction entered into by the Respondent assessee was speculative in was dismissed by the impugned order of the Tribunal. nature. It further holds that at no point of time did Revenue challenge the assertion of the Respondent assessee that the activity of entering into forward contract was in the regular course of its business only to safeguard against the loss on account of foreign exchange variation. Even before the Tribunal, we find that there was no submission recorded on behalf of the Revenue that the Respondent assessee should be called upon" to explain the nature of its transactions. Thus, the submission now being made is without any foundation as the stand of the assessee on facts was never disputed. So far as the reliance on Accounting Standard-11 is concerned, it would not by itself determine whether the activity was a part of the Respondent-assessee's regular business transaction or it was a speculative transaction. On present facts, it was never the*

*Revenue's contention that the transaction was speculative but only disallowed on the ground that it was notional. Lastly, the reliance placed on the decision in S. Vinodkumar (supra) in the Revenue's favour would not by itself govern the issues arising herein. (This is so as every decision is rendered in the context of the facts which arise before the authority for adjudication. Mere conclusion in favour of the Revenue in another case by itself would not entitle a party to have an identical relief in this case. In fact, if the Revenue was of the view that the facts in S. Vinodkumar (supra) are identical/similar to the present facts, then reliance would have been placed by the Revenue upon it at the hearing before the Tribunal. The impugned order does not indicate any such reliance. It appears that in S. Vinodkumar (supra), the Tribunal held the forward contract on facts before it to be speculative in nature in view of Section 43(5) of the Act. However, it appears that the decision of this court in CIT vs. Badridas Gauridas (P) Ltd." was not brought to the notice of the Tribunal when it rendered its decision in S. Vinodkumar (supra). In the above case, this court has held that forward contract in foreign exchange when incidental to carrying on business of cotton exporter and done to cover up losses on account of differences in foreign exchange valuations, would not be speculative activity but a business activity.*

8. *In the above view, the question of law, as formulated by the Revenue does not give rise to any substantial of law. Thus, not entertained.*

9. *The appeal is dismissed. No order as to costs."*

We find that the Hon'ble High Court in the aforesaid case duly considered the decision in Bhavani Gems vs ACIT and special Bench decision in the case of DCIT vs Bank of Bahrain and Kuwait along with the decision, relied upon by the Revenue, in the case of S. Vinodkumar Diamond Pvt. Ltd. vs Addl. CIT rendered on 03/05/2013 and thereafter the decision in CIT vs Badridas Goridas Pvt. Ltd. and then reached to a conclusion upholding the stand of the Tribunal.

Identical is the situation/facts in the appeal before this Tribunal. No contrary decision/facts were brought to our notice by the Revenue, therefore, respectfully following the decision from Hon'ble jurisdictional High Court, we hold that the forward contract in foreign exchange, incidental to carrying on a business of exports and done to cover up the losses on account of differences in foreign exchange valuation would not be speculative activity but a business activity. The stand taken by the Ld. Commissioner of Income Tax (Appeal) is, therefore, affirmed, resulting into dismissal of appeal of the Revenue.

Finally, the appeal of the Revenue is dismissed.

This Order was pronounced in the open court in the presence of ld. representatives from both sides at the conclusion of the hearing on 31/01/2017.

**Sd/-**

**Sd/-**

(Manoj Kumar Aggarwal)  
लेखा सदस्य / ACCOUNTANT MEMBER

(Joginder Singh)  
न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 31/01/2017

*Shekhar, P.S.* नि.स.

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant (Respective assessee)
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai

6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**