

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1465/Mds/2016

निर्धारण वर्ष / Assessment Year :2010-11

The Deputy Commissioner of
Income Tax,
Circle – 1,
Tirupur.

v. M/s S P Apparels Limited,
No.39-A, VOC Extension Street,
Kaikattipudur,
Avinashi – 641 654.

(अपीलार्थी/Appellant)

PAN : AAJCS 4031 P
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri V. Nanda Kumar, JCIT

प्रत्यर्थी की ओर से/Respondent by : Sh. T. Banusekar, CA

सुनवाई की तारीख/Date of Hearing : 17.08.2016

घोषणा की तारीख/Date of Pronouncement : 30.09.2016

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) – 3, Coimbatore, dated 30.12.2015 and pertains to assessment year 2010-11.

2. There was a delay of 59 days in filing this appeal by the Revenue. The Revenue has filed a petition for condonation of

delay. We have heard the Ld. Departmental Representative and the Ld. representative for the assessee. We find that there was sufficient cause for not filing the appeal before the stipulated time. Therefore, we condone the delay and admit the appeal.

3. Shri V. Nanda Kumar, the Ld. Departmental Representative, submitted that the assessee suffered loss in the foreign exchange derivative to the extent of ₹1,51,45,677/-. The loss claimed by the assessee was disallowed by the Assessing Officer on the ground that it is a speculative transaction. On appeal by the assessee, the CIT(Appeals) found that the derivative contracts were not entered into with an intention to manage the exposure of export proceeds received by the assessee. The CIT(Appeals) has also found that the transaction did not attract the conditions provided in second limb of Section 43(5) of the Income-tax Act, 1961 (in short 'the Act'). Ultimately, by placing reliance on the order of this Tribunal in the assessee's own case for assessment year 2008-09 in I.T.A. No.1327/Mds/2014 dated 17.04.2015, the CIT(Appeals) allowed the claim of the assessee. According to the Ld. D.R., foreign exchange derivative transactions are covered by proviso to Section 43(5)(a) of the Act. Since the transaction was not done on actual delivery, according to the Ld. D.R., it is a speculative transaction as provided

in Section 43(5) of the Act, therefore, the CIT(Appeals) is not justified in allowing the claim of the assessee.

4. On the contrary, Sh. T. Banusekar, the Ld. representative for the assessee, submitted that the assessee entered into cross currency option contracts on the basis of expert advice and scientific analysis of currency movements across various currencies. According to the Ld. representative, the contracts were entered into by the assessee with a view to effectively manage the underlying exposure on account of export proceeds receivable by the assessee. Therefore, according to the Ld. representative, the proviso to Section 43(5) is not applicable at all. The loss on account of foreign currency derivative is purely a business loss, therefore, the loss suffered by the assessee in the course of business is allowable under Section 28 of the Act. In fact, an identical issue was considered by this Tribunal in the assessee's own case for assessment year 2008-09 in I.T.A. No. 1327/Mds/2014 dated 17.04.2015. This Tribunal allowed a similar claim of the assessee as business loss. The CIT(Appeals) by placing reliance on the order of this Tribunal in the assessee's own case, for assessment year 2008-09, allowed the claim of the assessee. Therefore,

according to the Ld. representative, the Revenue cannot have any grievance at all.

5. We have considered the rival submissions on either side and perused the relevant material available on record. During the course of business transaction, the assessee entered into cross currency option contracts in order to protect the loss suffered on account of export proceeds receivable by the assessee. The Assessing Officer found that the foreign currency derivative transaction was in the nature of speculative transaction within the meaning of Section 43(5) of the Act, therefore, the loss suffered by the assessee cannot be allowed against the income from business. An identical set of facts was examined by this Tribunal in the assessee's own case for assessment year 2008-09 and the loss suffered by the assessee in such transaction was held to be a business loss by this Tribunal. Thus, this Tribunal for assessment year 2008-09 in the assessee's own case allowed a similar loss suffered by the assessee. Since the facts are identical for the year under consideration, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly followed the order of this Tribunal for assessment year 2008-09 and allowed the claim of the assessee.

This Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

6. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on 30th September, 2016 at Chennai.

sd/-
(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)
लेखा सदस्य/Accountant Member

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 30th September, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-3, Coimbatore
4. आयकर आयुक्त/CIT, Coimbatore
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.