

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL  
'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एसजयरामन, लेखा सदस्य के समक्ष

**Before Shri N.R.S. Ganesan, Judicial Member &  
Shri S. Jayaraman, Accountant Member**

आयकर अपील सं./I.T.A. No. 2937/Mds/2016  
निर्धारण वर्ष/**Assessment Year:2009-10**

M/s. BS & B Safety Systems  
(India) Ltd.,  
9, Cathedral Road,  
Chennai 600 086.

Vs. The Addl. Commissioner of  
Income Tax, Company Range I,  
121, Mahatma Gandhi High Road,  
Chennai 600 034.

**[PAN: AAACB1438Q]**

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by

: Shri R. Vijayaraghavan, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Ms. C. Yamuna, JCIT

सुनवाई की तारीख/ Date of hearing

: 03.07.2017

घोषणा की तारीख /Date of Pronouncement

: 25.09.2017

**आदेश /O R D E R**

**PER S. JAYARAMAN, ACCOUNTANT MEMBER:**

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals) 1, Chennai, in ITA No. 25/CIT(A)-1/2012-13 [Old ITA

No. 261/12-13/A-III] dated 16.08.2016 pertaining to the assessment year 2009-10.

2. M/s. BS & B Safety Systems (India) Ltd., the assessee, is engaged in the business of manufacture and sale of rupture disks, safety heads and accessories. Its business includes both exports of its products as well as imports of raw materials. During the assessment year 2009-10, the assessee admitted a net gain on account of difference in foreign exchange at Rs. 19,95,107/-. The AO required the assessee to furnish a detailed note on foreign currency transactions and asked it to explain why the loss on cancellation of forward contract should not be disallowed. The assessee submitted that the above sum included a loss of ₹. 10,66,499/- on account of cancellation of forward contracts entered by it was on account of imports and exports and it is a business loss. It relied on the decision of Income Tax Appellate Tribunal, Mumbai, in the case of DCIT Circle 3(1) vs. Bombay Diamond Co. Ltd., wherein the Tribunal, based on the decisions rendered by the Hon'ble Supreme Court in the case of CIT v. Woodward Governor (I) Pvt. Ltd. and by the Hon'ble Mumbai High Court in the case of ITO vs. Badradas Gauridu Pvt. Ltd, has held that loss on account of cancellation of foreign exchange forward contract is a business loss . The AO after perusing the details filed by the assessee held that the assessee's transactions are

regarded as speculative transactions since it satisfies the provisions of Sec.43(5) for the following reasons:

- (i) These are contracts entered into between the assessee company and the bank and there is no underlying asset/exposure.*
- (ii) The Act specifically provides exclusion of only those transactions done through recognized stock exchanges. In the instant case, the assessee's transactions are all with the banks and are not covered under the exemption clause of Sec. 43(5).*
- (iii) The assessee has not actually delivered the underlying currency to the banks with whom it had entered into such contracts. In the instant case, the assessee had cancelled most of the forex forward contracts without delivery of an underlying asset either the foreign currencies or the export proceeds in the denominated currencies.*

2.1 In view of the above facts, relying on the Hon'ble Madras High Court decision in the case of Sri Ranga Vilas Ginning & Oil Mills v. CIT (1982) 133 ITR 85 which held that the loss on forward contract settled not by actual delivery but by payment of differences as speculative business and the decision of the Honorable ITAT, Bangalore 'A' Bench in the case of Assistant Commissioner of Income-tax vs. K. Mohan & Co. (Exports) (P) Ltd. (2010) 39 DTR 97 wherein it was held that settlement of Forward contracts without actual delivery of currency is a speculative transaction under section 43(5), the AO held that the net loss of ₹.10,66,499/- claimed by the assessee towards

cancellation of forward contract falls within the ambit of speculative business which cannot be allowed to be set off against the normal business income as per Sec.73 and allowed it to be carried forward for set off against any speculation income that may arise in any succeeding financial years.

3. Aggrieved, the assessee filed an appeal before the CIT(A). The CIT (A) asked the assessee to provide the relevant details and after considering them held that " the jurisdictional ITAT in *Ambattur Clothing Ltd. v. JCIT* in ITA No. 1436, 1643/Mds/2014, 910/Mds/2015 in its order dated 12.10.2015 took the view that loss arising out of derivative transaction in excess of export turnover has to be considered as speculative loss because excessive derivative transaction has not proximity with export turnover. The observation of the ITAT was subsequent to the finding which upheld the direction of the CIT (A) for the AO to verify any forward contracts which have been cancelled prematurely and verify the reasons for premature cancellation in the light of the order of the Tribunal in *London Star Diamond Company (India) P Ltd v. DCIT* in ITA No. 6169/M/2012 dated 11.10.2013 wherein it was observed that loss arising from cancellation of premature contract is not to be allowed as business loss. Applying the ratio to the particulars furnished by the appellant with regard to forward contracts and the underlying export orders show that out of the six export orders only one export order being P/2008-2009/00051

for which booking date was 21<sup>st</sup> July 08 was terminated prematurely resulting in a loss of Rs.2,39,430. The AO is directed to exclude this sum from the claim and allow the balance as business loss in this case being Rs. 8,27,069/- (Rs.10,66,499 - Rs.2,39,430). This ground of appeal is partly allowed.”

Aggrieved against that order, the assessee filed this appeal with following grounds :

- (a) *The order of the learned Commissioner of Income Tax (Appeals) - 15, is contrary to the law, facts and circumstances of the case.*
- (b) *The learned Commissioner of Income Tax (Appeals) - 1, erred in confirming the cancellation of forward contracts as speculation loss amounting to Rs.2,39,430/-*
- (c) *The learned Commissioner of Income Tax (Appeals) - 1 failed to appreciate the fact that the cancellation of forward contracts entered into by the Appellant is in the normal course of business and the same has to be treated as business loss.*
- (d) *The learned Commissioner of Income Tax (Appeals) - 1 failed to appreciate the fact the Appellant is not a dealer in foreign exchange and hence the loss on cancellation cannot be treated as speculation loss in this case.*

4. The AR submitted that the cancellation of forward contracts entered into by the appellant is in the normal course of business and the same has to be treated as business loss. The appellant is not a dealer in foreign exchange

and hence the loss on cancellation cannot be treated as speculation loss and relied on the decision of the Hon'ble Gujarat High Court in the case of CIT v Friends and Friends Shipping ( P)(2013) 217 Taxman 276(Guj). Per Contra, the DR relied on the order of the CIT (A) .

5. We heard the rival contentions, gone through relevant orders and material. The assessee submitted before the AO that the company made a net foreign exchange gains / Loss as follows:

Table A:  
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Particulars	Amount
Gain on account of Exports	26,76,469
Loss on account of Imports	(7,01,222)
Gain on account of Others	19,860
Total	19,95,107

5.1 The assessee also submitted that the above sum included a loss of ₹.10,66,499/- on account of cancellation of forward contracts entered into by the company on account of imports and exports. After examining the assessee's claim, the AO held that its claim of Rs 10,66,499/- towards cancellation of forward contract falls within the ambit of speculative business. Further, the CIT (A) examined the claim as under :

Table B

“ Details of loss on forward contract:

## Export Contracts :

Contact No.	Booking date	Date on which to be utilised	Cancelled date	Name of the Bank	Currency USD	Booked in USD	Utilization in USD	Cancellation in USD	Profit/loss
102033865 102033865 102033865 102033865	04.02.08 04.02.08 04.02.08 04.02.08	30.04.08	30.04.08	ICICI Bank ICICI Bank ICICI Bank ICICI Bank	USD	165755		95701 11670 36405 21979	-124,446
P/2008-2009/00049	21.07.08	01.08.08 to 29.08.08	08.08.08	Corp Bank	USD	196000	48443	147557	92,223
P/2008-2009/00050	21.07.08	01.08.08 to 29.08.08	09.08.08	Corp Bank	USD	205000	39971	165029	-112,853
P/2008-2009/00051	21.07.08	01.08.08 to 29.08.08	09.09.08	Corp Bank	USD	138000		138000	-239,430
P/2008-2009/00051	08.08.08	01.08.08 to 29.08.08	06.10.08	Corp Bank	USD	116000	49843	66157	-334,247
P/2008-2009/00052	08.08.08	01.08.08 to 29.08.08	04.11.08	Corp Bank	USD	109000	48827	60173	-366,153
TOTAL – A						929755	187084	742671	(1,084,095 )

## Import Contracts

Contact No.	Booking date	Date on which to be utilised	Cancelled date	Name of the Bank	Currency USD	Booked	Utilization	Cancellation	Profit/loss
102092829	11.03.08			ICICI Bank	EUR	2291		2291	3,729
102131502	02.04.08			ICICI Bank	EUR	6278		6278	1,031
102108174					USD	3317	3084	233	-169
S/2009-2010/13007	06.02.09	10.02.09 to 27.02.09	27.02.09	Corp Bank	GBP	51000	49865	1135	829
S/2009-2010/13014	06.03.09	06.03.09 to 31.03.09	31.03.09	Corp Bank	EUR	13378	5337	8041	12,987
TOTAL – B						76264	58285	17979	18,406

Grand total = A +B = (-) ₹.10,66,499”

and held , inter alia, that “out of the six export orders only one export order being P/2008-2009/00051 for which booking date was 21<sup>st</sup> July 08 was terminated prematurely resulting in a loss of Rs. 2,39,430” .

5.2 From the Table A, supra, the assessee admitted a net foreign exchange gains at Rs 19,95,107. However, later on, it claimed that it included a loss of ₹10,66,499/-.The CIT (A) examined the transactions as per Table B, supra, and took cognizance that the loss from Export Contracts is at Rs. 1,084,095 and the gain from Import Contracts is at Rs 18,406 and total loss is at Rs.10,66,499. If we see table A , the assessee has shown a net loss on

account of imports at Rs 7,01,222. If the assessee's stand is correct, then the import gain of Rs 18,406 as per table B, should have been netted against the net loss on account of imports shown at Rs 7,01,222 in table A, supra. Further, the CIT (A) held that export order being P/2008-2009/00051 for which booking date was 21<sup>st</sup> July 08 was terminated prematurely resulting in a loss of Rs. 2,39,430. If we see the 4<sup>th</sup> item in table B, supra, the booking date is given as 21.07.2008, the date on which to be utilised as 01.08.2008 to 21.08.2008 and cancelled date is given as 09.9.2008 but a finding is given as "prematurely terminated". Thus, it is not clear from the above, whether the impugned claim of loss of ₹10,66,499/-, is an independent transactions of export or import or part of the transactions specified in Table A. On the facts and circumstances, we deem it fit to restore this matter to the AO for a fresh examination. The AO shall decide the issue in accordance with law after giving due opportunity to the assessee. If the assessee establishes that each and every of the impugned foreign exchange loss transaction arose on account of an integral or incidental activity to the export or import, as the case may be, and on or after the maturity date, then, the AO shall treat such loss as business loss. In respect of premature terminations, the Onus is on the assessee to explain and place relevant materials before the AO. Thereafter, the AO shall pass a speaking order in accordance with law on them.

6. In the result, the appeal of the assessee is treated as allowed.

Order pronounced on Monday, the 25<sup>th</sup> day of September, 2017 at Chennai.

**Sd/-**

(एन.आर.एस. गणेशन)

**(N.R.S. GANESAN)**

**न्यायिक सदस्य/Judicial Member**

**Sd/-**

(एस जयरामन)

**(S. JAYARAMAN)**

**लेखा सदस्य/Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 25<sup>th</sup> September, 2017

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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