



IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

ITA no.3646/Mum./2016
(Assessment Year : 2011-12)

M/s. Shreela Diamonds & Jewels P. Ltd.
16/1, Mont Blanc, Nr. Shalimar Hotel
Kemps Corner, Mumbai 400 036
PAN – AABCG1688G

..... Appellant

v/s

Income Tax Officer
Ward-5(3)(2), Mumbai

..... Respondent

Assessee by : Shri J.P. Purohit
Revenue by : Shri V. Vidhyadhar

Date of Hearing – 10.04.2018

Date of Order – 25.04.2018

ORDER

PER SAKTIJIT DEY, J.M.

This is an appeal by the assessee against order dated 19th February 2016, passed by the learned Commissioner (Appeals)-10, Mumbai, for the assessment year 2011-12. The effective ground raised by the assessee reads as under:-

"1. On the facts and in the circumstances of the case and in law, the learned Commissioner (Appeals) erred in confirming the disallowance of loss of ₹ 39,49,375 on cancellation of forward contract in foreign exchange.

2. On the facts and in the circumstances of the case and in law, the learned Commissioner (Appeals) erred in confirming the disallowance of ₹ 2,87,520 paid towards the society maintenance charges outstanding from the members from whom the property was purchased and added to the cost of property.

2. Brief facts are, the assessee is engaged in the business of trading and export of cut and polished diamond. For the assessment year under dispute, the assessee filed its return of income on 20th September 2011, declaring income of ₹ 11,90,861. During the assessment proceedings, the Assessing Officer noticing that the assessee has claimed loss of ₹ 73,99,318, on account of cancellation of forward contract called upon the assessee to justify the claim. In response to the query raised by the Assessing Officer, the assessee submitted its reply justifying the claim of loss. However, the Assessing Officer rejecting the explanation of the assessee disallowed an amount of ₹ 39,13,375, treating it as speculation loss. Further, the Assessing Officer disallowed deduction claimed while computing short term capital gain thereby determining short term capital gain at ₹ 1,31,928, as against loss shown at ₹ 2,80,780. The assessee challenged the addition / disallowance before the first appellate authority.

3. The learned Commissioner (Appeals), however, sustained the additions made by the Assessing Officer.

4. Learned Authorised Representative submitted that during the assessment proceedings, the assessee in reply to the query raised by the Assessing Officer has made submissions quantifying the loss on account of cancellation of pre-mature forward contracts at ₹ 22,11,842. However, the Assessing Officer without properly verifying the facts and material brought on record has disallowed an amount of ₹ 39,13,375, which has also been sustained by the learned Commissioner (Appeals). Learned Authorised Representative submitted, the Departmental Authorities having quantified the disallowance at a higher figure without properly verifying the facts on record, the issue should be restored back to the file of the Assessing Officer for examining afresh. He further submitted that the deduction claimed on account of short term capital gain included payment of ₹ 2,87,520 towards society maintenance charges. He submitted, the assessee had to pay the said amount as it was an outstanding amount of the earlier owner from whom the assessee had purchased the property. He submitted, the amount has to be added to the cost of property. He submitted, without properly verifying the fact the Departmental Authorities have made the addition which should also be restored back to the Assessing Officer for fresh adjudication.

5. The learned Departmental Representative, though, relied upon the order of the learned Commissioner (Appeals), however, he

submitted, the issues may go back to the Assessing Officer for factual verification.

6. We have heard rival submissions and perused material on record. As can be gathered from the submissions of the learned Authorised Representative, the basic grievance of the assessee is, the Assessing Officer has made both the additions without properly verifying the facts and materials brought on record by the assessee. From the submissions made before the Assessing Officer which is reproduced in the assessment order, it appears that as per assessee's claim, the loss on account of pre-mature cancellation of forward contract amounted to ₹ 22,11,842, whereas, the Assessing Officer disallowed an amount of ₹ 39,13,375. Similarly, assessee's claim that the amount of ₹ 2,87,520 added to the cost of acquisition of property represents society maintenance charges of the earlier owner appears to have not been considered by the Departmental Authorities. Since the issues raised by the assessee are purely factual and has to be ascertained by verifying the facts brought on record which have not been done in the earlier stages of the proceedings, we are inclined to restore both the issues relating to disallowance of loss on cancellation of forward contract as well as payment of society maintenance charges to the file of the Assessing Officer for denovo adjudication after due opportunity

of being heard to the assessee. Both the grounds are allowed for statistical purposes.

7. In the result, assessee's appeal is allowed for statistical purposes.

Order pronounced in the open Court on 25.04.2018

**Sd/-
RAJESH KUMAR
ACCOUNTANT MEMBER**

**Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER**

MUMBAI, DATED: 25.04.2018

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

(Asstt. Registrar/Sr.P.S)
ITAT, Mumbai