

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

ITA No. 5720/Del/2015
Asstt. Year: 2012-13

Asstt. Commissioner of Income Tax, Circle-9(2), New Delhi	Vs.	M/s. Fiem Industries Ltd. D-34, DSIDC Packaging Complex, Kirti Nagar, New Delhi – 110 015 PAN AAACF1034E
(Appellant)		(Respondent)

Department by:	Shri J.K. Mishra, CIT(DR) and Shri Surernder Pal, Sr. DR
Assessee by :	Shri Salil Agarwal, Shri Shailesh Gupta, Adv.
Date of Hearing	19/02/2019
Date of pronouncement	13/05/2019

ORDER

PER AMIT SHUKLA, J.M

The aforesaid appeal has been filed by the revenue against impugned order dated 15.7.2015, passed by Ld. CIT(Appeals)-3, Delhi for the quantum of assessment passed u/s 143(3) for the assessment year 2012-13. In the grounds of appeal the revenue has challenged the deletion of addition of Rs. 1,92,50,300/- on account of disallowance of loss on foreign currency exchange treating it to be speculative loss; and addition of Rs. 59,839/- on account of disallowance of deduction of other income.

2. The facts in brief qua the first issue is concerned, Ld. AO from the perusal of the profit and loss account noted that assessee has claimed an amount of Rs. 1,92,50,300/- on account of forward contracts in US Dollar-Rupee to hedge the export receivable in USD. In response to the show cause notice as to why the said amount should not be allowed being speculative in nature, the assessee has submitted as under:-

“The assessee carries on the business of manufacturing as well as exports of Automotive lighting & signalling equipments mirrors etc. Various manufactures of Two Wheelers, Four Wheelers & Automobiles. The assessee had entered into 2 (Two) hedging contracts termed as forward contracts with Standard Chartered Bank & City Bank, N.A. for the purpose of hedging of its export receivables denominated in USD. The contracts were entered into the year 200'7 for a period of 5 years. The copies of the same are enclosed herewith for your perusal. The loss was incurred by the assessee only because of the unprecedented foreign exchange volatility in the global markets triggered by the unfortunate fall of the biggest investment bank "Mis Lehmann's Brothers" of USA leading to unforeseen global recession staring from September 2008. The losses are duly allowable as revenue expenditure due to the following reasons:

“(i) The losses have arisen and were directly incidental to the carrying on of the business operations of the assessee.

(ii) There was a direct or proximate nexus between the business operations of export and import of goods and the loss on forward contracts.

(iii) The assessee does not carry on the business of trading in forward contracts or derivatives. The forward contracts

were entered only for hedging of foreign exchange fluctuation risk & not for- speculation.

(iv) The assessee was the actual user of the forward contracts and it had full intention to export goods to Europe & other countries. The loss was only due to the unforeseen circumstances prevailing in the global market which were unprecedented & beyond the control of the assessee.

(v) The hedging was done on the basis of confirmed orders with customers & past export performance of the assessee. The forward contracts were entered before the actual delivery of goods which is evidenced by the purchase order entered with the customers.

(vi) The assessee has not entered into any act which was prohibited under the law. There was no violation of any provisions of FEMA as governed by RBI for risk management under which entering of forward contracts In Foreign exchange was permitted only to exporters.

(vii) The assessee has incurred a real loss and not a notional or fictitious loss. The loss has been claimed on actual payment and not on notional basis.

(viii) The loss claimed is on revenue account and not on capital account as it is directly attributable to the export business of the assessee.

(ix) The forward contracts were entered with City Bank/Standard Chartered Bank with the object of protecting the export receivables against the foreign exchange fluctuations in the market.

(x) The assessee is a manufacturer of automotive mirrors, & lamps & the transactions of forward contracts were not done in isolation. They were incidental to the business & were done With the object of protecting the business interest of export of mirrors.

(xi) The contracts were non speculative in nature as they were based on agreements for actual delivery of goods as agreed in the purchase orders.

(xii) The contracts were entered based on the historical data available for the Forex rates of USO-INR & were based on scientific analysis & past track unprecedented global recession & foreign exchange volatility starting from September 2008.

(xiii) The contracts were integral to the export business of the assessee & are not covered under the definition of Speculative Transactions.

It is pertinent to note that similar crystallized profits/losses denominated in USO-INR & having similar terms & conditions have duly been accepted as 1961 for the 3 years.”

3. Ld. AO however, rejected the assessee’s contention and observed that transaction against which the assessee has claimed expenses is for buying and selling of US Dollar and the settlement is not by way of physical delivery. The transaction is not for forward purchase of raw material or merchandise and therefore, in view of section 43(5) the same is to be treated as speculative transaction and loss arising is to be held as speculative loss.

4. Before the Ld. CIT (A), the assessee has made very elaborate submissions which have been incorporated from pages 2 to 10 of the appellate order. The Ld. CIT (A) has deleted the said disallowance after considering the entire facts and material on record. In sum and substance, the finding of fact given by the Ld. CIT (A) are that, *firstly*, assessee was carrying on the business of manufacturing and supplies of auto component, sheet metal parts, etc., to various automotive manufacturers in India. It also exports its goods to overseas customers and has undisputed track record of export sales for the past several years. *Secondly*, while conducting its business, assessee has entered into forward contract with M/s. Standard Chartered Bank and Citi Bank N.A. to hedge its export receivables denominated in foreign currency. The same was offered by the bankers after verifying the underlying export orders executed with MNCs. The forward contracts were in conformity with the regulations and criteria prescribed by Reserve Bank of India; *thirdly*, he noted that assessee has filed complete party wise details of the purchase orders against which exports were made un USD during the year and is also filed copies of PO's exceeding USD 25,000; and *fourthly*, the AO has not disputed the genuineness of assessee in carrying out its business including its exports and also does not doubt the infrastructure of the assessee, the past history of actual exports made and the genuineness of the confirmed orders. Further, nowhere the AO has disputed the contracting terms with the bankers and the scientific basis and historical basis of the currency rates which went into freezing the negotiations of the forward contracts; and *lastly*, assessee has undisputedly exported goods denominated in USD which was USD 19,67,954. He has also analysed the historical data of USD and after detailed discussion and relying upon the various case laws he has directed the AO to allow the business loss /normal business profits.

He has held that the loss in forward contracts in the case of the assessee cannot be in the nature of speculation as defined in section 43(5).

5. Before us, Ld. DR strongly relied upon the order of the AO, and further submitted that the underlying hedging was for foreign currency, i.e., USD and settlement was not by way of physical delivery rather it mentions payment in exchange rate prevailing on the specified dates. Thus, it is clearly a speculative transaction in terms of section 43(5). He also strongly relied upon the judgment of Hon'ble Bombay High Court in the case of CIT vs. Shri Bharat R Ruia (HUF) (2011) 337 ITR 452, wherein it was held that future contracts for purchase / sale of an underlying security permitted to be traded on stock exchange and settled otherwise than by actual delivery would be speculative transactions.

6. On the other hand, Ld. Counsel for the assessee strongly relied upon the order of the Ld. CIT(A) and submitted that here in this case it is not a case of simple trading or contract for purchase and sale of USD. In fact assessee has entered into forward contracts with the bank on the basis of the confirmed orders of the export with the customers and past export performance of the assessee. The forward contracts were entered before the actual delivery of goods which is evidenced by the purchase orders placed by the customers. Therefore, there was direct nexus with the export and import of goods and the forward contracts. Therefore, it is purely on revenue account thus has to be allowed as business loss. In support of its contention it is relied upon the following decisions:

1.	Copy of order of Hon'ble ITAT Mumbai in the case of Foods and Inns Ltd. vs AC1T reported in 159 ITD 1007.
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2.	Copy of order of Honble ITAT Mumbai in the case of DOT vs Mahendra Brothers Exports Pvt. Ltd. reported in 161 fl'D 772. ^ ^
3.	Copy of order of Hon'ble ITAT Chennai in the case of SMC Garments (P) Ltd. vs DOT reported in 69 SOT 397.
4.	Copy of order of Hon'ble ITAT Ahmedabad in the case of Adani Enterprise (P) Ltd. vs DOT reported in 68 SO P 129.
5.	Copy of judgment of Honble High Court of Bombay in the case of CIT vs D. Chetan & Co. reported in 243 Taxman 356.
6.	Copy of judgment of Hon'ble High Court of Calcutta in the case of CIT vs Ambo Agro Products (P) Ltd. reported in 257 Taxman 1 56.
7.	Copy of judgment of Honble High Court of Allahabad in the case of ACIT vs Surya International (P) Ltd. reported in 406 ITR 274.
8.	Copy of order of Llon'ble ITAT Delhi in the case of Silicon Graphics Systems (India) Pvt. Ltd. vs DCIT in IT A No. 2976/Del/2013.
9.	Copy of order of Honble ITAT Delhi in the case of DCIT vs Matrix Clothing Pvt. Ltd. in ITA Nos. 2949 & 2950/Del/2014.

7. We have heard the relevant submissions and also perused the relevant finding given in the impugned orders as well as the material referred to before us at the time of hearing. The assessee company is engaged in the business of manufacturing and supply of automotive parts and also export the same to overseas customers. It had entered into hedging contract with Citi Bank and with Standard Chartered Bank. The contracts were entered for a period of five years consisting of a series of 60 individual monthly contracts. The underlying exposure for eligibility was worked out by the bank on the basis of average of the export and import achieved by the assessee in past years as per the RBI guidelines and the assessee has also filed the details of exports sales in terms of USD for the financial year 2011-12. The purchase orders shown before the authorities below were to the tune of USD 21.60 lacs contracted with the bankers. Thus, the evidences clearly show that there was sufficient underlying export

orders available with the assessee for the exports and no transaction for buying / selling of USD was undertaken which could be reckoned as a separate trading item. Here in this case, there was a direct and proximate nexus between the business operations of the import and export of goods and loss on forward contracts, because the hedging of foreign currency was done on the basis of confirmed orders with the customers and past export performance of the assessee which the bankers have duly verified and thereafter the forward contract were entered before the actual delivery of goods based on the purchase orders. Thus, clearly the hedging contracts entered were incidental to the business of the assessee and were intended to guard against losses through future price fluctuations. It has also been pointed out that in the earlier years in scrutiny proceedings such losses have been treated to be a business loss. The Ld. CIT (A) has categorically noted that it was a complete party wise details of the purchase orders against which exports were made in USD during the year and also perused the copy of purchase orders exceeding USD 25,000. In fact assessee has exported goods during the year under consideration amounting to USD 19,67,954 as against availability of purchase orders amounting to USD 22,13,453. Thus, it cannot be held that the future contracts were not connected to the assessee's export and was a separate transactions *de-hors* the export of the assessee. Once the forward contracts for foreign currency was directly related to export and import and incidental to the business of assessee, then it cannot be held that it is in the nature of speculative transaction within the scope of ambit of section 43(5). This issue stands covered by series of decisions as relied upon by the Ld. Counsel including that of Hon'ble Bombay High Court in the case **of CIT vs Badridas Gauridu (P) Ltd. 261 ITR 256** and Hon'ble Gujarat High Court in the case of **Decom Marketing Pvt. Ltd. Vs CIT 398 ITR 36**. Accordingly, we affirm the

order of the Ld. CIT(A) which is based on correct appreciation and facts and law and consequently grounds raised by the revenue is dismissed.

7. In the result appeal of the revenue is dismissed.

8. This decision was pronounced in the Open Court on 13th May, 2019.

sd/-

(L.P. SAHU)
ACCOUNTANT MEMBER

Dated: 13/05/2019

Veena

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, New Delhi