

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'E' : NEW DELHI)**

**BEFORE HON'BLE VICE PRESIDENT, SHRI G.D. AGRAWAL
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.4531/Del./2015
(ASSESSMENT YEAR : 2011-12)**

ACIT, Circle 5 (1),
New Delhi. vs. M/s. Nalini Jewellers,
16/2646-49, Bank Street,
Karol Bagh,
New Delhi.

(PAN :AAEFN2292D)

**ITA No.4181/Del./2015
(ASSESSMENT YEAR : 2011-12)**

M/s. Nalini Jewellers,
16/2646-49, Bank Street,
Karol Bagh,
New Delhi. vs. ACIT, Circle 5 (1),
New Delhi.

(PAN :AAEFN2292D)

(APPELLANT)

(RESPONDENT)

**ASSESSEE BY : Shri Anand Kumar Pandey, Advocate
REVENUE BY : Smt. Rinku Singh, Senior DR**

Date of Hearing : 20.05.2019

Date of Order : 28.05.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Present cross appeals filed by the assessee as well as by the Revenue are being disposed off by way of composite order to avoid repetition of discussion.

2. Appellant, ACIT, Circle 5 (1), New Delhi (hereinafter referred to as the 'Revenue') by filing the present appeal sought to set aside the impugned order dated 30.04.2015 passed by the Commissioner of Income-tax (Appeals)-17, New Delhi qua the assessment year 2011-12 on the grounds inter alia that:-

"1. The Ld. CIT(A) has erred in deleting the addition of Rs.1,13,85,924/- derived on account of forward contracts in respect of 'Foreign currency' being speculative profit can be set off against the loss of Rs.1,04,25,309/- debited in gold desk account.

2. The Ld. CIT(A) agreed with the AO that the loss from gold desk transactions is speculative but erroneously Ld. CIT(A) suo-moto took the stand that forward contracts is speculative without being claimed by the assessee during entire assessment proceeding. Even the assessee in the year under reference, while filing the return of income on 24.05.203 had treated it to be business profit.

3. The CIT(A) has erred in ignoring the fact that transaction was not listed/traded on a recognized stock exchange, as also, CIT(A) has further erred in ignoring the fact that neither do the transactions fall under the condition led down u/s 43(5)(d) of I. T. Act, 1961, nor has the assessee produced any documentary evidence during the assessment proceedings substantiating that the transactions referred to, by the assessee were indeed 'hedging' which also finds consonance in the judgment of Apex Court in case of CIT vs. Joseph John (1968) 67 ITR 74 (SC).

4. The Ld. CIT(A) has erred in deleting the additions of Rs.54,000/- on account of notional interest @ 10% on the sum expended by the assessee to partners on account of interest free advance."

3. Appellant, M/s. Nalini Jewellers (hereinafter referred to as the 'assessee') by filing the present appeal sought to set aside the impugned order dated 30.04.2015 passed by the Commissioner of

Income-tax (Appeals)-17, New Delhi qua the assessment year 2011-12 on the grounds inter alia that:-

“1. That Learned ACIT has erred in law and on facts while treating Rs.1,04,25,309/- being the "loss of gold desk account" as speculative loss and like wise CIT(A) is not justified while confirming the same.

2. That the learned CIT (A) has not appreciated the facts of the case, explanation offered & proceeded to hold the loss of Rs.1,04,25,309/- as speculative loss.”

4. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee is into manufacturing and export of gold jewellery and procures pure gold from Mineral & Metal Trading Corporation Limited. Assessing Officer noticed that the assessee has claimed loss on Gold Desk-D amounting to Rs.1,04,25,309/- of which full details of loss was called. Assessee filed extensive details extracted in para 3 of the assessment order by the AO. From the reply filed by the assessee, AO further observed that assessee's transactions are in the nature of hedging and covered under the exceptions provided in section 43(5)(a) and 43(5)(b) of the Income-tax Act, 1961 (for short 'the Act'). It is also observed by the AO that the assessee has not disputed that it is indulged in the derivative of gold and foreign currency which is treated as speculative transaction under section 43(5) of the Act. Declining the contentions raised by the assessee, AO proceeded to conclude that the assessee has failed to establish that the

transaction carried out by the assessee firm are for hedging purpose and not speculative transaction and thereby made an addition of Rs.1,04,25,309. AO also made addition of Rs.54,000/- on account of notional interest on the sum of Rs.5,40,000/- expended by the assessee to partners on proportionate basis @ notional interest of 10%.

5. Assessee carried the matter by way of appeals before the Id. CIT (A) Who has given partial relief by partly allowing the appeal. Feeling aggrieved, both the Revenue as well as assessee have come up before the Tribunal by way of filing the present appeals.

6. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

7. At the very outset, it is brought to our notice by the Id. Authorized Representatives of the parties to the appeals that identical issues were decided by the coordinate Bench of the Tribunal in *assessee's own case in ITA Nos.4487/Del/2014 & 4463/Del/2014 order dated 27.04.2018* by dismissing the appeal filed by the assessee and by partly allowing the appeal filed by the Revenue for statistical purposes. Then, the assessee carried the matter before the Hon'ble Delhi High Court who has passed the

order dated 29.04.2019 in WP (C) 4468/2019 and ITA 430/2019

by setting aside the matter to the AO to examine the issue with respect to verification of transactions and correlation with specific contracts by returning following findings :-

“4. We have heard counsel for the parties. The limited relief that the assessee seeks is that even while directing the remand for reconsideration at the behest of the Revenue in its appeal, ITAT failed to appreciate the assessee’s contention with respect to the contracts which it claimed were not forward contracts by virtue of proviso clauses (a) & (b) to Section 43 (5) of the Act. The contention was declined on the ground that no correlation between the forward contract transactions of gold and corresponding purchases and export of jewellery was established to satisfy the requirements of law. This Court is of the opinion that the assessee’s contention has some merit – the earlier portion of the main impugned order specifically noticed the compilation of documents produced during the proceedings, which contained specific contracts and the transactions which the Revenue alleged were speculative.

5. In these circumstances, given that the Revenue’s appeal has been remitted, the ITAT’s approach in our opinion was not correct. Accordingly, the assessee’s question with respect to the verification of the transactions and the correlation with specific contracts shall be examined having regard to the assessee’s contentions as well. ITA 430/2019 and W.P.(C) 4468/2019 are partly allowed in the above terms. The ITAT’s impugned order is hereby set aside.”

8. We are of the considered view that since the identical issues for AY 2010-11 are already pending adjudication by the AO having been remanded by the Hon’ble Delhi High Court, the same

issues qua for the year under assessment are also required to be remanded back to the AO to decide in accordance with the order passed by the Hon'ble High Court. Consequently, both the appeals are set aside to the AO to decide in accordance with the decision taken in AY 2010-11 by following the directions by the Hon'ble High Court. Consequently, both the appeals filed by the assessee as well as Revenue are allowed for statistical purposes.

Order pronounced in open court on this 28th day of May, 2019.

**Sd/-
(G.D. AGRAWAL)
VICE PRESIDENT**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 28th day of May, 2019
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-17, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**