

**IN THE INCOME TAX APPELLATE TRIBUNAL "D"  
BENCH, MUMBAI**

**BEFORE HON'BLE SH. SANDEEP GOSAIN, JM. &  
HON'BLE SH. G. MANJUNATHA, AM**

आयकरअपीलसं./ I.T.A. No. 2093 & 2092/Mum/2018  
(निर्धारणवर्ष / Assessment Year: 2013-14 & 2014-15)

In the matter of:

DCIT Cen Cir 1(2) 906, 9 <sup>th</sup> floor, Old CGO Building, M. K. Road, Mumbai-400 020	<b>बनाम/ Vs.</b>	Mahendra Brothers Exports Pvt. Ltd. 611, Panchartna, MA, Paramanand Marg, Opera House, Mumbai-400 004
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAFCM0246E		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri D. G. Pansari, DR
प्रत्यर्थीकीओरसे/Respondent by	:	Shri Rakesh Mohan, AR

सुनवाईकीतारीख/ Date of Hearing	:	01.05.2019
घोषणाकीतारीख / Date of Pronouncement	:	24.05.2019

**आदेश / ORDER**

**Per Sandeep Gosain, Judicial Member:**

The present two (2) Appeals have been filed by the revenue against the order of Commissioner of Income Tax

(Appeals)-47, Mumbai, dated 02.01.18 for AY 2013-14 & 2014-15 respectively.

2. Since the issues raised in both the appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed of by this consolidated order.

**I.T.A. No. 2093/Mum/2018 (AY 2013-14)**

3. First of all we take up revenue's appeal in I.T.A. No. 2093/Mum/2018 (AY 2013-14).

4. The solitary ground raised by the revenue relates to challenging the order of Ld. CIT(A) in allowing the loss of Rs. 41,18,41,298/- arising out of foreign currency forward contract as business loss.

5. At the outset, Ld. AR appearing on behalf of the assessee submitted before us that this ground is squarely covered by the order of Coordinate Bench of Hon'ble ITAT in *ITA No. 7319/Mum2011 for AY 2008-09* in assessee's own case, wherein

the *identical ground* raised in the present appeal has already been decided on merits.

6. On the other hand, Ld. DR refuted the claim of the assessee and relied upon the order passed by AO. It was further submitted that the revenue had filed appeal u/s 260A against the order of ITAT, thus in this way, the order passed by ITAT has not attend finality.

7. We have heard both the parties and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find that the identical ground has already been decided by the Coordinate Bench of ITAT in *ITA No. 7319/Mum2011 for AY 2008-09 and ITA No. 7449/Mum/2011 for AY 2004-05* in assessee's own case. The operative portion of the order of ITAT passed in *ITA No. 7319/Mum2011 for AY 2008-09 and ITA No. 7449/Mum/2011 for AY 2004-05* is contained in para no. 15 to 17, which is reproduced below:-

15. We have carefully considered rival submissions and also perused the relevant findings given in the impugned orders as well as materials placed before us. The assessee imports rough diamonds which are its principle raw material for manufacturing of polished diamonds, procured mainly from Diamond Trading Company which allocates and indicates on annual basis in advance for supply of rough diamonds through 'intention to offer'. The assessee also exports finished goods (polished diamonds) to various parties on credit and credit term ranges from 90 to 150 days. It is part and parcel of the assessee's business strategy to receive foreign currency for exports and pay foreign currency for imports. The assessee also meets its working capital by way of foreign currency loan from the bankers. Thus, the assessee's receipts and payments are in the form of foreign currency and hence it is integral and inseparable part of its business. In this process, the assessee is not only exposed to the risk of adverse price movements in the goods it deals in, but also wide fluctuations in foreign exchange rates in international markets having major impact on its revenue, receivables and payables. It is clearly evident that, due to large import and export of diamonds, which is the main business activity of the assessee, it is exposed to high risk of foreign exchange gain or loss which is arising only because of the said business only.

*In other words, all its receipts, payments, receivables and payables are in foreign currency which is inseparable and inextricably linked with the diamond business carried out by the assessee and, therefore, risk associated with the fluctuation of foreign currency also forms part and parcel of same business. To mitigate the foreign currency loss, RBI introduced the regulations so that exporters and importers can hedge the same through authorized dealers, mostly Banks. The assessee had entered into hedging transaction through banks and the amount for which the hedging transactions are entered are within the amount of the underlying transactions of imports and exports. There is no independent transaction of foreign exchange on standalone basis. The details of transaction on which the assessee has made profit and loss on various foreign exchange contracts has already been discussed in the impugned orders along with the copy of the contract entered with the banks. Thus, such a loss cannot be in any manner equated with hedging of foreign currency alone, but ceases to fall within the realm of 'speculation' albeit it is inextricable linked with the business of the assessee. This matter had already been decided by the Tribunal in the assessee's own case in the earlier years which has been upheld by the Hon'ble Bombay High Court following the ratio and principle laid down in the case of Badridas*

*Gauridu (supra). We find that this issue is no longer res integra, because in various decisions as relied upon by Ld. Counsel before us, it has been consistently held that, if the assessee is not dealing in foreign exchange per se but has hedged against the foreign exchange loss in the forward market with the bank, then any loss or gain thereto is to be treated as business loss or business gain only. The Hon'ble Bombay High Court in the case of Badridas Gauridu (supra), held that, if the assessee is not dealer in foreign exchange but an exporter and has hedged against the foreign exchange losses and for that purpose it had booked foreign exchange in the forward market with the bank, then the losses incurred on foreign exchange would be considered as business loss, because the foreign exchange contract is only incidental to the assessee's regular course of the business. While coming to this conclusion, the Hon'ble High Court relied upon the decision of Hon'ble Calcutta High Court in the case of CIT v Soorajmull Nagarmull, reported in [1981] 129 ITR 169. That apart, Hon'ble Gujarat High Court in the case of CIT vs Star and Star Shipping P Ltd / Friends and Friends Shipping Pvt. Ltd [2013] 35 taxmann.com 553 (Gujarat) came to the same conclusion and finding. ITAT Mumbai Bench in the case of London Star Diamond Company (I) P Ltd had also held and relied*

*upon aforesaid decisions and held that, if the assessee is not a dealer in foreign exchange but in regular business of import and export then fluctuation in foreign exchange during the forward contract with the banks for the export would be business transaction and for the business purpose only and will not be in the category of speculation u/s 43(5). In the said case, the Hon'ble Tribunal after detailed discussion and relying upon various case laws, held that foreign exchange loss in the course of the business occurred due to hedging transactions through advance is nothing but business gain or loss. Accordingly, in view of the myriad precedence, we also hold that, here in this case the foreign exchange loss of Rs.49,23,23,597/- is nothing but business loss which needs to be allowed.*

*16. So far as the CIT(A)'s contention that assessee has been unable to substantiate the underlying exposure of derivative contracts to the tune of Rs.8,23,26,649/- and, therefore, it should be substantiated, the assessee before us, has contended that in any genuine hedging transaction where there is huge volume of purchase exposure and sales exposure, the hedging transaction keeps on fluctuating. The Ld. CIT(A) has upheld the disallowance keeping in mind the fact that in any particular month the hedging transactions were higher than foreign exchange exposure, the excess cannot be*

*accepted as for the purpose of business transaction. We find that such an observation in general may not prevail in every case, because in normal business practice the hedging is often done based on actual estimated exposure looking to the past transactions undertaken and based on that, hedging is done in respect of transaction yet to be done in the near future. Bill to bill or one to one basis exposure of hedging cannot be done in a continuum business and nothing has been brought on record that RBI puts such kind of condition or bar for hedging of foreign currency based on actual bill to bill exposure. Hedging contracts need not succeed the contract for sale and actual goods manufactured but may get settled within a reasonable time. Quantity and timing may not be relevant for a short period in a continuous transaction as long as transaction construed is based on genuine hedging and finally it coincides with the actual exposure undertaken. It is only at the year end that one can still reconcile the hedging transactions with the actual exposure or delivery and come to a conclusion whether hedging contract exceeded the actual exposure or not but certainly not on week to week or month to month basis. Thus, the disallowance of loss sustained by the Ld. CIT(A) of Rs.8,23,26,649/- cannot be upheld simply on the ground that the exposure do not tally with the month-wise transaction. In view of our above*

*conclusion, we allow the claim of Rs.8,23,26,649/- and accordingly, the grounds raised by the assessee is allowed.*

*17. Now we come to the revenue's appeal, in the grounds of appeal following ground has been raised:-  
"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the Assessing Officer to treat only Rs.83,376,349/- as speculation loss instead of Rs.492,323,597/- without appreciating that the assessee used foreign currency derivative contract to hedge risk and ignoring that the provisions of section 43(5)(d) are not clearly attracted". Admittedly, this ground is similar to ground which has been decided above, therefore, in view of our finding given above, the revenue's ground does not survive and accordingly the same is dismissed. Resultantly, revenue's appeal stands dismissed.*

8. After having gone through the facts of the present case as well as considering the orders passed by revenue authorities and order of ITAT as mentioned above, we find that identical issue has already been decided by the Coordinate Bench of ITAT in **ITA No. 7319/Mum2011 for AY 2008-09 and ITA No.**

*7449/Mum/2011 for AY 2004-05* in assessee's own case. Even Ld. CIT(A) has also decided these grounds while relying upon the order of the Coordinate Bench of ITAT in assessee's own case as mentioned above. Ld. AR has also placed on record the copy of order dated 18.02.13 passed by Hon'ble Bombay High Court in the case of *CIT Vrs. Mahendra Brothers for AY 2004-05*, wherein also, the Hon'ble High Court had dismissed the appeal of the revenue by holding that the issue is covered by the decision of Hon'ble High Court in the case of *CIT vrs. Badridas Gauridu Pvt. Ltd. (2003) 261 ITR 256*. Therefore, respectfully following the decision of the Coordinate Bench of ITAT in assessee's own case and in order to maintain *judicial consistency* and *judicial discipline*, we apply the same findings which are applicable *mutatis mutandis* in the present case. Therefore, we order accordingly.

9. Consequently, the appeal filed by the revenue stands **dismissed**.

**ITA No. 2092Mum/2018 (AY 2014-15)**

10. Now we take up revenue's appeals in *ITA No. 2092/Mum/2018 (AY 2014-15)*. Since we have already decided the identical grounds of appeal in *ITA No. 2093/Mum/2018 for AY 2013-14* on merits. Therefore, following our own decision in *ITA No. 2093/Mum/18*, we apply the same findings in the present appeal in order to maintain judicial consistency which is applicable *mutatis mutandis*.

11. In the net result, both the appeals filed by the revenue stands **dismissed** with no order as to cost.

*Order pronounced in the open court on 24<sup>th</sup> May, 2019.*

*Sd/-*  
(G. Manjunatha)  
Accountant Member

*Sd/-*  
(Sandeep Gosain)  
Judicial Member

मुंबई Mumbai;दिनांकDated : 24.05.2019  
*Sr.PS. Dhananjay*

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT,  
Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार  
(Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**