

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“B” BENCH, AHMEDABAD**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**  
**& SHRI MAHAVIR PRASAD, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 2241/Ahd/2017  
(निर्धारण वर्ष / Assessment Year : 2011-12)

<b>DCIT</b> Circle – 3(1)(2), Ahmedabad	<b>बनाम/ Vs.</b>	<b>M/s. Rajshri Packagers Ltd.</b> (Now merged with Adani Wilmar Ltd.) Fortune House, Nr. Navrangpura Crossing, Navrangpura, Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCR0519F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Mudit Nagpal, Sr.D.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Bandish Soparkar & Srhi Parin Shah, A.Rs.

सुनवाई की तारीख / Date of Hearing	04/09/2019
घोषणा की तारीख /Date of Pronouncement	04/10/2019

**आदेश/ORDER**

**PER PRADIP KUMAR KEDIA - AM:**

The captioned appeal has been filed at the instance of the Revenue against the order of the Commissioner of Income Tax (Appeals)-9, Ahmedabad (CIT(A)' in short), dated 25.07.2016 arising in the assessment order dated 05.03.2015 passed by the Assessing

Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2011-12.

2. The substantive grounds of appeal raised by the Revenue read as under:-

- “1. *In law and in the facts and circumstances of the case, the LD. CIT(A) has grossly erred in adding Rs.3,83,12,474/- to the appellant's returned business income on the ground that the same represented speculation loss which could not be set off against business income and was required to be carried forward as speculation loss.*
2. *The LD. CIT(A) ought to have appreciated, inter alia, that in the peculiar facts and circumstances of the appellant's case, the amount represented damages paid by the appellant for its failure to deliver goods at the appointed time as agreed in the concerned contracts with its customers entered in the normal course of its business and being such, it was clearly deductible in the computation of business income.”*

3. When the matter was called for hearing, the learned AR for the assessee pointed out in the Revenue's appeal that the loss arising to the assessee for breach of contract has been held by the AO to be speculative loss by invoking Section 43(5) of the Act which is contrary to law as enunciated judicially by the various Courts. The learned AR for the assessee submitted on facts that the assessee had claimed contract settlement loss of Rs.62,34,974/- and Rs.3,20,77,500/- which represents difference between purchase and sale price at the time of nomination of contract in favour of buyer and seller as applicable. The assessee has not made any delivery of commodity and settled the contract by making payment of difference of amount between sale price and purchase price. The learned AR thus submitted that the amount of loss has been inflicted on the assessee is basically in the nature of damages for breach of contract. It was pointed out that the transaction of sale was not settled by the cross contract of purchase (vice versa) without delivery. In the instant

case, the assessee company in its commercial wisdom decided not to honor contracts i.e. not to deliver the oil but paid the differential amount in monetary consideration and hence, the assessee has settled the contract and paid the consideration for breach of contract at the price lesser than prevailing market rate. In the circumstances, the provisions of Section 43(5) of the Act are not attracted and the loss incurred by the assessee should be regarded as ordinary business loss. The following judicial precedents were relied upon:

- i. *CIT vs. Gora Mal Hari Ram Ltd. (2010) 191 Taxman 94 (Delhi)*
- ii. *CIT vs. Jaydwar Textiles (1993) 202 ITR 569 (Bombay)*
- iii. *CIT vs. Ambo Agro Products (P.) Ltd. (2018) 95 taxmann.com 345 (Calcutta).*

4. The learned DR for the Revenue relied upon the order of the AO.

5. We have carefully considered the rival submissions. The limited question that arises for consideration is whether the loss arising on breach of contracts would fall within the definition of speculative transaction as defined in Section 43(5) of the Act or such loss is to be regarded as ordinary business loss. The assessee in the instant case has paid the sum of Rs.3,83,12,474/- towards compensation for breach of contract and claimed it as business loss. The AO held it as speculative loss by treating the transaction as speculative transaction within the meaning of Section 43(5) of the Act. The CIT(A) however held that the contract resulting in payment of compensation did not amount to speculative transaction and directed the AO to allow the amount as business loss. We straightway notice that the Hon'ble Supreme Court in *CIT vs. Shantilal (P.) Ltd. (1983) 144 ITR 57 (SC)* held that the transaction cannot be described as a 'speculative transactions' within the meaning of Section 43(5) of the Act where

there is a breach of contract and on a dispute between the parties, damages were awarded as compensation by an arbitration award. The award of damages for breach of contract is not the same thing as the party to the contract has intended to settle the contract following a breach or nonperformance of the contract. Such payment towards breach is not akin to the word 'settled' used in Section 43(5) of the Act. In view of the decision of the Hon'ble Supreme Court and the decision of various High Courts following the principles laid down by the Hon'ble Supreme Court, we do not see any error in the conclusion drawn by the CIT(A). We thus decline to interfere.

6. In the result, the appeal of the Revenue is dismissed.

**This Order pronounced in Open Court on 04/10/2019**

Sd/-  
(MAHAVIR PRASAD)  
JUDICIAL MEMBER  
Ahmedabad: Dated 04/10/2019

Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अद्येषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /  
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, अहमदाबाद ।