

IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH KOLKATA

BEFORE SHRI S.S.GODARA, JM &DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.434/Kol/2019

(निर्धारणवर्ष / Assessment Year:2014-15)

| | | |
|--|------------|-----------------------------------|
| Arvind Metals & Minerals Pvt. Ltd. | Vs. | ACIT, Circle-4(1), Kolkata |
| 23/24, Radha Bazar Street, Kolkata-700001 | | |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AACCA 2199 K | | |
| (Appellant) | .. | (Respondent) |

Appellant by : Shri Manish Tiwari, FCA

Respondent by :Shri Supriyo Paul, JCIT

सुनवाईकीतारीख/ Date of Hearing : 27/02/2020

घोषणाकीतारीख/Date of Pronouncement : 08/07/2020

आदेश / O R D E R

Per Dr. A.L. Saini, AM:

The captioned appeal filed by the assessee, pertaining to assessment year 2014-15, is directed against the order passed by the Commissioner of Income Tax (Appeal)-2, Kolkata, in appeal no. 10115/CIT(A)-2/2017-18, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (in short the "Act") dated 27/12/2016.

2. The grounds of appeal raised by the assessee are as follows:

1. (a). *That on the facts and in the circumstances of the case, Ld. CIT(A) is wrong and unjustified in conforming A.O's order where loss on forward booking*

of foreign exchange of Rs. 1,45,374/- was disallowed as regular business loss u/s 28.

(b). That on the facts and in circumstances of the case, Ld. CIT(A) is wrong and unjustified in treating the loss of Rs. 1,45,374/- as speculative loss without considering that for payment of import purchases the assessee(importer) is required to make prior booking of foreign exchanges.

2. That on the facts and in the circumstances of the case, Ld. CIT(A) is wrong and unjustified in confirming AO's disallowances of prior period expenses Rs. 1,12,214/- without considering the statutory payments of ESI u/s 43B.

3. That on the facts and in the circumstances of the case, Ld. CIT (A) is wrong and unjustified in confirming AO's adhoc disallowance of travelling & conveyance of Rs. 1,78,912/- made arbitrarily without application of mind.

4. That the appellant craves leave to add, alter, adduce or amend any ground or grounds on or before the date of hearing of the appeal.

3. Ground No. 1 relates to addition of Rs. 1,45,374/- on account of loss on forward booking of foreign exchange.

4. Brief facts qua the issue are that during the scrutiny proceedings the Assessing Officer noticed that the assessee company had debited profit and loss account of Rs. 1,45,374/- on account of loss of forward contract cancellation. In this regard, assessee company was asked to explain the allowability of this expense. In reply, the assessee company filed letter dated 16/12/2016. Relevant portion of the letter is reproduced below:-

" We are an importer and in order to minimize the risk of currency fluctuation we book foreign currency in advance with the banks for the specified date in which we were to make the payment. At times, due to non- availability of fund partial amount of the foreign currency needs to be cancelled. The differential rates of forward booking and cancellation are then debited to our account which is being charged under the head loss on Forward Cancellation. This is not the speculative transaction as the same is being done with the underlying document for which foreign currency are being booked and is honored on the due date."

However, the Assessing Officer rejected the contention of the assessee and held as follows:

"A forward contract is an agreement between a buyer and a seller getting the seller to deliver a specified asset of specified quality and quantity to the buyer on a specified date at a specified place and the buyer in turn is obligated to pay the

seller a pre-negotiated price in exchange of the delivery. The definition of 'speculative transaction' in section 43(5) gives a simple test for deciding for the purpose of income-tax what a speculative transaction means. If a contract for sale or purchase is ultimately settled out and no actual delivery of the goods was effected under the settlement then it is a speculative transaction. Profit/loss in respect of unperformed contracts is considered speculation profit/loss. In short, in order that a transaction may fall within the scope of the expression 'speculative transaction', it must be a transaction in which a contract for purchase or sale of any commodity, intending stocks and shares, is periodically or ultimately settled otherwise than by actual delivery or transfer of the commodity or scrips. In view of the above facts of the issue, I have decided to treat this loss as speculation loss and accordingly, adjustment is made in the computation of total income."

5. Aggrieved by the order of the Assessing Officer the assessee carried the matter in appeal before the Id. CIT(A) who has confirmed the addition made by the Assessing Officer observing the followings:

"I have considered the grounds of appeal, statement of facts and submission of the authorized representative of the appellate company as well as the order of the assessing officer framed in the light of the materials available on record before the assessing officer during the assessment proceedings. The AO has mentioned that these expenses does not pertain to the year under consideration. I agree with the view as taken by the AO. Keeping in view of the facts as mentioned above, in the absence of any cogent material evidence, I do not find any infirmity in the order of the assessing officer and the same is hereby upheld. In view of above, this ground of appeal is dismissed."

6. Aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.

7. The Id. Counsel for the assessee has relied on the submissions made before the authorities below and on the other hand the Id. DR has primarily reiterated the stand taken by the Assessing Officer which we have already noted in our earlier para and the same is not being repeated for the sake of brevity.

8. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials available on record. We note that this ground relates to disallowance of loss on forward booking of Rs. 1,45,374/- considering the same as speculative in nature. The assessee company being an importer has foreign currency exposure. Hence in order to hedge its foreign currency exposure, the

assessee company enters into an agreement with the bank in advance for the specified date on which the payments are to be made. There are instances where due to lack of availability of funds the forward contract entered by the assessee company with the banks cannot be executed. In such a situation the forward contract is required to be cancelled. When the contract is cancelled, the difference between the rate originally agreed and the rate on the date of cancellation is recovered by the bank from the customers. The assessee company in such a situation where any payment is made to banks on cancellation of forward contract, debits the charges to its profit & loss account under the head "loss on forward cancellation". The assessee submitted before us relevant bank statements highlighting the charges paid to bank. In the instant case, Id AO without considering the facts of the case, considered the above transaction as speculative in nature and disallowed the same. We note that clause (a) of sub-section 5 of Section 43 of the Act states that forward contract is not a speculative transaction. The provision of section 43(5)(a) of the Act, is reproduced below:

"a contract in respect of raw material or merchandise entered into by a person in the course of his manufacturing or merchanting business to guard against loss through future price fluctuations in respect of his contracts for delivery of goods manufactured by him or merchandise sold by him" shall not be deemed to be speculative transactions."

A plain reading of section 43(5)(a) makes it clear that the impugned loss cannot be regarded as speculation. The Act clearly excludes hedging foreign currency transactions for the definition of speculative transaction. Hence the actions of Id AO in considering the loss on hedging foreign currency exposure as speculative is not justified. For that we rely on the judgment of Hon'ble Calcutta High Court in case of CIT vs. Soarajmull Nagarmull [129 ITR 169] wherein the court observed that "where assessee enters into forward contracts in foreign exchange in order to cover the loss arising due to difference in foreign exchange rate and/or valuation, is not of speculative in nature and was incidental to the assessee's regular course of business. As such it was allowable as a trade loss. In view of the above facts and legal position on the issue involved, the disallowance

of Rs. 1,45,374/- on the ground of speculative transaction requires to be deleted hence we delete the disallowance of Rs. 1,45,374/-.

9. Ground No. 2 raised by the assessee relates to disallowance of prior period expenses of Rs. 1,12,214/-.

10. Brief facts qua the issue are that,during the scrutiny proceedings the Assessing Officer noticed that prior period expense of Rs. 1,12,214/-had been debited in the accounts by the assessee company. On query, the assessee company submitted that said expense is related to the ESI payment related to the previous year 2012-13. The Assessing Officer rejected the plea of the assessee and held that the expenditure is not related for this assessment year, therefore, the entire expense under the head prior period expense was disallowed.

11. Aggrieved by the order of the Assessing Officer the assessee carried the matter in appeal before the Id. CIT(A) who has confirmed the action of the Assessing Officer observing the followings:

“I have considered the grounds of appeal, statement of facts and submission of the authorized representative of the appellate company as well as the order of the Assessing Officer framed in the light of the materials available on record before the Assessing Officer during the assessment proceedings. The Assessing Officer has mentioned that these expenses does not pertain to the year under consideration. I agree with the view as taken by the Assessing Officer. Keeping in view of the facts as mentioned above, in the absence of any cogent material evidence, I do not find any infirmity in the order of the Assessing Officer and the same is hereby upheld. In view of the above, this ground of appeal is dismissed.”

12. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials available on record. We note that this ground relates to disallowance of Rs. 1,12,214/- towards ESI payment relating to AY 2013-14. Learned Counsel submits that during the relevant assessment year, the assessee company deposited the ESI for the AY 2013-14 after it came to know that the

company was liable to comply with the provisions of ESI. Hence, it deposited the same with the relevant authority for earlier year and for the relevant assessment year at once during the AY 2014-15. The Id. Counsel submitted that during the earlier year i.e. prior to the A.Y 2014-15, the assessee company was unaware to the ESI provision and its applicability to the organization. Hence, on becoming aware of the provisions and its applicability to the organization, the assessee deposited the entire sum as required under the ESI Act which included payments for the AY 2013-14. We note that the provisions of Section 43B of the Act which provides that certain expenditure / payments which are otherwise eligible for deduction under the Act shall be allowed as a deduction only in the year of actual payment irrespective of the year of accrual of such expenditure. Since the assessee made payments relating to AY 2013-14 during the relevant assessment year 2014-15, applying the provisions of section 43B of the Act, the same is allowable expenditure. In view of the above facts we delete the disallowance of Rs. 1,12,214/-.

13. Ground No.3 raised by the assessee relates to ad hoc disallowance of travelling and conveyance expenses of Rs. 1,78,912/-.

14. At the outset itself, the Id. Counsel for the assessee submitted before the Bench that the order is passed by the Assessing Officer u/s 143(3) of the Act therefore no ad hoc disallowance should be made by assessing officer. However, Id. DR submits that the assessee failed to submit a few bills and vouchers relating to travelling expenses and conveyance expenses therefore, Assessing Officer made ad hoc disallowance. We have heard Id. D.R. for the Revenue and noted that Assessing Officer has passed the order u/s 143(3) of the Act but the assessee has failed to submit few bills and vouchers relating to travelling expenses/conveyance expenses before the AO for his verification, therefore we disallow Rs. 50,000/- out of Rs. 1,78,912/- to fill the gap of small anomalies done by the assessee. It is made clear that instant adjudication shall not be treated as a precedent in any preceding or succeeding assessment year. Therefore, we direct the Assessing Officer to delete

the balance amount of Rs. 1,28,912/- (1,78,912 – 50,000). Hence, ground No.3 raised by the assessee is partly allowed.

15. Before parting, it is noted that the order is being pronounced after 90 days of hearing. However, taking note of the extraordinary situation in the light of the Covid-19 pandemic and lockdown, the period of lockdown days need to be excluded. For coming to such a conclusion, we rely upon the decision of the Coordinate Bench of the Mumbai Tribunal in the case of DCIT vs. JCB Limited in ITA No. 6264/Mum/2018 and ITA No. 6103/Mum/2018 for A.Y. 2013-14 order dated 14.05.2020.

16. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the Court on 08.07.2020

Sd/-
(S.S.GODARA)
न्यायिकसदस्य / JUDICIAL MEMBER

Sd/-
(A.L.SAINI)
लेखासदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 08/07/2020

(SB, Sr.PS)

Copy of the order forwarded to:

1. Arvind Metals & Minerals Pvt. Ltd.
2. ACIT, Circle-4(1), Kolkata
3. C.I.T(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

True copy

By Order

Assistant Registrar
ITAT, Kolkata Benches

