

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

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND  
SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER**

***(Conducted through Virtual Court)***

**ITA No.1131/Ahd/2019  
Assessment Years: 2014-15**

The J.C.I.T.,  
Circle – 1(1)(1)-(OSD),  
Ahmedabad.

vs. M/s Adani Hazira Port Pvt. Ltd.,  
Adani House,  
Near Mithakali Six Road,  
Navrangpura,  
Ahmedabad.  
[PAN – AAICA 0970 E]  
(Respondent)

(Appellant)

Appellant by : Shri Mohd. Usman, CIT D.R.  
Respondent by : Shri Vartik Choksi, A.R. &  
Shri Biren Shah, A.R.

Date of hearing : 16.03.2022  
Date of pronouncement : 06.04.2022

**ORDER**

**PER SUCHITRA KAMBLE, JUDICIAL MEMBER :**

This is an appeal filed by the Revenue against order dated 29.04.2019 passed by the CIT(A)-I, Ahmedabad for the Assessment Years 2014-15.

2. The grounds of appeal are as under:

- “1. *The Learned CIT(A) erred in law and on facts in deleting the addition of Rs.6,46,83,102/- made on account of disallowance of SWAP contract loss.*
2. *On the facts and circumstances of the case, the Id. CIT(A) ought to have upheld the order of the Assessing Officer.*
3. *It is, therefore, prayed that the order of Id. CIT(A) may be set aside and that of the Assessing Officer be restored.”*

3. The assessee Company is engaged in the business developed by/general cargo Company and associated facilities at Hazira. The original return of income was filed by the assessee on 26.11.2014 declaring total loss of Rs.(-)177,98,05,980/-. Notice under

Section 143(2) read with Section 129 of the Income Tax Act, 1961 and notice under Section 142(1) of the Act along with questionnaire was issued on 08.06.2016. The assessee filed details before the Assessing Officer. The Assessing Officer made disallowance under Section 14A read with Rule 8D amounting to Rs.9,66,764/- and also made disallowance of SWAP Contract Loss amounting to Rs.6,46,83,102/-.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. A.R. submitted that this issue was decided by the Ahmedabad Tribunal in the case of Adani Enterprise Limited vs. ACIT being ITA Nos.1840/Ahd/2012, 3321/Ahd/2014 & 2305/Ahd/2015, for Assessment Years 2008-09, 2009-10 & 2010-11 respectively, order passed on 12.02.2019 in assessee's favour.

6. The Ld. D.R. relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused all the relevant materials available on record. During the course of hearing, the Ld. A.R. pointed out that the issue raised in the present appeal is identical to the issue decided by the Tribunal in Sister Concern of the assessee. The Tribunal held as under :-

*“12. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.*

*13. As learned representatives fairly agree, this issue is now covered, in favour of the assessee, by a coordinate bench decision in the case of Veer Gems Vs ACIT [(2017) 77 taxmann.com 127 (Ahmedabad - Trib.)] wherein the coordinate bench has, inter alia, observed as follows:*

*“16. The Revenue's last substantive ground pleads that the CIT(A) erred in deleting disallowance of provision of forward contract payable of Rs.34,35,000/- by holding that the entry passed in the books of account in respect of difference in exchange rate cannot be said to be in the nature of notional/unascertained liability. The assessee had made the impugned provision as per MTM certificate for the impugned assessment year followed by its reversal in the succeeding assessment year 2009-10 on account of foreign exchange rate difference as on 31.03.2008. The Assessing Officer disallowed the same by calling it as unascertained liability not allowable.*

17. The CIT(A) accepts assessee's arguments as follows :-

'7.1. During the course of assessment proceedings, vide order sheet entry dated 01.11.2011, the assessee was required to give the full details of the provision entry of Rs. 34,35,000/- on account of forward contract payable. The assessee vide its submission dated 16.12.2011 submitted that the account shown as payable as per MTM certificate for A.Y. 2008-09 was reversed in the A.Y. 2009- 10. Assessing officer observed that this liability which is worked out as on 31.03.2008 has not crystallised as on that date. According to A.O the same represents unascertained liability & is therefore, not allowable as expenditure under the I. T Act. On the basis of these observations, provision of forward contract payable of Rs. 34,35,000/- has been disallowed and added to the total income of assessee.

#### *Submissions of the Appellant*

7.2. During the course of appellate proceedings, the learned AR made various submissions; the relevant portion of the same is reproduced hereunder:

*"In the course of appellate proceedings, it is submitted that assessing officer has erred in making addition of Rs. 34,35,000/- to the total income of assessee on account of provision for forward contract payable. During the course of assessment proceedings, assessee submitted that account of forward contract was reflected in the books of accounts as per MTM certificate of ABN Amro Bank. Assessee is required to record forward contract transactions as per Accounting Standard 11 of ICAI & the same provides that forward contracts remaining outstanding at the end of financial year should be recorded at closing rate prevailing at the end of the year i.e. 31st March. This treatment is in line with the accrual method of accounting as profits/ losses pertaining to the year under consideration are required to be reported in P & L A/c & therefore, fluctuation in exchange rate is required to be taken into consideration. However, contention of assessing officer to treat the same as unascertained liability is completely incorrect in as much as entry is passed on the basis of actual closing rate prevailing at the end of financial year as per MTM certificate issued by ABN Amro Bank.*

*During the course of assessment proceedings, assessee filed copy of MTM certificate and copy of forward contract payable. As per MTM certificate, it is evident that exchange rate of USD has gone up as on 31st March as compared to the exchange rate prevailing at the time of booking of forward contracts & this has resulted into exchange loss to assessee for which provision entry is passed in the books of accounts.*

*It is further relevant to point out that in the subsequent year, when the contract has been cancelled, assessee has recognised the gain/loss based on the difference between exchange rate prevailing at the end of the current financial year as per MTM certificate & the exchange rate prevailing as on the date of cancellation of forward contract which is in line with the accrual system of accounting. As such assessee has passed entry for loss only in respect of the balance amount & the exchange loss is divided into two years as per accrual system of accounting & the Accounting Standard of ICAI.*

*Now, if any disallowance is made for the year under consideration in that case, deduction should be allowed of this amount in subsequent year, as assessee has claimed only balance loss i.e. loss arising on account of difference between exchange rate as on 31/03/2008 & exchange rate prevailing as on the date of cancellation. The addition made by assessing officer has thus, resulted into double taxation as after set off of provision entry of Rs. 34,35,000/- made at the end of current year, only the balance amount is claimed as deduction in subsequent year."*

*Decision:*

*7.3. I have considered the reasons given by assessing officer & also the submissions of appellant. The assessee has made provision in respect of forward contract entered into by it on the basis of difference in exchange rate prevailing as on the date on which forward contract has been booked and the exchange rate prevailing at the end of the year i.e. on 31.03.2008 as per MTM certificate issued by ABN Amro Bank. It is not in dispute that assessee is following mercantile method of accounting and as per this method, all the expenses/gains which pertains/arises during the year under consideration is required to be considered in the Profit and Loss account for that year itself. The provision entry has been made because the exchange as on 31st day of March has gone up as compared to the exchange rate of forward contract prevailing as on the date of transaction. In my view, the entry passed in the books of account in respect of the difference amount cannot be said to be in the nature of notional/unascertained liability as said entry is passed on the basis of actual exchange rate prevailing at the end of the year. The fluctuation in exchange rate has material bearing on the P & L A/c & as forward contract has been entered into during the year under consideration, losses/gain relating to the fluctuation in exchange rate pertaining to said forward contract should also be considered in P & L A/c for the year under consideration. It is also further seen that in the immediately succeeding year when forward contract has been cancelled, assessee has recognised expense/loss only*

*in respect of the balance amount i.e. in respect of the amount in excess of the provision made during the year under consideration. Now, if any disallowance is made for the year under consideration, in that case corresponding deduction is required to be allowed in the subsequent year. However, there is no justifiable reason in doing such an exercise as treatment given by assessee in the books of accounts is in line with the accrual system of accounting and the same does not result into provision for any unascertained liability. Consequently, the addition made on this disallowance is hereby deleted.'*

18. *We have heard rival submissions. Relevant findings perused. The assessee has admittedly made the impugned provision in view of difference in exchange rate as on the date of booking of its forward contract vis-a-vis exchange rate prevailing as on 31.03.2008. It has fortified its claim in view of ABN Amro Bank's MTM certificate forming basis of the impugned provision. The Revenue fails to dispute that the assessee has followed mercantile system of accounting instead of cash system and it is accordingly supposed to account for all expenses/gains in the P&L account on the said basis. It thus emerges that assessee had sufficient reason to treat the impugned liability arising on account of foreign exchange rate difference so as to make the impugned provision as per the relevant accounting standard issued by the Institute of Chartered Accountants of India. We thus find no reason to restore the impugned disallowance.*

14. *On a similar note, but with a little more detailed analysis, another coordinate bench of the Tribunal, in the case of Suzlon Energy Ltd Vs ACIT [(2017) 81 taxmann.190 (Ahd)], has observed as follows:*

6. *It is one of the most fundamental principles of accounting that while all anticipated losses are taken into account in computing the profits and losses of business, even though such losses may not have crystallized, as long as these losses can be reasonably quantified. This approach can be contrasted with the anticipated profits being ignored, in the computation of profits and losses of an enterprise, unless the profits are actually realized. To that extent, there is a dichotomy in accounting approach but then this is what is the sound accounting policy and it has the sanction of law. As a matter of fact, it is this principle, as recognized by Hon'ble Supreme Court in the case of Chainrup Sampatram v. CIT [1953] 24 ITR 481, which explains the valuation of closing stock on market price or cost price whichever is less. There is thus, in principle, no difficulty in seeking a deduction in respect of a reasonably anticipated loss, even though it may not have actually fructified, in computation of profits and gains of business. To this extent, the Assessing Officer was clearly in error in treating the loss on foreign exchange as a notional loss not deductible in computation of business income. On the facts of the present case, however, not only anticipated losses have been claimed as deduction but anticipated profits have been offered to tax. The gains have been offered to tax on the basis of assessee's following mandatory accounting*

standards, and on the basis of same accounting standards losses on forward contracts have been recognized too. The claim of deduction of Rs. 22.15 crores represents the difference between total foreign exchange loss of Rs. 50.11 crores as at the year end date and foreign exchange gains of Rs. 27.95 crore as at the year end date. What has been done by the Assessing Officer to take into account gains on such contracts but ignore the cases in which losses are computed in respect of the forward contracts. It is against this approach that the assessee had raised the grievance.

7. In the case of Woodward Governor India (P.) Ltd. (supra), the issue regarding deductibility of foreign exchange loss came up for consideration before Hon'ble Supreme Court and there was similar inconsistency in treatment to losses and gains on the forward contracts. Their Lordships, dealing with this issue and holding that such a loss will be deductible in computation of business profits, observed as follows:

' . . . . . it is clear that profits and gains of the previous year are required to be computed in accordance with the relevant Accounting Standard. It is important to bear in mind that the basis on which stock-in-trade is valued is part of the method of accounting. It is well established, that, on general principles of commercial accounting, in the P&L account, the values of the stock-in-trade at the beginning and at the end of the accounting year should be entered at cost or market value, whichever is lower—the market value being ascertained as on the last date of the accounting year and not as on any intermediate date between the commencement and the closing of the year, failing which it would not be possible to ascertain the true and correct state of affairs. No gain or profit can arise until a balance is struck between the cost of acquisition and the proceeds of sale. The word "profit" implies a comparison between the state of business at two specific dates, usually separated by an interval of twelve months. Stock-in-trade is an asset. It is a trading asset. Therefore, the concept of profit and gains made by business during the year can only materialize when a comparison of the assets of the business at two different dates is taken into account. Sec. 145(1) enacts that for the purpose of s. 28 and s. 56 alone, income, profits and gains must be computed in accordance with the method of accounting regularly employed by the assessee. In this case, we are concerned with s. 28. Therefore, s. 145(1) is attracted to the facts of the present case. Under the mercantile system of accounting, what is due is brought into credit before it is actually received; it brings into debit an expenditure for which a legal liability has been incurred before it is actually disbursed. (See judgment of this Court in the case of United Commercial Bank v. CIT (1999) 156 CTR (SC) 380 : (1999) 240 ITR 355 (SC). Therefore, the accounting method followed by an assessee continuously for a given period of time needs to be presumed to be correct till the AO comes to the conclusion for reasons to be given that the system does not reflect true and correct profits. As stated, there is no finding given by the AO on the

correctness of the Accounting Standard followed by the assessee(s) in this batch of civil appeals.

17. Having come to the conclusion that valuation is a part of the accounting system and having come to the conclusion that business losses are deductible under s. 37(1) on the basis of ordinary principles of commercial accounting and having come to the conclusion that the Central Government has made Accounting Standard-11 mandatory, we are now required to examine the said Accounting Standard ("AS").

18. AS-11 deals with giving of accounting treatment for the effects of changes in foreign exchange rates. AS-11 deals with effects of exchange differences. Under para 2, reporting currency is defined to mean the currency used in presenting the financial statements. Similarly, the words "monetary items" are defined to mean money held and assets and liabilities to be received or paid in fixed amounts, e.g., cash, receivables and payables. The word "paid" is defined under s. 43(2). This has been discussed earlier. Similarly, it is important to note that foreign currency notes, balance in bank accounts denominated in a foreign currency, and receivables/payables and loans denominated in a foreign currency as well as sundry creditors are all monetary items which have to be valued at the closing rate under AS-11. Under para 5, a transaction in a foreign currency has to be recorded in the reporting currency by applying to the foreign currency amount the exchange rate between the reporting currency and the foreign currency at the date of the transaction. This is known as recording of transaction on initial recognition. Para 7 of AS-11 deals with reporting of the effects of changes in exchange rates subsequent to initial recognition. Para 7(a) inter alia states that on each balance sheet date monetary items, enumerated above, denominated in a foreign currency should be reported using the closing rate. In case of revenue items falling under s. 37(1), para 9 of AS-11 which deals with recognition of exchange differences, needs to be considered. Under that para, exchange differences arising on foreign currency transactions have to be recognized as income or as expense in the period in which they arise, except as stated in para 10 and para 11 which deals with exchange differences arising on repayment of liabilities incurred for the purpose of acquiring fixed assets, which topic falls under s. 43A of the 1961 Act. At this stage, we are concerned only with para 9 which deals with revenue items. Para 9 of AS-11 recognises exchange differences as income or expense. In cases where, e.g., the rate of dollar rises vis-a-vis the Indian rupee, there is an expense during that period. The important point to be noted is that AS-11 stipulates effect of changes in exchange rate vis-avis monetary items denominated in a foreign currency to be taken into account for giving accounting treatment on the balance sheet date. Therefore, an enterprise has to report the outstanding liability relating to import of raw materials using closing rate of exchange. Any difference, loss or gain, arising on

conversion of the said liability at the closing rate, should be recognized in the P&L account for the reporting period.

10. As stated above, on facts in the case of M/s. Woodward Governor India (P) Ltd., the Department has disallowed the deduction/debit to the P&L a/c made by the assessee in the sum of Rs. 29,49,088 being unrealized loss due to foreign exchange fluctuation. At the very outset, it may be stated that there is no dispute that in the previous years whenever the dollar rate stood reduced, the Department had taxed the gains which accrued to the assessee on the basis of accrual and it is only in the year in question when the dollar rate stood increased, resulting in loss that the Department has disallowed the deduction/debit. This fact is important. It indicates the double standards adopted by the Department.

11. The dispute in this batch of civil appeals centers around the year(s) in which deduction would be admissible for the increased liability under s. 37(1).

12. We quote hereinbelow s. 28(i), s. 29, s. 37(1) and s. 145 of the 1961 Act, which read as follows :

"Sec. 28. Profits and gains of business or profession—The following income shall be chargeable to income-tax under the head "Profits and gains of business or profession", —

(i) the profits and gains of any business or profession which was carried on by the assessee at any time during the previous year."

"Sec. 29. Income from profits and gains of business or profession, how computed—The income referred to in s. 28 shall be computed in accordance with the provisions contained in ss. 30 to 43D."

"Sec. 37. General—(1) Any expenditure (not being expenditure of the nature described in ss. 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession."

Explanation : For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure."

"Sec. 145. Method of accounting—(1) Income chargeable under the head "Profits and gains of business or profession" or "Income

*from other sources" shall, subject to the provisions of sub-s. (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.*

*(2) The Central Government may notify in the Official Gazette from time to time accounting standards to be followed by any class of assesseees or in respect of any class of income.*

*(3) Where the AO is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-s. (1) or accounting standards as notified under sub-s. (2), have not been regularly followed by the assessee, the AO may make an assessment in the manner provided in s. 144.*

*"13. As stated above, one of the main arguments advanced by the learned Addl. Solicitor General on behalf of the Department before us was that the word "expenditure" in s. 37(1) connotes "what is paid out" and that which has gone irretrievably. In this connection, heavy reliance was placed on the judgment of this Court in the case of Indian Molasses Company (supra). Relying on the said judgment, it was sought to be argued that the increase in liability at any point of time prior to the date of payment cannot be said to have gone irretrievably as it can always come back. According to the learned counsel, in the case of increase in liability due to foreign exchange fluctuations, if there is a revaluation of the rupee vis-a-vis foreign exchange at or prior to the point of payment, then there would be no question of money having gone irretrievably and consequently, the requirement of "expenditure" is not met. Consequently, the additional liability arising on account of fluctuation in the rate of foreign exchange was merely a contingent/notional liability which does not crystallize till payment. In that case, the Supreme Court was considering the meaning of the expression "expenditure incurred" while dealing with the question as to whether there was a distinction between the actual liability in praesenti and a liability de futuro. The word "expenditure" is not defined in the 1961 Act. The word "expenditure" is, therefore, required to be understood in the context in which it is used. Sec. 37 enjoins that any expenditure not being expenditure of the nature described in ss. 30 to 36 laid out or expended wholly and exclusively for the purposes of the business should be allowed in computing the income chargeable under the head "Profits and gains of business". In ss. 30 to 36, the expressions "expenses incurred" as well as "allowances and depreciation" has also been used. For example, depreciation and allowances are dealt with in s. 32. Therefore, Parliament has used the expression "any expenditure" in s. 37 to cover both. Therefore, the expression "expenditure" as used in s. 37 may, in the circumstances of a particular case, cover an amount which is really a "loss" even though the said amount has not gone out from the pocket of the assessee.*

15. For the reasons given hereinabove, we hold that, in the present case, the "loss" suffered by the assessee on account of the exchange difference as on the date of the balance sheet is an item of expenditure under s. 37(1) of the 1961 Act.'

8. In the present case also, the assessee is consistently following the mercantile method of accounting, the same accounting treatment for the foreign exchange losses and gains has been given by the assessee all along, the assessee is making entries in respect of such losses and gains, and the treatment is consistent with the Accounting Standards. As a matter of fact, the Assessing Officer has not even raised any issues with respect to the above. His case is confined to the loss being notional in nature and contrary to the CBDT guidelines. As for the CBDT instructions, it is only elementary that any instructions issued by the CBDT cannot bind the assessee even though the assessee is entitled to, and can legitimately ask for, any benefits granted to the assessee by such instructions or circulars. Nothing, therefore, turns on the CBDT instruction even if it is actually contrary to the claim of the assessee.

9. We have also noted that, as per the details filed by the assessee, the foreign exchange contracts have been entered into for genuinely restricting its bonafide risk exposure of the assessee in respect of its exports and imports transactions. These contracts cannot, therefore, be viewed on a standalone basis as speculative transactions. These transactions are integral part of the business transactions and any loss or gains arising from these transactions, for the detailed reasons set out above, are deductible in computation of profits and gains of business.

10. In view of the above discussions, we uphold the action of the CIT (A) so far as this relief in respect of deleting the disallowance of Rs. 22,15,55,371 on account of loss, at the end of the year, on foreign exchange contracts. We confirm the same and decline to interfere in the matter.

15. In view of these binding judicial precedents, with which we are in considered agreement, we uphold the plea of the assessee and direct the Assessing Officer to delete the impugned disallowance of Rs 73,00,000. The assessee gets the relief accordingly.

16. Ground no 3 is thus allowed.”

8. It is observed by the CIT(A) that the M2M loss on SWAP contract is allowable where loans were converted into foreign currency loan to take benefit of low interest rate and loss recognised on account of foreign exchange fluctuation as per notified Accounting Standard 11 is an accrued and subsisting liability and not merely a

contingent or hypothetical liability. There is no need to interfere with the findings of the CIT(A). Therefore, appeal of the Revenue is dismissed.

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

Order pronounced in the open Court on this 6<sup>th</sup> day of April, 2022.

*Sd/-*  
**(BHAGIRATH MAL BIYANI)**  
Accountant Member

*Sd/-*  
**(SUCHITRA KAMBLE)**  
Judicial Member

***Ahmedabad, the 6<sup>th</sup> day of April, 2022***

*PBN/\**

*Copies to:*

- (1) The appellant*
- (2) The respondent*
- (3) Commissioner*
- (4) CIT(A)*
- (5) Departmental Representative*
- (6) Guard File*

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Ahmedabad benches, Ahmedabad*