

**INCOME TAX APPELLATE TRIBUNAL  
MUMBAI 'I' BENCH, MUMBAI**

**[Coram: Pramod Kumar, Vice President and  
Amit Shukla, Judicial Member]**

ITA No. 321/Mum/2022  
Assessment Year: 2014-15

**Deputy Commissioner of Income Tax (IT)-2(1)(1)  
Mumbai**

..... **Appellant**

**Vs.**

**City Bank Overseas Investment Corporation**  
*C/o- Deloitte Haskins & Sells Tower 3, 27<sup>th</sup> -32<sup>nd</sup> Floor,  
India Bulls Finance Centre, Elphinstone Mill Compound,  
Senapati Bapat Marg, Elphinstone (W)Mumbai 400013,  
[PAN:AABCC5333N]*

..... **Respondent**

**Appearances:**

**Purushottam Tripuri** *for the appellant*

**Madhur Agarwal** *for the respondent*

Date of concluding the hearing : 08.06.2022  
Date of pronouncement : 05.09.2022

**O R D E R**

**Per Pramod Kumar, VP :**

1. By way of this appeal, the Assessing Officer has challenged the correctness of the order dated 2<sup>nd</sup> December 2021 passed by the learned CIT(A) in the matter of assessment under section 143(3) of the Income Tax Act 1961, the assessment year 2014-15.

2. Grievances raised by the appellant are as follows:-

1. *"Whether on the facts and in the circumstance of the case and in law, the Ld. CIT(A) was right in upholding that income arising from early settlement of Forward Foreign Exchange contract is to be treated as "capital gain" as against the "income from other sources" assessed by the AO even when Forward Foreign Exchange contract is neither a capital asset nor it is business of the assessee to enter into such contracts?"*

2. *"Whether on the facts and in the circumstance of the case and in law, the Ld. CIT(A) was right in upholding that income arising from early settlement of Forward Foreign Exchange contract is to be treated as "capital gain" as against the "income from other sources" assessed by the AO, when there is no correlation between the so claimed forward foreign*

*exchange contracts with investments and such investments are not even mentioned or reflected in the return of income.*

*Without prejudice*

*3. "Whether on the facts and in the circumstance of the case and in law, even if the Hon'ble ITAT allows the receipt as "capital gain", then also no set off of carry forward loss can be allowed as per the decision of the Hon'ble Apex Court in the case of Goetze (India) Ltd. vs CIT, reported in 284 ITR 323 (SC) (2006) wherein the Hon'ble Apex Court held that the assessee cannot make new claim otherwise than by filing a revised return."*

3. So far as the first and second grounds of appeal is concerned, it is sufficient to take note of the fact that the learned CIT(A) has granted the impugned relief on the short ground that the same issue was decided in favour of the assessee by the learned CIT(A) in the immediately preceding assessment year which has been accepted by the Assessing Officer, by not challenging the relief so given, in further appeal. The relevant observations by the CIT(A) are as follows:-

*I have perused the grounds of appeal, statement of facts, order appealed against and submission of the Appellant including the decisions relied upon. It is noted that the Hon'ble Tribunal has held the loss / gain on cancellation / rollover of foreign exchange forward contract as capital loss / gain in assessee's own case for AY 2001-02 and subsequent years. This decision has been accepted by the AO(s) themselves in later assessment years as is noted in para 3 above. Accordingly, it is held that gains of Rs. 72,37,52,405/- on cancellation / rollover of foreign exchange forward contract is to be taxed as short term capital gains.*

4. The Assessing Officer is aggrieved of the relief so granted by the CIT(A) and is in appeal before us.

5. Having heard the rival contentions and having perused the material on record, we find that it is a well settled legal position that when relief granted by the CIT(A) is accepted by the Assessing Officer in one year, it cannot be generally challenged in appeal by the Assessing Officer in a subsequent assessment year. We may, in this regard, refer to the following observations of Hon'ble Supreme Court, in the case of Radhasoami Satsang vs CIT [(1992) 193 ITR 321 (SC)]:-

*II. One of the contentions which the learned senior counsel for the assessee-appellant raised at the hearing was that in the absence of any change in the circumstances, the revenue should have felt bound by the previous decisions and no attempt should have been made to reopen the question. He relied upon some authorities in support of his stand. A Full Bench of the Madras High Court considered this question in T.M.M. Sankaralinga Nadar & Bros. v. CIT 4 ITC 226. After dealing with the contention the Full Bench expressed the following opinion:*

*"The principle to be deduced from these two cases is that where the question relating to assessment does not vary with the income every year but depends on the nature of the property or any other ques-tion on which the rights of the parties to be taxed are based, e.g., whether a certain property is trust property or not, it has nothing to do with the fluctuations in the income; such questions if decided by a Court on a reference made to it would be res judicata in that the same question cannot be subsequently agitated...." (p. 242)*

*One of the decisions referred to by the Full Bench was the case of Hoystead v. Commissioner of Taxation 1926 AC 155. Speaking for the Judicial Committee, Lord Shaw stated :*

*"Parties are not permitted to begin fresh litigations because of new views they may entertain of the law of the case, or new versions which they present as to what should be proper apprehension by the Court of the legal result either of the construction of the documents or the weight of certain circumstances. If this were permitted litigation would have no end, except when legal ingenuity is exhausted. It is a principle of law that this cannot be permitted, and there is abundant authority reiterating that principle. Thirdly, the same principle - namely, that of setting to rest rights of litigants, applies to the case where a point, fundamental to the decision, taken or assumed by the plaintiff and traversable by the defendant, has not been traversed. In that case also a defendant is bound by the judgment, although it may be true enough that subsequent light or ingenuity might suggest some traverse which had not been taken."*

*These observations were made in a case where taxation was in issue.*

*12. This Court in Parashuram Pottery Works Co. Ltd. v. ITO [1977] 106 ITR 1 stated:*

*". . . At the same time, we have to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity...." (p. 10)*

*Assessments are certainly quasi-judicial and these observations equally apply.*

*13. We are aware of the fact that strictly speaking res judicata does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.*

6. Respectfully following the above esteemed views of Hon'ble Supreme Court, we approve the well reasoned conclusions arrived by the learned CIT(A) and decline to interfere in the matter.

7. Ground no 1 & 2 are thus dismissed.

8. So far as ground 3 is concerned, we find that the learned CIT(A) has only given a general direction to give a general direction to give consequential relief as a result of variation in figures, on account of appeal effect etc, as evident from his following observations:-

*4.1 As regards set off of brought forward capital losses, the appellant has submitted a copy of computation of income. The appellant has not set off any brought forward losses against the gains, but following note is placed below the computation:*

*" 1. Net profits of Rs. 72,37,52,405/- (per Annexure 1) made on rollover of Foreign Exchange Contracts has been considered as Short-term Capital Gains (STCG) in view of the Tribunal's order in own case for the assessment year 2001-02.*

*2. It is contented that in the event the losses arising in the earlier years (i.e. AY 2006-07 & 2007-08) on account of rollover of the foreign exchange forward contracts are not set off against the gains arising out of such transactions in the AYs 2008-09, 2009-10, 2011-12 and 2012-13, the same should be allowed to be set off against such gains of the current year."*

*Thus the claim is made in the event losses for A.Y. 2006-07 and 2007-08 are not set off against gains in AYs 2008-09, 2009-10, 2011-12 and 2012-13. In the statement of facts, the appellant has stated that it has brought forward losses of A.Y. 2006-07 at Rs. 1,86,54,500/- and of A.Y. 2007-08 at Rs. 52,10,49,900/- (as per AO only Rs. 16,59,12,400/-) which are eligible to be set off against gains of this year. However, the position may have changed after filing of this appeal due to some orders giving effect etc. being passed. Thus the AO needs to find out correct position (i.e. after giving effect to earlier years' Tribunal / CIT (A) orders), before any set off is given. Therefore, I am only inclined to dispose this part of ground 1 with a general direction. Accordingly, the AO is directed to allow set off of brought forward capital losses against this year's short term capital gain as per the provisions of the Act and after due verification of records as discussed above. Thus, ground No. 1 is partly allowed.*

9. The Assessing Officer is, however, aggrieved by these directions and is in appeal before us.

10. Having heard the rival contentions and having perused the material on record, we see no infirmity in these directions either. The learned CIT(A) has only directed consequential relief in accordance with the law, as may be admissible. We approve the stand of the learned CIT(A) in this point as well, and decline to interfere in the matter.

11. Ground no 3 is thus also dismissed.

12. In the result, the appeal is dismissed. Pronounced in the open court today on the 5<sup>th</sup> September, 2022.

Sd/-  
**Amit Shukla**  
(Judicial Member)

Sd/-  
**Pramod Kumar**  
(Vice President)

**Mumbai, dated 5<sup>th</sup> day of September, 2022**

Copies to:                   (1)    *The Appellant*                   (2)    *The respondent*  
                                  (3)    *CIT*                                       (4)    *CIT(A)*  
                                  (5)    *DR*                                       (6)    *Guard File*

*By order*

*Assistant Registrar/Sr.PS  
Income Tax Appellate Tribunal  
Mumbai benches, Mumbai*