

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'ए', कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Rajesh Kumar, Accountant Member

**I.T.A No.1201/Kol/2023
Assessment year: 2012-13**

**Concept Images Pvt. Ltd.....Appellant
4th Floor, Azimganj House,
7, Camac Street, Circus Avenue,
S.O., Kolkata – 700017.
[PAN: AABCC1959L]**

vs.

DCIT, Circle-7(1), Kolkata.....Respondent

Appearances by:

Shri Anil Kochar, Advocate, appeared on behalf of the appellant.

Shri Ankur Goyal, JCIT-Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : January 10, 2024

Date of pronouncing the order : March 22, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 19.10.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The sole issue raised in this appeal is as to marked to market loss incurred by the assessee on hedging of the transaction is to be treated as speculative loss or normal business loss.

3. The brief facts of the case are that the assessee is in business of purchase and sale of bullions and also manufacturers of gold ornaments. Since the price of gold constantly fluctuates, to safeguard itself from loss, if any, due to fluctuation the appellant had entered into future contracts with the suppliers of gold to safeguard against loss

through future price fluctuations in respect of contracts for actual delivery of goods of manufacture or merchandise sold. During the year, the assessee suffered a loss of Rs.2,06,68,598/- as loss on hedge of such future transaction and debited the same in the P/L A/c as business loss which has been disallowed by the Assessing Officer on the ground that it is not part of the business being carried on.

4. The ld. CIT(A) confirmed the findings of the Assessing Officer.

5. The ld. counsel for the assessee has submitted that entering into future contracts of gold is very much a part of appellant's business as the same is in the normal course of business of purchase and sale of bullion and to safeguard itself from loss the appellant hedges in the same gold the result of which might be positive or negative depending upon the market fluctuation and at the end the assessee is guarded against any such unforeseen eventuality. Hence, the disallowance of loss on future transaction by the Assessing Officer is totally wrong and uncalled for.

6. The ld. DR, on the other hand, has relied upon the findings of the lower authorities.

7. We have heard the rival contentions. The issue is squarely covered by the various decisions of the Hon'ble High Courts including the decision of the jurisdictional High Court in the case of CIT vs. Soorajmull Nagarmull reported in (1981) 5 Taxman 289 (Kol) and further by Hon'ble Bombay High Court in the case of CIT v. Badridas Gauridu (P.) Ltd. reported in [2004] 134 Taxman 376/[2003] 261 ITR 256 (Bom.) wherein it has been held as under:

"The assessee was not a dealer in foreign exchange. The assessee was a cotton exporter. The assessee was an export house. Therefore, foreign exchange contracts were booked only as incidental to the assessee's

*regular course of business. The Tribunal has recorded a categorical finding to this effect in its order. The Assessing Officer has not considered these facts. Under section 43(5) of the Income-tax Act, "speculative transaction" has been defined to mean a transaction in which a contract for the purchase or sale of a commodity is settled otherwise than by the actual delivery or transfer of such commodity. However, as stated above, the assessee was not a dealer in foreign exchange. The assessee was an exporter of cotton. In order to hedge against losses, the assessee had booked foreign exchange in the forward market with the bank. However, the export contracts entered into by the assessee for export of cotton in some cases failed. In the circumstances, the assessee was entitled to claim deduction in respect of Rs. 13.50 lakhs as a business loss. This matter is squarely covered by the judgment of the Calcutta High Court, with which we agree, in the case of **CIT v. Soorajmull Na**[2021] 130 taxmann.com 67 (Karnataka)."*

The similar view has taken by the Hon'ble Karnataka High Court in the case of Shankara Infrastructure Materials Ltd. v. Assistant Commissioner of Income-tax, Circle 12(3) Bangalore reported in [2021] 130 taxmann.com 67 (Karnataka), wherein, it has been held that the loss incurred by the assessee on account of hedging the transaction to avoid higher loss on account of foreign exchange fluctuation was to be allowed as deduction u/s 37(1) of the Act.

8. In view of the above discussion, the addition made by the lower authorities is not justified and the same is accordingly ordered to be deleted.

9. In the result, the appeal of the assessee stands allowed.

Kolkata, the 22nd March, 2024.

Sd/-
[Rajesh Kumar]
लेखा सदस्य /Accountant Member

Sd/-
[Sanjay Garg]
न्यायिक सदस्य /Judicial Member

Dated: 22.03.2024.

RS

Copy of the order forwarded to:

1. Concept Images Pvt. Ltd
2. DCIT, Circle-7(1), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches