

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER**

AND

SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

**ITA No.6273/MUM/2024
Assessment Year: 2017-18**

Mantra Exports Private Limited 91 Mantra Exports, Marol Maroshi Road, Andheri East, Mumbai 400059 PAN: AAACM7287J	V s	Assistant Commissioner of Income Tax. Circle 10(2)(2), Aaykar Bhavan, Maharishi Karve Road, Mumbai 400020
Appellant		Respondent

Present for:

Appellant by : Shri Tushar Shah, CA
Respondent by : Shri R.R. Makwana, Addl. CIT.

Date of Hearing : 27.01.2025
Date of Pronouncement : 24.04.2025

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of ld. CIT(A) National Faceless Appeal Centre (NFAC), Delhi vide Order No: ITBA/NFAC/S/250/2024-25/1069648071(1) dated 14.10.2024 passed against the assessment order by ld. ACIT, Circle 10(2)(2), Mumbai u/s.143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 05.12.2019 for AY 2017-2018.

2. Grounds taken by the assessee are reproduced as under:

1. On the facts and circumstances of the case and in law the Ld. CIT(A). erred in confirming the total income of the appellant at Rs. 9,34,34,113/- passed u/s 143(3) dated 05.12.2019 which was subsequently rectified at Rs. 9,20,84,113/- passed u/s 154 r.w.s 143(3) dated 09.01.2023 against the returned income of Rs. 7,75,51,690/-

2. On the facts and circumstances of the case and in law the Ld. CIT(A). erred in confirming the disallowance made by AO of Rs. 7,20,116/- claimed u/s 2(24)(x) r.w.s 36(1)(va) in respect of employees contribution towards Provident fund amounting to Rs. 4,20,873/- and ESIC amounting to Rs 2,99,293/- as the payment was made after the due date prescribed under Provident Fund Act and ESIC Act even though the payment was made before the due date of filing of Income Tax Return and was therefore allowable.

3. On the facts and circumstances of the case and in law the Ld. CIT(A). erred in confirming the addition made by AO of Rs 1,31,87,080/- on account of notional Mark to Market Gains on Forward exchange Contracts arising due to revaluation of the positions as year-end date without appreciating that the appellant has already offered the actual gains at the time of maturity of the said forward contracts in the subsequent year (i.e. FY 2017-18).

3. Brief facts of the case are that assessee is a domestic company engaged in the business of exports of readymade garments. For the year under consideration, assessee filed its return of income on 31.10.2017 reporting total income at Rs. 7,75,51,690/-. On the first issue raised vide ground no. 2 relating to disallowance made of Rs. 7,20,116/- in respect of employees' contribution towards Provident Fund and ESIC (both taken together) claimed as deduction by the assessee u/s. 36(1)(va) for which payment was made before the due date of filing the return, the details furnished by the assessee is tabulated as under:

Sr. No	Nature of contribution	Month	Due date	Date of deposit	Amount (RS)
1	Provident Fund	Oct,2016	15.11.2016	29.11.2016	4,20,873
2	ESIC	Aug,2016	21.09.2016	23.09.2016	51,810
3	ESIC	Sept,2016	21.01.2016	25.10.2016	82,886
4	ESIC	Dec,2016	21.01.2017	25.01.2017	82,778
5	ESIC	Jan,2017	21.02.2017	22.02.2017	81,769
Total					7,20,116

3.1. The aforesaid issue raised by the assessee has come to rest by the verdict of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. vs. CIT [2022] 143 taxmann.com 178 (SC) wherein it has been held that *"deduction u/s. 36(1)(va) in respect of delayed deposit of amount collected towards employee's contribution to provident fund cannot be claimed when deposited within the due date of filing of return even when r.w. Section 43B of the Income-tax Act, 1961."*

3.2. Respectfully following the decision of Hon'ble Supreme Court (supra) which squarely covers ground no. 2 taken by the assessee, the same is accordingly dismissed.

4. In respect of ground no. 3 relating to addition of Rs.1,31,87,080/- made by the ld. AO on account of notional Marked-to-Market gains on forward exchange contract arising due to revaluation of the position as at year end date, ld. AO observed that assessee had reduced its income by this amount. Explanations were called for in this respect for which assessee submitted vide its letter dated 26.11.2019 that in case of export turnover, sales are realized after the allowed credit period is over. In such intervening period, there are fluctuation in Euro-Rupee Exchange rate. To safeguard against any adverse fluctuations, assessee takes forward cover against its future receivables in Euro currency.

4.1. For the year under consideration ending as on 31.03.2017, unmatured forward contract were revalued based on the exchange rate prevailing as on that date, resulting into a notional gain of Rs.1,31,87,080/- which was accounted in the books of account to comply with the provisions contained in Accounting Standard-11 which deals with

'Effect of changes in Foreign Exchange Rate' issued by the Institute of Chartered Accountant of India (ICAI). This marked-to-market gain on forward exchange contract is a notional gain and is not liable to tax under the Act even though credited to the profit and loss account which is more so for the purpose of accounting and disclosure as required under the Accounting Standard to be mandatorily complied by the assessee.

4.2. Assessee also referred to the instruction issued by Central Board of Direct Taxes (CBDT) vide its instruction no. 03/2010 dated 23.03.2010 from where it drew an inference that income of gains arising on account of marked-to-market gains on unsettled forward contracts is not taxable. According to the assessee, in the subsequent year i.e. AY 2018-19, the accounting entry passed in respect of this marked-to-market notional gains was reversed and the actual gain arising on the settlement of forward contract at the time of their maturity was offered to tax on realization basis. Thus, bringing this notional marked-to-market gain to tax in the year under consideration leads to double taxation.

4.3. Ld. AO did not accept the submissions made by the assessee and proceeded to make the addition of this amount while completing the assessment. Ld. CIT(A) affirmed the addition so made by the Ld. AO. Aggrieved, assessee is in appeal before the Tribunal.

5. Before us, Ld. Counsel for the assessee reiterated the submissions made in this respect before the authorities below. He also pointed out that ld. CIT(A) while affirming the addition made by the ld. AO placed reliance on the decision of Co-ordinate Bench of ITAT, Mumbai in the case of Tata Consultancy Services vs. CIT, LTU in ITA no. 2794/Mum/2018 for AY

2011-12. According to him, ld. CIT(A) has not discussed anything on the merits of the case of the present assessee and has concluded against the assessee in one line by stating that “*respectfully following the decision of the Jurisdictional ITAT I find no reason to interfere with this addition made by the AO.*” According to the ld. Counsel, this decision pertains to period prior to notification of Income Computation and Disclosure Standard (ICDS) notified by the Ministry of Finance vide notification no. 87/2016 dated 29.09.2016 whereby ten ICDS were notified which operationalized a new frame work for computation of taxable income by the assessee following mercantile system of accounting for the purpose of computing income under the head ‘profits and gains of business or profession’ and ‘income from other sources’. These ICDS became applicable with effect from 01.04.2016 and would apply to assessment year 2017-18 and onward. According to him, taxable profits are now to be determined after making appropriate adjustments to the financial statements whether prepared under the existing Accounting Standards or Ind AS to bring them in conformity with ICDS. Thus, ld. Counsel submitted that reliance placed by the ld. CIT(A) on the decision of co-ordinate bench of ITAT Mumbai in the case of Tata Consultancy Services (supra) is not tenable in the light of these subsequent developments.

5.1. He further referred to the technical guide on ICDS issued by ICAI on 05.07.2017 and referred to ICDS-VI “Effects of changes in Foreign Exchanges Rates” which deals with treatment of transactions in foreign currency, translating the financial statements of foreign operations and treatment of foreign currency transactions in the nature of forward exchange contracts. In respect of forward exchange contracts, he referred to para 9(5) of the technical guide, according to which premium, discount

or exchange difference on contracts that are intended for trading or speculation purposes or that are entered into to hedge the foreign currency risk of a firm commitment or a highly probable forecast transaction shall be recognized at the time of settlement.

5.2. In view of this, ld. Counsel submitted that assessee is required to recognize the premium, discount or exchange difference on the contracts at the time of settlement since in the present case assessee had entered into forward contracts to hedge its foreign currency risk relating to exports sales made by it. He further referred to para 9.1.2. which specifically deals with the issue in hand. According to this para 9.1.2, with the introduction of ICDS, marked-to-market gain/loss on forward exchange contract intended for trading or speculation cannot be recognized as income/expense till such time they are eventually settled.

5.3. Ld. Counsel also referred to para 9.9. of the technical guide on ICDS relating to ICDS-VI which specifically states that while the ICDS recognizes the premium, discount or exchange difference on contracts that are intended for trading, speculation purposes or specified hedging transactions to be recognized only at the time of settlement, AS-11 provides that such gain/loss is to be recognized at each balance sheet date as the contract value is marked to its current market value while computing income under the Act. The marked-to-market gains or losses on such open/unsettled contracts at the end of the financial year under AS-11 would need to be excluded in computing the income. In subsequent period when such contracts are settled, the gain or loss as per the ICDS would need to be recognized and the corresponding gain or loss as per AS-11 would need to be excluded.

5.4. In terms of this afforested requirement under AS-11 and ICDS-VI, assessee accounted for marked-to-market gain on the open/unsettled forward contracts as on 31.03.2017 which was excluded while computing income under the head 'profits and gains of business or profession' under the Act, in compliance with ICDS-VI. Subsequently, in AY 2018-19 when the forward contracts were eventually settled, the actual gain/loss arising thereon was recognized and included in the income under the head 'profits and gains of business or profession' for that year. In this respect, reference was made to audited financial statements for the subsequent financial years along with copies of ledger in respect of impugned transaction. Reference was made to the breakup of gain on foreign exchange fluctuation which was recognized by the assessee in terms of the above stated position. The same is extracted below:

<i>Particulars</i>	<i>Amount in Rs.</i>
<i>Foreign Exchange Fluctuation</i>	<i>8,46,14,275,56.</i>
<i>Current year adjustments (31.03.2018)</i>	
<i>Gain on Exchange Fluctuation on Debtors outstanding (as of 31.03.2018)</i>	<i>-2,22,04,559.97</i>
<i>MTM loss on Exchange fluctuation on Forward contracts (As of 31.03.2018)</i>	<i>-3,06,37,442.00</i>
<i>Gain on Exchange fluctuation of premium to the extent of Debtors outstanding (as of 31.03.2018)</i>	<i>97,27,276,00</i>
<i>Last year's Reversals (31.03.2017)</i>	
<i>MTM Gain on foreign fluctuation on forward contract (reversal of 31.03.2017)</i>	<i>-1,31,87,080.00</i>
<i>Gain on Foreign fluctuation on forward contract-premium payable (reversal of 31.03.2017)</i>	<i>-1,66,465.00</i>
<i>Gain on Exchange fluctuation of premium to the extent of Debtors outstanding (reversal of 31.03.2017)</i>	<i>-61,95,898.00</i>
<i>Total</i>	<i>2,19,50,106.59</i> <i>As per P/L</i>

5.5. Ld. Counsel thus, evidently demonstrated the factual position on the treatment given by it to the marked-to-market gain accounted by the assessee on notional basis in accordance with AS-11 in its books of accounts prepared for the year ending as on 31.03.2017 which was excluded while computing the income under the head 'profits and gains of business or profession' in compliance with ICDS-VI.

5.6. He further placed reliance on the CBDT instruction (supra) where in para 2 guidelines are given in respect of treatment to be given by the Assessing Officers for marked-to-market loss. For the purpose of treatment marked-to-market loss, it is stated in this instruction that in cases where no settlement has actually taken place and the loss on marked-to-market basis has resulted in reduction of books profit, such a notional loss would be contingent in nature and cannot be allowed to be set off against the taxable income which should be added back for the purpose of computing taxable income of an assessee. From this guideline given in respect of treatment of loss on marked-to-market basis, analogous inference is drawn for the treatment of gain on marked-to-market basis which results in increase of book profit and which is a notional gain and therefore, cannot be brought to tax while computing taxable income of the assessee. Thus, assessee has rightfully reduced the notional marked-to-market gain accounted in respect of unsettled forward contracts as on 31.03.2017.

6. We have heard both the parties and perused the material on record. We have also given our thoughtful consideration to the submissions made before us in relation to As-11 and ICDS-VI as well as reliance placed by Ld. CIT(A) on the decision of Co-ordinate bench of ITAT in the case of Tata Consultancy Services (supra). In the present case before us, the factual

position in respect of notional marked-to-market gain accounted by the assessee on unsettled forward contract as on 31.03.2017 in terms of AS-11 is undisputed and remains uncontroverted. The year under consideration in this appeal requires compliance with ICDS notified by the Ministry of Finance. Admittedly, assessee has given effect to ICDS-VI while computing its income under head 'profits and gains of business or profession' by reducing the notional marked-to-market gain. It is also a fact on record evidently demonstrated by the assessee that the accounting entry in respect of notional marked-to-market gain as on 31.03.2017 was reversed in the subsequent assessment year and eventually actual realized gain/loss was included while computing the income under the head 'profits and gains of business or profession' for Ay 2018-19. Nothing contrary has been brought on record by the revenue on this stated factual position of the assessee.

6.1. We also take note of the fact that Id. CIT(A) has based his decision by giving a one liner observation of respectfully following the decision of the Co-ordinate bench in the case of Tata Consultancy Services (supra) which relates to AY 2010-11 i.e. period much prior to the notification of ICDS made effective from AY 2017-18 i.e. the year under consideration in this present appeal, hence, distinguishable and not applicable in the present facts and circumstance of the case.

7. Considering the overall factual matrix and the position emerging after notification of ICDS made effective from AY 2017-18, compliance requirements under AS-11 and also assistance provided from the technical guide issued by ICAI on ICDS, we are in agreement with the submissions made by the Id. Counsel for the assessee. Accordingly, we delete the

addition so made by the ld. AO in this respect. Ground no. 3 raised by the assessee is allowed.

8. In the result, appeal by the assessee is partly allowed.

Order pronounced in the open court on 24.04.2025

Sd/-
[Amit Shukla]
Judicial Member

Sd/-
[Girish Agrawal]
Accountant Member

Dated:24.04.2025.

Divya R. Nandgaonkar
Stenographer

Copy to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai