IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,

AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER

	ITA No. 1743/DEL/2019	
	A.Y.: 2014-15	
ACIT, SPECIAL RANGE-7, C.R. BUILDING, NEW DELHI	VS	PRUDENT AGRI COMMODITIES INDIA PVT. LTD., (EARLIER M/S SUNDER AGRI COMMODITIES INDIA PVT. LTD.) 68/2, RNM CENTRE, JANPATH NEW DELHI – 110 001 (PAN: AASCS3922N)
(APPELLANT)		**(RESPONDENT)**

Assessee by : Shri Salil Kapoor, Adv.,
Ms. Ananya Kapoor, Adv.,
Sh. Sumit Lal Chandani, Adv., &
Sh. Shivam Yadav, Adv.

Department by : Ms. Harpreet Kaur Hansra, Sr. DR.

Date of hearing : 26.06.2025
Date of pronouncement : 09.07.2025

ORDER

PER SHAMIM YAHYA, AM :

This appeal filed by the Revenue is directed against the order of the Ld. CIT(A)-XXV, New Delhi dated 21.12.2018 pertaining to assessment year 2014-15.

2. Brief facts of the case are that assessee company e-filed its return of income for AY 2014-15 on 26.11.2014 declaring an income of Rs. 1,06,26,080/- The case was selected for scrutiny assessment under CASS and statutory notice u/s. 143(2) of the Act was issued on 28.08.2015. Thereafter, notice under section 142(1) of the I.T. Act, 1961 was issued on 06.06.2016 and 12.09.2016,

in response thereof the Ld. AR of the assessee attended the proceedings from time to time and filed the necessary details. The assessee company is engaged in the business of trading of agricultural commodity i.e. cotton. The assessee filed copy of balance sheet and profit and loss account and other details which were examined during the course of assessment proceedings. The Assessee had entered into an export contract with Louis Dreyfus Commodities Asia Pte Ltd. ('LDA') for export of cotton in foreign currency. During the assessment proceedings, it was submitted that due to commercial expediency, the Assessee Company could not make any export of cotton before November 2013 and accordingly, had to liquidate cotton stock (purchased in March 2013) into the domestic cotton market. The proceeds earned from domestic sales was invested by the Assessee into units of mutual funds and earned capital gains on redemption of such units. The capital gains earned by the Assessee Company from sale of mutual funds have been duly offered to tax under the head "Income from Capital Gains" while the dividend income has been treated as exempt income under the provisions of Section 10(35) of the Act. During the course of assessment proceedings, the AO asked the Assessee Company to show-cause why foreign exchange loss should not be disallowed under the provisions of Section 14A of the Act read with Rule 8D of the Income-tax Rules, 1962 (the 'Rules'). The Assessee Company vide its reply dated 26 December, 2016 submitted before the AO that considering the extant government regulations on export of cotton and the volatility in the international market, the Assessee Company had to return the advances to LDA on which it had incurred foreign exchange loss. Further, the provisions of Section 14A of the Act inter-alia requires the disallowance of only direct expenditure related to the earning of exempt income, which in the present case is NIL as the assessee has not paid any interest on the advances received against export. It was submitted before the AO that the foreign exchange loss is revenue expenditure allowable as deduction under Section 37 of the Act. AO rejected the above submission and

held that foreign exchange loss is a direct cost relatable to earning of exempt income and accordingly disallowed the foreign exchange loss on an estimate basis. It was also submitted that the advance was taken in accordance with the DGFT guidelines. Further as per the export contract, the Assessee Company was required to supply cotton any time before 18 March, 2014 and so the advance could not have been repaid/returned before that date. Further, it was submitted that the Assessee Company had no control over the foreign currency exchange loss which it suffered on account of refund of advance. As the advance was in relation to the export of cotton which was the main business activity of the Assessee Company, the foreign exchange loss on refund of advance was also a business loss and in relation to export of cotton. That it has no direct relation with the investment in mutual funds. That even otherwise, if the Assessee Company could have obtained the RCs for the supply of the entire quantity of cotton as per the export contract i.e. 4,350 MT, the Assessee Company would not have had to refund the advance amount and consequently would not have incurred foreign exchange loss. That thus, the entire foreign exchange loss is attributable to business of dealing in cotton and the said loss is not related to investments in mutual funds. However, the AO was not convinced. Hence, he concluded that disallowance u/s. 14A on account of direct cost of foreign borrowing would be Rs. 2,62,19,908/- of the forex loss is on account of finance cost directly related to investment made in the mutual fund unit and accordingly, this expenditure was held as direct cost under the provisions of section 14A of the Act and accordingly, made the addition of Rs. 2,62,19,098/-.

3. Against the above, assessee preferred an appeal before the Ld. CIT(A) who vide his impugned order has granted relief to the assessee by observing as under:-

> *"I have considered the issues involved. The losses ensuing on account of foreign currency fluctuations are a distinct accounting entry and there is a plausible likelihood of GAINS or LOSSES on such fluctuations. Such expenses don't fall in scope of section 14A related expenses per se. The accounting treatment of losses/gains on account of forex fluctuations does not render the possible expense as directly relatable to the exempt income as same is incurred on funds repatriated and such funds were in any case received as advance for export of cotton. The AO has also not disputed the contention that such advance was not taken for the purposes of investing in mutual funds. The other detailed submissions by the appellant have also been considered alongwith the assessment order. The following citations help us resolve the issues in that regard –*
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> - *In the case of CIT v. India Molasses Co. (P) Ltd. (37 ITR 66) [SC], the Hon'ble Supreme Court has explained the meaning of the word 'Expenditure' as follows -*
>
> > *"Expenditure is equal to 'expense' and 'expense is money laid out by calculation and intention though in many uses of the word this element may not be present... But the idea of 'spending' in the sense of 'paying out or away' money is the primary meaning and it is with that meaning that we are concerned. 'Expenditure' is thus what is paid out or away' and something which is gone irretrievably... To be a payment which is made irretrievably, there should be no possibility of the money forming, once again, a part of the funds of the assessee-company...*
>
> - *Hon'ble Supreme Court in the case of CIT v. Sutlej Cotton Mills Ltd (116 TR 1) [SC] has held that a loss occasioned by devaluation being one brought about by an act of sovereign state is a business loss. The relevant extract of the decision is as below:*
>
> > *"The law is well settled that where profit or loss arises to an assessee on account of appreciation or depreciation in the value of foreign currency held by it, on conversion into*

another currency, such profit or loss would ordinarily be trading profit or loss if the foreign currency is held by the assessee on revenue account or as a trading asset or as part of circulating capital embarked in the business."

Thus in the above case, the decision of the Hon'ble Supreme Court clearly indicates that the forex loss is a 'loss'.

- *With regard to foreign currency exchange loss, the Hon'ble Supreme Court in the case of CIT v. Sutlej Cotton Mills Ltd (116 ITR 1) [SC] has held that a loss occasioned by devaluation being one brought about by an act of sovereign state is a business loss. In this case, the taxpayer, an Indian company, had a cotton mill in Pakistan where it carried on business of manufacturing and selling cotton fabrics. It was taxed on the Pakistan profit calculated in terms of INR based on the then prevailing foreign exchange rate. During the assessment years 1957-58 and 1959-60, the assessee remitted certain amounts from Pakistan to India and claimed that with the devaluation of Pakistani rupee, it had suffered loss in the said remittances. The Hon'ble Supreme Court held that where profit or loss arises to the taxpayer on account of appreciation or depreciation in the value of foreign currency held by it, on conversion into another currency, such profit or loss would ordinarily be trading profit or loss if the foreign currency is held by the assessee on revenue account or as a trading asset or as part of circulating capital embarked in the business. The relevant extract of the decision is reproduced below:*

  "The law is well settled that where profit or loss arises to an assessee on account of appreciation or depreciation in the value of foreign currency held by it, on conversion into another currency, such profit or loss would ordinarily be trading profit or loss if the foreign currency is held by the assessee on revenue account or as a trading asset or as part of circulating capital embarked in the business."

Thus in the above case, the decision of the Hon'ble Supreme Court clearly indicates that the forex loss is a 'loss'.

- *Further in the case of CIT v. V.S. Dempo & Co. (P.) Ltd. (206 ITR 291) [Bom], the entire amount of loan which had been advanced to the other company for the purchase of machinery had been repaid by that company to the assessee by way of adjustment against the price of iron ore supplied to it which was*

its stock-in-trade. The Hon'ble Bombay High Court held that since the loan was utilized by the assessee as. circulating capital, the loss occurred due to devaluation of the Indian rupee was clearly a revenue loss and allowable as a deduction in computation of the income of the assessee for the assessment year concerned. Thus, the Hon'ble Bombay High Court has affirmed the order of the Tribunal which held that the loss incurred by the assessee on account of devaluation was a revenue loss and, hence, an allowable deduction in computing its income under section 28 of the Act.

Further, it is also to see that rule 8D of the Rules only covers only expenditure and foreign exchange loss would not be covered. Rule 8D of the Rules only covers direct expenditure and foreign currency exchange loss is not expenditure. Thus, in view of the above discussions there is no disallowance warranted on account of foreign currency exchange loss in the present case. The addition on this count is, therefore directed to be deleted. This ground is allowed."

4. Against the aforesaid action of the Ld. CIT(A), Revenue is in appeal before us.

5. Ld. DR relied upon the order of the Assessing Officer.

6. Per contra, Ld. AR for the assessee submitted that the issue in hand is squarely covered by the decision of the Delhi Tribunal in the case of ACIT, Circle 16(1), New Delhi vs. Theolia Wind Power (P) Ltd. [2019] 109 Taxmann.com 3 (Delhi – Trib.) dated 29.07.2019 and accordingly requested that the appeal of the revenue may be dismissed. He further relied upon the order of the Ld. CIT(A) and stated that Ld. CIT(A) has passed a reasonable order, which does not need any interference, on our part, therefore, the same may be upheld.

7. We have heard both the parties and perused the records. We find ourselves in agreement with the Ld. CIT(A)'s finding that the losses ensuing on account of foreign currency fluctuations are a distinct accounting entry and there is a plausible likelihood of gains and losses on such fluctuations. Such

expenses don't fall in scope of section 14A related expenses. The accounting treatment of losses/gains on account of forex fluctuations does not render the possible expense as directly relatable to the exempt income as same is incurred on funds repatriated and such funds were in any case received as advance for export of cotton. We further note that AO has also not disputed the contention that such advance was not taken for the purposes of investing in mutual funds. In our view, the Ld. CIT(A) has correctly held that foreign currency loss of Rs. 2,62,19,098/- was revenue expenditure and was allowable under section 28. The case laws referred by the Ld. CIT(A) are germane and support the decision of Ld. CIT(A). We further find considerable cogency in the contention of the Ld. AR that the instant issue is squarely covered by the decision of the Delhi Tribunal in the case of ACIT, Circle 16(1), New Delhi vs. Theolia Wind Power (P) Ltd. [2019] 109 Taxmann.com 3 (Delhi – Trib.) dated 29.07.2019 wherein, following have been observed:-

> *"17. So, following the decision rendered by Hon'ble Apex Court in the case of **CIT vs. Walfort Share & Stock Brokers (P.) Ltd.** (supra) and decision rendered by the coordinate Bench of the Tribunal discussed in the preceding para, we are of the considered view that when business advances taken by the assessee company from Natural Energy Corporation GmbH for providing consultancy services though admittedly invested in mutual funds, the same cannot be treated to have been received for the purpose of investment in mutual funds. Meaning thereby, there is no proximate nexus between the advances received and investment made in the mutual funds yielding tax exempt income and in these circumstances, foreign exchange loss suffered by the assessee cannot be disallowed u/s 14A of the Act.*
>
> *18. Moreover, copy of account of Natural Energy Corporation GmbH for AY 2010-11, available at page 25 of the paper book, is duly showing debit of exchange fluctuation gain to advance and corresponding credit to exchange fluctuation gain. Even otherwise, there is no dispute that the assessee is continuously following the mercantile method of accounting and thereby consistently providing exchange fluctuation loss or gain in its account in the year in which the same has been incurred.*
>
> *19. Furthermore, Hon'ble Apex Court in case cited as **CIT vs. Woodward Governor India P. Ltd.** (supra) has explained the difference*

between the words "any expenditure" for the purpose of section 37 of the words "expenditure incurred" as per section 14A by returning following findings :-

> ***"WORDS AND PHRASES- "ANY EXPENDITURE", "PROFITS", MEANINGS OF.***
>
> ***"Loss" suffered by the assessee on account of fluctuation in the rate of foreign exchange as on the date of the balance-sheet is an item of expenditure under section 37(1) of the Income-tax Act, 1961.***
>
> ***Decision of the Delhi High Court in CIT v. WOODWARD GOVERNOR INDIA P. LTD. [2007] 294 ITR 451 affirmed.***
>
> ***For valuing the closing stock at the end of a particular year, the value prevailing on the last date is relevant. This is because profit/loss is embedded in the closing stock. While anticipated loss is taken into account, anticipated profit in the shape of appreciated value of the closing stock is not brought into account, as no prudent trader would care to show increase in profits before actual realization. This is the theory underlying the rule that closing stock is to be valued at cost or market price whichever is lower.***
>
> ***Decision of the Delhi High Court affirmed.***
>
> ***The expression "any expenditure" has been used in section 37 of the Income-tax Act, 1961, to cover both "expenses incurred" as well as an amount which is really a "loss" even though such amount has not gone out from the pocket of the assessee."***

*20. So, following the decision rendered by Hon'ble Apex Court in **CIT vs. Woodward Governor India P. Ltd.** (supra), we are of the considered view that loss suffered by the assessee on account of foreign exchange rate fluctuation as on date of balance sheet is an item of expenditure u/s 37(1) of the Act and is not liable to be disallowed u/s 14A of the Act. So, the loss suffered by the assessee on account of fluctuation in the rate of foreign exchange is a revenue loss and not a capital loss as held by ld. CIT (A) in AY 2008-09 and contended by ld. DR for the Revenue."*

7.1 In the background of the aforesaid discussions and respectfully following the aforesaid precedents, we affirm the action of the Ld. CIT(A) and accordingly, reject the grounds raised by the Revenue.

8. As regards issue of deletion of addition of Rs. 6160/- on account of late deposit of employees contribution to provided fund made by the AO is concerned. We note that this issue is no longer res-integra and has been decided in favour of the Revenue by the decision of the Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. vs. CIT-I., wherein, it has been held that payment towards employee's contribution to ESIC/PF after the due date prescribed under the relevant statutes is not allowable deduction. Therefore, respectfully following the binding precedent, we allow this ground of the Revenue.

9. In the result, the appeal filed by the Revenue partly allowed.

Order pronounced on 09/07/2025.

Sd/-	Sd/-
(VIMAL KUMAR)	**(SHAMIM YAHYA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

SRBHATNAGAR

Copy forwarded to: -

1. Appellant**.**
2. Respondent.
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar