

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI**

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.3503/Del/2016
(ASSESSMENT YEAR 2009-10)

ITA No.3504/Del/2016
(ASSESSMENT YEAR 2010-11)

A2Z Maintenance & Engineering Services Ltd., Q-116, DLF Shopping Mall, Arjun Marg, DLF Phase-1, Gurgaon. PAN:AAECA1203A	Vs.	DCIT, Central Circle-II, Faridabad.
(Appellant)		(Respondent)

ITA No.3414/Del/2016
(ASSESSMENT YEAR 2010-11)

DCIT, Central Circle-II, Faridabad.	Vs.	A2Z Maintenance & Engineering Services Ltd., Q-116, DLF Shopping Mall, Arjun Marg, DLF Phase-1, Gurgaon. PAN:AAECA1203A
(Appellant)		(Respondent)

Assessee by	Sh. Puneet Agarwal, Shruti Garg, Sakshi Bisht and Chetan Kumar Shukla, Advocates	
Department by	Shri Manish Kumar, CIT -DR	
Date of Hearing	28/08/2025	
Date of Pronouncement	29/08/2025	

ORDER**PER MANISH AGARWAL, AM,**

These two appeals are filed by the Assessee for Assessment Years 2009-10 and 2010-11 in ITA Nos. 3503 and 3504/DEL/2016 and one by the Revenue for Assessment Year 2010-11 in ITA No.3414/Del/2016.

2. As all these appeals contained issues which are interlinked, therefore, these are taken together and adjudicated by a single order. The details of the appeals are tabulated as under:

Sr. No.	Appeal	Asst. Years	Date of CIT(A)'s order.	Appeal BY
1	3503/Del/2016	2009-10	04.03.2016	Assessee
2	3504/Del/2016	2010-11	04.03.2016	Assessee
3	3414/Del/2016	2010-11	04.03.2016	Revenue

3. First we take up assessee's appeal for Assessment Year 2009-10 in ITA No. 3503/Del/2016.

4. Having perused the material on record. Assessee is a company and engaged in the business of engineering services. A search and seizure action was carried out at the business premises of M/s A2Z Group on 24.04.2012. Consequentially, the case of the assessee was centralized and notice u/s 153A was issued. In response to notice u/s 153A on 14.07.2014, the assessee declared income of Rs.1,10,70,33,060/-, thereafter, the notices were issued and finally the income of the assessee was assessed accepted the returned income. It was the claim of the AR of the assessee that a sum of Rs.1.56 Cr. was offered in the return of income filed for this year as additional income declared as a result of search which includes a sum of Rs. Rs.1.14 crores pertaining to assessment year 2010-11 and, therefore, it was requested to the Assessing Officer to exclude this amount of Rs.1.14 crores from total income of the assessee. The AO observed that Director of the assessee company Sh. Amit

Mittal in his statement under recorded u/s 132(4) of the Act admitted additional income of Rs.41.31 lacs for Assessment Year 2009-10 and Rs. 3.94 Crs. in Assessment Year 2010-11, however, in the return of income a sum of Rs.1.56 Cr. was offered as additional income in Assessment Year 2009-10 and Rs. 2.80 Crs. in Assessment Year 2010-11. Accordingly, the AO assessed the additional income of Rs. 1.56 crores in AY 2009-10 and further made addition of Rs. 1.14 crores in AY 2010-11 by holding the same as income which was admitted in statements but not disclosed in the return of income filed by ignoring the fact that additional income of Rs.1.14 Cr. was pertaining to Assessment Year 2010-11 and was inadvertently offered for tax in Assessment Year 2009-10. It is thus submitted by the AR that double addition was made on this account. It is further prayed to delete the addition so made.

5. On the other hand, the Ld. CIT-DR submits that once the assessee has declared this additional income of Rs.1.14 Cr. In return of income filed for AY 2009-10, the same could not be taken back subsequently. He therefore, prayed for confirmation of the order of the lower authorities.

6. Heard both the parties and perused the materials available on record. From the perusal of the order of the AO and the arguments advanced by the ld.AR, sole issue cropped up is whether the additional income at Rs.1.14 Cr. declared in the return of income filed for AY 2009-10 though the same was pertinent to Assessment Year 2010-11 could be reduced from the income of AY 2009-10 and be taxed in AY 2010-11. It is seen that in Assessment Year 2010-11, the AO had made the addition towards additional income of Rs.1.14 Cr. by observing that during the course of search additional undisclosed income of Rs.3.94 Cr. was admitted as additional income for Assessment Year 2010-11, however, in the return of income only 2.80 Cr. were offered, by ignoring the fact such amount of Rs.1.14 Cr. was already offered by the assessee in Assessment Year 2009-10 in addition to the additional income of Rs.41.31 lacs admitted for

Assessment Year 2009-10. Thus, assessee has made additional income offered of Rs.1.14 Cr. which actually pertinent to Assessment Year 2010-11 and needs to be reduced from the total income assessed. At the same time, it is seen that assessment stood completed by accepting the income declared by the assessee at Rs.1.10,70,33,060/- in the return of income filed in response to notice u/s 153A of the Act. It is settled principle of law that whatever income is declared by the assessee in its return of income cannot be reduced. Accordingly, in this year though we agree with the argument of the AR, however, if the additional income of Rs.1.14 Cr is reduced, it will be resulted into the assessment at an income which is lower than return income. In view these facts, we uphold the assessed income at Rs. 1,10,70,33,060/- and direct the AO to reduce the amount of additional income Rs.1.14 Cr inadvertently offered in AY 2009-10 from the total income assessed for Assessment Year 2010-11. With these directions, the assessee's appeal for Assessment Year 2009-10 is partly allowed.

ITA Nos. 3504/Del/2016 & 3414/Del/2016 for AY 2010-11

7. Now come to cross appeals for Assessment Year 2010-11. In assessee's appeal, ground of appeal No.1 is with regard to confirmation of addition of Rs.4,40,805/- by disallowing the loss on forward transactions in commodities.

8. Before us, the Ld. AR submits that during the year assessee was executing EPC contracts and for execution of the contracts products, raw material like Steel and aluminum were required on continuous basis and there were vast fluctuation in their prices, therefore, in order to neutralized the effect of such price fluctuations, hedging contracts were entered into of these materials by the assessee. The AO treated the same as speculative transactions as defined u/s 43(5) of the Act and disallowed the same. It was the argument that such hedging transactions are integral part of the business of the assessee and, therefore, in terms of Explanation-2 to section 28 of the Act, it cannot be

treated as the speculation business and, therefore, AR requested for the deletion of disallowance made.

9. On the other hand, the Ld. CIT-DR vehemently supported the order of the lower authorities and requested for the confirmation of the same. He submits that these transactions were carried out in commodity exchange and related to steel and aluminum which are commodities in which assessee is neither manufacturer nor trader thus these are purely fallen in the category of speculation transactions as per section 43(5) of the Act. He prayed accordingly.

10. Heard both the parties and perused the material available on record. It is admitted fact that assessee was engaged in the business of Contractor (EPC Contractor) where assessee was required to Steel and Aluminum on regular basis for the consumption at the work sites. Since the projects were carried out for long period and the tender price is fixed when the contract was awarded thus to save the future losses anticipated due to price fluctuation, hedging transactions were entered into by the assessee. It is further seen that the such hedging transactions were done solely for the benefit of the business of the assessee and there was no intention of the assessee making any profit/loss out of such transaction. Further these hedging transactions were entered into for two commodities steel and aluminum which are required in execution of works awarded thus it is an integral part of the regular business activity of the assessee.

11. Explanation 2 to section 28 provides that where speculative transactions carried on by an assessee are of such a nature as to constitute a business, the business (hereinafter referred to as "Speculation Business") shall be deemed to be distinct and separate from any other business. The separation of business enunciated by Explanation 2 and categorization thereof as a 'speculative business' do not apply to all 'speculative transactions', so to say the legislative

fiction applies only when the speculative transactions carried on by an assessee are of such a nature as to constitute a business in itself. The hon'ble Madras High Court in the case of CIT vs. Sri Ramalinga Choodambigai Mills Ltd. reported in MANU/TN/0798/1998, while dealing with an identical issue held as under:

- "3. The contracts had been entered into, for securing supplies of cotton which is the raw material for the manufacture of the yarn the assessee's business being the manufacture of yarn. The assessee was not carrying on a separate and distinct business of speculating on trading in cotton. The decision of the assessee to cancel these contracts was not with a view to suffer a loss or make profit, but to minimise the loss that it was likely to suffer as the purchase of that variety cotton would not have been of utility to the assessee after the assessee had changed the plan of manufacture which required a different variety of cotton.*
- 4. Learned counsel for the Revenue submitted that these transactions must be regarded as speculative transactions, in view of the definition of speculative transaction set out in Section 43(5) of the Act, That provision defines speculative transaction as one for the purchase or sale of any commodity, including stocks and shares, which is periodically or ultimately settled otherwise than by the actual delivery of the commodity or scrips. The proviso to Section 43(5)(a) provides that a contract in respect of raw materials or merchandise entered into by a person in the course of his manufacturing or merchanting business to guard against loss through future price fluctuations in respect of his contracts for actual delivery of goods manufactured by him or merchandise sold by him, shall not be deemed to be a speculative transaction. The assessee here had entered into the contracts for the purchase of cotton which was required for the manufacture of the yarn. As those contracts were in the nature of hedging contracts, those contracts are excluded by the very definition from the category of speculative transactions.*
- 5. Learned counsel for the Revenue also submitted that in view of the Explanation 2 to Section 28 of the Act, where speculative transactions carried on by an assessee are of such a nature as to constitute a business, the business shall be deemed to be distinct and separate from any other business. That Explanation is not attracted here as the assessee was not carrying on a speculative business in the purchase or sale of cotton. Even*

assuming that the contract in question can be regarded as constituting speculative transactions, that by itself would not be the sufficient to hold that the assessee was carrying on a speculative business. The contracts were entered into in the ordinary course of business of running a textile mill and had been entered into bona fide to secure the supply of the raw materials required by it. The contracts were later cancelled only because that raw material was no longer fit for the assessee's use, having regard to the fact that a different variety of cotton was required for the manufacture of higher count of yarn. If all such contracts are excluded from the definition of speculative transaction entering into such contracts, and settling the same by paying damages does not amount to carrying on speculative business for the purpose of Explanation 2 to Section 28 of the Act".

12. In the instant case as observed above, assessee was not making future contracts of Steel and Aluminum but entered into transactions to cover up the loss in price fluctuations in execution of the works contracts. Thus it does not constitute speculative business activity as provided in Explanation -2 of the Act. Accordingly, by respectfully following the judgement of hon'ble Madras high court as cited (supra) in our considered opinion once the assessee was not engaged in the speculative activity and hedging was done to save the business losses due to future price fluctuations, therefore, such transactions are wholly and exclusively for benefit of the business and accordingly the same is allowable as expenditure u/s 37(1) of the Act. In view of these facts, we allowed the loss of forwarding contracts at Rs.4,40,805/-. The grounds of appeal No.3 and 4 of the assessee are allowed.

13. Ground Nos.1 and 2 are not pressed, thus, are dismissed.

14. Before us, vide letter dated 20.01.2020, the assessee has taken three additional grounds of appeal, out of which Ground Nos. 8 and 9 are not

pressed. Thus, the remaining additional ground of appeal No.7 is admitted being legal ground and decided below. The Ground No.7 reproduced as under:

“7. That in view of the facts and circumstances of the case CIT(A) has erred in law and on facts, in not deleting the addition of Rs.1,14,29,000/-. Both the lower authorities have failed to appreciate that addition of Rs.1.14,29,000/- will lead to double addition of same amount in two different Assessment Years.”

15. As observed above by us in assessee's appeal for Assessment Year 2009-10 in ITA No.3503/Del/2016 that additional income offered of Rs.1.14 Cr. actually pertained to the year under appeal i.e. AY 2010-11, however, inadvertently the same was included in the total income declared by the assessee for Assessment year 2009-10. In that year we dismissed the appeal of the assessee on this issue and directions were given to consider the same in AY 2010-11 as addition of the same amount in AY 2010-11 would lead to double taxation of an income. From the perusal of the assessment order for AY 2010-11, we find that AO had made separate addition of Rs.1,14,29,000/- being amount of additional income offered in the statement recorded u/s 132(4) during the course of search and not offered in the return of income filed. We find that this income has already been included as additional income by the assessee in Assessment Year 2009-10 and due taxes were paid, thus, further addition of the same in the year under appeal would be tantamount to double taxation. Accordingly, we hereby direct the AO to delete the addition of Rs.1,14,29,000/- on account of income which has already been offered for tax in preceding year. The additional Ground of appeal No.7 taken by the assessee is thus allowed.

16. The appeal of the assessee for Assessment Year 2010-11 is partly allowed.

17 Ground of appeal no.1 taken by the Revenue is with respect to the deletion of addition of Rs.3,88,01,009/- being the loan processing charges paid to the financial institution which was held as capital expenditure by the AO.

18. Heard both the parties and perused the materials available on record. It is seen that the Ld. CIT(A) while deleting the addition has made a detailed discussion on this issue which is in para 5.3 of the order, the same is hereby reproduced as under:

"Ground No.3 relates to the addition of Rs. 3,88,01,009/- made by the AO on the ground of loan processing charges paid to various banks while making this addition the AO has observed as under

On perusal of reply of the assessee and the records it is related that in the books of account, the assessee itself had claimed loan processing for as capital expenditure as it has benefit spread across various years. Having shown it as capital expenditure, the assessee has amortized the expenses in various years. Having shown it as capital expenditure, the assessee has amortized the expenses in various years i.e. debited the expenses in parts. There is no provisions in Income Tax to claim capital expenses in parts. Amortization of expenses is not allowable except when claimed under specific provisions like section 35D, 35DD, 35DDA, 35E etc. Since loan processing fee is a capital expenditure, it is not allowable under section 37(1) of the Act. Hence, addition of Rs. 3,88,01,009/- is made to the returned income.

The contention of the appellant with regard to the same is reproduced as under:

"During the assessment year, the appellant had incurred an expenditure of Rs.3,88,01,009/- towards loan processing fee details of the loan processing fee are given at page 1-6 of the paper book. It may be mentioned that the AO has not doubted the genuineness of the expenditure or regarding its quantum. The AO has treated this expenditure as capital expenditure and hence added the same to the returned income. The AO has further tried to strengthen the case by stating that itself, in its books of account had claimed loan processing fee as capital expenditure as has spread over the expenditure across various years and hence treated the same as capital expenditure.

It has been further stated that loan processing fees of Rs. 3,88,01,009/- is paid for loans taken for existing running projects. The details of processing fee paid and amortization schedule has also been submitted. The processing fee is paid for working capital cash credit limit and in the same cases for working capital term loan. In these cases, it is amortized according to period of loan. These expenses are allowable under section 37. The appellant has also relied on various judicial pronouncements."

After perusal of the assessment order and the submissions of the appellant, it is noticed that the loans have been taken for financing running projects and the processing fee is paid for working or cash credit limits and in some cases paid for working capital term loans. As the processing fees has been paid for existing projects towards working capital loans, it cannot be said that some capital asset of enduring nature has come into existence. The processing fees paid by the appellant in my view falls in the realm of revenue expenditure. Section 2 (28A) of the Act defines the term interest as under:-

"Interest" means interest payable in any manner in respect of any moneys borrowed or debt incurred (includes a deposit, claim or other similar rights or obligation) and included any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized."

With regard to treatment of these expenses as capital expenditure, it has been held by the Hon'ble Supreme Court in the case of Taparia Tools Ltd., vs JCIT (2015) 55 Taxmann. com 361 (SC) that merely because a different treatment was given in the books of account could not be a factor which would deprive assessee from claiming entire expenditure as a deduction in year of payment itself.

Further in the various judgments relied upon by Appellant, it has been held that the loan was a liability and therefore, processing fee which was paid by the assessee for raising the loan was expenditure incurred for the purpose of business and could not be treated as capital expenditure. It has been further held that if the business is started, interest on loan borrowed by the assessee is allowable, irrespective of the loan, even if the loan is borrowed for acquisition of asset.

In view of the above discussion, it is held that the loan processing fees paid to the banks is a revenue expense and hence allowable in the case of appellant. Therefore, this ground of appeal is allowed."

19. Before us, the Ld. CIT-DR vehemently supports the order of the AO, however, had failed to controvert the findings of the Ld. CIT(A) by placing on record any contrary material in this regard. It is further seen that Ld. CIT(A) followed the judgment of Hon'ble Supreme Court in the case of **Taparia Tools Ltd. vs. JCIT [2015] 55 Taxaman.com 361(SC)** which has direct bearing on this issue. Further the hon'ble Madras High Court in the case of India Cements vs. reported in 60 ITR 52 also of the similar view. In view of these facts and by respectfully following the judgements of hon'ble Supreme court and of hon'ble high court as cited above, we find no infirmity in the order of Ld. CIT(A) which is hereby upheld. The ground of Appeal No.1 of the Revenue is dismissed.

20. The Revenue's Ground of appeal No.2 is with respect to deletion of addition of Rs.61,69,810/- being the premium paid to bank on account of hedging of foreign currency for repayment of foreign currency loan. The Ld. CIT(A) while deleting the disallowance has made the following observations:

“7.3 Decision :-

Ground no. 5 relates to disallowance of Rs. 61,69,810/-made by the AO on account of premium on forward contracts.

The AO has made following observations while making the disallowance:

"Similarly, the premium paid on the speculative business is not allowable since the transaction is with the bank but not with recognized stock exchange, hence the same cannot be allowed as business expenses and hence an addition of Rs.61,69,810/- to the taxable income of the assessee"

The submissions of the appellant in this ground are reproduced in the appellate order in the preceding para 7.2.

The following observations are made with regard to this ground of appeal:

a) The appellant has paid the premium of Rs. 61,69,810/- on account of the hedging of foreign currency loans from SBI.

b) The premium has been paid on hedging of the foreign currency loans which had to be repaid in foreign currency to mitigate the loss which the appellant may incur on account of foreign exchange fluctuation.

c) The judicial pronouncements relied upon by appellant in the case of CIT vs Britannia Industries [2015] Taxmann.com 16 [Calcutta] is directly applicable to the facts of the case.

d) The treatment of this transaction by the AO as speculative transaction is not correct as such forward contract which are purely hedging transactions entered to safeguard against loss arising out of fluctuation in foreign currency are not speculative transactions falling within ambit section 43(5) of the Act as held by various Courts.

In view of the above discussion, the disallowance made by the AO on this account cannot be sustained.

In the result, this ground of appeal is allowed.

Ground of appeal No. 6 is general in nature and does not require any adjudication and hence dismissed."

21. Before us, the Revenue has not controverted the findings of the Ld. CIT(A) who had deleted the disallowance by placing reliance on the judgment of the Hon'ble Kolkata High Court in the case of **Britannia Industries Ltd vs. DCIT reported in [2015] taxman.com 60**. Thus, by respectfully following the judgement of the Hon'ble Kolkatta High Court in the case of Britania Industries (sura), we find no error in the order of the Ld. CIT(A) which is hereby upheld. Ground of appeal No. 2of the revenue is dismissed.

22. In the final result, the appeals of the assessee in ITA No.3504/Del/2016 for Assessment Year 2009-10 and ITA No.3505/Del/2016 for Assessment Year 2010-11 are partly allowed and Revenue's appeal in ITA No.3414/Del/2016 for Assessment Year 2010-11 is dismissed.

Order pronounced in the open court on 29 .08.2025.

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

Dated: 29.08.2025
PK/Sr.Ps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI