IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE 'A' BENCH, BANGALORE

BEFORE SHRI N.V.VASUDEVAN, JUDICIAL MEMBER
AND
SHRI ABRAHAM P GEORGE, ACCOUNTANT MEMBER

ITA No.997(BNG.)/2012
(Assessment year : 2009-10)

Star Exports & Imports
No.274/275, D.G.H
M.K.Puttalingaiah Road,
Padmanabhanagar,
Bangalore-560 070
PAN No.AALFS8337D Appellant

Vs

The Addl. Commissioner of Income-tax,
Range-4,
Bangalore Respondent

Assessee by : Shri H.N.Khincha, CA
Revenue by : Shri P.Dhivahar, JCIT

Date of hearing : 28-01-2015
Date of pronouncement : 06-02-2015

O R D E R

PER SHRI ABRAHAM P GEORGE, AM;

In this appeal filed by the assessee its grievance that loss of Rs.1,52,81,124/- claimed by it was not allowed by the lower authorities considering the transactions giving rise to the loss to be speculative in nature.

2. Facts apropos are that assessee trading in Iron Ore and also exporting Iron Ore fines had filed return for the impugned assessment

year declaring income of Rs.7,10,44,222/-. From the profit & loss account filed by the assessee, the AO found an amount of Rs.1,52,81,124/- was harged as dollar realization loss. Assessee was required to explain. Details of the loss as furnished by the assessee is reproduced here under;

Date	Particulars	Voucher type	Debit(Rs.)	Credit(Rs.)
08-04-2008	Karnataka Bank C/A dollar amount realized rate difference)	Bank receipt		41,98,876
21-10-2008	Karnataka Bank C/A (being amount Paid towards dollar realization charges)	Karnataka Overseas Bank payment	1,94,80,000	

Closing Balance debit *1,52,81,124*

Apart from the above details the assessee also filed a letter from M/s Karnataka Bank Ltd. which stated as under*;*

> *" We invite your kind attention to the captioned letter dated 28th July 2011 regarding forward purchase contract difference effected on 08-04-2008. Please make a note that as per existing guidelines and FEDAI rule forward contract profit should be credited on due date not on the day of cancellation and if any loss occurred while cancelling the contract the loss should be recovered on*

the same day. In your case the captioned contract cancelled on 31-03-2008 and profit supposed to be credited on 04-04-2008 (delivery from 24-03-2008 to 04-04-2008). Due to technical problem we were unable to pass the profit on 04-04-2008 and the same was credited to your account on 08-04-2008".

Assessee also filed a copy of the letter dated 20-08-2008 to the Manager of M/s Karnataka Bank Ltd. wherein it requested cancellation of the forward purchase contract.

3. When the AO sought why the transactions should not be considered as speculative in nature and why the loss should not be considered as speculation loss, assessee replied in detail and the crux of the reply was under;

i) The foreign exchange contracts were entered with banker so as to hedge against foreign exchange fluctuation

ii) It was in the nature of hedging contract to guard against possible financial loss.

iii) The transactions were entered in the normal course of business.

iv) The Foreign exchange cannot be considered as a commodity falling within the definition speculative transactions given in Sec.43(5) of the Act.

4. However, the AO was not impressed by the above reply. According to him, the commodity involved was a financial asset which assessee had agreed to supply the bank at a pre-determined rate. It was a type of derivative, since its value changed in accordance with the rate changes. Assessee as per the learned AO, could not be saved by proviso to Sec.43(5) of the Act, for the reason that contract was not in respect of raw materials or merchandise. Further, as per the learned AR Co-ordinate Bench in the case of CIT Vs M/s K. Mohan & Co.(Exports) Pvt. Ltd. 126 ITD 59(Bang) had held that foreign exchange forward contract transactions giving rise to loss or gains would be speculative in nature. Again as per the AO, the decision of the Hon'ble Calcutta High Court in the case of CIT Vs Soorajmull Nagar Mull 129 ITR 169, relied on by the assessee was distinguishable on facts. He thus, held that the speculative transactions resulted in a speculative loss which could not be set off against normal profits of the business of the assessee. He thus made and addition of Rs.1,52,81,124/- and completed the assessment.

5. In its appeal before the CIT(A) argument of the assessee was that, the AO had misunderstood the nature of the transactions. According to the assessee first contract was entered with M/s Forromet International Trading PTE Ltd.,**(FITPL)** on 01-03-2008 for supply of

40,000/- metric tonnes of Iron Ore Fines within the period 01-03-2008 to 15-03-2008. In order to hedge the probable foreign currency fluctuation, assessee had entered into a contract with M/s Karnataka Bank Ltd. on 07-03-2008 and as per this contract assessee was to deliver 70.00 lakhs US Dollars to the bank during the period 24-03-2008 and 04-04-2008 for which bank was obliged to give Rs.40.84 per dollar As per the assessee, the forward contract entered with M/s Karnataka Bank Ltd. was based on the contract for supply of Iron Ore Fines to M/s **FITPL.** There were a number of addendums to the contract with **M/s FITPL** extending the time of delivery. However, the forward contract with bank expired on 04-04-2008 and the value of Indian Rupee having gone up there was a profit realization of Rs.41,98,876-. As per the assessee similar to this there was another contract entered on 28-08-2008 with the same buyer M/s FITPL for supply of 45,000 MT of Fines at US dollar 105 per MT. A fresh forward purchase contract was entered with M/s Karnataka Bank Ltd on 02-09-2008. The delivery period for dollars was 01-10-2008 to 15-10-2008, as per the contract with M/s Karnataka Bank Ltd. For this supply also assessee could not adhere to the time schedule, stipulated by seller, despite extensions. The bank cancelled the forward purchase contract and due to exchange rate fluctuation there was a loss of Rs.1,94,80,000/-. As per the assessee

only difference between two sets of transactions was that in the first one, supply was eventually made to the buyer and sale proceeds received on 28-04-2008. The second the contract did not fructify at all, since it could not deliver the Iron Ore Fines. Assessee also submitted before the learned CIT(A) that it had started the business in Iron Ore Fines only in June 2007, prior to which it was doing trading in rough granite blocks. As per the assessee, apart from the above two contracts for supply of Iron Ore Fines to M/s FITPL there were only three local sales of Iron Ore Fines. In February, 2009 as per the assessee, it had stopped its business in Iron Ore Fines. Thus, according to the assessee, the loss due to foreign exchange fluctuation arising out of the cancellation of the foreign exchange forward contract with bank was a pure business loss and not the result of any speculative transactions.

6. However, the learned CIT(A) was not impressed. According to him, the foreign exchange forward contract entered by the assessee with the bank, which were ultimately cancelled was not in the line of business of the assessee. As per the learned CIT(A) the transactions were speculative in nature, falling within the definition of speculative transactions given in Section 43(5) of the IT Act. Proviso to Section did not save the assessee. Again as per the learned CIT(A), the two

speculative transactions constituted a speculative business, in view of Explanation 2 to Section 28 of the Act. According to him, the transaction entered with bank was on 07—03-2008 for delivering 70.00 lakh US dollars at Rs.40.54 per dollar during the period 24-03-2008 and 04-04-2008. As against this, the contract with M/s FITPL for selling 40,000/- MT of Iron Ore Fines, at the rate of US Dollar 144/- per MT was entered on 01-03-2008 with delivery schedule between 01-03-2008 & 15-03-2008. There was a modification of this contract whereby the MT was increased from 40,000/- to 50,000/- on 01-06-2008. According to learned CIT(A) by the time the forward contract with the bank was to expire the delivery of Iron Ore to the supplier should have been already completed. This, as per the learned CIT(A) proved that transaction with the bank was for making a profit by trading in foreign exchange and not linked to the export order. Vis-à-vis the second transaction though it was observed by the learned CIT(A) that the date of delivery as per in the schedule in the contract with the supplier tallied with that mentioned in the forward exchange contract, this also according to him, could not be linked to the regular business of the assessee. According to the learned CIT(A), in view of the decision of the Co-ordinate Bench of this Tribunal in the case of Sri K.Mohan & Co.,(Exports) (P)Ltd. (Supra) the transactions did constitute a speculative business. Hence, according to him, loss was

nothing but speculative loss and could not be allowed for a set off again regular profits of the business of the assessee. Taking this view, the learned CIT(A) confirmed the addition made by the AO.

7. Now before us, learned AR strongly assailing the order of the lower authorities submitted that the forward exchange contracts entered with the bank were only to protect the assessee against the changes in exchange rates which could not be predicted. These were nothing but hedging against a foreign currency exposure. As per the learned AR, assessee could deliver the goods with respect to the first contract only after scheduled date. The date as per the agreement with M/s Karnataka Bank Ltd had expired and the forward contract with the said bank stood automatically cancelled. Due to currency exchange rate fluctuation, there was a profit which was credited to the account of the assessee. As per the learned AR vis-à-vis the second contract, the assessee could not deliver the goods at all. When the forward exchange contract period was over, the bank cancelled this contract also resulting in a loss. As per the learned AR the loss on account of foreign currency contract sprang directly from and was incidental to the business of the assessee. There was a direct and proximate nexus. Further, according to the learned AR foreign currency was not a commodity to fall within the ambit of Section

43(5) of the Act. As per the learned AR, the transactions with bank were for hedging against foreign exchange fluctuations and not a speculative in nature. Even if it was considered speculative in nature, it would not result in a speculative business. Reliance was placed on the decision of the Hon'ble Bombay High Court in the case of CIT Vs Badridas Gauridu (P)Ltd 261 ITR 256 and that of Hon'ble Gujarat High Court in CIT Vs Panchamahal Steel Ltd (Tax Appeal No.131 of 2013 dated 28-03-2013) and CIT Vs Friends & Friends Shipping Pvt.Ltd.(2013) 217 Taxmann 267. As per the learned AR all these decision follow the law laid down by the Hon'ble Mumbai High Court in the case of Sooraj Mull Nagarmull (Supra) which was brushed aside by the lower authorities for no reason. Reliance was also placed on the following Tribunal decision/Board Circulars

i) Rushabh Diamond Vs ACIT ITA NO.7217/Mum/2012 dt.26-04-2013 ITR 95(All.)

ii) Voltas International Ltd Vs ACIT 126 TTJ 702(Mum)

iii) CBDT Circular No.23D(XXXIX-4) (F.No.412(4)60/TPL)

iv) London Star Diamond Co.(I) Pvt. Ltd Vs DCIT ITA No.6169/M/2012 dated 11-10-2013.

8. Per contra, learned DR submitted that the transactions with the bank were never settled by delivery of dollars. It was settled by adjusting the difference. Foreign currency transactions would also fall within the definition of speculative transaction, if it satisfied the ingredients of Section 43(5). As per the learned DR, in the case of first transaction M/s Karnataka Bank Ltd. itself in its letter dated 28-07-2008 had mentioned that assessee had requested for cancellation of the forward purchase contract for dollars. Thus, it was a clear case of profiteering on forward exchange without delivery. In the case of the second transaction the contract was cancelled prior to the scheduled date of delivery of dollars viz. 04-04-2008. The cancellation was effected on 31-03-2008 as required by the assessee. Hence, as per the learned DR the nature of transaction was only speculative. Further, as per the learned DR foreign exchange was not the goods manufactured by the assessee nor goods sold by it. Assessee was not dealing in foreign exchange. It could not say that it was a part of its regular business. The forward contracts were settled by cancellation and not by delivery of foreign currency. Reliance was placed on the decision of Mumbai Bench in the case of S.Vinod Kumar Diamonds Pvt. Ltd Vs ITO (2013) 59 SOT 124 and also on the decision of Co-ordinate Bench in the case of K. Mohan & Co(Exports) Pvt. Ltd (Supra). Learned DR also placed reliance on the decision of Bombay High Court in

the case of CIT Vs Sri Bharath R Ruia(HUF) (2011) 337 ITR 452 in support of his argument that application of Section 43(5) was not restricted to contracts which are capable of performance by actual delivery and the term commodity occurring in Section 43(5) of the Act would include derivatives.

9. We have heard the rival contentions and perused the orders. First aspect to decide is whether the transactions entered by the assessee with M/s Karnataka Bank Ltd were speculative in nature. For deciding this question we have to see whether the forward exchange contract entered by the assessee were in fact for hedging the supply contract entered by the assessee with M/s FITPL. It is an admitted position that the first contract with M/s FITPL was entered on 01-03-2008 for supply of 40,000 MT of Iron Ore Fines during the period 1st to 15th March, 2008. It is also not disputed that there was an addendum dated 06-03-2008 to increase the quantity from 40,000/-MT to 50,000/- tones. The price agreed was Rs.144/-dollar per MT. The realizable amount therefore, came to US dollars 72.00 lakhs. As per the assessee the forward exchange contract dated 07-03-2008 with M/s Karnataka Bank Limited was for hedging the above contract. A look at paper book page no.71 which is the contract with M/s Karnataka Bank Limited show

that the said bank had confirmed purchase of 70.00 lakhs US Dollar for Rs.28,37,80,000/- and assessee had to deliver the dollars within the period 24-03-2008 to 04-04-2008. No doubt, the delivery schedule for Iron Ore was on 01-03-2008 to 15-03-2008 whereas the delivery schedule for US Dollars with the bank was 24-03-2008 to 04-04-2008. The addendum dated 06-03-2008 had increased the quantity from 40,000/- MT to 50,000/-. The second addendum rescheduling the delivery period giving assessee time upto 05-04-2008 was dated 12-03-2008. In other words, the extension of delivery time for Iron Ore was made after the forward exchange contract was entered with the bank on 07-03-2008. Due to this incongruity the learned CIT(A) reached a conclusion that the foreign exchange forward contract entered by the assessee with the bank was not for hedging the supply contract with M/s FITPL. However, in our opinion, this conclusion does not gel with certain other facts on record. Number one is that assessee had made an application on 07-03-2008 with M/s Karnataka Bank Ltd. for booking a forward contract. The format itself provides for the commodity to be mentioned. The format for applying for forward purchase contract FE2011 is clearly one which has been prescribed by the bank and not the invention of the assessee. The said application as appearing P.B.page-32 is reproduced hereunder;

Application for book of forward purchase contract-exports FE-2011.

From
M/s Star Exports & Imports,
No.274/275, D.G.H M.K. Puttalingaiah Road,
Padmanabhanagar,
Bangalore-560 070

To
The Chief/Senior Branch Manager,
Karnataka Bank Ltd.
Overseas Branch.
Dear Sir,

Booking of Forward Exchange contract against Exports.

We request you to look forward contracts/at our risk and responsibility to cover our exports as per the following details.

Currency & amount	*Delivery period*	*Usance*	*Commodity*
USD 700,00,000	*5th April, 2008*		*Iron Ore Fines*

For M/s Star Exports & Imports
Sd/-
H.D.Ramaiah, Partner
In this connection we declare as under;

- *Our actual average export sales for the past 2 years are Rs. lakhs*
- *Our estimated export sales for the current year is Rs. lakhs and*
- *Projected export sales for the next year is Rs. lakhs*
- *Our uncovered exposure on exports are Rs. lakhs*

Further, we confirm that the aggregate of the local forward purchase contracts out standings are less than the average of the actual exports of the preceding 2 years. We also confirm that the exposure covered by the above contract have not been covered with any other authorized dealer.

It is understood that the contract is subject to FEDAI Rules and we authorize you to recover charges if any, to the debit of our account. Further, if we ail to utilize the contract or gie suitable instructions for cancellation or extension before due date we confirm that you have the right to automatically cancel the contract on the 5th day from due date for delivery and debit the charges to our account without further reference to us. We also understand that no deliveries will be accepted

after due date and before its automatic cancellation on the 15th day from the due date.

Yours faithfully,
For M/s Star Exports & Imports
Sd/-H.D.Ramaiah
(Stamp & Signature of the Applicant)

Place: Bangalore
DSate:07-03-2008

Guidelines on foreign exchange derivatives and hedging commodity price risk and freight risk overseas prescribed by RBI vide its Circular dated 29-10-2007 gives the operational guidelines for the banks. These operational guidelines stipulate that the banks have to make a thorough verification of the documentary evidence and full particulars of contract should be marked. It is clearly stated that no hedging facility is to be provided to the clients on the basis of undertakings, alone. Further, maturity of the hedge as per these guidelines could not exceed maturity of the underline transactions. In the face of such guidelines of RBI the conclusion that the bank had given a foreign exchange coverage contract on a stand alone basis, without verifying the assessee's agreement of supply of Iron Ore Fine to M/s FITPL, cannot be accepted. The flow of events do show that the contract with the bank dated 07-03-2008 was entered by the assessee only based on its supply of contract with M/s FITPL.

10. If we take the second set of transactions there is an application dated 02-09-2008 from the assessee to the bank wherein it requires forward exchange for US Dollars of Rs.40.00 lakhs against Iron Ore Fines. The period mentioned is 01-10-2008 to 15-10-2008. The format is very same and the application placed at paper book page no.43 carries the stamp of the bank as well. The second contract with M/s FITPL also mentions delivery schedule as 1st to 15th October, 2008 which perfectly tallies with the period mentioned in the forward exchange contract. It might be true that the assessee had cancelled the second contract prior to the last date mentioned in the contract with the bank, and the assessee never made any supply to M/s FITPL. As a prudent businessman when it found that supply of Iron Ore Fines may not be possible, assessee could have thought that it would be not wise to continue with forward exchange contract. We cannot fault the assessee for foreclosing the forward exchange contract. In such circumstances, the facts in our opinion show that the forward contracts were all pursuant to or incidental to the business contracts for the supply of Iron Ore. Lower authorities in our opinion, fell in error in viewing this transaction independently, divorced from each other. No doubt, Co-ordinate Bench of this Tribunal in the case of Sri K.Mohan & Co (Exports)(P)Ltd. (Supra) had held that profit from forward contract were to

be assessed as profit from speculative business. However, in the said case, there were large number of such transaction and forward contracts were taken in respect of 46% of the export turnover. It was no doubt held that forward contracts which were settled without actual delivery of foreign exchange were to be considered as speculative transactions. However, we find that Hon'ble Gujarat High Court in the case of CIT Vs Friends & Friends Shipping Co.(Supra) had followed the decision of Hon'ble Calcutta High Court in the case of Soorajmull Nagarmull (Supra) and had held that foreign exchange contracts when incidental to the regular course of assessee's business, loss arising there from would not be speculative loss, but incidental loss to assessee's business. Relevant part of the judgment of the Hon'ble Gujarat High Court is reproduced here under;

"Revenue is in appeal against the judgment of the Tribunal dated 29.5.2009 raising following questions for our consideration :

"Whether the Appellate Tribunal is right in law and on facts in reversing the order passed by CIT(A) and thereby deleting the disallowance of Rs.15,04,910/- made on account of Foreign Exchange Difference ?"

From the record, it emerges that the assessee who is an exporter had entered into forward contracts with the Bankers to hedge against any loss arising out of fluctuation in foreign currency. From the order passed by the CIT(A), we gather that the contract between the assessee and the bank provided that the

assessee would buy some quantity of dollars at a particular rate to cover export bill payment. The contract gave delivery option dates. The assessee had to take the delivery within the period indicated in the contract and if for some reason it was not possible to do so, the assessee had to give instructions to the Bank for cancellation of the contract. Since on some occasions, the assessee was required to give instructions for cancellation of forward contract, the assessee had to pay agreed charges to the Bank. In the process the assessee suffered loss of Rs.15 lacs. The Assessing Officer disallowed the loss holding it as ***speculative*** *in nature and therefore covered under sub-section (5) of section 43 of the Act. In further appeal, CIT(A) confirmed the order of the Assessing Officer relying on the decision of the Andhra Pradesh High Court in the case of M.G.Brothers v. CIT, (1985) 154 ITR 695 and also in the case of Commissioner of Income Tax v. Joseph John, 67 ITR 74. On further appeal, the Tribunal deleted the disallowance relying on the decision of the Bombay High Court in the case of CIT v. BadridasGauridu (P) Ltd., 261 ITR 256. We may notice that the Bombay High Court in the said decision had relied on a decision of the Calcutta High Court in the case of CIT v. Soorajmull Nagarmull, 129 ITR 169 (Cal.)*

Counsel for the Revenue vehemently contended that the Assessing Officer as well as the CIT (Appeals) had examined the issue threadbare. It was found that there was no direct connection between the export contract and the booking of dollars by the assessee. The entire ***transaction*** *was thus in the nature of speculation.*

On the other hand, learned counsel Shri Thaker appearing on behalf of the assessee contended that the issue is squarely covered by the decision of the Bombay High Court in the case of Badridas Gauridu (P) Ltd. (supra). The assessee is admittedly not a dealer in foreign exchange. The charges that the assessee had to pay to the Bank were in the nature of revenue expenditure in the course of business. Counsel further submitted that the Reserve Bank of India's guidelines would not permit the Bank to enter into a forward contract

with respect to foreign currency unless the assessee had export contract on hand.

Having thus heard the learned advocates for the parties and having perused the documents on record, we find that the issue is covered by the decisions of the Bombay High Court in the case of Badridas Gaurida (P) Ltd. and the Calcutta High Court in the case of Soorajmull Nagarmull (supra).

In the decision of the Bombay High Court, the assessee was in the business of export of cotton. The assessee had entered into forward contract with banks in respect of foreign exchange. Some of these contracts could not be honoured for which the assessee had to pay Rs.13.50 lacs which was debited to the profit and loss account. The assessee claimed the sum as business loss. Revenue was of the opinion that the loss was ***speculative*** *in nature. Bombay High Court following the decision of the Calcutta High Court in the case of Soorajmull Nagarmull (supra) held that the expenditure would not be covered under section 43(5) of the Act as* ***speculative transaction****. It was observed 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 commodity is settled otherwise than by the actual delivery or transfer of such commodity. However, as state 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 caes 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 jdugment of the Calcutta High Court, with which we agree, in the case of CIT v.Soorajmull Nagurmull(1981) 129 ITR 169."

Before the Calcutta High Court, the assessee was a firm engaged in the business of import and export of jute. In course of business, the assessee would enter into forward contract in foreign exchange in order to cover the loss which may arise due to difference in foreign exchange valuation. In one such contract, the assessee had to pay to the Bank difference of Rs.80,491/- which was claimed by the assessee as revenue expenditure. The Assessing Officer disallowed the claim. The High Court held that the assessee was not a dealer in foreign exchange and the foreign exchanges were only incidental to the assessee's regular course of business and the loss was thus not a ***speculative*** *loss but incidental to the assessee's business and allowable as such. Facts in the present case are very similar. Admittedly, the assessee is not a dealer in foreign exchange. For the purpose of hedging the loss due to fluctuation in foreign exchange while implementing the export contracts, the assessee had entered into forward contract with the banks. In some cases, the export could not be executed and the assessee had to pay certain charges to the Bank and thereby incurred certain expenses. These expenses the assessee claimed by way of expenditure towards business. We do not find that the* ***transaction*** *can be stated to be in speculation as to cover under sub-section (5) of section 43 of the Act.*

It is true that the CIT(Appeals) has made some observations which would prima facie suggest that there was no direct co-relation between the exchange document and the precise export contract. However, such observations cannot beseen in isolation.

CIT(Appeals) himself has noted that the assessee had entered into seven separate contracts with the bankers. In the case of M.G.Brothers (supra), the

*Andhra Pradesh High Court was concerned with a case where the assessee was qcarrying on business of groundnut oil and the assessee entered into forward **transaction**s in neem oil and cotton seed oil. In that view of the matter, the Court held that it was not a hedging **transaction** since there was no evidence that the assessee had adequate stock of raw materials to the extent of hedging **transaction**s.*

*In the case of Joseph John (supra) , the Apex Court observed that the burden of proof is upon the assessee to show that the **transaction** is not **speculative transaction** but a hedging **transaction** and further that the finding of the Tribunal that the **transaction** carried out by the assessee is **speculative** in nature and not hedging **transaction**s is essentially a finding on a question of fact.*

The above noted decisions do not directly touch the controversy arising in the present appeal. We find that the decisions of the Bombay High Court and the Calcutta High Court noted above would cover the situation.

Tax appeal is therefore dismissed".

In view of the above decision of the Hon'ble Gujarat High Court we are of the opinion that the decisions relied on by the revenue which are of various Tribunal Benches pale into insignificance. Judicial discipline requires us to follow judgment of High Court unless and until a contrary judgment of jurisdictional High Court is shows by the parties to the litigation. Even if there is a conflict of opinion between various High Courts, unless and until, there is a jurisdictional High Court decision, one

way or the other, an assessee can rightly submit that the one in its favour should be followed. We are therefore, of the opinion that the assessee has to succeed in this appeal.

11. Appeal of the assessee is allowed.

Order pronounced in the open Court on the 6th February, 2015.

Sd/-
(N.V.VASUDEVAN)
JUDICIAL MEMER

Sd/-
(ABRAHAM P GEORGE)
ACCOUNTANT MEMBER

Bangalore:
D a t e d : 06-02-2015
am

Copy to :

Appellant
Respondent
CIT(A)-IV, Bangalore.
CIT
DR, ITAT, Bangalore.
Guard file (1+1)

Asst. Registrar

ITAT, Bangalore