

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "C", MUMBAI

Before Shri G S Pannu, AM, & Shri Saktijit Dey, JM

ITA No. 5479/Mum/2014
Assessment Year 2009-10

ADIT (IT) 1(2), Mumbai	Vs.	Citibank Overseas Investment Corporation, C/o Deloitte Haskins & Sells Tower- 3, 28 th Floor, Indiabulls Finance Centre, Elphinstone Mill Compound, Senapati Bapat Marg, Mumbai 400 013 PAN AABCC5333N
(Appellant)		(Respondent)

CO No. 19/Mum/2016
(Arising out ITA No.5479/Mum/2014
Assessment Year 2009 - 10)

Citibank Overseas Investment Corporation, Mumbai	Vs.	ADIT (IT) 1(2), Mumbai
(Cross- Objector)		(Respondent)

Revenue By : Shri B S Bisti [CIT-DR]
Cross-objector By: Shri Arvind Sonde

Date of Hearing :15.03.2017	Date of Pronouncement : 24.03.2017
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ORDER

Per Saktijit Dey, Judicial Member:

The captioned appeal and the cross-objection by the department and the assessee respectively are against the common order dated 11.02.2014 of the learned CIT(A)- 10, Mumbai for the A.Y. 2009-10.

2. **ITA No. 5479/Mum/2014** : The only issue arising in the departmental appeal is in relation to the decision of the learned CIT(A) in holding that gain on cancellation of forward foreign exchange contracts is to be treated as capital gain.

3. Briefly, the facts are that the assessee is a non-resident company. For the assessment year under consideration, the assessee filed its return of income on 26.09.2009 declaring total income of Rs.12,63,199/-. During the assessment proceedings, the AO from the return of income as well as accompanying statements found that though the assessee, in the relevant previous year, has made gains of Rs.21,72,55,371/- on cancellation of forward foreign exchange contract however, had not offered them to tax on the plea that such receipts are in the nature of capital receipt and hence, not chargeable to tax. The AO not being convinced with such plea called upon the assessee to explain why such gain should not be assessed under the head "Income from other sources". In reply, though, the assessee objected to the treatment proposed to be given by the AO to gain derived from forward foreign exchange contract and in alternative it was also submitted that such gain should be treated as business income and in absence of a Permanent Establishment (AE) in India, it is not taxable, however, the AO did not find merit in the submissions of the assessee and ultimately held that gain arising on forward foreign exchange contract cannot be treated as business

transactions and gain on cancellation of the forward foreign exchange contract gives rise to income under the head "Income from other sources." Accordingly, he completed the assessment. Being aggrieved by the assessment order so passed, the assessee preferred appeal before the CIT(A). The learned CIT(A) noticing that in assessee's own case for A.Y. 2001-02, the ITAT has held that gain derived from cancellation of forward foreign exchange contract is to be treated as capital gain, which was subsequently followed by his predecessor while deciding assessee's own case for A.Ys 2006-07 and 2007-08, held that gain derived from forward foreign exchange contract is to be treated as capital gain.

4. At the outset the learned AR submitted before us that the issue stands covered by the decision of the ITAT in assessee's own case for A.Y 2001-02, 2006-07 and 2007-08, wherein Tribunal has held that income arising from forward exchange contract is assessable under the head capital gain. The learned DR fairly agreed with the aforesaid submissions of the assessee.

5. We have considered the submissions of the parties and perused the material on record. As could be seen from the material on record, the only issue in dispute between the parties is in relation to the status of gain derived from the forward foreign exchange contract, whether to be assessed as capital gain or income from other sources. Undisputedly, this is a recurring dispute between the assessee and the department from earlier assessment

years and in assessee's own case for A.Y. 2001-02 in ITA No. 4436/Mum2005 the Tribunal vide its order dated 21.12.2005 has held that income arising from forward foreign exchange contract is assessable under the head "Capital gains". The same view was reiterated by the Tribunal in assessee's own case for A.Y. 2007-08 in ITA No. 7044/Mum/2010 vide order dated 16.01.2013. Respectfully following the aforesaid decisions of the co-ordinate Bench, we hold that the gains arising from forward foreign exchange contract are assessable under the head "Capital gain" and not as "Income from other sources". Hence, grounds raised by the department on this issue are dismissed.

5. In the result, the department's appeal is dismissed.

6. **CO No. 19/Mum/2016** : Ground nos. 1 and 2 are not pressed. Hence, these two grounds are dismissed as not pressed.

7. Ground no.3 is on disallowance of assessee's claim of set off of brought forward capital loss against the gains from forward foreign exchange contract.

8. We have heard the parties and perused the material on record. The learned AR has submitted before us that the gain derived from the forward foreign exchange contract since has been held to be capital gain; the same should be set off against the capital loss. As could be seen from the

impugned order of the learned CITA(A), the assessee had raised a specific ground before the CIT(A) claiming set off of Capital gain from the forward foreign exchange contract against brought forward capital loss. However, the learned CIT(A) without adjudicating the ground on merit has dismissed the same as infructuous. While deciding the department's appeal in the earlier part of this order, we have upheld the decision of the CIT(A) in treating the gain arising from forward foreign exchange contract to be assessable under the head "Capital Gain". Consequentially, the assessee is entitled to set off such gain against brought forward capital loss as per the relevant statutory provisions. We, therefore, direct the AO to verify assessee's claim by examining the material on record and allow consequential relief to the assessee. This ground is allowed for statistical purpose.

9. In the result, the department's appeal is dismissed and the assessee's cross-objection is partly allowed for statistical purpose.

Order pronounced in the open court on 24th day of March 2017.

**Sd/-
(G S Pannu)
ACCOUNTANT MEMBER**

Mumbai; Dated : 24th March, 2017

**Sd/-
(Saktijit Dey)
JUDICIAL MEMBER**

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Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. DR, 'C' Bench, ITAT, Mumbai

BY ORDER,

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(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai