

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ "ए" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI
BEFORE HON'BLE S/SHRI JOGINDER SINGH (JM), AND RAJESH KUMAR,(AM)

आयकर अपील सं./I.T.A. No.246/Mum/2014
(निर्धारण वर्ष / Assessment Year : 2009-10)

Income Tax Officer 16(3)(1), Room No.219, Matru Mandir, Mumbai-400007	बनाम/ Vs.	M/s Ankit Diamonds, 1219/1220, Prasad Chamber, Opera House, Mumbai-400004
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AAAF3924D

अपीलार्थी ओर से / Appellant by:	Shri Sachchidanand Dube
प्रत्यर्थी की ओर से/Respondent by	Shri K A Vaidyaligan

सुनवाई की तारीख / Date of Hearing : 26.7.2016
घोषणा की तारीख /Date of Pronouncement : 29.7.2016

आदेश / O R D E R

Per RAJESH KUMAR, Accountant Member:

This is an appeal filed by the revenue and is directed against the order of the Ld. CIT(A)-27, Mumbai dt.18.10.2013 pertaining to A.Y. 2009-10.

2. Only issue raised in the grounds of appeal is against the deletion of "Mark to Market" los of Rs.45,31,646/- by the ld. CIT(A) as made by the AO during the course of assessment proceedings arising on the valuation of forward exchange contracts on the closing date of accounting year and further that the ld. CIT(A) is erred in not taking the cognizance of decision rendered by the Mumbai Bench of the Tribunal in the case of M/s Vinodkumar Diamonds Pvt Ltd. in ITA No.506/Mum/2013 dated 3.5.2013.

3. Facts of the case are that the assessee-firm being a importer, manufacturer and exporter of diamonds and studded jewellery, filed its return of income on 27.9.2009 declaring total income of Rs.67,966/- which was processed u/s 143(3) of the Act. Thereafter, scrutiny proceedings were initiated against the assessee and statutory notices under section 143(2) and 142(1) were issued and served upon the assessee.

4. During the course of assessment proceedings, the AO found that the assessee has debited Rs.45,31,646/- to profit and loss account on account of forward contract loss. In response to the show cause notice issued by the AO, the Id.AR submitted that the assessee has entered into the foreign exchange forward contract in the ordinary course of its business. The Id. AR further submitted that the rate of foreign exchange continued to change fluctuate from time to time. The assessee also submitted that the loss on account of foreign exchange fluctuation were admissible as these were taken in to account at the end of the year on the prevailing rate of exchange and therefore rightly claimed by the assessee. However, the AO not convincing with the reply added back the loss on account of "mark to market" in respect of forward contract of Rs.45,99,612/- vide order dated 30.12.2011 passed under section 143(3) of the Act. Aggrieved by the order of the AO, the assessee filed appeal before the Id. CIT(A) who after considering he submissions of the assessee in para 2.3. of the appeal order allowed the appeal of the assessee by following the decisions in the cases of DCIT V/s

Bank of Bahrain and Kuwait (ITAT) Mumbai Bench) 43 DTR-505, CIT V/s Woodward Governor India (P) Ltd (2009) 312 ITR 254 (SC) and various other decisions. Aggrieved by the order of Id.CIT(A) the revenue is in appeal before us.

5. We have heard the Id.DR, who strongly opposed the order passed by the Id.CIT(A) being wrong and contrary to the law as the Id. CIT(A) did not appreciate the fact in correct perspective and prayed for setting aside the order of CIT(A) and upholding that of AO.

6. On the contrary the Id.AR strongly opposing the arguments of the Id.DR submitted that the issue raised in this appeal stands covered in favour of the assessee by the decision of Hon'ble Apex Court in the case of Woodward Governor India P Ltd (2009) 312 ITR 254, ONGC Limited (322 ITR 180(SC), Special Bench of the Tribunal in the case of Bank of Baharain and Kuwait (41 SOT 29) Mum (SB) and also by the following decisions:

- a) Osia Diamonds(Gems) - 2163/M/2013
- b) Venus Jewels - 7328/7329/Mum/2013;
- c) Raj Gems -ITA No.4486/M/2012;
- d) D Chetan & Co. ITA No.4456/M/2012 ;
- e) Sutariaya Gems Private Limited -ITA No. 3361/M/2013;
- f) Munjani Bras. ITA No.7628/M/2011;
- g) Munjani Bras -ITA No.6065/M/2012;
- h) Gandhi Enterprises -ITA No.4485/M/2012
- i) Societe Generale ITA No. 3597, 3595, 8198/M/2005;
- j) Bhavani Gems - ITA No.2855/M/2010;
- k) H Dipak & Co. -ITA No.7629/M/2011;
- l) Kumbh Gems - ITA No.6600/M/2012;
- m) S Rajiv & Co. -ITA No.7095/M/2012;
- n) H Sherul & Co. - ITA No.4481/Mum/2012;

- o) S Jogani Exports Private Limited; and
- p) Inter Jewels Private Limited - AY 2008/09 (Copy enclosed)

The Id.AR submitted that the order passed by the Id. FAA was totally based on correct appreciation of facts and as per the judicial decisions by the various court of law. The Id. AR finally submitted that since these losses incurred during the ordinary course of business on the forward contract the assessee suffered these losses on fluctuation in foreign exchange and therefore rightly accounted at the close of the year. The Id. AR finally prayed that in view of the various decisions, the appeal of the revenue be dismissed with costs.

7. We have carefully considered the submissions of the parties, perused the material placed before us including the orders of authorities below and case laws relied upon by the parties. We find that the assessee is a importer, manufacturer and exporter of diamonds and studded jewellery and has being regularly entered into various transactions of import and export in connection therewith. The assessee has entered into various foreign exchange forward contracts which span more than a year and during the assessee suffered of Rs.45,99,612/- as loss on the basis of foreign exchange rate at the end of year which in our opinion admissible in view of the ratio laid down in the case of Woodward Governor India P Ltd (supra) and various other decisions. Accordingly, we uphold the order passed by the Id.CIT(A) by dismissing the appeal of the revenue.

8. In the result the appeal of the revenue is dismissed.

The above order was pronounced in the open court on 29th July, 2016.

घोषणा खुले न्यायालय में दिनांक: 29th July, 2016 को की गई ।

Sd

(JOGINDER SINGH)
Judicial Member

sd

(RAJESH KUMAR)
Accountant Member

मुंबई Mumbai: 29th July, 2016.

व.नि.स./ SRL , Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned
4. आयकर आयुक्त / CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai concerned
6. गार्ड फाईल / Guard file.

True copy

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai