



IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

ITA no.1744/Mum./2014
(Assessment Year : 2009-10)

Asstt. Commissioner of Income Tax
Circle-16(3), Matru Mandir
Tardeo Road, Mumbai 400 007

..... Appellant

v/s

M/s. Ratnadeep Impex
810, Prasad Chambers
Opera House, Mumbai 400 004
PAN - AAEFR6683C

..... Respondent

Revenue by : Shri Pradeep Kumar Singh
Assessee by : Shri Aarti Vissanji

Date of Hearing - 05.05.2016

Date of Order - 20.05.2016

ORDER

PER SAKTIJIT DEY, J.M.

Instant appeal of the Department is directed against the order dated 5th December 2013, passed learned Commissioner (Appeals)-28, Mumbai, pertaining to assessment year 2009-10.

2. As could be seen from the ground raised, the Department is aggrieved with the decision of the learned Commissioner (Appeals) in allowing assessee's claim of mark to market loss of ₹ 2,88,07,401.

3. Brief facts are, the assessee a partnership firm is engaged in the business of export of diamonds. For the assessment year under consideration, assessee filed its return of income on 29th September 2009, declaring total loss of ₹ 4,07,15,499. In the course of assessment proceedings, the Assessing Officer on verifying the accounts of the assessee has debited an amount of ₹ 2,88,07,401, towards loss on account of foreign exchange forward contract. The Assessing Officer, therefore, called upon the assessee to justify the claim of loss by observing that the loss being a notional loss on valuation of a liability which has not been crystallized cannot be allowed. In response to the query raised by the Assessing Officer, it was submitted by the assessee that as per the Accounting Standard-11 of ICAI, the assessee has to account for the loss since there is a contractual liability on the part of the assessee with the banks to buy / sell US dollar at a future date beyond 31st March 2009 and its magnitudes needs to be estimated with reasonable certainty on the date of drawing the Balance Sheet on 31st March 2009. It was, therefore, stated that the loss claimed not being a notional loss has to be allowed. In support of such contention, assessee relied upon the decision of the Tribunal in DCIT v/s Bank of Bahrain & Kuwait, ITA no.4404 and 1883/Mum./2004, and the decision of the CIT v/s Woodward Governor (India) P. Ltd., [2009] 312 ITR 354 (SC), the

Assessing Officer after considering the submissions of the assessee, however, was not convinced with the same. Deliberating upon the nature of forward contract and consequential gain / loss for outstanding foreign exchange, the Assessing Officer finally concluded that the claim of loss being notional one on a contingent liability cannot be allowed. Being aggrieved of such disallowance of loss, assessee preferred appeal before the learned Commissioner (Appeals).

4. The learned Commissioner (Appeals) after considering the submissions of the assessee and examining the nature of forward contract found that these contracts have a maturity profile which coincides with expected dates of foreign currency receivables or payables and quantum involved in such foreign contracts do not exceed the quantum of exposure to foreign currency receivables / payables. He also found that the assessee had been consistently following a method of accounting wherein the year end re-statement or mark to market gain or loss in respect of all assets and liabilities, including forward contract of foreign currency are recognised as profit or loss in Profit & Loss account, along with the exchange difference of exports, exchange difference in imports and exchange difference on borrowings in foreign currency. He also observed that no disallowance has been made to any of these accounting entries except the loss of outstanding foreign exchange forward contract amounting to ₹ 2.88

crore. He also found that the loss recognised during the year has been reversed in the subsequent year after allowing the forward contracts to mature on the given date at the booked rate, hence, there is no undue advantage to the assessee. The learned Commissioner (Appeals) noting that the assessee is in the business of export wherein there would always be certain receivables in foreign exchange during the year observed that the assessee is consistently exposed to the risk arising out of fluctuation in foreign exchange rate and such risk is integral to assessee's business. According to the learned Commissioner (Appeals), what is required to be seen is whether the risk which the assessee has hedged by way of a forward contract has an underlying asset or a liability by way of debtors and creditors. He observed, when a legally tenable contract is in existence, duly supported by an underlying asset and the contract having been entered during the course of business and further the exchange rate as on date of entering contract and as at the year end being ascertainable, due effect of the contract at the year end has to be considered while assessing assessee's income. The learned Commissioner (Appeals) thereafter relying upon the decision of the Hon'ble Supreme Court in *Woodward Governor (India) P. Ltd. (supra)* and the decision of the Tribunal, Mumbai Special Bench, in *Bank of Bahrain & Kuwait (supra)*, held that the loss on forward foreign exchange contract is allowable.

He also referred to two other decisions of the Tribunal, Mumbai Bench in *M/s. Bhawani Gems v/s ACIT*, ITA no.2855/Mum./2010 dated 30th March 2011 and *H. Deepak & Co.*, ITA no.7629/Mum./2011 dated 30th April 2013. Being aggrieved, Department is in appeal before us.

5. Learned Departmental Representative supporting the reasoning of the Assessing Officer submitted, the liability of the assessee being contingent in nature the loss on such liability is notional, hence, the learned Commissioner (Appeals) was not justified in allowing assessee's claim. In support of such contention, the learned Authorised Representative relied upon the decision of the Tribunal, Mumbai Bench, in *S. Vinod Kumar Diamonds Pvt. Ltd.*, ITA no.506/Mum./2013 dated 3rd May 2013.

6. Learned Authorised Representative on the other hand, strongly supporting the view expressed by the first appellate authority submitted, the issue is otherwise covered by the decision of the Tribunal, Mumbai Bench, in assessee's own case for the assessment year 2007-08, wherein under identical facts and circumstances, the Tribunal allowed assessee's claim of loss on foreign exchange forward contract. As far as the decision of *S. Vinod Kumar Diamonds Pvt. Ltd.* (supra), relied upon the Department, learned Authorised Representative submitted, the said decision is not applicable as held

by the Tribunal, Mumbai Bench, in a number of cases. In this context, she relied upon the following decisions:-

- i) ACIT v/s M/s. Venus Jewel, ITA no.7328 & 7329/Mum./2013 and others, dated 31st July 2015
- ii) M/s. S. Jogani Exports Pvt. Ltd. v/s ACIT, ITA no.7012/Mum./2012, dated 26th February 2016;
- iii) ACIT v/s Navin Mehta & Co., ITA no.3729/Mum./2013, order dated 7th April 2016;
- iv) ACIT v/s M/s. Vishinda Diamonds, ITA no.7330/Mum./2013 dated 20th January 2016.

7. We have considered the submissions of the parties and perused the material available on record in the light of the decisions referred to by both the parties. The fact that the assessee is an exporter of diamond and the forward contracts have been entered into with the banks in respect of import and export made by the assessee in the regular course of business has not been disputed by the Assessing Officer. The Assessing Officer has disallowed assessee's claim of loss only for the reason that the liability arising out of such contract is not ascertained, hence, the loss is a notional one. In our view the reasoning of the Assessing Officer is not acceptable. As rightly held by the learned Commissioner (Appeals), applying the ratio laid down in Bank of Bank of Bahrain & Kuwait (supra) and Woodward Governor (India) P. Ltd. (supra), mark to market loss has to be allowed if the assessee has entered into forward exchange contract in respect of

import / export. There is no allegation by the department that any of forward foreign exchange contract was cancelled before the date of maturity. In fact, in assessee's own case for the assessment year 2007-08, the co-ordinate bench of the Tribunal while deciding the issue in ITA no.4861/Mum./2011 dated 19th April 2014, has allowed assessee's claim of loss on foreign exchange forward contract entered into with the Banks in the regular course of business. The Department has not brought to our notice any material difference in facts to take a contrary view in the impugned assessment year. Moreover, the reasoning of the learned Commissioner (Appeals) while allowing the appeal being on the basis of sound principle supported by the ratio laid down in judicial precedents referred to by him, we do not see any reason to interfere with the same. Accordingly, upholding the order of the learned Commissioner (Appeals), we dismiss the ground raised by the Department.

8. In the result, appeal is dismissed.

Order pronounced in the open Court on 20.05.2016

Sd/-
RAJESH KUMAR
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 20.05.2016

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Dy./Asstt. Registrar)
ITAT, Mumbai