

IN THE HIGH COURT OF DELHI AT NEW DELHI 19-08-2009

Present: Mr.Jagdish Rai Goel for the appellant.

Mr. P. Roychaudhary for the respondent.

ITA No.1425/2006

DHARAM PAL ARORA

The assessee is a member of Delhi Stock Exchanges Association and deals in sale/purchase of shares. He also has investment in shares. During the assessment year 1992-93 relevant to the previous financial year the assessee had claimed rate difference due to clearing rates fixed in specified shares for Rs.1,16,03,338. It was the case of the assessee that in this year he had done 24 clearing transactions. Details thereof were provided. He had mentioned that these were the hedging transaction as a trader and as an investor. Under these hedging transactions the assessee has shown profits of Rs.77,70,706/- and hedging loss of Rs.1,93,74,706/-. After setting off the hedging profit against hedging loss, the net heading loss of Rs.1,16,03,338/- was claimed by the assessee. The Assessing Officer, inter alia, noted that on the last date of business in the Stock Exchange in the said financial year, i.e., 27.3.1992 maximum loss was suffered which was to the tune of Rs.14,09,394/-. According to the Assessing Officer, the assessee could not explain the basis of loss and could not establish as to how these losses were suffered at the end of the year.

The Assessing Officer further observed that the assessee was asked to explain as to how he had claimed such heavy loss from hedging profit at the end of the year and to give documentary proof in support of his contention, which, according to the Assessing Officer, was not satisfactorily explained. In these circumstances, out of Rs.1,16,03,338/- claimed by the assessee as hedging loss, the Assessing Officer disallowed the amount of Rs.14,09,394/- treating the same as speculative loss and not as hedging loss. For this purpose the Assessing Officer referred to Proviso (b) to Section 43(5) of the Income-Tax Act.

Relevant portion of the assessment order as passed by the Assessing Officer, in this behalf, is as under:-

According to section 43(5) proviso (b), a contract in respect of stock and shares entered into by a dealer or investor therein to guard against loss in his holding of stock and shares through price fluctuations, shall not be deemed

to be speculative transaction. Looking to the nature of transactions done by the assessee, the assessee has already suffered maximum loss throughout the year, and he could not explain why he suffered further loss at the end of the year. In my opinion, whatever transactions done on 27.3.92 were not hedging transactions, as the assessee could not guard the loss in this year. Since the assessee has suffered further loss in addition to earlier losses during the year, the transactions done on 27.3.92 are nothing but speculative transactions, and the loss claimed in these transactions, is also speculative loss. Hence, this loss being speculation loss is not allowable against the other incomes of the assessee as per provisions of section 72(1) of the Income-tax Act, 1961 and added to the income of the assessee.

In the appeal preferred by the assessee before the CIT (A), the Appellate Authority reversed the aforesaid order of the Assessing Officer and deleted the amount of Rs.14,09,394/- in the following manner:-

I have examined the contentions of the assessee's AR. The AO has made disallowance without correctly appreciating the provisions of Section 43(5) proviso (b) of the IT Act which clearly lays down that a contract in respect of stock and shares entered into by a dealer or investor to guard against loss in his holding of stock and shares through price fluctuation shall not be deemed to be a speculative transaction. The assessee is a dealer/investor in shares and stocks and loss incurred in hedging transaction is outside the purview of speculation has held by the Gujarat High Court in the case of CIT Vs. Mohanlal Ramchhoddas reported in 203 ITR 304. Besides, the AO treated the transactions done on 27.3.92 as no hedging transaction on the basis of his opinion and not on any supporting material. Besides the method of accounting adopted by the assessee has been accepted by the department for more than 30 years no such disallowance was made in earlier and subsequent years. In view of the above, the disallowance made by the AO is deleted. Relief of Rs.14,09,394/-.

This order has been upheld by the Income-Tax Appellate Tribunal. After hearing the counsel for the parties at length we are of the opinion that no question of law arises in this case. As is clear from the extracted portion of the order of the Assessing Officer, according to the Assessing Officer since the assessee had also suffered loss throughout the year, he should not have done transactions on 27.3.92 and on this basis the Assessing Officer opined that it was not a hedging transaction but speculative transaction. It is rightly pointed out by the CIT(A) that this was mere opinion of the Assessing Officer not supported by any material. May be, the act on the part of the assessee in entering into the aforesaid transaction on 27.3.92 was not a wise one. However, that could not be a ground for treating the transaction as

speculative transaction. It is relevant to note in this behalf that the Assessing Officer has accepted the figure of loss. It is nowhere stated that total loss of Rs.1,16,03,338/- was not suffered during this period. Therefore, the genuineness of the transaction is not disputed. In these circumstances, merely because according to the Assessing Officer the transaction done on 27.3.92 was not an act of prudence on the part of the assessee, could not be a ground to treat the loss as speculative loss. This appeal is accordingly dismissed.

A.K. SIKRI, J

VALMIKI J. MEHTA, J

August 19, 2009