

Dharam Pal Arora: Hedging Loss not Speculative Section 43(5): Assessee's Business Prudence Not Substitutable by AO:

“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.”