

IN THE HIGH COURT OF DELHI AT New Delhi

ITA 1120/2008

CIT (Appellant - Through: Ms Prem Lata Bansal, Ms Anshul Sharma,
Mr Mohan Prasad Gupta and Mr Sanjeev Rajpal, Advocates)

Versus

SAMTEL INDIA LTD. (Respondent - Through: Mr Ajay Vohra, Ms Kavita Jha
and Mr Sriram Krishna, Advocates)

HON'BLE	MR	JUSTICE	VIKRAMAJIT	SEN
HON'BLE	MR	JUSTICE	RAJIV	SHAKDHER

ORDER
21.05.2009

In this case the Assessing Officer had made an addition by treating the loss suffered on foreign exchange forward contract as a capital loss. The assessee being aggrieved filed an appeal before the Commissioner of Income Tax (Appeals) [in short CIT (A)].

The CIT (A) while directing the Assessing Officer to allow the claim of the assessee as a revenue loss observed that if the loss is in respect of import of capital goods it will be in the capital field and if it is in respect of import of raw materials, it will be in the revenue field.

Furthermore, the CIT (A) observed that in the immediate proceedings the assessee had offered a sum of Rs 12.27 lacs as taxation on the ground that it had earned a profit on a similar contract for import of raw material. Being aggrieved the Revenue preferred an appeal before the Income Tax Appellate Tribunal (in short the Tribunal). The Tribunal correctly observed that provision of Section 43A of the Income Tax Act, 1961 (in short the Act) would not be applicable because the loss was incurred by the assessee in respect of import of raw materials, components and spare parts. The Tribunal also noted the fact that in respect of a similar contract for the earlier year the assessee had offered the profit earned as a tax. In view of this the Tribunal sustained the order of CIT (A) on this issue.

We had by an order dated 18.02.2009 directed the counsel for the Revenue Ms. Prem Lata Bansal to confirm whether in the earlier year profit on the similar contract for import of raw materials had been offered for tax. She confirmed the position as being correct.

In our opinion, in view of this finding of fact returned by the Tribunal that the loss had been incurred by the assessee on account of import of raw materials, components and spare-parts and also that the profit in the sum of Rs 12.27 lacs in an earlier year similar contract for import of raw materials had been offered for tax as rightly held by the CIT (A) and the Tribunal, the provisions of Section 43A of the Act would not be applicable.

No substantial question of law arises for our consideration. The appeal is dismissed.

VIKRAMAJIT SEN, J

RAJIV SHAKDHER, J

MAY 21, 2009