THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

I.T.T.A.No.395 of 2017

ORDER: (per SK,J)

This appeal by the Revenue under Section 260A of the Income-tax Act, 1961 in relation to the assessment year 2009-10 seeks to raise the following substantial questions of law:

(i) In the facts and circumstances of the case, whether the Tribunal (ITAT) is correct in law in holding in respect of stock in which the respondent-assessee traded can be characterized as non-speculative, particularly when the respondent-assessee did not discharge its obligated onus to establish any unfailing nexus between its underlying export business and forward contracts for the period under consideration?

(ii) In the facts and circumstances of the case, whether the Tribunal (ITAT) is justified in law in treating the loss declared on forward contracts and pre-closure of forward contracts transacted with the Nationalised Bank as speculative despite such treatment was against the spirit of CBDT Circular No.3 of 2010 dated 23.03.2010 which stipulates that the transactions made through registered Stock Exchanges only be treated as non-speculative?

(iii) In the facts and circumstances of the case, whether the Tribunal (ITAT) is justified in law in granting relief to the respondent-assessee on the grounds of commercial expediency, though the transactions fall within the definition of speculative nature as per the provisions of Section 43(5) of the Income-tax Act, 1961?

However, perusal of the record reflects that in the appeal filed by the assessee, the Commissioner of Income Tax (Appeals), Guntur, found upon verification of the bank statements of the assessee that the losses had crystallised and that the finding of the Assessing Officer in this regard could not be accepted. The foreseeable losses were entered by the assessee keeping in mind the currency fluctuations and commercial expediency and the bank statement of the assessee detailed the actual losses incurred, in fact, on each contract. The Commissioner therefore held that the said losses had crystallised on closure/cancellation of the contracts and the same could not be treated as notional losses which may arise. This finding of the Commissioner was confirmed by the Income Tax Appellate Tribunal, Visakhapatnam Bench, Visakhapatnam, in I.T.A.No.487/Vizag/2012 filed by the Revenue.

Perusal of the order dated 07.10.2016 passed in the said appeal reflects that the Tribunal, being the final fact finding authority, affirmed the finding of the Commissioner that the losses incurred by the assessee on account of cancellation/renewal of foreign exchange contracts had crystallised and were debited to the assessee's bank account. The said losses were therefore held to be business losses and the additions made by the Assessing Officer holding them to be otherwise were accordingly deleted.

This being the factual situation, we are of the opinion that the finding of the Assessing Officer, without having the benefit of the bank statements of the assessee, cannot be sustained once such bank accounts were made available to the appellate authorities and perusal thereof confirmed the losses claimed by the assessee. We therefore find no ground to interfere with the order under appeal.

No question of law, much less a substantial one, arises for consideration in this appeal. It is accordingly dismissed. No order as to costs.

____
JUSTICE SANJAY KUMAR

____
JUSTICE GUDISEVA SHYAM PRASAD

Date:10.07.2017

GJ