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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 1140/2017

THE PR. COMMISSIONER OF INCOME TAX-6 ..... Appellant

versus

MATRIX CLOTHING PVT. LTD. ..... Respondent

ITA 1141/2017 & CM APPL. 45220/2017

THE PR. COMMISSIONER OF INCOME TAX-6 ..... Appellant

versus

MATRIX CLOTHING PVT. LTD. ..... Respondent

<u>Present</u>: Mr. Ruchir Bhatia, Sr.Standing counsel for the Appellant.
Mr. Salil Aggarwal with Mr.Madhur Aggarwal and Mr.Uma Shankar, Advs. for the respondent.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

<u>O R D E R</u>

% **12.03.2018**

The revenue appeals the concurrent findings of fact and urges that the ITAT fell into error in not holding that the foreign exchange loss reported by the assessee, was essentially a speculative transaction, hit by Section 43(5).

The assessee is an exporter and had for safeguarding its interest entered into hedging transactions for six months to one year with authorised foreign exchange dealers/banks. It claimed loss of ₹8,22,38,674/- on account of fluctuations for AY 2009-2010. The AO brought that amount to tax, on the ground that the assessee had received amounts in the normal course of its business at the agreed contractual rates, from the foreign purchasers and that consequently the loss was purely speculative. This reasoning was overturned by the CIT(A), who inter-alia followed several decisions of the Tribunal, including the impact of amended Section 43(5) and a circular i.e. Instruction No.3/2010 issued by the CBDT. On the basis of such reasoning, the assessee's appeal was allowed. The ITAT confirmed the CIT(A)'s order holding as follows:-

> *10. Having gone through the above cited decisions, we find that it has been unanimously held therein that forward contracts transactions when entered into with the banks for hedging the losses due to foreign exchange fluctuation on the export proceeds, are to be considered integral or incidental to the export activity of the assessee. Therefore, the losses or gains constitute the business loss or gains and not the speculation activities. The Hon'ble Supreme Court in the case of CIT Vs. Woodward Governor India (P)Ltd. (2009) 312 ITR 254 (SC) has also been pleased to hold that loss suffered by assessee on account of foreign exchange difference as on the date of balance sheet is an item of expenditure under section 37(1) of the Act. In view of unrebutted explanation made by the assessee and the decisions relied upon, in our view, the ld. CIT (Appeals) has rightly come to the conclusion that*

> *any loss out of such business necessities for taking a hedging contract in forex transaction to guard the currency risk due to fluctuation in the foreign currency, of an exporter, cannot be held as speculation loss and has to be considered as business loss. In the process of hedging, instead of loss, if the assessee earns income, then same is not exempted from tax as per the above decision of the Hon'ble Supreme Court in the case of CIT Vs. Woodward Governor India (P) Ltd. (supra). The action of the ld. CIT (Appeals) in accepting the explanation of the assessee and in deleting the disallowance in question made by the Assessing Officer thus cannot be held unjustified. The first appellate order in this regard is comprehensive and reasoned one as well as supported by the above cited decision, We thus, are not inclined to interfere therewith. The same is upheld. The ground No. 3 of the appeal for the assessment year 2009-10 and ground No. 2 of the appeal for the assessment year 2010-11 are rejected."*

This Court is of the opinion that the findings of fact by the CIT(A) and the ITAT are concurrent and based upon sound reasons. Both the appellate authorities have relied upon *CIT Vs. Woodward Governor India (P) Ltd.* (2009) 312 ITR 254 (SC). The hedging transaction was necessary for the assessee to protect itself from currency fluctuation risks it was inevitably exposed in the case of export trade. The assessee had reported identical transactions in the past which were accepted by the Revenue. For these reasons, the Court holds that no substantial question of law arises.

The other two questions of law with respect to advance of interest free loans to a related party, the findings of fact again are that the lending was on the basis of commercial expediency. The last question was with respect to non deduction of TDS on account of export commission. The findings of fact are that the foreign entity receiving the amounts were not Indian residents and subject to tax and that the services rendered were rendered outside India.

In ITA 1141/2017 only two questions arise i.e foreign exchange loss (which is covered by the order in ITA 1140/2017) and interest free loans to related parties for which again the findings are concurrent and the order for the previous year covers the issue.

No substantial question of law arises in these appeals. They are accordingly dismissed. All the pending applications also stand disposed of.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

MARCH 12, 2018

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