

INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No.1209/AHD/2017 (AY 2012-13)
(Hearing in Virtual Court)

The Dy. CIT, Circle-1(1)(2), Room No. 114, 1 st Floor, Aayakar Bhavan, Majuragate, Surat-395001.	Vs	M/s Garden Silk Mills Ltd. Tulsi Krupa Araade, Near Aai Mata Chowk, Surat – 395010. PAN : AAACG8932C
Assessee/ Appellant		Revenue/Respondent

Assessee by	Sh. Manish J.Shah –Advocate
Revenue by	Sh. O.P.Vaishnav – CIT-DR
Date of hearing	11.05.2021
Date of pronouncement	18.06.2021

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by Revenue is directed against the order of learned Commissioner of Income Tax (Appeals)-1, hereinafter referred as “ld. CIT(A)” Surat dated 27.02.2017 for the assessment year (AY) 2012-13. The Revenue has raised the following grounds of appeal:

1. On the facts and circumstances of the case and in law, whether the Ld. CIT(A) was justified in deleting the addition made on account of gains from cancellation of forward contract without appreciating the fact that the so-called asset could not be created not any foreign exchange loan was taken by the assessee for such assets. Therefore, the Assessing Officer has correctly treated the same as revenue receipt.

2. On the facts and circumstances of the facts and in law, whether the Ld. CIT(A) was justified in deleting the addition without appreciating the fact that reason/basis for which forward contract was undertaken remained unfulfilled; that rendered the whole transaction an adventure on the part of the assessee and therefore, gains from such transaction were treated rightly as revenue receipt by the Assessing Officer.

3. On the facts and circumstances of the case, the Ld. CIT(A) ought to have upheld the order of the assessing officer.

2. Brief facts of the case as gathered from the order of lower authorities are that assessee is a company engaged in manufacturing of polyester chips, yarn, and other fabrics. The assessee filed its return of income declaring loss of Rs. 185 Crores. The assessee thereafter filed revised return declaring loss of Rs. 186 Crores on 31.03.2014. The case was selected for scrutiny. The Assessing Officer (AO) while passing the assessment order on 31.03.2015 under section 143(3) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'], besides other additions treated the gain of foreign exchange fluctuation of Rs. 3.22 crore as 'revenue receipt' in place of 'capital receipt' as declared by the assessee. On appeal before the ld. CIT(A), the treatment of gain on foreign exchange fluctuation as 'revenue receipt' was reversed to 'capital receipt'. The ld. CIT(A) while reversing the treatment relied upon the decision of Hon'ble jurisdictional High Court in assessee's own case PCIT vs. Garden Silk Mills Ltd. reported vide 320 ITR 720. The ld. CIT(A) further held that the borrowing of the assessee on which the assessee made

hatching contract was for the purpose of importing capital asset and that surplus earned upon cancellation of such contract will partake the character of capital receipt. Thus, aggrieved by the order of ld. CIT(A), the Revenue has filed the present appeal before this Tribunal.

3. We have heard submission of Sh. O.P. Vaishnav learned Commissioner of Income –tax- departmental representative (ld. CIT-DR) for Revenue and Sh. Manish J Shah learned Counsel for the assessee. The ld. CIT-DR for Revenue supported the order of Assessing Officer (AO). The ld. CIT-DR for the revenue supported the order of the assessing officer. The ld. CIT-DR for the revenue further submits that the assessee before assessing officer relied on the order in its own in PCIT vs. Garden Silk Mills Ltd (supra), observation in the said case are mere obiter. The forward contract was nothing but a right to make available foreign exchange at a particular rate irrespective of exchange rate at that point of time. Therefore, such right cannot be imparted with character of capital asset. Thus, the ld. CIT-DR submits that he is supporting the view taken by AO.
4. On the other hand, ld. AR of the assessee submits that the assessee during the assessment clearly explained that the assessee entered into contract covered the foreign exchange component on the loan availed for acquiring the asset. The assessee explained before the AO as well as before the ld.

CIT(A) that due to adverse market situation, the assessee-company postponed the said project and on cancellation of such forward contract, the assessee earned gain of Rs. 3.22 crore, which was treated as capital asset. In support of its contention, the assessee relied upon various decisions as recorded by AO as well as by Id. CIT(A) in their respective orders. The AO not followed the binding decision of jurisdictional High Court in assessee's own case PCIT vs. Garden Silk Mills Ltd. (supra), by taking altogether different view, that the said order was passed by High Court in an appeal against the order under section 263 of the Act, and that the question before the High Court was whether the Id. CIT(A) passed a reasonable or sustainable order or not. The Id. AR for the assessee vehemently submitted that the assessee in order to expand its manufacturing capacity plan to purchase three capital asset, consisting of following machineries;

Sr.No.	Particulars
1	Metalizers Topmet 2850 Hires
2	Slitters
3	Bopet Projects

5. The assessee decided to import the machinery and equipment against the foreign currency loan. In order to ensure and guard against the fluctuation in foreign currency, the assessee decided to enter into forward contract. However, due to certain adverse market environment and other limiting factors, the assessee decided to keep the expansion on hold and decided that

forward exchange contract so made to be cancelled. On cancellation of such forward contract exchange contract, the assessee gained Rs. 3.22 Crore. The said gain is in the nature of capital receipt as the forward contract was made in furtherance of acquisition of capital asset. The ld. AR for the assessee submit that the issue raised by Revenue is squarely covered by the decision of jurisdictional High Court in assessee's own case for AY 1993-94 in PCIT vs. Garden Silk Mills Ltd.(supra). The ld. CIT(A) after considering the factual position appreciated the fact that intended loan have been raised for the purpose of acquisition of plant & machinery and gain so earned on fluctuation of exchange rate was on capital account. The learned Counsel for the assessee prayed for dismissal of the appeal.

6. We have considered the rival contention of both the parties and perused the order of lower authorities. We have also deliberated on the case law relied by learned Counsel for the assessee and referred by assessing officer. We find that during the assessment the assessing officer noted that in Explanatory Note to the computation of income the assessee has shown gain of Rs. 3.22 Crore on cancellation of forward exchange contract. The assessing officer issued show cause notice as to why such gain should not be treated as revenue receipt. The assessee in its reply explained that assessee-company as a part of capital expenditure plan decided to put new

project/new machinery and equipments were required to be imparted from abroad in foreign currency. It was explained that to guard the forward in rate of foreign currency, the assessee had entered in contract covering foreign exchange component. However, due to adverse market situation, the assessee postponed the said project and on cancellation of such foreign forward contract, the assessee earned gain of Rs. 3.22 crore. The reply of the assessee was not accepted by the assessing officer. The assessing officer held that forward contract was nothing but a right to make available foreign exchange at a particular rate irrespective of exchange rate at that point of time. The assessing officer further held that gain so earned cannot be treated in a character of capital asset because the assessee could use it for capital asset, raw material, or even just for making profit as evident in this case. The case law relied by the assessee in its own case for AY 1993-94 was not accepted by taking view that it was relating to the order under section 263 and was on different footings. We find that the assessing officer has not disputed the fact that the assessee in order to expand its manufacturing capacity plan to purchase three capital asset and the forward contract was executed to safe guard the risk of foreign exchange fluctuation on the loan raised for the purpose of acquisition of said capital asset.

7. Before Id. CIT(A) filed detailed written submissions as recorded in para -7 of his order. The assessee explained the facts in the similar manner as explained by Id. Counsel for assessee before us. The Id. CIT(A) after considering the facts on the issue held that the assessee company is engaged in manufacturing of polyester chips, yarn, and other fabrics and is not in a banking business. The assessee also not engaged in the business of foreign exchange nor trading in machineries sought to be imported. The assessee intended to expend its capital expansion and planned to purchase certain machineries and accordingly decided to import such machineries from abroad against foreign currency loan. Further, in order to safe guard its interest against the fluctuation in foreign currency entered into forward contract. The Id CIT(A) after relying on the decision of Hon'ble Supreme Court in *Sutlej Cotton Mills Vs CIT* (116 ITR 1 SC) held that if the amount in foreign currency was a trading asset then foreign exchange fluctuation would be a revenue expenses, but if held as capital account, the loss would be a capital loss. The Id CIT(A) also held that the decision in assessee's own case for AY 1993-94 is also squarely applicable on this issue for the year under consideration.
8. Further, we find that the Hon'ble Jurisdictional High Court in assessee's own case for AY 1993-94, while considering the merit of the case clearly

held that if the foreign exchange was acquired under the contract for the purpose of discharging an obligation on capital account viz, toward borrowing for the purpose of import of capital asset, which would indicate that the surplus realised on cancellation of such contract would bear the same character. After factual considering of the issue we are of the view that intended loan have been raised for the purpose of acquisition of plant & machinery and gain so earned on fluctuation of foreign exchange rate was on capital account. Thus, the gain so earned would partake the character of capital asset. Thus, in view of the above discussion, we do not find any infirmity in the order of Id. CIT(A) which we affirm. No contrary facts or law is brought to our notice to take other view.

9. In the result, appeal of Revenue is dismissed.

Order announced on June, 2021 by placing result on notice board.

Sd/-

(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Surat, Dated:18/06/2021 /SK, PS

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

Copy to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

Assistant Registrar, ITAT, Surat