

Deep Industries Ltd., 12A & 14, Abhishree Corporate Park, Ambli Bopal Road, Ambli, Ahmedabad-380058. PAN: AAACD6915E	Vs.	D.C.I.T, Circle-1(1)(2), Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by :	Shri Sakar Sharma, A.R
Revenue by :	Shri Virendra Singh, Sr.D.R

सुनवाई कतारख/Date of Hearing : 03/12/2020

घोषणा कतारख /Date of Pronouncement: 04/01/2021

आदेश / O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals)-1, Ahmedabad, dated 18/10/2017 arising in the matter of assessment order dated 21/12/2016 passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2014-2015.

2. The only issue raised by the assessee is that the learned CIT(A) erred in confirming the addition made by the AO for ₹ 64,16,539/- under section 37(1) of the Act in respect of forward contract premium expenses.

3. Briefly stated facts are that the assessee in the present case is a limited company and engaged in the business of gas & air compression activities. The assessee in the year under consideration has incurred an expense of ₹ 64,16,539.00 on the forward contracts to hedge the instalments of two foreign currency loan in order to avoid any loss on account of foreign currency fluctuation. It was contended that the foreign currency loans were obtained by the assessee to acquire equipment which were used for the purpose of the business.

3.1 However, the AO during the assessment proceedings found that

- i. The premium amount of forward contract does not represent foreign exchange fluctuation loss but it is in the nature of the premium paid to secure the foreign currency loss which may arise at the time of repayment of instalment of such loan. As such the amount of repayment represents the principal amount of the loan and not the interest cost on such borrowing.
- ii. Furthermore, the foreign currency loan obtained by the assessee was utilized for meeting the capital expenditure.
- iii. The accounting standards issued by the ICAI, AS-11 The Effects of Changes in Foreign Exchange Rates, may be relevant and mandatory for maintaining the books of accounts under the Companies Act. But the same is not relevant while computing the income for the purpose of the taxes.

3.2 In view of the above the AO was of the view that such amount of premium paid by the assessee to secure the amount of instalment, representing the principal amount, of the foreign currency loan cannot be allowed as deduction. Thus the AO disallowed the same and added to the total income of the assessee.

4. Aggrieved assessee preferred an appeal to the learned CIT (A).

4.1 The assessee before the learned CIT (A) submitted that it has been incurring the expenses on the forward contracts for securing the foreign currency transaction consistently as per the accounting policy.

5. However the learned CIT (A) rejected the contention of the assessee and confirmed the order of the AO after having reliance on the order of Bangalore tribunal in the case of Archidply Industrial Ltd. Vs DCIT in ITA No. 1079/Bang/2011 vide order dated 17-7-2012.

6. Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before us.

7. The learned AR before us filed a paper book running from pages 1 to 49 and submitted that the provisions of section 43A of the Act does not apply premium paid by the assessee to secure the payment of the liability in foreign currency on account of exchange fluctuation.

7.1 The learned AR further submitted that the similar claim was allowed by the revenue in the own case of the assessee in the earlier assessment years.

8. On the other hand the Id. DR vehemently supported the order of the authorities below.

9. We have heard the rival contentions of both the parties and perused the materials on record. The provisions of section 43A of the Act deals with the adjustment of the fluctuation in the liability of foreign currency pertaining to the capital assets acquired from outside India. This adjustment on account of change in the rate of exchange is made with respect to the amount/liability actually paid during the year by adding/deducting in the actual cost of imported assets acquired in foreign currency. This adjustment in the liability of foreign currency may result loss or gain to the assessee but the same needs to be adjusted with the capital assets as per the provisions of section 43A of the Act. In other words, such loss arising to the assessee, is not deductible in the profit & loss account.

9.1 Proceedings further, we find that the assessee in the present case has secured such loss with respect to the liability in foreign currency which may arise at the time of payment by way of taking of forward contract. The assessee to secure the loss on account of foreign currency fluctuation has taken a forward contract and for which it has paid the premium which was claimed as revenue expenditure. Now the question arises whether such premium paid by the assessee to secure the fluctuation in the foreign currency is subject matter of the provisions of section 43A of the Act. In our considered view the provisions of section 43A of the Act deals with the loss/gain with respect to the liability in foreign currency for the assets acquired from a country outside India. In other words, it does not deal with respect to the cost incurred by the assessee to secure the loss which may arise at the time of repayment on account of fluctuation in the exchange rate with respect to foreign currency liability which was recorded in the books of the assessee in Indian currency. Thus once the provisions of section 43A of the Act are not applicable on the deduction claimed by the assessee in the given facts and circumstances, there cannot be any disallowance by invoking the provisions of section 43A of the Act.

9.2 It is a very common practice to take the insurance policies for the business assets by the business organization to provide safety/safeguard from any unseen loss. Such insurance policies are taken for various purposes such as to ensure the

assets, staff of the assessee etc which does not result any fixed assets coming into existence. Furthermore such insurance policies are taken in the course and for the purpose of the business which are accordingly allowable as deduction under section 37(1) of the Act. Now coming to the case on hand, the assessee incurred the cost to secure the foreign currency liability against the exchange fluctuation is akin to insurance policies. Therefore we are of the view that such expenses incurred by the assessee in the course of business are allowable as deduction under section 37(1) of the Act.

9.2 We also note that the assessee has claimed similar expenses in the earlier years which was allowed by the Revenue. Accordingly, we are of the view that the assessee is also entitled for its claim based on the principle of consistency.

9.3 Accordingly, we are not impressed the finding of the authorities below. Furthermore, the case law referred by the Id. CIT-A is distinguishable from the facts of the present case in terms of the reasoning, the decision in the present case is rendered. Thus we set aside the finding of the learned CIT (A) and direct the AO to delete the addition made by him. Hence the grounds of appeal of the assessee is allowed.

10. In the result, the appeal of the assessee is **allowed**.

Order pronounced in the Court on 04/01/2021 at Ahmedabad.

**Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated
Manish

(True Copy)
04/01/2021