

(1993) 02 BOM CK 0063
In the Bombay High Court
Case No : IT Ref. No. 116 of 1979

Commissioner of Income Tax

APPELLANT

Vs

Ramkumar Venugopal and Co.

RESPONDENT

Date of Decision : 09-02-1993

Acts Referred:

Income Tax Act, 1961 — Section 24, 28, 43(5)

Citation : (1995) 215 ITR 732 : (1993) 70 TAXMAN 30

Hon'ble Judges : U.T. Shah, J; Sujata V. Manohar, J

Bench : Division Bench

Advocate : G.S. Jetly, for the Appellant; Arun Sathe, for the Respondent

Judgement

Smt. Sujata Manohar, J.—The assessee is a partnership firm doing business in Bardan (Jute sacks), Kultan, Sutli, etc. In other words, the firm is doing business in jute products. For the asst. yr. 1966-67 the assessee had debited its profit and loss account by an amount of Rs. 31,988 being loss on account of a hedge transaction in the Bardan account. The ITO, however, held on going through the accounts that the assessee, although it had the requisite stock of Bardan, did not have stock that quality of Bardan which was contracted for the purposes of forward sale. The differences arising out of the renewal of such contracts for forward sale were settled from time to time. He, therefore, held that the loss had not arisen from a hedging contract but it was a speculation loss.

2. The AAC confirmed the findings of the ITO. The assessee appealed before the Tribunal. Before the Tribunal was pointed out that the assessee used to enter into forward contracts with customers in Calcutta for jute goods and correspondingly entered into subsequent contracts for sales of such goods with a view to avoid fluctuations in prices. The Tribunal held that although the quality of goods may be different this would not prevent such a transaction from being considered as a hedging transaction. The Tribunal, therefore, held that the loss in question should be treated as a hedging loss and not as a speculation loss.

3. From this decision of the Tribunal, the following question has been referred to us under s. 256(1) of the IT Act :

"Whether, on the facts and in the circumstances of the case, the loss of Rs. 31,988 in Bardan account is a hedging loss and not a speculation loss ?"

4. Sec. 43(5) of the IT Act defines, for the purposes of determining profits and gains of the business or profession, a speculative transaction to mean, "transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips, provided that for the purposes of this clause a contract in respect of raw materials or merchandise entered into by a person in the course of his manufacturing or merchanting business to guard against loss through future price fluctuations in respect of his contracts for actual delivery of goods manufactured by him or merchandise sold by him shall not be deemed to be a speculative transaction".

5. In connection with this provision, the CBDT, by its Circular No. 23 dt. 12th September, 1960 has clarified for the benefit of the Departmental that hedging transactions in connected, though not the same, commodities should not be treated as speculative transactions. It has directed that the ITO should not treat genuine hedging transactions in connected commodities as speculative transactions though the transactions may not be in identically the same commodity. The Board has given the following illustration. Hedging transaction in one type of cotton against another type of cotton, one variety of oil-seed against another, one type of grain against another should not be treated as speculative transaction provided the other conditions of Explanation 2 to s. 24 are satisfied. This provision of the Indian IT Act, 1922 is similar to s. 43(5)(a) in the present IT Act, 1961. In view of this clarification the objection of the Department that the hedging transaction of the assessee was in respect of a different quality of Bardan has no merit. The assessee has drawn our attention to the Annexure to the paper book setting out the bye-laws contained Chapter VII of the East India Jute and Hessian Exchange Ltd. Hedging contracts in this commodity, therefore, have to be in the standard form set out there. The standard form prescribes certain quality of Bardan. Hence, the assessee has entered into hedging contracts of that quality of Bardan. This itself clearly indicates that this transaction was intended as a hedge contract. We are, therefore, in agreement with the findings given by the Tribunal.

6. In view of the Board's Circular which is binding on the Department, it is surprising that the Department has sought this reference. In any case, in view of the circular which binds the Department, the loss of Rs. 31,988 in contracts for Bardan has to be taken as a hedging business loss and not as a speculation loss. The question, therefore, which is referred to us is answered in the affirmative and in favour of the assessee.

No order as to costs.