IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 376 OF 2014

The Commissioner of Income Tax-5
Mumbai .. Appellant

v/s.

M/s. Vinergy International Pvt. Ltd. .. Respondent

Mr. Abhay Ahuja for the appellant
Mr. Satish Mody a/w Ms. Aasifa Khan for the respondent

CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.

DATED : 11th AUGUST, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 28th August, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2009-10.

2. The Revenue urges the following question of law for our consideration :-

> *"Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified by allowing foreign exchange fluctuation loss of Rs.62.62 lakhs to set off against the taxable*

income without considering the CBDT's instruction No.3 of 2010 dated 23.03.2010?"

3. The respondent assessee claimed an expenditure / loss of Rs.62.62 lakhs and Rs. 34.37 lakhs as gain on account of foreign exchange fluctuation related to purchase and sales transactions outstanding as on 31st March, 2009 in its Return filed for A.Y. 2009-10. The Assessing Officer did not allow the expenditure / loss of Rs.62.62 lakhs holding it to be a contingent liability while not disturbing the gain of Rs.34.37 lakhs offered for tax by the respondent assessee. In appeal, the CIT(A) upheld the order of the Assessing Officer.

4. On further appeal, the impugned order of the Tribunal has allowed the respondent assessee's appeal holding that the claim of expenditure of Rs.62.62 lakhs is permissible under Section 37 of the Act. The impugned order of the Tribunal placed reliance upon the decision of the Apex Court in ***Commissioner of Income Tax Vs. Woodward Governor India (P) Ltd. 312 ITR 254*** to hold that where the loss suffered by an assessee due to fluctuation of foreign exchange as on the date of balance-sheet in respect of purchase and sales of goods (payment have to be made / received) is allowable as expenditure under Section 37(1) of the Act.

5. The grievance of the Revenue before us is that Instruction no. 3 of 2010 dated 31st March, 2010 issued by the CBDT in respect of loss on account of foreign exchange derivatives is subsequent to the Apex Court's decision in *Woodward Governor India (P) Ltd.* (supra) and was not considered by the Tribunal. This instruction according to the Revenue would govern the issue.

6. In the present facts, we find that the loss was not on account of derivatives but are in fact losses and gains in foreign exchange relating to the purchase and sales transactions i.e. creditors and debtors outstanding as on 31st March, 2010. Therefore, the Instruction no.3 of 2010 issued by CBDT would have no application to the facts of the present case. In fact, the issue arising herein would be covered by the principles laid down sby the Apex Court in *Woodward Governor India (P) Ltd. (supra)*.

7. Accordingly, as the impugned order of Tribunal followed by the decision of the Apex Court in *Woodward Governor India (P) Ltd.* (supra) which governs the issue, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

8. The appeal is dismissed. No order as to costs.

(A.K. MENON, J.) **(M.S. SANKLECHA, J.)**