

## **Forward contracts for hedging in forex wasn't speculative when it was made in normal course of business**

**Summary – The High Court of Bombay in a recent case of D. Chetan & Co., (the Assessee) held that Forward contracts for purpose of hedging in course of normal business activities of import and export done to cover up losses on account of differences in foreign exchange valuations would not be speculative activity, but business activity**

### **Facts**

- The assessee was engaged in the business of import and export. During the assessment proceedings, the Officer found that respondent assessee had explained certain losses claimed on account of having entered into hedging transactions to safeguard variation in exchange rates affecting its transactions of import and export by entering into forward/contracts.
- The Assessing Officer disallowed the claim on the ground that it was a notional loss of a contingent liability and added it to the total income of respondent assessee.
- On appeal, the Commissioner (Appeals) held that it was not speculative transaction and the loss incurred as forward contract was allowed as a business loss.
- On further appeal, the Tribunal upheld the findings of the Commissioner (Appeals).
- On appeal to the High Court :

### **Held**

- The impugned order of the Tribunal has, while upholding the finding of the Commissioner (Appeals), independently come to the conclusion that the transaction entered into by the respondent assessee is not in the nature of speculative activities. Further the hedging transactions were entered into so as to cover variation in foreign exchange rate which would impact its business of import and export of diamonds. These concurrent finding of facts are not shown to be perverse in any manner. In fact, the Assessing Officer also in the assessment order does not find that the transaction entered into by the respondent assessee was speculative in nature. It further holds that at no point of time did revenue challenge the assertion of the respondent assessee that the activity of entering into forward contract was in the regular course of its business only to safeguard against the loss on account of foreign exchange variation. Even before the Tribunal, there was no submission recorded on behalf of the revenue that the respondent assessee should be called upon to explain the nature of its transactions. Thus, the submission now being made is without any foundation as the stand of the assessee on facts was never disputed. So far as the reliance on Accounting Standard 11 is concerned, it would not by itself determine whether the activity was a part of the respondent assessee's regular business transaction or it was a speculative transaction. On present facts, it was

never the revenue's contention that the transaction was speculative but only disallowed on the ground that it was notional. In *CIT v. Badridas Gauridas (P.) Ltd.* [2004 \(134\) Taxman 376](#) this Court has held that forward contract in foreign exchange when incidental to carrying on business of cotton exporter and done to cover up losses on account of differences in foreign exchange valuations, would not be speculative activity but a business activity.