



**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH "A", LUCKNOW**

**BEFORE SHRI. A. D. JAIN, VICE PRESIDENT  
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.507/LKW/2017  
Assessment Year: 2010-11

Surya Commercials Ltd. 22/134, Shri Dwarikadheesh Road Kanpur	v.	DCIT Range 6 Kanpur
TAN/PAN:AADCS3675D		
(Appellant)		(Respondent)

Appellant by:	Shri Rakesh Garg, Advocate		
Respondent by:	Shri Ajay Kumar, D.R.		
Date of hearing:	05	09	2019
Date of pronouncement:	06	09	2019

**ORDER**

**PER A. D. JAIN, V.P.:**

This is assessee's appeal against the order of the Id. CIT(A)-II, Kanpur, dated 23/5/2017 for the assessment year 2010-11, taking the following grounds of appeal:

- (1) Learned C.I.T.(A) has altogether failed to appreciate that there was no mistake in the assessment order passed by Learned A.O. so as to warrant any rectification u/s 154 of the Act.
- (2) Learned C.I.T.(A) has been guided by irrelevant considerations and misappreciation of facts on record, as also section 73 of the Act and the Explanation thereto read with the law enshrined in section 154 of The Act, in as much as he has failed to appreciate that the learned Dy. C.I.T. altogether ignored, or had otherwise not considered the replies filed on record in response to the show cause notice u/s 154 of the Act.

2. In this case, the assessment under section 143(3) of the Act was completed on 31.10.2012 at a total income of Rs.28,10,880/-, after set off of brought forward Business Loss of Rs.42,50,204/- for assessment years 2008-09 & 2009-10 and Unabsorbed Depreciation of Rs.49,208/- for assessment years 2008-09 & 2009-10. Further, it had been noticed from the assessment order and case record by the A.O that income from "Non-Speculative Business" had been set-off against brought forward Business Loss, for assessment years 2008-09 & 2009-10 of Rs.42,50,204/- [19,03,967+23,46,237], which were determined as speculative loss during scrutiny assessment for the relevant assessment year and was, in the opinion of the Assessing Officer, not permissible as per I.T. Act. Therefore, a notice under section 154 of the Act was issued on 13.01.2016 to the assessee company, proposing the above mistake to be rectified, as the mistake was apparent from record. The relevant portion of the notice is reproduced as under:

*"From the perusal of record & Computation of income it has been noticed that business losses for the A.Y Rs. 2008-09 & 2009-10 of Rs. 19,03,967/- & Rs. 23,46,237/- respectively have been set-off from the Business Income of A. Y. 2010-11. However, the same were determined as speculative losses in the relevant assessment order. As per section 73 of the IT Act, 1961 Speculative losses can be set off against future speculative income only. Therefore, allowed set off losses amounting to Rs.42,50,204/- should have been disallowed and added back to the total income of the assessee company"*

3. Vide order dated 16/3/2016, passed under section 154 of the Act, the A.O disallowed the brought forward business loss of Rs.42,50,204/- (Rs.19,03,967/- + Rs.23,46,237/-), which had originally been set off against the business income of Rs.87,04,503/-, for the year under consideration, i.e., assessment year 2010-11, observing thus:

*"In response to the notice u/s 154 dated 13.01.2016, the assessee company has not submitted any reply till the given period, this shows that the assessee company has nothing to say in this regard, further it is pertinent to mention here that the assessee company has not appealed against the Assessment Order for A.Ys 2008-09 & 2009-10 this shows that the assessee has no objection in treating the business loss for A.Ys 2008-09 & 2009-10 as Speculative losses, therefore assessment order dated 31.10.2012 is accordingly proposed to be revised considering that the assessee company has nothing to say in this regard."*

4. The Id. CIT(A) has confirmed the order passed under section 154 of the Act, observing, inter alia, that:

*"A speculative business loss cannot be adjusted against the normal business income of the appellant even though they are from sale/purchase of shares. Appellant has accepted the contention of the AO who treated the said activity as speculative, by not filing any appeal against the said order. Once the findings of the AO have been accepted then appellant cannot agitate the same issue by objecting to the rectification proceedings. More so, when the appellant has nothing to say legally or factually as to why the order of AO is incorrect as far as applicability of the provisions of s. 154 or s. 73 are concerned. At this stage, applicability of s. 73 of the I.T Act cannot be gone into as that matter has reached its finality. In such circumstances, I am unable to approve the contention of the appellant that s. 154 was not applicable.*

*In this case, assessment U/s 143(3) of the Act was completed on 31.10.2012 at total income of Rs.28,10,880/- after set off of brought forward Business Loss of Rs.42,50,204/- for A.Y 2008-09 & 2009-10 and Unabsorbed Depreciation of Rs.49,208/- A.Y 2008-09 & 2009-10. It was noticed by AO from the assessment order and case record that Income from "Non-Speculative Business" has been set-off from brought forward "Business Loss for A.Y 2008-09 & 2009-10 of Rs.42,50,204/- [19,03,967+23,46,237], which were assessed as speculative loss during scrutiny assessment for*

*relevant Assessment year. Appellant accepted this finding of the AO and has also not challenged during this appellate proceeding. It is clearly not permissible as per I.T. Act. Therefore, action of AO under section 154 of the I.T. Act 1961 proposing to treat the above mistake and to rectify the same as the mistake that is apparent from record is legally correct. From the perusal of record & Computation of income, it is established that business losses for the AYs 2008-09 & 2009-10 of Rs.19,03,967/- & Rs.23,46,237 respectively have been incorrectly set-off from the Business Income of AY 2010-11, even though the same were determined as speculative losses in the relevant Assessment Order. As per section 73 of the I.T Act, 1961, Speculative losses can be set off against future speculative income only. Therefore, allowed set off losses amounting to Rs.42,50,204/- should have been disallowed and added back to the total income of the assessee company, which was not done.*

.....  
*Assessee has been unable to demonstrate with reference to any material that the income that was set off against the business income was speculative in nature or there are two views applicable on such a situation and set of, facts. Appellant has not been able to demonstrate that speculative losses can be set of against regular business income."*

5. Heard. As per the operative portion of the notice issued to the assessee under section 154 of the Act, as reproduced hereinabove, "As per section 73 of the IT Act, 1961 Speculative losses can be set off against future speculative income only." The question is, whether this is correct. The losses of earlier years, i.e., assessment years 2008-09 and 2009-10 were claimed by the assessee to be set off against the profit of the year under consideration, for the reason that there was no change in the nature of the business of the assessee company. The set off of the loss claimed by the assessee was allowed by the AO vide order

passed u/s. 143(3) of the Act. The assessee company is a Limited Company engaged in the business of purchase and sale of shares during the year under consideration and has also earned income from Rent and Dividend, etc. The assessee is a non-banking financial company (NBFC) and may be categorized as an Investment Company. The business of the assessee-company undisputedly remains the same as that in the earlier two assessment years, i.e., purchase and sale of shares. The fact that during the year under consideration, the assessee carried on the business of purchase and sale of shares stands established from the assessee's Directors' Report/Annual Report (APB-36), consisting of 30 pages, for the year under consideration. Therein, in the profit and loss account for the year ended on 31/3/2010, the following obtaining position vis-à-vis the assessee's business activity of dealing in shares during the year has been depicted:

Opening stock of shares	Rs.5,19,09,372.02
Purchase of shares	Rs.0,72,93,266.11
Share Transfer Agent's Expenses	Rs.0,00,12,685.00
Demat Charges	Rs.0,00,32,018.19
Securities Transaction Tax	Rs.0,01,45,983.55
Sale of Shares	Rs.5,69,18,371.34
Profit on sale of shares	Rs.0,00,01,028.76
Closing stock of shares	Rs.4,47,70,860.44

6. Further, a scanned copy of pages 20 and 21 of the Report, comprising of Schedule 'B', i.e., the Schedule of Stock in Trade annexed to and forming part of the Balance Sheet as on 31/3/2010 and the profit and loss account (supra) for the year ended on that date, is being appended as under, for ready reference:

**SCHEDULE 'B'**

Schedule of Stock in Trade annexed to and forming part of the Balance Sheet as at 31st March, 2010 and Profit and Loss Account for the year ended on that date

	OPENING STOCK		PURCHASES/ADJUSTMENTS		SALES / ADJUSTMENTS		CLOSING STOCK	
	No. of Shares	Value Rs.	No. of Shares	Value Rs.	No. of Shares	Value Rs.	No. of Shares	Value Rs.
<b>FULLY PAID QUOTED EQUITY SHARES</b>								
1. J.K. Traders Ltd.	1446	11568.00					1446	11568.00
2. Hilman Capital & Finance Ltd.	133910	663927.20					133910	663927.20
3. J.K. Synthetics Ltd.	3137934	6181729.98					3137934	9005870.58
4. Telesia Trading & Finance Ltd.	717200	1455916.00					717200	1455916.00
5. The India Cements Ltd.	1500	153302.42	1000	111670.69	1000	121175.42	1500	158985.00
6. J.K. Cotton Spg & Wvg Mills Co. Ltd.	51119	1.00					51119	1.00
7. Larsen & Toubro Ltd.	1250	523950.00			150	136338.59	1100	461076.00
8. Ultratech Cement Ltd.	450	152284.50					450	152284.50
9. A C C Ltd.	800	434392.00					800	434392.00
10. Loyal Textile Mills Ltd.	1300	65520.00					1300	195520.00
11. Spice Jet Ltd.	2500	33675.00			2500	137678.1	0	0.00
12. J.K. Cement Ltd.	0	0.00	480612	53519724.13	456101	53374794.04	24511	2729299.85
13. Jaiprakash Associates Ltd.*	700	58940.00	1000	155855.08			2050	278718.00
14. Hotel Leela Venture Ltd.	2000	37200.00	2000	77169.29			4000	196200.00
15. Moser Baer (India) Ltd.	300	15930.00					300	21900.00
16. S. Kumar Nationwide Ltd.	100	2270.00			100	4504.38	0	0.00
17. Bata India Ltd.	500	51900.00					500	79630.00
18. Jai Prakash Power Venture	2000	58300.00					2000	135100.00
19. Noida Toll Bridge Ltd.	4250	101362.50			4250	168984.07	0	0.00
20. Southern Petrochemical Industries Corp.Ltd.	4000	24360.00					4000	78600.00
21. Swadeshi Cement Co. Ltd.	100	1110.00					100	1110.00
22. Birla Corporation Ltd.	50	8877.50					50	13208.50
23. Chettinad Cement Corporation Ltd.	50	12543.00					50	12543.00
24. Shree Cement Ltd.	50	27193.00	250	303140.05	250	430544.48	50	55055.50
25. Gujrat Siddhee Cement Ltd.	100	819.00					100	1456.00
26. I F C I Ltd.	1000	19300.00	3000	164076.85			4000	199400.00
27. Wockhard Ltd.	200	17100.00					200	27740.00
28. Kesoram Industries Ltd.	100	13535.00					100	37490.00
29. Indian Hotel Company Ltd.	2554	100627.60					2554	260635.70
30. Arvind Mills Ltd.	1700	22780.00					1700	57460.00
31. Bajaj Hindustan Ltd.	1000	48050.00			1000	195508.75	0	0.00
32. Pioneer Projects Ltd.	246850	510979.50					246850	510979.50
33. Ridhi Sidhi Commercial Ltd.	551800	1158780.00					551800	1158780.00
34. Plastic Products Ltd.	8500	1.00					8500	1.00
35. Andhra Cements Ltd.	1000	17300.00					1000	26400.00
36. Heidelberg Cement India Ltd.	1500	27975.00	2000	88092.17			3500	167755.00
37. Praj Industries Ltd.	500	25990.00					500	25990.00
38. Ispat Industries Ltd.	3500	37975.00	4000	96714.56			7500	145500.00
39. Tata Chemicals Ltd.	950	134187.50					950	310507.50
40. Alok Industries Ltd.	2400	29880.00					2400	53280.00
41. Brandhouse Retails Ltd.	20	0.00					20	0.00
42. Petronet LNG			5000	355354.05	5000	400188.87	0	0.00
43. Hindustan Zinc			500	634627.68	500	642190.32	0	0.00
44. KRBL			5000	1130898.49	5000	1246766.62	0	0.00
45. Yes Bank			250	68707.63	250	59054.03	0	0.00
46. Bombay Dyeing & Manufacturing			500	296240.29			500	276350.00
47. Tamilnadu Newsprint Ltd.			2000	178304.04			2000	178304.04
48. Sakthi Sugar Ltd.			500	47787.16			500	29675.00
49. SAIL			5000	1226487.90			5000	1226500.00
50. Tata Iron & Steel			2000	1275805.49			2000	1265300.00
<b>UNQUOTED EQUITY SHARES</b>								
1. Accurate Finmn Services Ltd.	2296	0.00					2296	0.00
2. Amarjothi Granites ( India ) P. Ltd.	9700	8845000.00					9700	8845000.00
3. Ujala Merchants & Traders Ltd.	950000	7256944.44					950000	7256944.44
4. Delhi Mercantile Ltd.	50000	500000.00					50000	500000.00
5. Bengal & Assam Co. Ltd.**	11482	399000.00				643.67	11482	398356.33
6. J.K. Industrial & Mineral Products Ltd.	286000	2860000.00					286000	2860000.00
7. Sarvashaktiman Traders Pvt. Ltd.	50000	500000.00					50000	500000.00
8. Panch Mahal Cement Co. Ltd.	50	545.00					50	545.00
9. J.K. Udyog Ltd.	1448	955154.80					1448	955154.80
10. Bharat Nidhi Ltd.	25	250.00					25	250.00
11. Vijay Stambh Traders Pvt. Ltd.	50000	500000.00					50000	500000.00
<b>UNQUOTED PREFERENCE SHARES</b>								
6% J.K. Cotton Spg. & Wvg. Mills Co. Ltd.	0	0.00	5000	500000.00			5000	500000.00
8.5% J.K. Cotton Spg. & Wvg. Mills Co. Ltd.	1875	1.00	3540	354000.00			5415	354001.00
<b>CURRENT YEAR</b>		34058426.94		60584655.55		56918371.34		44770860.44
<b>PREVIOUS YEAR</b>		51909372.02		7293266.11		23464783.56		34058426.94

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SURYA COMMERCIALS LIMITED

\* Bonus issue in the ratio of 1:2 allotted on 19th December, 2009. Therefore 350 shares issued as bonus shares.  
 \*\* Rs. 643.67 have been received by cheque as fractional entitlement which have been deducted from the cost.

Signed for Identification  
 For V.P. ADITYA & CO.  
 Chartered Accountants

Place : Kanpur  
 Dated : 29th May, 2010

Udayan Mukerji  
 Partner  
 M.No. 405900

Prashant Seth  
 S.N. Agarwal  
 Jagjit Singh } Directors

7. The Explanation to section 73 of the Act, as applicable to the year under consideration, reads:

*"Explanation.-Where any part of the business of a company other than a company whose gross total income consists mainly of income which is chargeable under the heads "Interest on securities", "Income from house property", "Capital gains" and "Income from other sources" or a company the principal business of which is the business of banking or the granting of loans and advances) consists in the purchase and sale of shares of other companies, such company shall, for the purposes of this section, be deemed to be carrying on a speculation business to the extent to which the business consists of the purchase and sale of such shares"*

8. Thus, as per the Explanation, if the gross total income of a company does not consist mainly of income chargeable as "Interest on securities", "Income from house property", "Capital gains" and "Income from other sources" and if its principal business is not the business of banking or that of granting of loans or advances, its business of purchase and sale of shares of other companies shall be deemed to be a speculative business.

9. This Explanation has been made applicable w.e.f. 1/4/2015. In the expression "the principle business of which is the business of trading in shares or banking", the phrase "trading in shares or" has been inserted over the erstwhile Explanation.

10. Section 73(1) of the Act states:

*"73(1) Any loss, computed in respect of a speculation business carried on by the assessee, shall not be set off except against profits and gains, if any, of another speculation business."*

11. So, a speculative loss can be set off only against another speculative loss.

12. Admittedly, the gross total income of the assessee company does not consist mainly of income chargeable as "Interest on securities", "Income from house property", "Capital gains" and "Income from other sources" and its principal business is not the business of banking or of granting of loans or advances. The assessee company is a Limited Company engaged in the business of purchase and sales of shares during the year under consideration and has also earned income from Rent and Dividend, etc. The assessee is a non-banking financial company (NBFC) and may be categorized as an Investment Company. The losses of earlier years, i.e., assessment years 2008-09 and 2009-10 were claimed by the assessee to be set off against the profit of the year under consideration for the reason that there was no change in the nature of the business of the assessee company. The set off of loss claimed by the assessee was allowed by the AO vide order passed u/s.143(3) of the Act, in accordance with the Explanation to section 73 of the Act, as per which, the business of the assessee company is deemed to be a speculative business. To reiterate, in the earlier two years, the business of the assessee was a speculative business. Ergo, the business of the assessee company in the year under consideration remains the same as that in the earlier two assessment years.

13. In view of the above, we hold that there was no mistake apparent from the record in the original assessment order dated 16/3/2016 and the brought forward losses of Rs.42,50,204/- had correctly been set off against the speculative business income of Rs.87,04,503/-, for the year under consideration.

14. Hence, finding merit in the grievance sought to be raised by the assessee, the same is accepted. The order under appeal is reversed.

15. In the result, the appeal is allowed.

Order pronounced in the open Court on 06/09/2019.

Sd/-  
[T. S. KAPOOR]  
ACCOUNTANT MEMBER

Sd/-  
[A. D. JAIN]  
VICE PRESIDENT

DATED:06/09/2019  
JJ:0509

Copy forwarded to:

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

By order  
Assistant Registrar