

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD 'A' BENCH, HYDERABAD.**

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER AND  
SHRI L. P. SAHU, ACCOUNTANT MEMBER  
(Through Virtual Hearing)**

**ITA No.153/Hyd/2021  
(Assessment Year : 2013-14)**

M/s. Secunderabad Club,  
Hyderabad.  
PAN AAAAT2534E

.....Appellant.

Vs.

Income Tax Officer,  
Ward 10(2), Hyderabad.

.....Respondent.

Appellant By : None.

Respondent By : Shri Paruchuri Dinesh. (D.R.)

Date of Hearing : 18.10.2021.

Date of Pronouncement : 16.11.2021.

**O R D E R**

**Per Shri S.S. Godara, J.M. :**

This assessee's appeal for Asst. Year 2013-14 arises from the Commissioner of Income Tax (Appeals)-6, Hyderabad's order dt.16.02.2018 passed in case No.0051/2016-17/B2/CIT(A)-6 in proceedings under Section 143(3) of the Income Tax Act, 1961 ('the Act').

Case called twice. None appeared at assessee's behest. We accordingly proceed exparte.

2. We notice at the outset that these assessee appeal suffers from 1013 days delay in filing the appeal. Hon'ble apex court's recent order dt.23.09.2021 in Miscellaneous Application No.665/221 in SMW(C) No.3/2020 in IN RECOGNIZANCE FOR EXTENSION OF LIMITATION has already excluded time period between 15<sup>th</sup> March, 2020 till 2<sup>nd</sup> October, 2021 for the purpose of computing all limitations. Coupled with this, case law Collector Land Acquisition Vs. Mst. Katiji & Ors, 1987 AIR 1353 (SC) and University of Delhi Vs. Union of India, Civil Appeal No.9488 & 9489/2019 dated 17<sup>th</sup> Dec., 2019, hold that such a delay; supported by cogent reasons, deserves to be condoned so as to make way for the cause of substantial justice. We thus hold that all these 1013 delays are neither intentional nor deliberate on account of 2019 pandemic only. The same stands condoned therefore.

3. The assessee's sole substantive grievance raised in the instant appeal seeks to reverse both the very authorities'

action disallowing its alleged operational loss of Rs.4,07,27,370 arising from mutuality account as a deficit has not eligible to be set off against income from other sources and house property; as the case may be.

4. We next note that the assessee's instant sole substantive grievance is no more res integra in light of this co-ordinate bench of tribunal's decision for assessee's batch of 16 appeals in ITA Nos.1388 to 1390; 940, 941, 1392 to 1400/Hyd/2015 & 1103 and 1696/Hyd/2018 read as under ;

*"8. We have given our thoughtful consideration to the foregoing rival contentions and find no merit in the assessee's stand seeking to set off its impugned deficit of Rs.18,58,643; arising from "mutuality" account, against interest income from "other" sources. We make it clear that there is no dispute about the assessee being eligible for mutuality benefit regarding the deficit account herein resulting in negative figure of Rs.18,58,643 claimed as eligible for set off u/s.71 of the Act. Hon'ble apex court's landmark decision in Bangalore Club case (2013) 350 ITR 509 (SC) has settled the law that an assessee has to satisfy the three essential ingredients for the purpose of getting mutuality benefit i.e. a complete identity between contributors and participators, their actions to be very much in furtherance to mandate of the club and that there is no scope for any kind of profiteering from the fund created by them which could only be expended or returned to themselves. Their lordships duly took into consideration (1889) Style (Surveyor of taxes) Vs. New York Life Insurance Company that "one cannot make any profit*

from himself” in light of the three foregoing conditions. It has been further made clear therein that it is only section 2(24)(vii) of the Act wherein a specific instance of a mutual organization has been held to be deriving taxable income.

9. Coming to the assessee's impugned deficit of Rs.18,58,643 arising from its income and expenditure account that profit and loss account as set off against its interest income assessed as income from “other” sources, there could hardly be any issue that although hon'ble apex court's landmark decision in CIT Vs. J.S. Gotla (1985) 156 ITR 223 (SC) holds that “it can be accepted without much doubt that income would include loss” and vice versa, the fact remains that the assessee's income, if any, arising from its impugned “mutuality” account, would never be taxable since satisfying the foregoing three ingredients. It is at this stage that we take note of the clinching statutory expressions employed in section 71 of the Act providing for “Set Off of loss from one head against income from another”. We deem it appropriate to observe that the legislative expression “head” of income must be taken as any of the five heads of income provided u/s. 14 of the Act i.e. salary, income from house property, profits and gains of business or profession, capital gains and income from other sources; respectively. We thus are of the opinion that once the assessee's impugned deficit arising from mutuality account is neither covered in any of the said heads as well nor u/s. 2(24)(vii) defining “income” in the very account, section 71 of the Act would not apply in isolation. We further deem it proper to refer to hon'ble apex court's recent larger bench decision in Commissioner of Customs Vs. Dilip Kumar & Co. (2018) 9 SCC 1 (SC) that provisions of a taxing statutes have to be strictly construed only. We next quote CIT Vs. Hariprasad and Co. P. Ltd. (1975) 99 ITR 118 (SC) that a loss arising from a head of income not chargeable to tax is not eligible to be set off against a taxable source as follows :

*“ It may be remembered that the concept of carry forward of loss does not stand in vacuo. It involves the notion of set off. Its sole purpose is to set off the loss against the profits of a subsequent year. It presupposes the permissibility and possibility of the carried-forward loss being absorbed or set off against the profits and gains, if any, of the subsequent year. Set off implies that the tax is exigible and the assessee wants to adjust the loss against profit to reduce the tax-demand. It follows that if such set-off is not permissible or possible owing to the income or profits of the subsequent year being from a nontaxable source, there would be no point in allowing the loss to be "carried forward". Conversely, if the loss arising in the previous year was under a head not chargeable to tax, it could not be allowed to be carried forward and absorbed against income in a subsequent year, from a taxable source.*

*Now let us test the claim of the assessee in the light of the above principles. The "capital loss" of Rs. 28,662/- in the present case, was, sustained in September 1953, that is, in the previous year 1953-54. Let us assume that in the subsequent years 1955-56 and 1956-57 when the capital gains were not taxable, he made huge capital gains far exceeding this loss, could he be obliged to show those capital gains in his return? Could the loss of the year 1953-54 be absorbed or set off against such capital gains of the subsequent years? The answer is emphatically in the negative.”*

*Hon’ble Gujarat High Court judgment in (2015) 367 ITR 261 (Guj) **Kishorebhai Bikabhai Virani Vs. ACIT** also holds that a loss under an exempt source is not to be carried forward for set off against subsequent year’s income.*

10. *So far as the assessee's argument that the foregoing judicial precedents (supra) have duly held that it ought to adopt commercial principles in computation of income, there would be hardly any dispute qua the same. The question before us is not that of computation of income but regarding set off of loss u/s.71 of the Act which it has to be computed as per strictly construction principle only going by the clinching fact that the assessee herein is eligible for “mutuality” benefit qua deficit claimed as loss. We thus hold that the assessee’s case law is distinguishable of facts.*

11. *Lastly comes the learned counsel’s argument that the tribunal had already accepted applicability of section 71 of the Act qua set off of its loss claim in remand directions*

*(supra), we hold that the CIT(A) had been directed to consider the assessee's going by the corresponding statutory provisions in light of relevant facts rather than allowing the same on merits. We further make it clear that the assessee had raised the impugned argument for the first time before the learned co-ordinate bench wherein it thought it proper to redirect the same back to the CIT(A) for necessary verification and adjudication. We thus decline the assessee's instant solitary substantive grievance as well as the main "lead" appeal ITA No.1388/Hyd/2015. Same order to follow in assessee's remaining three appeals 1389 & 1390/Hyd/2015 (heard on 22.09.2021) since learned counsel fairly stated at Bar for all these four cases raise identical substantive grounds."*

Following the decision of co-ordinate bench order (supra), the assessee's instant substantive grievance has no merit and accordingly it stands rejected in the very terms.

5. This assessee's appeal is dismissed.

*Order pronounced in the open court on 16th Nov., 2021.*

Sd/-

**(L.P. SAHU)**  
Accountant Member

Sd/-

**(S.S. GODARA)**  
Judicial Member

Hyderabad, Dt. 16.11.2021.

\* Reddy gp

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3.	Pr. C I T-6, Hyderabad. / CIT-6, Hyderabad.
4.	CIT(Appeals)-6, Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File.

By Order

Sr. Pvt. Secretary, ITAT, Hyderabad.