

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “SMC” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.113/Ahd/2022  
Assessment Year: 2019-20**

Rishitkumar R. Jain,  
227, New Cloth Market,  
Outside Raipur Gate,  
Raipur,  
Ahmedabad – 380 002.  
[PAN – ADIPJ 4978 M]  
(Appellant)

vs. Income Tax Officer,  
Ward - 7(2)(4), Ahmedabad.

(Respondent)

Appellant by : Shri Ashok Dhariwala, AR  
Respondent by : Shri N.J. Vyas, Sr. DR

Date of hearing : 01.09.2022  
Date of pronouncement : 23.09.2022

**ORDER**

This appeal is filed by the Assessee against the order dated 12.03.2022 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2019-20.

2. The assessee has raised the following grounds of appeal :-

*“On the facts and in the circumstances of the case and in law, the learned CIT (Appeals) has erred by allowing the set off of business loss of Rs.64,790/- out of Rs.10,64,790/- claimed as per computation of income. The appellant has received dividend on shares of Rs.24,47,500/- which was credited in profit and loss account and for calculation of business income same was reduced from business income and considered under the head income from other sources.*

*The appellant has rightly claimed business loss of Rs.10,64,790/- after deducting income considered under other head of income i.e. STCG, LTCG, Income from other sources (Dividend and Bank Interest) and salary aggregating to Rs.52,13,259/- from profit shown as per profit and loss account.*

*In view of above facts and circumstances of the case the current business loss of Rs.10,64,790/- be allowed for set off against other head of income.”*

3. The assessee filed return of income declaring total income of Rs.16,61,631/-. The assessee received intimation order under Section 143(1) of the Income Tax Act, 1961. On going through the order it was noticed that set off of current business loss was reduced from Rs.10,64,790/- to Rs.64,790/-. The assessee therefore filed online rectification application stating the fact that the business loss as per computation of income of Rs.10,64,790/- be allowed. The assessee received dividend of Rs.24,47,500/- which was credited in Profit & Loss account. While calculating business income for the year amount of dividend Rs.24,47,500/- was reduced from the business income in computation of income being considered under other head of income. The assessee has shown dividend income under the head income from other sources and claimed exempted dividend of Rs.10,00,000/- as per provision of Section 115BBDA and balance amount of Rs.14,47,500/- was taxable and paid taxes as per provisions. The order under Section 154 of the Act was passed on 02.06.2020 thereby stating that the system has not correctly allowed these losses, as there is no basis for the same. Further, as per Section 73 of the Act, set off of speculation loss against non speculation business not allowed.

4. Being aggrieved by the order under Section 154 of the Act, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that in column no.5 of the order under Section 154 of the Act dated 30.09.2019 the income from other sources was Rs.14,50,385/- and the income under the head “income from other sources” was computed under Section 154 was the same Rs.14,50,385/-. The dividend income of Rs.14,47,500/- (Rs.24,47,500 – Rs.10,00,000 exempted under Section 115BBDA) was accepted in the order passed under Section 154. There was no dispute regarding dividend income shown under the head “income from other sources” as per Section 115BBDA. The assessee received rectification order in which also in column no.8 the current year business loss claimed by the assessee was Rs.10,64,790/- which was reduced to Rs.64,790/-. The business

loss reduced by Rs.10,00,000/- without any reason. In column no.19 of the rectification order for loss of current year to be carried forward was nil as provided by the assessee as well as computed under Section 154 reason being the business loss of Rs.10,64,719/- was set off against other head of income for the year and there was no business loss to be carried forward for future set off. The assessee received dividend of Rs.24,47,500/- which was credited in Profit & Loss account. While calculating the business income for the year was the amount of dividend of Rs.24,47,500/- which was reduced from the business income in the computation of income being considered under the other head of income from other sources. The Ld. AR submitted that CPC accordingly erred in making addition of Rs.10,00,000/- under the head business income which is exempt under Section 115BBDA of the Act and considered under the other head of income. Ld. AR further submitted that all the income considered under other heads of income i.e. Short Term Capital Gain, Long Term Capital Gain, dividend income, salary income and savings bank interest was reduced from profit as per audited Profit & Loss account of Rs.41,48,469/- which will result in business loss of Rs.10,64,790/-. All the income which was considered under other head of income were accepted in the intimation under Section 143(1) as well as in the rectification order passed under Section 154 of the Act. Therefore, the CIT(A) and the Assessing Officer was not correct in not allowing the set off of business loss to the assessee and denying the claim of business loss.

6. The Ld. DR relied upon the order of the CIT(A) as well as order under Section 154 of the Act.

7. I have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the Assessing Officer has accepted the assessee's dividend income along with other heads of income. The assessee has claimed exemption under Section 115BBDA of the Act in respect of dividend income and, therefore, business loss was reduced by Rs.10,64,790/- instead of rectifying actual discrepancy and allowing the claim of exemption. The Assessing Officer as well as the CIT(A) has ignored the assessee's audited Profit & Loss account and the details given therein without any justified reasons. Thus, from the perusal of the records and business loss of Rs.10,64,790/-, the same has to be set off from the business income.

I direct the Assessing Officer accordingly. Needless to say the assessee be given opportunity of hearing by following principles of natural justice. Appeal of the assessee is thus partly allowed for statistical purpose.

8. In the result, appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the open Court on this 23<sup>rd</sup> day of September, 2022.

Sd/-  
**(SUCHITRA KAMBLE)**  
Judicial Member

**Ahmedabad, the ..... day of September, 2022**

**PBN/\***

Copies to: (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Ahmedabad benches, Ahmedabad*