

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No.3043/Del/2018
(Assessment Year: 2010-11)
M/s. Hindustan Aqua Ltd, Vs. DCIT,
25, Bazar Lane, Bengali Circle-12(1),
Market, New Delhi New Delhi
(Appellant) (Respondent)

PAN: AAACH3298J

Assessee by :	Dr. Rakesh Gupta, Adv Shri Somil Agarwal, Adv
Revenue by:	Shri Sandip Kumar Mishra, Sr. DR
Date of Hearing	22/02/2024
Date of pronouncement	28/02/2024

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.3043/Del/2018 for AY 2010-11, arises out of the order of the Commissioner of Income Tax (Appeals)-42, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 145/17-18/CIT(A)-42 dated 19.03.2018 against the order of assessment passed u/s 143(3)/147 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 30.09.2014 by the Assessing Officer, DCIT, Circle-12 (1), New Delhi (hereinafter referred to as 'Id. AO').
2. The assessee has challenged the validity of assumption of jurisdiction u/s 147 of the Act. On merits, the only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the action of the Id. AO in not allowing the set off of brought forward loss of Asst Year 2005-16 in the sum of Rs 12,53,378/- in the facts and circumstances of the instant case.

3. We have heard the rival submissions and perused the materials available on record. The assessee is engaged in the business of job work and derivative share trading. The return of income for the Asst Year 2010-11 was filed by the assessee company on 11.10.2010 declaring total income of Rs 95,58,284/- after setting off the brought forward business loss of Rs 12,53,378/- of Asst Year 2005-06. Admittedly, the Tax Auditor had not reported any set off of brought forward loss of earlier year in his Tax Audit Report. However, this figure of Rs 12,53,378/- was duly mentioned in the relevant column in the Income Tax Return by the assessee for the purpose of set off with the business income. The original assessment was completed u/s 143(3) of the Act on 25.5.2012 determining total income at Rs 1,02,08,940/- after making disallowance of Rs 6,50,660/- u/s 14A of the Act. This assessment was sought to be reopened by the Id. AO on the ground that the assessee had set off the brought forward business loss of Rs 12,53,378/- with the business income of the year the veracity of which needs to be verified. Accordingly, a notice u/s 148 of the Act was issued to the assessee. The assessee sought for furnishing of reasons recorded for reopening the assessment which were duly furnished. The assessee filed its objections for the reasons recorded and also provided the details of losses available with the assessee in a tabular form as under:-

S.No.	Particular	Amount(Rs.)	C/F Balance
A	Assessed loss in the A.Y 2004-05	14,08,244/-	14,08,244/-
B	Assessed loss in the A.Y 2005-06	32,34,224/-	46,42,468/-
C	Loss set off against A.Y 2006-07 profit	27,76,621/-	18,65,847/-
D	Loss set off against A.Y 2007-08 profit	6,12,465/-	12,53,378/-
E	Loss set off against A.Y 2008-09 & 2009-10 profit	Nil	12,53,378/-
F	Loss set off against A.Y 2010-11 profit	12,53,378/-	Nil

4. The Id. AO did not dispose of the objections for reasons recorded by way of a separate speaking order thereby violating the decision of Hon'ble Supreme Court in the case of GKN Driveshafts Ltd reported in 259 ITR 19 (SC). The Id. AO however proceeded with the reassessment proceedings and observed that the assessee had indeed taxable business profits in Asst Years 2008-09 and 2009-10 and accordingly the business loss of Asst Year 2005-06 should have been set off with the business income of Asst Years 2008-09 and 2009-10. Since the same was not done by the

assessee for the reason of the mistake of the Accountant, the brought forward business loss of Asst Year 2005-06 in the sum of Rs 12,53,378/- would not be eligible to be set off with the business income of Asst Year 2010-11. This action of the Id. AO was upheld by the Id. CIT(A) for the same reasoning.

5. From the above, it is evident that the assessee had indeed had assessed business loss of Rs 12,53,378/- in Asst Year 2005-06. This loss was admittedly not set off with the business income by the assessee in Asst Years 2008-09 and 2009-10. But that does not mean that the assessee would not be eligible for set off of the said business loss with future business income. As per the provisions of Section 72 of the Act, the unadjusted business loss of a particular year would be eligible to be carried forward to 8 subsequent assessment years and the same would be eligible for set off against the business income of 8 subsequent assessment years. Hence as per section 72 of the Act, the assessee had indeed set off the brought forward business loss of Rs 12,53,378/- pertaining to Asst Year 2005-06 with the business income of Asst Year 2010-11 which is within the 8 years time limit provided in the statute. Hence the lower authorities grossly erred in not following the provisions of the Act in the correct perspective and had denied the legitimate deduction to the assessee. The Id. AO is hereby directed to allow the set off of brought forward business loss of Rs 12,53,378/- pertaining to Asst Year 2005-06 with the business income of the year under consideration. Accordingly, the grounds raised by the assessee on merits are allowed.

6. Since, the relief is granted to the assessee on merits, the other legal grounds raised by the assessee challenging the validity of reopening of assessment need not be gone into and the same are hereby left open.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 28/02/2024.

-Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 28/02/2024
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi