

**आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता**

**IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH KOLKATA**

**Before Shri Rajesh Kumar, Accountant Member and  
Shri Pradip Kumar Choubey, Judicial Member**

**ITA No.1188/Kol/2025**

**Assessment Year: 2017-18**

**M/s Raina Commodities Pvt. Ltd.....Appellant  
3<sup>rd</sup> Floor, Suit No.90,  
6A, Clive Row, Kol- 1..  
[PAN: AABCR2903H]**

**vs.**

**ITO, Ward-1(1), Kolkata.....Respondent**

**Appearances by:**

Shri Manoj Kataruka, Adv., appeared on behalf of the appellant.

Shri S. B. Chakraborty, Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing :September 08, 2025

Date of pronouncing the order :September 15, 2025

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the assessee against the order dated 16.12.2024 of the Commissioner of Income Tax, Appeal ADDL/JCIT(A)-7, Mumbai [hereinafter referred to as the "Id. CIT(A)"] passed u/s 250 of the Income Tax Act, 1961 [hereinafter referred to as the "Act"].

2. The assessee has challenged the order of the Id. CIT(A) upholding the action of the Assessing Officer in passing rectification order u/s 154 of the Act thereby confirming the action of the Assessing Officer in treating the loss of Rs.79,25,368/- as speculation loss as against offered by the assessee as normal business loss. The assessee has also challenged the validity of order passed u/s 154 of the Act on the ground that there is no mistake apparent from the record in the assessment

framed u/s 143(3) and therefore, the order passed u/s 154 of the Act may be quashed.

3. The facts in brief are that the assessee was framed in this case u/s 143(3) of the Act vide order dated 30.12.2019 wherein the loss of Rs.79,25,368/- from intra-day trading in derivatives was offered as business loss and accordingly return was filed. The Assessing Officer assessed the same in the assessment framed u/s 143(3). Thereafter the Assessing Officer passed an order u/s 154/143(3) dated 14.09.2021 making suo moto adjustment in the rectification order treating the business loss of Rs.79,25,368/- as speculation loss being covered u/s 43(5) of the Act without giving a show-cause notice to the assessee.

4. The assessee challenged the said order u/s 154/143(3) of the Act before the Id. CIT(A) and the Id. CIT(A) also without considering the reply of the assessee dismissed the appeal by upholding that there is no justification for delayed filing of the appeal.

5. The assessee filed an affidavit explaining therein that the assessee was not knowing about the rectification order having been passed u/s 154/143(3) for the assessment year 2017-18 by ITO, Ward-1, Kolkata on 14.09.2021 as the same falls under Covid Period which was also passed without giving any notice to the assessee. The assessee submitted that the assessee came to know about the said order on 15.01.2024 only. Therefore, there was no delay in filing the said appeal by the assessee before the Id. CIT(A) and if at all the delay is considered to be there, the same may be condoned on the ground that the delay falls under Covid period and the reasons for the delay is bona fide and genuine. The Id. counsel for the assessee also submitted that the assessee has uploaded all the information and details before the Id. CIT(A) along with a written submission and therefore, the order may kindly be passed on merit.

6. After hearing the rival contentions and considering the materials available on record, we find that in this case, the Assessing Officer passed order u/s 143(3) of the Act accepting the loss from derivatives which was claimed to set off against other income as stated hereinabove. Thereafter, the Assessing Officer suo motto passed the rectification order without affording any opportunity to the assessee by rejecting the said claim of set off against interest income. In our view, the said action of the Assessing Officer is not sustainable in the eyes of law as this is not an apparent mistake from the record which could be rectified by the Assessing Officer. This is a debatable issue and cannot be rectified u/s 154 of the Act. The case of the assessee is squarely covered by the decision of the Apex Court in the case of ITO vs. Volkart Brothers & Ors. reported in 82 ITR 50 (SC) and decision of Rajasthan High Court in the case of CIT vs. United Mercantile Co. (P) Ltd. reported in (1986) 158 ITR 41(Raj) wherein it has been held that provisions of section 154 of the Act can be resorted to in case of mistake which is apparent from record and not otherwise. In other words where the issue is debatable on which two views are possible or required to be established by long drawn process of reasoning then provisions of section 154 of the Act can not be invoked. Moreover, the case of the assessee does not fall within the ambit of section 43(5) of the Act which provides that "speculative transaction" means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips". We note that there are certain exceptions to this in the provisos and as per proviso (d), it has been provided that "an eligible transaction in respect of trading in derivatives referred to in clause (ac) of section 2 of the Securities Contracts (Regulation) Act, 1956 carried out in a recognised stock exchange" and proviso (e) which provides that "an eligible transaction in respect of trading in commodity derivatives carried out in a [recognised stock exchange which is

chargeable to commodities transaction tax under Chapter VII of the Finance Act, 2013 (17 of 2013), shall not be deemed to be a speculative transaction". In this case, the transactions were done on the stock exchange on which commodity transaction tax has been paid. Therefore, the same does not fall within the ambit of section 43(5) of the Act. Considering these facts and circumstances, we are inclined to set aside the order of the Id. CIT(A) and direct the Assessing Officer to delete the addition on two counts: (i) the order passed u/s 154 of the Act is unsustainable as there is no mistake apparent from the record in the order passed u/s 143(3) of the Act as the issue is debatable and should be understood after a very prolonged and lengthy analysis of section 43(5) of the Act and (ii) the transaction does not fall within the ambit of section 43(5) of the Act.

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

***Kolkata, the 15<sup>th</sup> September, 2025.***

Sd/-  
**[Pradip Kumar Choubey]**  
Judicial Member

Sd/-  
**[Rajesh Kumar]**  
Accountant Member

Dated: 15.09.2025.

RS

*Copy of the order forwarded to:*

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

//True copy//

By order

Assistant Registrar, Kolkata Benches