

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI**

**BEFORE SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No.1750/Del/2022, A.Y. 2017-18

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| Sahara India Corp Investment Ltd., I-Kapoorthala Complex, Aliganj, Lucknow, UP PAN: AAACS1707R | Vs. | Assistant Commissioner of Income Tax, Central Circle-1, Jhandewalan, New Delhi |
| (Appellant) | | (Respondent) |

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| Appellant by | Sh. Aditya Vohra, Advocate Sh. Arpit Goyal, Advocate |
| Respondent by | Sh. Ajay Kumar Arora, Sr. DR |

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| Date of Hearing | 10/10/2025 |
| Date of Pronouncement | 31/10/2025 |

ORDER

PER AVDHESH KUMAR MISHRA, AM

This appeal for the Assessment Year ('AY') 2017-18 filed by the assessee is directed against the order dated 07.06.2022 of the Commissioner of Income Tax (Appeals)-23, New Delhi ['CIT(A)'].

2. The assessee has raised following grounds: -

- "1. That the Ld. CIT(A) has erred in law and on facts and circumstances of the cases not confirming the claim of the appellant with reference to loss on sale of securities to be a Business Loss and confirming the action of the Assessing Officer in treating the same as Capital Loss*
- 2. That the Ld. CIT(A) has erred in law and on facts and circumstances of the case in not considering the facts that the appellant is a Non-Banking Financial Company of category and, therefore, has to follow the guidelines issued by the Reserve Bank of India for all Non-Banking Financial*

(depositing, accepting or holding) Companies Prudential Norms (Reserve Bank) Directions 2007, according to which, it was mandatory for the appellant company to follow Accounting Standards and Guidance Note issued by the Institute of Chartered Accountants of India for drawing up its final accounts.

3. *That the Ld. CIT(A) has erred in law and on facts and circumstances of the case in overlooking the fact that in earlier years the income from sale of securities has been subjected to tax as business income in the hands of the appellant and, therefore, the deviation there from during the year is against the principle of consistency.*
 4. *That the Ld. CIT(A) is not justified in not appreciating the fact that the appellant is a NBFC Company and trading in shares and securities is a part of its business activities and, therefore, the loss from sale of securities was in the nature of a business loss and not a capital loss as held by the Assessing Officer.*
 5. *That in any view of the matter, the CIT(A) has not correctly appreciated the facts and circumstances of the case as well as in law in confirming the treatment of loss on sale of securities as a Capital Loss as held by the Assessing Officer and not a Business Loss as claimed by the appellant merely by relying on the presentation of account of the appellant wherein the shares sold were appearing under the head Non-Current Assets which was in consonance with the guidelines issued by the Institute of Chartered Accountants of India.*
 6. *Without prejudice in any view of the matter, the CIT(A) should have given a finding of carry forward of capital losses.*
 7. *That the appellant craves leave to add, alter, amend or withdraw any or all grounds of appeal at any time before or during the course of the hearing.”*
- 2.1 Vide above grounds, the assessee has raised two issues; namely, (i) treating of loss claimed in the Profit and Loss account as capital loss and (ii) the disallowance of carry forward of such capital loss.

3. The relevant facts giving rise to this appeal are that the appellant assessee, a NBFC company, engaged in the business of financing, filed its Income Tax Return ('ITR') of the relevant year declaring loss of (-) Rs.6,24,34,866/-. The case was picked up for limited scrutiny. During the course of scrutiny assessment proceedings, the Assessing Officer ('AO') noticed that the assessee had debited its Profit and Loss account by a loss of Rs.5,00,95,539/- arisen on sale of quoted share of M/s. Pipavav Defence & Offshore Engineering Company Ltd. ('PDOECL'). The AO show-caused assessee to explain that why this loss should not be treated as a capital loss as the share of PDOECL had been shown as an asset in the Balance Sheet as an asset and not as stock-in-trade. The AO was not satisfied with the assessee's submission; therefore, he treated the said loss as capital loss and added back in the returned loss. Consequently, the assessment was completed at a loss of (-) Rs.1,23,39,327/- instead of the returned loss of (-) Rs.6,24,34,866/-.

4. Aggrieved, the assessee filed appeal before the Ld. CIT(A), who decided the issue of capital loss as under:

"11. It is seen that the investment made by the appellant was shown as long term investment in the books of accounts. In this regard, the balance sheet of the appellant company is scanned and reproduced below.

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12. From perusal above it is seen that the appellant himself treated investment in impugned share as long term investment in the book of accounts and not as stock in trade. From perusal of the profit and loss account, it is seen that the loss on sale of long-term security is separately

treated and not clubbed with revenue. The P & L account for the year is scanned and reproduced below.

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13. During the year under consideration, the appellant had sold only one scrip i.e. M/s. Pipavav Defence and Offshore Engineering Company Ltd. There was no other transaction during the year under consideration.

14. Circular No. 4 of 2007 dated 15.06.2007 is of no help to the appellant. The appellant has maintained two accounts one investment, account and the other is stock in trade. The impugned share from part of investment account and not of stock in trade. As per para 10 of the circular, the gain arising from sale of Investment portfolio is to be treated as capital gains.

15. There has not been any transaction apart from the impugned transaction and that too was carried out by the direction of Hon'ble Supreme Court. The transaction was not carried out with the motive of profit. Hence, as per the Circular no. 4/2007, the appellant's case in that of capital gains and not business income.

16. In the case of CIT vs Associated Industrial Development Co. Pvt. Ltd., (1971) 82 ITR 586 (SC), the assessee was managing share of various companies and treated the transaction of same as capital gain. The revenue assessed it as business Income. The Hon'ble Supreme Court upheld the decision of the Assessing Officer. Therefore, the case relied upon by the appellant is against him.

17. In the case of Equity Intelligence India Pvt. Ltd., the appellant had carried out transaction in 45 scrips. The holding period of 36 shares was from 3 days to 93 days. The appellant in that case had carried out a number of transactions during the past 3-4 years. Therefore, the fact of this case is different from the facts of the appellant.

18. From perusal of the balance sheet, it is seen that the appellant has valued the investment at cost and has not claimed any deduction on account of valuation loss and has similarly, not offered any income on account of gain on valuation. It is also seen that in respect of portfolio held has stock in trade, the appellant has valued closing stock at cost only.

19. From the perusal of the account, it is seen that the appellant has very meager expenses. The P & L account of the appellant for the year under consideration is reproduced as under:

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20. The appellant has not employed any manpower and the same is evident from the accounts of the appellant for the year. Apparently, the appellant purchased shares from his own funds and no borrowed capital was utilized for making Investment.

21. The shares have been held from 4th March 2013 till its forced sale on 15.09.2016. Thus, the appellant has held the share for three years six month and eleven days. From the accounts, it is seen that the shares were sold by the appellant at the direction of Hon'ble Supreme Court and the sale proceeds was deposited in Sahara SEBI Refund Account.

22. *The facts of the case of the appellant brought out above clearly establish that the shares transactions carried out by the appellant was in the nature of investment activity and rightly characterized as capital gains. The action of the Assessing Officer in treating loss of Rs.5,00,95,539/- as capital gains is upheld.”*

[Emphasis supplied.]

4.1 The Ld. CIT(A) decided the issue of disallowance of carry forward of capital loss against the assessee. The Ld. CIT(A) held that since the capital gains of the relevant year was exempted from tax; therefore, the loss resulted on sale of shares of M/s. PDOECL being capital loss, being exempted from tax, could not be carried forward to the subsequent years. The relevant finding of the Ld. CIT(A) is as under:

“27. The facts of the case of the appellant and the provision of law stated above establish that the gain/loss arising to the appellant is in the nature of long-term capital loss. The long-term capital gains have been made taxable from F.Y 2018-19. Prior to F.Y 2018-19, long term capital gain was exempted. Therefore, long term capital loss being from an exempted source cannot be allowed to be carried forward. In this regard, if income from a

particular source is exempt from tax, then loss from such source cannot be set off against any other income which is chargeable to tax. E.g., Agricultural income is exempt from tax, hence, if the taxpayer incurs loss from agricultural activity, then such loss cannot be adjusted against any other taxable income. Similarly, as gain in respect of long-term capital gain on sale of securities chargeable to STT is exempted from tax for the impugned year, therefore, the losses cannot be allowed to be carried forward.”

5. Before us, the Ld. Counsel argued the case vehemently. He drawing our attention to the assessee's business; i.e. purchase and sale of shares, securities, etc., submitted that the said loss derived from the sale of shares of M/s. PDOECL was nothing but the revenue loss. Hence, the said loss had been rightly debited to the Profit and Loss account. He thus, prayed for reversing the finding of the Ld. CIT(A). Alternatively, he contended that the said assessed capital loss should be allowed to be carried forward to subsequent years. In support of this argument, he placed reliance on the following decisions:

- Karanchand Premchand Ltd: [1960] 40 ITR 106 (SC)
- Royal Calcutta Turf Club: 144 ITR 709 (Cal)
- Raptakos Brett & Co Ltd.: [2015] 69 SOT 383 (Mum)
- Shiv Kumar Jatia: ITA 7256/Del/2019 (Del Trib)

6. Per contra, the Ld. Sr. DR placed reliance on the relevant findings of the Ld. CIT(A). Emphasizing on the accounting treatment of shares of M/s. PDOECL given by the assessee in its regular books of accounts itself, the Ld. SR DR submitted that shares of M/s. PDOECL had been owned by the

assessee itself as a capital asset in its books of accounts. Hence, the sale of shares of M/s. PDOECL would generate only the capital profit/loss. He, therefore, prayed for the dismissal of all grounds appeal related to the issue of disallowance of loss claimed in the Profit & Loss account as capital loss.

7. We have heard both parties and have perused the material available on the record. Before us, the Ld. Counsel has filed the relevant financial statements for the financial year ending March, 2017. A perusal of the same clearly shows that the shares of M/s. PDOECL have been shown as asset under the head 'non-current investments' in the Balance Sheet of the assessee. The shares of M/s. PDOECL have never shown as stock in trade in the books of accounts and have never been routed through the Profit & Loss account of the preceding years and or in the relevant year. Further, the sale consideration of shares of M/s. PDOECL received in the relevant year has also not been shown as revenue receipts by the assessee in its Profit & Loss account of the relevant year. In this case, the assessee has consistently disclosed shares of M/s. PDOECL in its Balance Sheet under the head investments which manifests the intention of being an investor. The shares of M/s. PDOECL have been declared in ITRs consistently under the head investments as 'non-current investment'. Also, the Revenue has not disturbed the status of shares of M/s. PDOECL declared as 'non-current investment' by the assessee and accepted the same. Based on the above-mentioned facts emerged from the Books of Accounts of the assessee, the intention of the

assessee in investing in shares of M/s. PDOECL as capital asset gets established. The assessee has always treated shares of M/s. PDOECL in its Books of Accounts as investment. The assessee has never treated shares of M/s. PDOECL as stock-in-trade. The Hon'ble Gujarat High Court in the case of Bhanuprasad D Trivedi, HUF [2017] 87 taxmann.com 137 has held that where assessee has purchased shares with clear intention of being an investor and held shares by way of investment, gain/loss arising out of transfer of such shares should be treated as capital gains/loss and not as business income/loss.

8. In the present case, the Ld. CIT(A) has given cogent and substantial reasoning for dismissing the appeal. The Hon'ble Supreme Court in the case of Associated Industrial Development Co. (P.) Ltd. [1971] 82 ITR 586 has held that the issue regarding the holding of shares is by way of investment or forming part of stock-in-trade is a matter within the knowledge of the assessee and if he produces proof to show that he had maintained the distinction between the shares which are held as stock-in-trade and which are by way of investment, then the intention of the assessee is a main criteria to be judged. Here, the intention of the assessee gets demonstrated by the accounting treatment of shares of M/s. PDOECL in Books of Accounts of the assessee. Further, the shares of M/s. PDOECL have been sold in pursuance of order of the Hon'ble Supreme Court.

9. We have perused the material available on the record and orders of the Authorities below. We do not see any infirmity in the impugned order holding the loss on sale of shares of M/s. PDOECL as capital loss and adding it back in the returned loss. Therefore, we decline to interfere with the finding of the Ld. CIT(A) in this regard. Consequentially, grounds numbered 1-5 fail.

10. The alternate ground is in respect of the disallowance of carry forward of the above-mentioned capital loss. The Ld. Counsel submitted that the Ld. CIT(A) had held that the said loss on sale of shares of M/s. PDOECL was not allowable to be carried forward; however, this issue had been decided in the favour of the assessee by the Tribunal in case of Raptakos Brett & Co. Ltd. [2015] 58 taxmann.com 115. The submission of the Ld. Counsel, in nut shell, is that the Tribunal in the case Raptakos Brett & Co. Ltd. (supra) has dealt this issue in-depth. After considering all judgements, the Tribunal in the case Raptakos Brett & Co. Ltd. (supra) has held that long-term capital loss on sale of shares can be set off and can be carried forward as per provisions of sections 70 and 71 of the Act as section 10(38) of the Act includes only long-term capital gains and by any stretch of imagination capital loss cannot be included under the purview of section 10(38) of the Act. In the case Raptakos Brett & Co. Ltd. Further, reliance was placed on the decisions of the Tribunal in cases of Bennett Coleman & Company Ltd. ITA No. 2433/Mum/2019, Rare Investment ITA No. 3409/Mum/2018, Shiv Kumar Jatia ITA No. 7256/Del/2019.

11. On alternate ground, the Ld. Sr. DR placed reliance on the finding of the Ld. CIT(A).

12. We have heard both parties and have perused the case laws (mentioned above in para 10) relied upon by the Ld. Counsel. We find merit in arguments/contentions/submissions of the Ld. Counsel. We are therefore, of the considered view that this issue is squarely covered by the case laws mentioned above in para 10. We therefore, following the reasoning given by the Tribunal in decisions mentioned above in para 10, hold that the disallowance of carry forward of the above-mentioned capital loss was not justified. We therefore, set aside the finding of the Ld. CIT(A) in this regard and direct the Ld. AO to allow carry forward of the above-mentioned capital loss as per the law.

13. Consequently, the appeal of the assessee is partly allowed as above.

Order pronounced in open Court on 31st October, 2025

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated: /10/2025

Binita, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT/CIT
4. Sr. DR, ITAT
5. CIT(A)

Sd/-

(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI