

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "A", MUMBAI**

**BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER)  
AND  
SHRI ASHWANI TANEJA (ACCOUNTANT MEMBER)**

I.T.A. Nos. 6388 & 6399/Mum/2014  
(Assessment Years: 2004-05 & 2005-06)

ACIT, Cir.47, Mumbai	vs	M/s Ashok Apparels Pvt Ltd PML Premises, 462, Senapati Bapat Marg, Lower Parel, Mumbai-13
		PAN : AABCA1436E
(Appellant)		(Respondent)

Appellant by	Shri M.V. Rajguru
Respondent by	Shri Sholka Shah

Date of hearing : 07-12-2016  
Date of order : 15 -12-2016

**ORDER**

**Per ASHWANI TANEJA, AM:**

These appeals have been filed against the common order passed by the Commissioner of Income-tax (Appeals)-38, Mumbai [in short, CIT(A)] dated 25-07-2014 against the penalty orders passed by the AO u/s 271(1)(c) for the assessment years 2004-05 and 2005-06, on the following common grounds of appeal:-

*"1. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty levied by the AO. The Hon'ble Bombay High Court held that the losses incurred on derivative transaction to be treated as speculative losses in terms of Section 43(5) of the Income Tax Act. "*

2. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty levied by the AO as by claiming a loss, which is not otherwise allowable to be set off against regular business income, the assessee has submitted inaccurate particulars of income for purpose of tax evasion."*

2. It is noted that in both the appeals penalty was levied on disallowance of loss incurred on derivative transaction by treating the same as speculative losses in terms of section 43(5) of the Act. On appeal, the Ld. CIT(A) deleted the penalty.

3. During the course of hearing, it was brought to our notice by the Ld. Counsel of the assessee that in the quantum appeal, the disallowance has been deleted by the Tribunal vide its order dated 26-07-2013 in ITA Nos 6936 -6938/Mum/2011. The Ld. DR did not dispute the submission of the assessee.

4. We have gone through the orders passed by lower authorities as well as the order of the Tribunal passed in quantum appeals. It is noted from the order of the Tribunal that the disallowance made by the AO of the impugned loss has been deleted by the Tribunal. Under these circumstances, no basis survives to continue with the penalty since penalty was levied only on the impugned loss. Thus, order of Ld CIT(A) in deleting the penalty in both the assessment years is hereby upheld.

5. In the result, appeals filed by the Revenue are dismissed.

*Order was pronounced in the open court at the conclusion of the hearing.*

Sd/- (MAHAVIR SINGH)	Sd/- (ASHWANI TANEJA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 15<sup>th</sup> December, 2016

Pk/-

Copy to:

1. The appellant
  2. The respondent
  3. The CIT(A)
  4. The CIT
  5. The Ld. Departmental Representative for the Revenue, A-Bench
- (True copy) By order

ASST.REGISTRAR, ITAT, MUMBAI BENCHES