IN THE INCOME TAX APPELLATE TRIBUNAL,
AGRA(SMC) BENCH, AGRA
BEFORE :
SUNIL KUMAR SINGH, JUDICIAL MEMBER
BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

ITA No. 443/Agr/2026
Assessment Year: 2016-17

Yashpal Singh Yadav, B-243, Sector 26, Noida (UP)-201301	**Vs.**	ACIT Circle 2(3)(1), Jhansi, U.P. - 284003
PAN :ABKPY3591P		
(Appellant)		**(Respondent)**

Assessee by	Shri Navneet Jerath, CA.
Department by	Sh. Anil Kumar, Sr. DR

Date of hearing	22.07.2026
Date of pronouncement	14.10.2026

ORDER

PER:BRAJESH KUMAR SINGH, A.M.

This appeal is directed against the impugned order dated 06.03.2026 passed in appeal No ADDL/JCIT (A) BHUBANESWAR/10003/2015-16 by the ADDL/JCIT (A), Bhubaneswar

(hereinafter referred to as the CIT(A), u/s. 250 of the Income Tax Act, 1961 (hereinafter referred to as the "Act") for the A.Y. 2016-17, wherein ld. CIT (A) has dismissed assessee's appeal.

2. The assessee filed his return of income on 12.09.2016 declaring an income of Rs.37,88,310/-. The return was filed beyond the due date with a delay of 39 days. The case was selected for scrutiny through CASS under the category of limited scrutiny. The AO noted that the assessee is a salaried person and had earned salary from Anya Agro & Fertilizers Pvt. Ltd. The AO also noted that purchase & sale deed of property and details of his capital loss etc. were examined. Thereafter, the AO noted that the assessee had sold two properties during the year and the assesee had shown capital loss on sale of the property. The AO assessed the total income at Rs.37,88,310/-, i.e., the returned income. In this regard, the relevant extract of the assessment order is reproduced as under :

> "In this case, the assessee has e-filed his return of income on 12-09-2016, declaring an income of Rs. 37,88,310/-. The case was selected for scrutiny through CASS under the category of limited scrutiny. A notice u/s 143(2) of the Income Tax Act, 1961 was issued on 08-08-2017 and notice u/s 142(1) of the Income Tax Act, 1961 was issued on 08-06-2018 for fixing the date for hearing on 18-06-2018. In response to above notices, assessee submitted written replies through e-portal.

2. Assesee is a salary person and earn salary from Anya Agro & Fertilizers Pvt. Ltd. In compliance of the notices u/s 142(1) of the IT Act, 1961, assessee submitted detail/nature of his income/business, Copy of ITR with computation of income, Copy of form 16 and form 26AS, Copy of ITR-V, Purchase and sale deed of property and detail of his capital loss etc., which were examined.

3. During the examining the documents of the assessee, it is found that the assessee has sold two properties during the year. The chart is as below-

S.No.	Purchase price of property	Sale price of property	Capital gain/Loss
1.	Rs.1,95,00,000/-	Rs.1,60,00,000/-	Rs.(-)35,00,000/-
2	Rs.4,80,00,000/-	Rs.3,70,00,000/-	Rs.(-)1,10,00,000/-

Assessee has shown capital loss on sale of property.

After discussion assessed at total income of Rs. 37,88,310/-. Issue notice of demand, challan and computation of income. Charge interest as per law."

2.1 Aggrieved with the said order, the assessee filed an appeal before the learned CIT(A) with the delay of 2738 days, which was condoned by the ld. CIT(A). The assessee in ground No. 2 of the appeal submitted that the AO is wrong in disallowing the carrying forward of capital loss of Rs.1,45,00,000/-. In this regard the ground No. 2 of the appeal filed by the assessee before the ld. CIT(A) is reproduced as under :

"2. That the Ld. AO was wrong in disallowing the carrying forward of capital loss of Rs.1,45,00,000/- despite its genuine reason, is not only unjust but also contradictory to the principles of equity and fairness embedded in tax law, is bad in law. **[IN THE ITAT CHANDIGARH BENCH 'A' International Fresh Farm Products (India) Ltd. v. Income-tax Officer]."**

2.2. However, learned CIT(A) dismissed the appeal of the assesee and relevant extract of the order of learned CIT(A) is reproduced as under :

> "6.2 Ground No. 2: In the instant appeal the appellant has contested the disallowance for carry forward capital loss for subsequent years. Upon reviewing the assessee's submission, ITR and intimation order it is found that the appellant has filed belated ITR on 12.09.2016. As per the ITR, the appellant has incurred a short term capital loss of 1,45,00,000/- covered u/s 74 of the Act, which can be carry forwarded to eight assessment years if and only if condition mentioned in section 80 r.w.s 139(3) met. The relevant part of section 80 and section 193(3) of the act is reproduced below:
>
> "80. Notwithstanding anything contained in this Chapter, no loss which has not been determined in pursuance of a retum filed 36 [in accordance with the provisions of sub-section (3) of section 139], shall be carried forward and set off under sub-section (1) of section 72 or sub-section (2) of section 7337 [or sub-section (2) of section 73A] or sub-section (1) 38 [or sub-section (3)+] of section 7439 [or sub-section (3) of section 74A]."
>
> Further section 139(3) states that:
>
> "(3) If any person who 53[*] has sustained a loss in any previous year under the head "Profits and gains of business or profession" or under the head "Capital gains" and claims that the loss or any part thereof should be carried forward under sub-section (1) of section 72, or sub-section (2) of section 73, 54 [or sub-section (2) of section 73A] or sub-section (1) 55 [or sub-section (3)] of section 74, 56[or sub-section (3) of section 74A], he may furnish, within the time allowed under sub-section (1) 57[*], a return of loss in the prescribed form 58 and verified in the prescribed manner and containing such other particulars as may be prescribed, and all the provisions of this Act shall apply as if it were a return under sub-section (1)."

6.2.1 Upon plain reading of the 139(3) combined with section 80, there arises no ambiguity. For carrying forward the loss, the appellant must have filed the return in due time, in this case, it is not so. Hence CPC is good in law in disallowing the carry forward of the loss claimed in the belated return filed.

7. In light of the above the appeal is dismissed."

(emphasis supplied by us)

3. Aggrieved with the said order, the assessee is in appeal before us on the following grounds :

"Ground No. 1-General Ground (Against Facts and Law)

1.1 That the Order of the Ld. ADDL/JCIT(A), Bhubaneswar, is bad in law, against the facts of the case and against the principles of natural justice, and therefore deserves to be set aside.

Ground No. 2-Erroneous Dismissal of Carry Forward of Short Term Capital Loss of Rs. 1,45,00,000/-

2.1 That the Ld. ADDL/JCIT(A) erred, both on facts and in law, in upholding the disallowance of carry forward of short term capital loss of Rs. 1,45,00,000/- incurred by the Appellant during A.Y. 2016-17.

2.2 That the Ld. CIT(A) himself, after duly condoning the delay of 2,738 days, held that the Appellant's medical reason was not fully credible, yet proceeded to dispose of the appeal. However, the Ld. CIT(A) erred in not appreciating that the same medical circumstances that justified condonation of delay in filing the appeal were equally sufficient to justify condoning the delay in filing the return of income, particularly when the hospitalization was from 20/07/2016 to 10/09/2016, i.e., covering the entire return-filing period. There is a manifest inconsistency in the order inasmuch as the Ld. CIT(A) condoned the delay yet ignored the same medical circumstances while adjudicating Ground No. 2.

2.3 That the Ld. CIT(A) erred in mechanically applying section 80 read with section 139(3) of the Act without considering that the short term capital loss of Rs. 1,45,00,000/- which is is genuine and has been mentioned by the ACIT, Circle 2(3)(1), Jhansi in his

in his order passed u/s 143(3) on 18.12.2018, and which was duly disclosed in the return of income. and has arisen from bona fide investment activities, specifically sale of two immovable properties. The Ld. CIT(A) failed to exercise quasi-judicial discretion and adopt a purposive interpretation of the Act.

2.4 That the Ld. CIT(A) failed to appreciate that the provisions of section 80 read with section 139(3) of the Act, being provisions causing civil consequences in the nature of forfeiture of a lawfully accrued right (carry forward of loss), must be interpreted strictly and narrowly. Where the delay in filing the return is entirely attributable to circumstances beyond the control of the assessee (hospitalization), a rigid application of section 80 results in grave injustice.

2.5 That the Ld. CIT(A) has failed to follow the binding judicial pronouncement of the Hon'ble ITAT, Chandigarh Bench 'A' in the case of International Fresh Farm Products (India) Ltd. v. Income Tax Officer (cited even in the Statement of Facts filed by the Appellant before the Ld. CIT(A)), which holds that-

"...where the assessee is only claiming carry forward of losses of the specified business, the AO has no jurisdiction to deny such carry forward." [Emphasis supplied]

The ratio of the above decision squarely applies since the Appellant had only claimed carry forward and not set-off of the capital loss in the impugned assessment year. The carry forward is a preliminary step distinct from set-off, and the AO/CIT(A) could not have denied the claim at the stage of carry forward itself.

2.6 That the Ld. CIT(A) has misconstrued the scope of section 80 of the Act. A plain reading of section 80 is that no loss 'not determined in pursuance of a return filed under section 139(3) shall be carried forward. In the present case, the Appellant did file a return disclosing the loss; the assessment u/s 143(3) was also completed wherein the loss was found to be genuine. Thus, the loss stands 'determined' in the assessment proceedings. The restriction under section 80 applies only where no return is filed at all, or the loss was never disclosed, and not where the loss has been disclosed in a belated return which has been accepted.

2.7 That the Ld. CIT(A) failed to appreciate that:

(a) The short term capital loss of Rs. 1,45,00,000/- arose from genuine sale transactions that are verifiable from registered sale deeds and the assessment records;

(b) The AO in the scrutiny assessment u/s 143(3) verified the capital loss details and determined the income; non-allowance of carry forward creates an asymmetric and inequitable outcome;

(c) The Appellant is not claiming the loss as a set-off in A.Y. 2016-17 itself but merely seeking to carry it forward in accordance with section 74 of the Act.

2.8 That the disallowance of carry forward of the short term capital loss of Rs. 1,45,00,000/- causes grave financial prejudice and undue hardship to the Appellant, who is a salaried individual and had genuinely incurred the loss on property transactions. The Appellant craves to place additional judgments in support of this ground at the time of hearing.

Ground No. 3-Non-appreciation of the Principle of Equity and Fairness

3.1 That the Ld. CIT(A) has erred in not considering that the principle of equity embedded in the fiscal law cannot be overlooked. The Appellant, who was admitted to hospital during the entire return-filing period and filed the return as soon as he was medically fit (12/09/2016), ought not to be penalized for circumstances entirely beyond his control. The denial of carry forward in such circumstances is contrary to the spirit of the Act.

Ground No. 4-No Opportunity of Personal Hearing Granted

4.1 That the impugned order records 'Present for the Appellant: Not Applicable' and 'Date of Hearing(s): As per record(s)', suggesting that no proper hearing was afforded to the Appellant. The summary disposal of the appeal without hearing the Appellant violates principles of natural justice and renders the order non-est in the eyes of law. The Appellant was not given a fair and reasonable opportunity to present his case before the Ld. CIT(A).

Ground No. 5-General/Omnibus Ground

5.1 That the Appellant craves leave to add, alter, amend, or withdraw any of the foregoing grounds of appeal at the time of hearing, and to raise any additional ground(s) as may be

necessary in the interest of justice and with the leave of the Hon'ble Tribunal."

4. At the time of hearing, learned AR filed a written submission wherein it was stated that the learned CIT(A) denied the benefit of carried forward of short-term capital loss of Rs.1,45,00,000/- solely on the ground that the return of income was filed with a delay of 39 days beyond due date prescribed u/s. 139(1) of the Act. Learned AR submitted that the delay was very marginal and it was neither deliberate nor intentional and that there was no intention, whatsoever, to evade tax or derive any undue advantage. In this regard, the learned AR also relied judicial precedents in support of his claim and the relevant extract of the submission is reproduced as under:

"4. Judicial Precedents

The Appellant respectfully relies upon the following principles laid down by CBDT circular no 11/2024 and the ITAT and the Hon'ble Courts:

I. CBDT circular no 11/20124: The CBDT has has issued the order authorizing Income Tax Authorities to admit applications or claim for refund and carry forward of loss and set off thereof u/s 119(2)()b) of the Income Tax Act 1961.

II. Padmalochanan Radhakrishnan vs UOI & Ors 186 taxmann.com 121-Cal HC- The Hon'ble High Court in its order dated 05.5.2026 held that the AO misconstrued the intent and purport of the statutory provisions and CBDT circular no 11 of 2024 and observed that the delay of 7 days was negligible and Bonafide, and that no assessee would ordinarily gain by filing a belated return. Relying on CBDT and Anr vs Regan Powertech Pvt Ltd and Land Acquisition vs MST Kartiji, the court applied the principle of proportionality and directed the respondent

authorities to condone the delay and process the return in accordance with law.

III. **Collector, Land Acquisition v. Mst. Katiji & Ors. [(1987) 167 ITR 471 (SC)]**

The Hon'ble Supreme Court held that a liberal approach should be adopted while considering matters involving delay and that substantial justice should prevail over technical considerations.

IV. N. Balakrishnan v. M. Krishnamurthy [(1998) 7 SCC 123]

The Supreme Court held that the length of delay is not material; what is material is whether the explanation is bona fide and whether refusal to condone the delay would result in injustice.

V. CIT v. Kulu Valley Transport Co. (P.) Ltd. [(1970) 77 ITR 518 (SC)]

The Supreme Court emphasized that beneficial provisions relating to carry forward of losses deserve liberal construction.

VI Vinod Kumar Soni vs ITO (Agra Trib) vide order dated 25.6.2026-had condoned the delay of about 353 days in filing the appeal as the appellant was undergoing medical treatment and was supported by an affidavit from the assessee and the uncontroverted affidavit was sufficient.

The ITAT and the various High Courts and the Supreme Court has on various occasions visited this issue and have interpreted law in a more liberal manner and have applied the principles of natural justice and proportionality and have issued orders favouring the assessee by condoning the delay in filing the income tax return or the appeal and allowed relief to the assessee.

5. Equitable Considerations.

20. The Appellant has acted honestly and transparently.

21. The delay is minimal.

22. The claim is genuine.

23. No prejudice whatsoever is caused to the Revenue for the relevant assessment year.

24. Refusal to allow carry forward of the loss would permanently deprive the Appellant of a valuable statutory benefit for a minor procedural lapse and would cause irreparable hardship.

6. Prayer

In view of the facts and circumstances stated above, it is most respectfully prayed that this Hon'ble Tribunal may kindly:

(a) condone the delay of 39 days in filing the return of income for the limited purpose of allowing the carry forward of the Short-Term Capital Loss;

OR IN THE ALTERNATIVE

(b) set aside the order of the Learned CIT(A) and direct the Assessing Officer to allow the carry forward of the genuine Short-Term Capital Loss in accordance with law;

(c) pass such other or further orders as this Hon'ble Tribunal may deem fit and proper in the interest of justice."

5. On the other hand, the learned Sr. DR supported the orders of the authorities below.

6. We have heard both the parties and perused the material on record. In this case, as noted above by the AO, the case was picked up for limited scrutiny and the purchase and sale deed of property and details of the capital loss etc. of the assessee were examined by the AO. The AO further noted that during the year, the assessee had sold two properties and had incurred capital loss of Rs. 1,45,00,000/- which was noted by the AO in the assessment order- *'Assessee has shown capital*

loss on sale of property'. However, the AO did not make any observation regarding the carry forward of the above capital loss on the sale of the said two properties. Aggrieved with the above fact, the assessee filed an appeal before the Ld. CIT(A) for the allowance of the said carry forward of the capital loss of Rs. 1,45,00,000/-. However, the Ld. CIT(A) dismissed the assessee's appeal relying upon the provision of section 80 and 139 (3) of the Act and the relevant extracts of the order of the Ld. CIT(A) has been reproduced by us earlier in this order. However, on similar facts, the Coordinate Bench of Chandigarh Tribunal in the case of M/s International Fresh Farm Products (India) Limited vs. ITO Ward 2(1) Chandigarh vide order dated 07.08.2023 in ITA no. 630/Chd/2022 relied upon by the Ld. AR, allowed a similar claim of the assessee for carry forward of a business loss incurred u/s 35D of the Act where also the assessee had filed its return of income beyond the due date. In this regard, the relevant extracts of the order in the said case are reproduced as under:

> "8. It was submitted that in the instant case, the assessee has admittedly filed its return of income much after the due date and claimed carry forward of current year business losses of Rs. 8,36,02,091/- which is clearly not allowable in terms of the provisions of Section 139(3) read with Section 80 of the Act. It was accordingly, submitted that there was no infirmity in the action of the CPC/AO in disallowing the claim of the assessee which is clearly in accordance with the provisions of Law. It was further submitted that practically, there is no mechanism where the AO for the subsequent assessment year can verify whether the return of previous assessment year has been filed within the

prescribed due date and therefore, where the AO for the impugned assessment year is examining the return of income and gives a finding that the return has not been filed in time and thus, the assessee is not allowed to carry forward the business losses, there is no infirmity in the said action of the AO. Further, reliance was placed on the decision of Hon'ble Punjab & Haryana High Court in case of Rajiv Gupta Vs. CIT [2014] 51 taxmann.com 53 wherein the matter was decided in favour of the Revenue upholding the decision of the Coordinate Chandigarh Benches in case of Rajiv Gupta Vs. ITO [2008] 114 ITD 346.

9. We have heard the rival contentions and perused the material available on record. The limited issue under consideration relates to carry forward of current year business loss of specified business u/s 35D to the subsequent assessment year. The same has been denied by the AO/CPC and confirmed by the ld CIT(A)/NFAC for the reason that return of income has been filed much after the due date as prescribed u/s 139(1) of the Act and necessary guidance has been drawn from the provisions of Section 139(3) read with Section 80 of the Act.

10. Section 73A contains provisions relating to carry forward and set off of losses of specified business and the same reads as under:

> "(1) Any loss, computed in respect of any specified business referred to in section 35AD shall not be set off except against profits and gains, if any, of any other specified business. (2) Where for any assessment year any loss computed in respect of the specified business referred to in sub-section (1) has not been wholly set off under sub-section (1), so much of the loss as is not so set off or the whole loss where the assessee has no income from any other specified business, shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and— (i) it shall be set off against the profits and gains, if any, of any specified business carried on by him assessable for that assessment year; and (ii) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on."

11. Sub-section (2) to Section 73A provides that any loss, computed in respect of any specified business referred to in section 35AD which has not been wholly set off under sub section (1), shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year and it shall be set off against the profits and gains, if any, of any specified business carried on by him assessable for that assessment year. Thus, the right of the assessee to carry forward and set off of losses has been made subject to provisions of Section 80 of the Act.

12. Section 80 provides that no loss which has not been determined in pursuance of a return filed in accordance with section 139(3) shall be carried forward and set off under section 73A(2).

13. Sub-section (3) to Section 139 provides that where a person has incurred a loss in any previous year under the head "profits and gains of business or profession" and claims that such loss should be carried forward in terms of section 73A(2), he may furnish the return of income within the time prescribed u/s 139(1) of the Act.

14. In the instant case, the assessee has incurred certain losses in respect of its specified business u/s 35D for the impugned assessment year and claims that such loss be allowed to be carried forward for being set off against income of the specified business of the subsequent assessment year. The return of income for the impugned assessment year, however, has been filed beyond the prescribed due date as provided u/s 139(1) of the Act. There is thus a violation by way of not filing the return of income within the prescribed due date, a condition precedent for allowing the assessee's claim. In the said background, the contention which has been raised by the ld AR is that the language which has been provided in the statute is "carry forward and set off" and therefore both these phrases have to be co-jointly read and cannot be segregated and therefore it is only in the year in which the set off is claimed by the assessee that the provisions of Section 80 may be invoked by the AO in the subsequent assessment year. In other words, it is for the AO, examining the return of income for the subsequent year where the assessee seeks set off of brought forward losses from the impugned assessment year, to take appropriate decision to allow or deny such claim of set off, however, as far as the impugned assessment year is concerned, where the assessee is only claiming carry forward of losses of specified business, the AO has no jurisdiction to deny such carry forward.

15. In case of Manmohan Das (Supra), the Hon'ble Supreme Court held that it is for the ITO dealing with assessment in the subsequent year to determine whether the loss of the previous year may be set off against the profits of that year and a decision recorded by the ITO who computes the loss in the previous year that loss cannot be set off against the income of the subsequent year is not binding on the assessee and the relevant findings are contained in para 3 of its order which read as under:

> "3. The second question presents little, difficulty. In making his order of assessment for the year 1950-51, the ITO declared that the loss computed in that year could not be carried forward to the next year under s. 24(2) of the IT Act, as it was not a business loss. The ITO has under s. 24(3) to notify to the assessee the amount of loss as computed by him, if it is established in the course of assessment of the total income that the assessee has suffered loss of profits., Sec. 24(2)

confers a statutory right (subject to certain conditions which are not material) upon the assessee who sustains a loss of profits in any year in any business, profession or vocation to carry forward the loss as is not set off under sub-s. (1) to the following year, and to set it off against his profits and gains, if any, from the same business, profession or vocation for that year. Whether the loss of profits or gains in any year may be carried forward to the following year and set off against the profits and gains of the same business, profession or vocation under s. 24(2) has to be determined by the ITO who deals with the assessment of the subsequent year. It is for the ITO dealing with the assessment in the subsequent year to determine whether the loss of the previous year may be set off against the profits of that year. A decision recorded by the ITO who computes the loss in the previous year under s. 24(3) that the loss cannot be set off against the income of the subsequent year is not binding on the assessee."

16. Following the same, the Coordinate Delhi Benches in case of Burda Druck India Pvt Ltd (Supra) has held in para 6 & 7 as under:

"6. We have given a thoughtful consideration to the orders of the authorities below. The undisputed fact is that while concluding assessment the AO declared that the loss computed is not allowed to be carried forward. In our considered opinion all that the AO is required is to notify the assessee the amount of loss as computed by him. Whether the loss in any year may be carried forward to the following year and set off against the profits has to be determined by the AO who deals with the assessment of the subsequent year. It is for the ITO dealing with the assessment in the subsequent year to determine whether the loss of the previous year may be set off against the profits of that year. For this proposition we place strong reliance on the decision of the Hon'ble Supreme Court in the case of CIT Vs. Manmohan Das 59 ITR 699 wherein:-
"It was held by the Hon'ble Supreme Court that it is for the Assessing Officer dealing with the assessment in the subsequent year who has to determine whether the loss of the previous year may be set off against the profits of that assessment year. The Hon'ble Supreme Court further held that a decision recorded by the Assessing Officer who computes the loss in the previous year that the loss cannot be set off against the income of the subsequent year is not binding on the assessee.

23. The ratio of the decision of the Hon'ble Supreme Court in the case of CIT Vs. Manmohan Das (supra) applied squarely to the facts of the assessee's case."

7. In the light of aforementioned discussion and respectfully following the ratio laid down by the Hon'ble Supreme Court in the case of

Manmohan Das (supra). We have no hesitation in directing the AO to expunge the concluding remark “brought forward loss is not allowed to be carry forward as per para 3,4 and 5.”

17. Similarly, the Coordinate Mumbai Benches in case of Instant Traders Pvt Ltd (Supra) has held in para 5-7 of its order which read as under:

> “5. After having carefully considered the rival submissions, we find that the limited plea of the assessee before us is to the effect that the dispute regarding the denial of the carry forward of loss on the basis of prohibition contained in section 79 of the Act be considered by the Assessing Officer in accordance with law in the subsequent year where the assessee claims actual set off. An identical situation has been considered by our coordinate Bench in the case of Khajrana Ganesh Properties Private Limited (supra), wherein one of us is part of the Bench. The Tribunal, by relying the judgment of Hon'ble Supreme Court in the case of Manmohan Das (Deceased) (supra), noted that whether or not loss in any year can be carried forward and set off in the subsequent year is liable to be determined by the Assessing Officer who deals with the assessment of such subsequent year. In fact, the Hon'ble Supreme Court specifically noted that the decision recorded by the Assessing Officer, who computes the loss in preceding year that loss cannot be set off in the subsequent year is not binding on the assessee in the subsequent actual year of set off. Considered in this light, the co-ordinate Bench in the case of Khajrana Ganesh Properties Private Limited (supra) came to conclude that it is only the Assessing Officer dealing with the assessment of the assessment year where the assessee has claimed set off of the loss is competent and not the Assessing Officer of the earlier year. The relevant decision of the Co-ordinate Bench is as under:
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> > "We have carefully considered the rival submissions and find that the issue before us can be disposed off in the light of the point of law laid down by the Hon'ble Supreme Court in the case of Manmohan Das (Deceased) (supra). As per the Hon'ble Supreme Court, whether the loss in any year may be carried forward to the following year and set-off against the income of the subsequent year is liable to be determined by the Assessing Officer who deals with the assessment of such subsequent year. The Hon'ble Supreme Court further noted that a decision recorded by the Assessing Officer who computes the loss in a previous year that the loss cannot be set-off against the income of the subsequent year is not binding on the assessee in the subsequent actual year of set-off. Considered in this light, in our view, the Assessing Officer in the instant year had no jurisdiction to give a finding that the loss of Rs.7,96,21,402/-cannot be

> carried forward and set-off against the income of the subsequent year. Therefore, such observations/directions of the Assessing Officer, in our view, are bereft of jurisdiction and are accordingly directed to be removed. So however, our aforesaid decision should not be understood as any reflection on the merit or otherwise of invoking of Sec. 79 of the Act prohibiting carry forward and set-off of loss in certain situations. The application of Sec. 79 of the Act shall be open to be considered by the Assessing Officer in the subsequent year while evaluating the claim of the assessee for set-off of the impugned business loss. As a consequence of our aforesaid discussion, we set-aside the order of CIT(A) and direct the Assessing Officer to remove the directions relating to denial of carry forward and set-off of loss of Rs.7,96,21,402/-. Thus, on this aspect, assessee succeeds for statistical purposes."

6. Considering in the aforesaid light, in our view, so far as the instant assessment year is concerned, the Assessing Officer is not competent to give a finding that the loss cannot be carry forward and set off against the income of the subsequent year. Accordingly, the matter is remanded back to the file of the Assessing Officer to remove the direction relating to denial of carry forward and setoff of loss. However, our direction should not be interpreted to be any reflection on the merits of invoking section 79 of the Act, which prohibits carry forward and set off of loss in specified situations. The same shall be open to be considered by the Assessing Officer in the subsequent year of actual set-off while evaluating the claim of the assessee for set off of the impugned business loss.

7. As a consequence of our aforesaid discussion, we set aside the order of the CIT(A) and direct the Assessing Officer to expunge the directions so far as it relates to denial of carry forward and set off of loss. Thus, on this aspect the assessee succeeds for statistical purposes only."

18. Similarly, the Coordinate Mumbai Benches in case of M/s Orra Fine Jewellery Pvt Limited (Supra) has held in para 18-23 of its order which read as under:

> "18. We have heard the rival submissions, perused the orders of the authorities below and the case laws relied on. The substantial issue for consideration now before us for the A.Y. 2012-13 is whether the provisions of section 79 of the Act can be invoked and examined in the assessment year in which the assessee claimed for carry forward of losses or in the assessment year in which the assessee actually claimed set off of carry forward losses against the profits of that year. The assessee contends that the Assessing Officer can examine the

applicability of the provisions of section 79 of the Act only in the year in which the loss is set off and not in the year in which the assessee claims the loss to be carried forward. In the present case during the A.Y. 2006-07 the Assessing Officer invoking the provisions of section 79 of the Act denied carry forward of losses prior to the A.Y. 2006-07. Assessee carried the matter unsuccessfully before the appellate authorities and the matter is now pending before the Hon'ble High Court.

19. In the case of CIT v. Manmohan Das [59 ITR 699] the following question which came up before the Hon'ble Allahabad High Court has been examined by the Hon'ble Supreme Court in the appeal preferred by the revenue.

> "Whether the assessee could claim a set off of the loss suffered by him in the preceding year 1950-51 against his profits in the year under consideration, i.e., 1951-52, having failed to prefer an appeal against the refusal by the Income-tax Officer making the assessment for the year 1950-51 to allow the assessee to carry forward the loss under section 24(2) of the Act ?"

20. The Hon'ble Supreme Court held as under: -

> "3. The second question presents little difficulty. In making his order of assessment for the year 1950-51, the Income-tax Officer declared that the loss computed in that year could not be carried forward to the next year under section 24(2) of the Income-tax Act, as it was not a business loss. The Income-tax officer has under section 24(3) to notify to the assessee the amount of loss as computed by him, if it is established in the course of assessment of the total income that the assessee has suffered loss of profits. Section 24(2) confers a statutory right (subject to certain conditions which are not material) upon the assessee who sustains a loss of profits in any year in any business, profession or vocation to carry forward the loss as is not set off under sub-section (1) to the following year, and to set off against his profits and gains, if any, from the same business, profession or vocation for that year. Whether the loss of profits or gains in any year may be carried forward to the following year and set off against the profits and against the same business, profession or vocation under s. 24(2) has to be determined by the Income-tax Officer who deals with, the assessment of the subsequent year. It is for the Income tax Officer dealing with the assessment in the subsequent year to determine whether the loss of the previous year may be set off against the profits of that year. A decision recorded by the Income-tax Officer who computes the loss in the

previous year under s. 24(3) that the loss cannot be set off against the income of the subsequent year is not binding on the assessee."

21. As could be seen form the above, the Hon'ble Apex Court held that the loss of profits or gains in any year may be carried forward to the following year and set off against the profits and against the same business, profession or vocation under section 24(2) has to be determined by the Assessing Officer who deals with, the assessment of the subsequent year. It was held by the Hon'ble Supreme Court that it is for the Assessing Officer dealing with the assessment in the subsequent year who has to determine whether the loss of the previous year may be set off against the profits of that assessment year. The Hon'ble Supreme Court further held that a decision recorded by the Assessing Officer who computes the loss in the previous year that the loss cannot be set off against the income of the subsequent year is not binding on the assessee.

22. Following this decision of the Hon'ble Supreme Court, the Chandigarh Bench of the Tribunal in the case of Rajiv Gupta v. ITO [114 ITD 346] held that, the Assessing Officer was justified in refusing set off of the long-term capital loss suffered in A.Y. 1996-97, in A.Y. 1997- 98 as well as in A.Y. 1999-2000. It was observed by the Tribunal that there was a glaring and patent mistake committed by the Assessing Officer originally while making the assessments for the said assessment years under section 143(3) of the Act which was rightly modified, the assessment orders by rectifying the mistake of law by denying set off of long term capital loss claimed by the assessee. The facts in this case were that the assessee claimed carry forward of long term capital loss of A.Y.1996-97 in its return of income filed belatedly. This loss was set off during the A.Y. 1997-98 and A.Y. 1999-2000 by the assessee in the return of income filed. The Assessing Officer originally while completing the assessments u/s. 143(3) of the Act allowed the claim for set off. However, subsequently by passing rectification order u/s. 154 of the Act Assessing Officer denied the claim for set off which was upheld by the Tribunal, relying on the decision of the Hon'ble Supreme Court in the case of CIT v. Manmohan Das (supra) wherein it has been held that the claim of the assessee has to be examined by the Assessing Officer in the year in which such claim for set off was made by the assessee in the return of income. Following the decision of the Hon'ble Apex Court, the Tribunal in this case decided the appeals against the assessee.

23. The ratio of the decision of the Hon'ble Supreme Court in the case of CIT v. Manmohan Das (supra) applies squarely to the facts of the assessee's case. On a reading of the Tribunal order in ITA.No.5760/Mum/2009 dated 05.06.2013 passed for the A.Y. 2006-07

wherein the claim for carry forward of losses were denied invoking provisions of section 79 of the Act, we observed that the decision of the Hon'ble Supreme Court in CIT v. Manmohan Das (supra) was not brought to the notice of the Tribunal and the Tribunal had no occasion to examine the effect of this decision. Therefore, we are of the considered view that in view of the decision of the Hon'ble Supreme Court in the case of CIT v. Manmohan Das (supra) the decision of the Tribunal for the A.Y.2006-07 sustaining the action of the Assessing Officer in not carrying forward the loss to be set off against the profits of the subsequent years has no relevance and the findings given therein has no application for the assessment year under consideration. We are also of the view that the decision of the Tribunal cannot be considered as a binding precedent as the Tribunal did not consider the decision of the Hon'ble Supreme Court in the case of CIT v. Manmohan Das (supra). In the facts and circumstances, thus respectfully following the decision of the Hon'ble Supreme Court in the case of CIT v. Manmohan Das (supra) we hold that the claim for set off of carry forward of losses prior to assessment years 2006-07 against the profits of the current assessment year i.e. A.Y.2012-13 vis-à-vis the provisions of section 79 of the Act has to be examined by the Assessing Officer only in the assessment year in which the assessee claimed such set off of losses in the return of income. In the present case since the assessee has claimed set off of carry forward of losses against the income of the current assessment year i.e. A.Y. 2012-13 and also in the subsequent assessment years this claim of the assessee has to be examined only during the assessment year 2012-13 and subsequent assessment years. Thus, the grounds raised in this regard are restored to the file of the Assessing Officer who shall decide the implication of section 79 of the Act in the light of our above said findings and observations. The grounds raised are disposed off accordingly."

19. In the last of the aforesaid decisions, the Coordinate Mumbai Benches have also discussed the decision of the Coordinate Chandigarh Benches in case of Rajiv Gupta (Supra) wherein the facts of the case were that the long term capital loss incurred in A.Y 1996-97 was refused to be allowed set off by the AO while passing the rectification order for A.Y 1997-98 to 1999-2000 and which was upheld by the Bench. It was again a case where the AO for the year where the loss was claimed to be set off (and not a case where the AO for the year where the loss was incurred and claimed to be carried forward) has denied such claim for the reason that the return for the previous year was not filed in time. The said decision has since been confirmed by the Hon'ble Punjab and Haryana High Court and we thus find that the said decision support the case of the assessee rather than the Revenue.

20. In light of the aforesaid discussion and in the entirety of facts and circumstances of the case, we are of the considered view that there are two

aspects of the matter. Firstly, the determination of loss of the specified business by the AO and secondly, the carry forward of the said losses to the subsequent assessment year. The AO for the impugned assessment year has to determine the loss from the specified business and notify the same to the assessee accepting the loss as claimed by the assessee or suggesting any variation thereof. However, as far as the second aspect of the matter is concerned, there is no legal and justifiable basis for the AO/CPC to deny the assessee the carry forward of current year business loss of specified business u/s 35D as so computed by the AO for being set off against eligible profits in the subsequent years. It is for the AO examining the return of income for the subsequent year where the assessee seeks set off of the brought forward losses to take into consideration whether the return of income for the year of incurrence of losses of the specified business has been filed within prescribed due date or not and then, take appropriate action as per law. We therefore set-aside the order of the ld CIT(A) and direct the AO/CPC to remove the directions as far as it relates to denial of carry forward and set off of losses is concerned.

21. Now, coming to the submission of the ld CIT/DR that practically, there is no mechanism where the AO for the subsequent assessment year can verify whether the return of previous assessment year(s) has been filed within the prescribed due date, we find that appropriate documentation needs to be maintained by the department and in particular, the necessary modification is required in the form for furnishing return of income wherein due date of filing of return of income and actual date of filing of return of income for the relevant assessment years should also be provided along with particulars relating to losses to be carry forward and set off.

22. In the result, the appeal of the assessee is allowed."

(emphasis supplied by us)

6.1 In the present case also the assessee had admittedly filed its return of income after the due date on 12.09.2016 with a delay of 39 days and had claimed carry forward of short-term capital loss of Rs. 1,45,00,000/- on the sale of two properties. The AO did not allow the carry forward of the said short-term capital loss which was upheld by the Ld. CIT(A) relying upon the provisions of section 80 of the Act as was done in the

above cited case in respect of carry forward of business loss u/s 35D of the Act. The carry forward and the set off losses under the head “capital gains” is dealt under section 74 of the Act which is also governed by section 80 of the Act. Therefore, respectfully following the above order of the Chandigarh Tribunal, on the similar interpretation of section 80 of the Act for allowing the carry forward of loss which was denied by the lower authorities, we reverse the order of the Ld. CIT (A) and direct the AO to allow the carry forward of the short-term capital loss of Rs. 1,45,00,000/- as claimed by the assessee. However, our aforesaid decision should not be understood as any reflection on the merit or otherwise of invoking of Section 74 of the Act prohibiting carry forward and set-off of loss in certain situations. The application of Section 74 of the Act shall be open to be considered by the Assessing Officer in the subsequent year while evaluating the claim of the assessee for set-off of the impugned capital loss of Rs. 1,45,00,000/-. Ground no. 2.5 of the appeal filed by the assessee is allowed in terms as indicated above.

7. In view of the fact, ground no. 2.5 of appeal filed by the assessee being allowed in terms as indicated above, the others grounds of appeal become academic and are left open in this case.

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

Order pronounced in the open court on 14/10/2026.

Sd/-	***Sd/-***
(SUNIL KUMAR SINGH) **JUDICIAL MEMBER**	**(BRAJESH KUMAR SINGH)** **ACCOUNTANT MEMBER**

Dated: 14/10/2026

*aks/-

Copy forwarded to:

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

Asst. Registrar, ITAT, Agra