

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI
BEFORE SHRI PRAMOD KUMAR, VP AND SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No.1915/Mum/2020

(निर्धारण वर्ष / Assessment Years: 2012-13)

M/s. Birla Edutech Limited 1 st Floor, Dalamal House, Nariman Point, Mumbai- 400020.	बनाम / Vs.	ITO, Ward-3(1)(2) Room No.666, 6 th Floor, Aayakar Bhavan, Mumbai-400020.
स्थायी लेखा सं. /जीआइआर सं. /PAN/GIR No. : AADCB6433A		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Vipul Jain
Revenue by:	Shri Chetan Kacha (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 06/09/2022

घोषणा की तारीख /Date of Pronouncement: 10/11/2022

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-8, Mumbai dated 10.02.2020 for the assessment year 2012-13.

2. The grounds of appeal raised by the assessee are as under: -

“1. That on the facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) [hereinafter referred to as Ld. CIT(A)] was not justified and grossly erred in confirming the action of Ld. AO by disallowing set off of c/f losses and unabsorbed depreciation by invoking the provisions of section 79 of the Act without considering the provision of section 2(18) of the Act and section 3(iv) of Companies Act 1956.

2. That on the facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) was not justified and grossly erred in confirming the action of AO by disallowing the loss by



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invoking provisions of section 79 of the Act, when change in shareholding has taken place within the same Yash Birla Group.

3 That on the facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) and AO was not justified and grossly erred in disallowing the loss by invoking provisions of section 79 of the Act being debatable issue as mistake apparent from record and passing the order u/s 154 of the Act.

4. Without prejudice to above: Ld. CIT(A) and AO was not justified and grossly erred in disallowing set-off of carried forward unabsorbed depreciation by invoking the provisions of section 79 of the Act.”

3. Ground no. 3 is taken up first, being a legal issue, which challenges the jurisdiction of AO to have invoked the impugned action u/s 154 of the Income Tax Act, 1961 [hereinafter (“the Act”) (Rectification of mistake apparent on record). The assessee has raised this ground against the action of the Ld. CIT(A) in confirming the action of the AO passed u/s 154 of the Act [rectification of order] by disallowing set- off of carried forward losses and unabsorbed depreciation by invoking the provision of Section 79 of the Act without considering the provisions of Section 2(18) of the Act and Section 3(iv) of the Companies Act, 1956. According to the assessee, the AO did not had the power (suo-motto) to pass order u/s 154 of the Act because it was not mistake apparent from records whereas the issue involved mixed question of fact and law, and since the AO was not vested with the power of review by the stature he AO could not have invoked jurisdiction u/s 154 of the Act which was merely for correcting the mistake apparent on the face record.



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4. Brief facts are that the assessee/Birla Edutech Ltd (M/s. BEL) is part of 'Yash Birla Group' of company. During the year, assessee/Birla Edutech Ltd (M/s. BEL) issued new equity shares to M/s. Shearson Investment & Trading co. Pvt. Ltd. and M/s. Birla Shloka Edutech Ltd. ("BSEL") [Parent company of assessee] which is a listed company. The assessee company incurred loss of Rs.3,05,15,064/- in earlier AY. 2010-11 (including unabsorbed depreciation Rs.58,02,628/-) out of which Rs.70,23,243/- was set off against the income earned for AY. 2012-13. The AO while passing the scrutiny assessment on 30.03.2015 u/s 143(3) of the Act allowed the claim of the set-off of losses of Rs.70,23,241/-. However, later the AO invoked his power u/s 154 of the Act and has passed the order dated 28.07.2016 u/s 154 of the Act reversing his own action by disallowing the assessee's claim of set off of losses on the reason that since there was major change in the shareholding pattern of the assessee company as per provision of Section 79 of the Act, the loss cannot be allowed to be set- off. According to AO, since his earlier action of allowing the ibid claim was a mistake apparent from records, he disallowed the claim of set-off of losses. However according to assessee, AO could not have undertaken such an exercise meaning the AO could not have reversed his own action which impugned action tantamount to review of his own order which power the AO is not vested with. According to Ld. AR the AO erroneously has disallowed the claim allowed by him by wrongly applying section 154 of the Act which was only for rectification of mistake that too apparent on the fact of record. It was



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pointed out by the Ld. AR, that the issue involved is a mixed question of fact and law and involves interruption of various statute and provision of law and examination of relevant facts and there are conflicting judicial precedents on the subject (not jurisdictional High Court on this issue). So it was a debatable issue which could not have been interfered by AO u/s 154 of the Act. The Ld. AR brought to our notice the relevant facts that assessee company issued new equity shares on 6.02.2012 and M/s. BSEL became major share holder of 86.67% Rs.3,27,15,000/- shares out of the total Rs.3,77,45,000/- shares (i.e. 86.67% refer page no. 26-27 shares holding pattern) which was held by them till 31.03.2012. [It is assessee's contention that by virtue of this share holding of 86.67% by M/s. BSEL which is a listed company, M/s. BEL i.e. assessee from date of issue (i.e. on 6.02.2012) till the end of financial years (i.e. 31.03.2012) is "a company in which public are substantially interested and therefore the bar placed by section 79 of the Act to claim set off and carry forward off losses and depreciation is not applicable]. Thus the claim of assessee/M/s. BEL is that since more that 50% of its shares are held by M/s. BSEL (which is a listed company) assessee became a company in which public are substantially interested and so assessee company would not fall in the ken of Section 79 of the Act, and in this back-drop the assessee claimed set off and carry forward of business losses and un-absorbed depreciation. However the AO did not agree and according to him, there was no exception provided in Section 79 of the Act on the facts



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of the assessee so he invoked section 154 of the Act to disallow the claim of set off loss.

5. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who dismissed the appeal of assessee on the ground that the AO in the original assessment proceedings had ignored the applicability of Section 79 of the Act and has not taken note of the relevant facts and circumstances of the case which clearly attracts section 79 of the Act. Since AO ignored the relevant facts, it was a mistake and therefore, AO rightly invoked power u/s 154 of the Act and disallowed carry forward loss, which was allowed to be set off erroneously by him while passing the original assessment order. Thus, rectification of an obvious non-application of provision is justified u/s 154 of the Act. Aggrieved, the assessee is before us.

6. Assailing the action of the Ld. CIT(A), the Ld. AR submitted that the Ld. CIT(A) erred in invoking rectification power u/s 154 of the Act for an issue which is per-se debatable and as discussed, there is mixed question of fact & law which need examination of other statutes also. So the AO erred in reversing his own order which tantamount to review of his own order, which power the AO is not vested with and so his action u/s 154 of the Act was bad in law. To demonstrate the complicity of the issue which has been erroneously corrected u/s 154 of the Act [*by disallowing the loss by invoking Section 79 of the Act as mistake apparent from record while passing the order u/s 154 of the Act*], the Ld. AR cited various case laws viz. Vtkart Brother and others



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(1971) 82 ITR 50 (SC) and Tata Engineering and Locomotive Co. (1998) 108 ITR 869 (Bom); and also he assailed the impugned action of Ld. CIT(A) in not appreciating the fact and law involved in the issue i.e, since M/s. BSEL was a public company and holding 86.67% of the share of assessee company, section 79 of the Act was not applicable as held by the Hon'ble Jurisdictional High Court in Tata Petrodyne Ltd. (2015) 60 taxmann.com 81 (Bom) and this Tribunal in the case of Merediths Traders (P) Ltd. (ITA. No.3435/Mum/2010). Further, the Ld. AR submitted that in any case, the control of the assessee company was always with the Yash Birla group, so question of section 79 of the Act does not arise and cited the case laws (i) Amco Power Systems Ltd. (2015) 379 ITR 375 (Kar) (ii) Select Holiday Resorts (P.) Ltd. (2013) 217 Taxman 110 (Delhi) and (iii) Wadhwa & Associates Realtors Pvt. Ltd. (ITA. No.967/Mum/2016 dated 14.02.2018). And as per Ld. AR, in any case, (alternative argument), section 79 bars carry forward and set off of *“any loss incurred in any year prior to the previous year”*. Consequently, section 79 of the Act are not applicable to carry forward and set off of depreciation which is governed by Section 32(2) of the act and there is no restriction on carry forward of depreciation as held by Hon'ble Supreme Court in Shri Subhalaxmi Mill Ltd. 249 ITR 795 (SC). Moreover, according to Ld. AR, it can be seen that change in share holding has taken place within the group and therefore there is no change in the management as such. Therefore, AO erred in applying Section 79 of the Act. And in any case the issue of invoking Section 79 of the Act to disallow the



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loss and depreciation the AO could not have done while exercising jurisdiction u/s 154 of the Act because this power is only to correct mistake apparent on the face of the record. According to Ld AR, for applying Section 79 of the Act in the facts and circumstances of the case, interpretation of law of multiple provisions of the Act as well as Companies Act and case laws are required and thus it is a debatable issue. Therefore, according to Ld. AR in any case the AO did not have jurisdiction u/s 154 of the Act to disallow the carry forward loss applying section 79 of the Act.

7. Per contra, the Ld. DR supported the order of the Ld. CIT(A), and does not want us to interfere with the order of Ld. CIT(A).

8. Having heard both parties and after perusal of records, we note that in this case, in this assessment year i.e. AY. 2012-13, there was change in shareholding pattern due to which the assessee company became the subsidiary of another same group i.e. a Public Listed Company i.e. M/s. BSEL. The AO in the regular assessment u/s 143(3) of the Act vide order dated 30.03.2015, allowed the brought forward losses (set off for AY. 2010-11) to the tune of Rs.70,23,241/-. However, later, the AO passed the order dated 28.07.2016 u/s 154 of the Act disallowing set off of carried forward loss and unabsorbed depreciation to the tune of Rs.70.23,241/- applying section 79 of the Act. According to Ld. AR, the AO could not have done this impugned action u/s 154 of the Act because it was not a mistake apparent on the face of record and more over it was a debatable issue and there was mixed question of fact & law on the issue. So AO could not have



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disallowed the claim by exercise of power u/s 154 of the Act. Moreover, according to Ld. AR, the Ld. CIT(A) has not taken into consideration the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Tata Petrodyne Ltd (2015) 60 taxmann. Com 81 (Bom).

9. The Ld. AR brought to our notice the facts of the instant case which shows that the issue on which AO reversed his order u/s 154 of the Act was mixed question of fact & law. He brought to our notice that as on 31.03.2010 BEL had issued 50000 shares to seven (7) shareholders. Subsequently, new equity shares were issued on 06.02.2012 to parent company M/s. Birla Shloka Edutech Limited (M/s. BSEL) and Shearson Investment and Trading Co. P. Ltd. Thus, M/s. Birla Shloka Edutech Ltd. (M/s. BSEL) became major shareholder of 3,27,15,000 shares out of the total 3,77,45,000 shares (ie. 86.67%) on 06.02.2012 which was continuously held by them till 31.03.2012. According to Ld. AR, as per the provisions of Section 2(18)(b) of the Act, since Birla Shloka Edutech Ltd. [M/s. BSEL) was a listed company and was holding more than 50% of the paid-up share capital of BEL/assessee company from the date of issue (ie. 06/02/2012) till the end of the financial year (ie. 31.03.2012)]. Hence, according to assessee i.e, BEL/assessee company needs to be termed as “a company in which public are substantially interested”. Hence according to Ld. AR application of section 79 of the Act is automatically ruled out because this section applies only to Companies in which the public are not substantially interested. Hence according to



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him, the assessee can rightly set off and carry forward the Business Losses and unabsorbed depreciation as BEL does not fall within the ambit of Section 79 of the Act. However, the AO as well as the Ld. CIT(A) erred in not appreciating this fact and law.

10. According to Ld. AR, the short question is as to whether the brought forward losses and unabsorbed depreciation can be disallowed in the case of the assessee by applying Section 79 of the Act in proceedings for rectification of mistake u/s 154 of the Act is to be adjudicated first. To appreciate the contention of assessee that AO could not have undertaken this exercise u/s 154 of the Act because the issue involved was mixed question of fact and law. We note that as on 05.02.2012, the shareholding pattern of the assessee was as under: -

Name of the shareholder	No. of shares	%
Yashovardhan Birla	25,000	50.000
P.V.R Murthy	4,000	8.00
N. Srikrishna	4,000	8.00
G.L. Lath	4,000	8.00
Arun Singhi	4,000	8.00
Shearson Investment and Trading Co. P. Ltd.	4,000	8.00
Nirved Traders P. Ltd.	5,000	10.00
	50,000	100.00

11. The share holding pattern got changed, thereafter as on 31.03.2012 as under: -

Name of the shareholder	No. of shares	%
Yashovardhan Birla	25,000	0.07
P.V.R Murthy	4,000	0.01
N. Srikrishna	4,000	0.01
G.L. Lath	4,000	0.01
Arun Singhi	4,000	0.01
Shearson Investment and Trading Co. P. Ltd.	49,84,000	13.20
Nirved Traders P. Ltd.	5,000	0.01
Birla Shloka Edu Tech Ltd.	3,27,15,000	86.67



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	3,77,45,000	100.00

12. It would be gainful to refer to Section 79 of the Act which reads as under: -

“79. Notwithstanding anything contained in this Chapter, where a change in shareholding has taken place in a previous year in the case of a company (not being a company in which the public are substantially interested) no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year unless

(a) on the last day of the previous year the shares of the company carrying not less than fifty-one per cent of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than fifty-one per cent of the voting power on the last day of the year or years in which the loss was incurred Provided that nothing contained in this section shall apply to a case where a change in the gift voting power takes place in a previous year consequent upon the death of a shareholder as on account of transfer of shares by way of gift to any relative of the shareholder making such gift;

Provided further that nothing contained in this section shall apply to any change in the shareholding of an Indian company which is a subsidiary of a foreign company as a result of amalgamation or demerger of a foreign company subject to the condition that fifty one per cent shareholders of the amalgamating or demerged foreign company continue to be the shareholders of the amalgamated or the resulting foreign company.”

13. A bare perusal of sec. 79 divulges that if a change in the shareholding of the company takes place in a previous year, no loss



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incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year unless the conditions specified in clause (a) are satisfied. However, it is important to note that sec. 79 is applicable “in the case of a company, not being a company in which the public are substantially interested”. It, therefore, transpires that sec. 79 has no application in the case of a company in which the public are substantially interested. To put it in simple words, if it is a company in which the public are not substantially interested, then sec. 79 would apply.

14. Section 2(18) of the Act defines “company in which the public are substantially interested”, the relevant part of which is as under:

“(b) if it is a company which is not a private company as defined in the Companies Act, 1956 (1 of 1956), and the conditions specified either in item (A) or in item (B) are fulfilled, namely :-

(A)

(B) shares in the company (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than fifty per cent of the voting power have been allotted unconditionally to, or acquired unconditionally by, and were throughout the relevant previous year beneficially held by –

(a) the Government, or (b) a corporation established by a Central, State or Provincial Act, or

(c) any company to which this clause applies or any subsidiary company of such company if the whole of such share capital of such subsidiary company has been held by the parent company or by its nominees throughout the previous year”.



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15. As per clause (b) of sec. 2(18), a company is said to be a company in which the public are substantially interested if it is a company which is not a private company as defined in the Companies Act, 1956, and the conditions either in item (A) or in item (B) are satisfied.

16. Public company' has been defined in sec. 3(iv) of the Indian Companies Act, 1956, to mean a company which –

- (a) is not a private company;
- (b) has a minimum paid-up capital of five lakh rupees or such higher paid-up capital, as may be prescribed;
- (c) is a private company which is a subsidiary of a company which is not a private company.”

17 Here, it is pertinent to note that the above extracted clause (iv) of sec. 3 of the Companies Act defining 'public company' has been substituted by the Companies (Amendment) Act, 2000, w.e.f. 13-12-2000. Sec. 43A defining “deemed public company” was amended w.e.f. 13-12-2000 to abolish the concept of “deemed public company”. Simultaneous with the amendment in sec. 43A, sec. 3(iv) of the Companies Act was also substituted to provide that a private company which is subsidiary of a company which is not a private company shall mean a “public company”. From the above discussion, it is evident that where a private company is subsidiary of a public company, such private company shall also mean a 'public company'.

18. Section 79 is applicable “in the case of a company, not being a company in which public are substantially interested” meaning Section 79 is applicable to a private Ltd. company and not a company in which



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substantially interested. Further, as per section 2(18) of the Act, a company is said to be, company in which public are substantially interested if it is a company which is not a private company as defined in Companies Act, 1956, and that either of the following conditions are satisfied; (A) Shares in the company were listed in a recognized stock exchange in India as on the last day of the previous year, (B) Shares in the company carrying not less than 50% of voting power has been allotted unconditionally or acquired unconditionally by, and were throughout the relevant previous year beneficially held.

19. From perusal of the definition of ‘Public Company’ as given in Section 3(iv) of the Companies Act, 1956, it is evident that where a private company which is a subsidiary of a Public Company, such private company shall also be considered to be a ‘public company’.

20. Coming to the facts of the case, we note that in the assessee company, M/s. Birla Shloka Edutech Ltd. (BSEL) became major shareholder by holding 86.67% as on 06-02-2012, which was continuously held by it till the year end i.e. 31-03-2012. Thus according to Ld. AR, since BSEL (being a listed company) holds more than 50% of the paid up share capital of the appellant company from date of issue till the end of financial year i.e. 31-03-2012, therefore, the Appellant-company is “*a company in which public are substantially interested*” as per the definition of Income-tax Act and Companies Act.



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21. And he cited the decision of the Hon'ble Jurisdictional High Court in case of Tata Petrodyne Ltd [2015] 60 taxmann.com 81 (Bom) [Refer Page No. 67 to) 2] wherein it has clearly held that, "*where voting power of assessee company had been unconditionally acquired by company in which public e. is substantially interested.*" Thus he contended that assessee company would become a company in which public was substantially interested; And in such an event, assessee company's claim of brought forward losses need to be allowed and section 79 of the Act is not attracted in the facts of the case. The Ld. AR also brought to our notice this Tribunals decision in the case of Meredith Traders (P) Ltd. (ITA No. 3435/Mum/2010) [Refer Page No. 75 PB) wherein Tribunal held that as under: -

"10. The ld. CIT has albeit held that the assessee is a deemed public company as per the Companies Act, but he held that the same could not be true while applying the provisions of the Act. There is a basic fallacy in this point of view for the reason that sec. 79 of the Act is not applicable to the companies in which public are substantially interested. The definition of the company in which public are substantially interested has been given in section 2(18), which itself refers to the definition of private company as per the Companies Act. It is here that the Doctrine of Incorporation comes into play. As the definition of a 'private company' as per the Companies Act has been bodily lifted and incorporated in section 2(18) of the Income-tax Act, then what ever is its meaning in that enactment, will apply with full force to sec. 2(18) and in turn section 79 of the Act. It is impermissible to argue that the assessee may be a deemed public company as per the Companies Act, but would not be so for the purposes of the IT Act. Once a company is found to be not a private company as per the



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Companies Act, the same cannot be treated as a private company for the purposes of section 79 read with section 2(18) of the Act. Our view is fortified by the judgment of the Hon'ble Supreme Court in *Surana Steels (P) Limited VS DCIT & Ors (1999) 237 ITR 777 (SC).*”

22. Therefore, according to Ld. AR since the assessee company's more than 50 per cent of the shares were held by a public company consequently M/s. BSEL (public company) became the holding company of the assessee-company. Therefore, it was explicit that the assessee-company, by fulfilling the requisite conditions, became a company in which the public were substantially interested as per the Companies Act. Once it was held that the assessee was a company in which the public were substantially interested, application of section 79 was automatically ruled out because this section applies only 'in the case of company, not being a company in which the public are substantially interested', And by virtue of doctrine of incorporation comes into play the definition of "Private Company" as per the companies Act has been as such incorporate into Section 2(18) of the Act, then the same meaning will apply to Section 2(18) of the Act and which interim would be applicable to Section 79 of the Act. ...Once a company is found to be not a private company as per the Companies Act, the same cannot be treated as a private company for the purposes of section 79 read with section 2(18) of the Act and Since, the appellant is a subsidiary of company in which public are substantially interested and thus provisions of section 79 of the Act are not



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applicable to it. According to him, both AO and Ld. CIT(A) has not considered Section 3 of Companies Act and therefore erroneously stated that, there is no specific exemption provided in section 79 on the facts of the Appellant and it will apply automatically in case of change in shareholding. According to Ld. AR, the purpose of section 79 of the Act would be that benefit of carry forward and set off of business loss of previous years of company should not be misused by any new owner who may purchase the share of the company, only to get the benefit of set-off of business losses of the previous years.

23. Further, it was pointed out by the Ld. AR that Section 79 of the Act has no application when the change in shareholding has taken place within the group and there is no ultimate change management. According to him, it can be seen that Birla Edutech Ltd. (Assessee-company) and Birla Sholka Edutech Ltd. (Parent-company of assessee) both are Yash Birla Group of companies. During the concerned assessment year, BSEL hold 86.66% of the assessee company. However, BSEL is majorly controlled under the same Group i.e. Yash Birla and thus are ultimately controlled by the same management and therefore there is no change in management. As observed from the financial statement and ITR form, there are common directors in both the group companies. Thus, in the given case, section 79 of the Act need not to be applied as the change in shareholding is within the group without the change in control.

Reliance is placed on the following case laws:

DCIT V Amco Power Systems Ltd. (2015) 379 ITR 375 (Kar)



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DCIT Vs. Select Holiday Resorts (P.) Ltd. (2011) 16 taxmann.com 374

Wadhwa & Associates Realtors Pvt. Ltd. Vs. ACIT (ITA No. 967/M/2016, dated 14.02.2018)

24. In the light of the aforesaid discussion, we are of the opinion that the AO could not have invoked jurisdiction u/s 154 of the Act which power is only for rectification of mistake which is apparent on the face of record. According to Ld. AR, the AO in the appellant's case has made assessment u/s 154 by invoking the provisions of section 79 of the Act. However, section 79 of the Act clearly excludes the company in which public are substantially interested, now in order to check the applicability of section 79, we need to see the definition of the company in which public are substantially interested, which is defined u/s 2(18) of the Act. Further section 3 of Companies Act, 1956 defines the company, Private company and public company, thus the issue in the appellant's case require interpretation of various sections, in order to see whether the provisions of section 79 is applicable on the appellant or not, and it indeed involves interpretation of various provisions of law.

25. Further, it is noted that there are various judicial precedents on the issue of applicability of provisions of Section 79 of the Act on change in shareholding within the Group and when there is no change in ultimate holding or management. Further, there are also various



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judicial precedents in which authorities tried to establish whether the company is a company in which public is substantially interested or not and thus provisions of section 79 is not applicable. In every decision, whether it is in favour or against the appellant, appellate authorities has made the decisions after satisfying itself as to the applicability and interpretation of various provisions and laws. Thus, it cannot be said that it is a mistake apparent from records, when the issue involves interpretation of relevant laws and sections.

26. Thus, it can be safely concluded that set-off of losses when there is a change in shareholding is not a mistake apparent from record, and is debatable issue in the facts and circumstances discussed supra and it is not a case rectification. Reliance is placed on the following case laws:

Birla Cotton Spinning and Weaving Mills Ltd. v. ITO (1995) 211 ITR 610 (Cal.)

CIT v. Indian Steel And Wire Products Ltd. (1992) 192 ITR 252 (Cal)

CIT v. Calcutta Steel Co. Ltd. (1985) 153 ITR 488 (Cal)

Jagatdal Jute and Industries Ltd. v. CIT & ANR (2004) 266 ITR 587 (Cal)

CIT v. Illy Lilly & Co India (P) Ltd (2011) 334 ITR 186 (Del)

CIT v. Soora Subramanian (2010) 34 DTR 76 (Mad) *CIT v. Haritha Seating System Ltd*, (2011) (Tax Appeal No. 106 of 2008) (Mad)

CIT v. New Central Jute Mills Co. Ltd (1976) 105 ITR 262 (CAL)

CIT v. Hero Cycles Pvt. Ltd. (1997) 228 ITR 463 (SC) *Deva Metal Powder (P) Ltd. v. Commissioner of Trade Uttar Pradesh* (Appeal



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(civil) 5607 of 2007) CIT v. Tata Engineering and Locomotive Co. Ltd
(1997) 108 ITR 869 (Bom)

CIT v. Schlumberger Sea Co. Inc. (2003) 264 ITR 331 (Cal)

Bata India Ltd. v. ACIT (2001) 249 ITR 491 (Cal)

27. Thus, we find considerable force in the submission of the Ld. AR that AO erred in invoking Section 154 of the Act to disallow the losses u/s 79 of the Act which in any case can be termed to be mistake apparent on record. From the discussion (supra) it can be seen that not only provisions of Income Tax Act but also Companies Act need to be considered for adjudicating the issue on which several judicial precedents are there on the issue and which is mixed question of fact and law and therefore, certainly it cannot be rectified by AO u/s 154 of the Act. Therefore, we allow ground no. 3 of the assessee and therefore ground no. 1 & 2 are left open without us expressing any opinion on it. Since we allow ground no.3, consequently we cancel the impugned action of AO to have exercised jurisdiction u/s 154 of the Act and the action of AO to disallow the carry forward losses are deleted.

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

Order pronounced in the open court on this 10/11/2022.

Sd/-

(PRAMOD KUMAR)
VICE PRESIDENT

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 10/11/2022.

Vijay Pal Singh, (Sr. PS)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :



ITA No.1915/Mum/2020
A.Y. 2012-13
M/s. Birla Edutech Ltd.

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai