

Loss from dealing in mutual funds couldn't be treated as loss from speculative business

Summary – The High Court of Bombay in a recent case of Hertz Chemicals Ltd., (the Assessee) held that Loss in dealing in units of mutual fund/bonds would not be considered as loss in speculation business

Facts

- The assessee offered its profit/loss from share trading as income from speculation for purpose of section 73 and amounts received from mutual funds/bonds as business income.
- The Assessing Officer observed that till the preceding assessment year, *i.e.*, assessment year 2003-04 the assessee had offered profit/loss as from speculative business on its income from share trading as well those from mutual funds. This was revealed by the fact that for the year ending 31-3-2003 the assessee had shown closing stock of shares at Rs. 6.69 crores while the opening stock on 1-4-2003 for the subject assessment year was shown as Rs. 1.01 crores and the balance of Rs. 5.67 crores was shown as opening stock of mutual funds/bonds in view of the decision of the Apex Court in *Apollo Tyres Ltd. v. CIT* [\[2002\] 255 ITR 273/122 Taxman 562](#). However, Assessing Officer held that the closing stock on the last day of the preceding assessment year should be the opening stock for the subject assessment year and, thus, the bifurcation was not permissible. Consequently, the activity of dealing in mutual funds/bonds was considered to be an activity of dealing of shares as speculation business which resulted in certain addition.
- On appeal, the Commissioner (Appeals) deleted the addition by following the decision of the Apex Court in *Apollo Tyres Ltd. (supra)* wherein the Apex Court held that business of buying and selling of units of Unit Trust of India would not amount to speculation business.
- The Tribunal dismissed the revenue's appeal.
- On appeal to the High Court:

Held

- The decision of the Apex Court in *Apollo Tyres Ltd. (supra)* covers the issue in favour of the assessee.
- In said case the contention on behalf of the revenue was that even the units have to be considered to be shares covered by section 73. The Apex Court negated the above submission on behalf of the revenue holding that the provisions of UTI Act create a fiction to make Unit Trust of India a deemed company and the income received on its unit by an assessee to be deemed dividend. However, the Court held that there is no deeming provision for unit to be considered as share. Thus units are not shares.
- In the instant facts also, no specific provision has been pointed out which would deem the units in a mutual funds and/or bonds to be shares either for the purposes of the Act or for any other purposes. In that view of the matter, the decision of the Apex Court in *Apollo Tyres Ltd. (supra)*

would cover the controversy arising for consideration as units are not shares and, therefore, dealing in units cannot be considered to be shares.

- Therefore, the Tribunal was justified in confirming the action of the Commissioner (Appeals) in deleting the addition on account of speculation loss