

**आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, CHENNAI**  
**श्रीए. चंद्र पूजारी, लेखा सदस्य एवं श्री चल्ला नागेन्द्र प्रसाद, न्यायिक सदस्य के समक्ष**  
**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**  
**AND SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**आयकरअपीलसं./I.T.A.No.824/Mds/2012**

(निर्धारणवर्ष / Assessment Year: 2009-10)

Mr. Subhash Chandra Goel, 3-B, Tenerife Terrace 173, Periyar EVR Road, Kilpauk, Chennai-600 010. PAN:AAQPS9216A (अपीलार्थी/Appellant)	Vs	Assistant Commissioner of Income Tax, Circle-V Chennai-34. (प्रत्यर्थी/Respondent)
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अपीलार्थीकीओरसे/ Appellant by	:	Mr. G.Baskar, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. A.V.Sreekanth, JCIT

सुनवाईकीतारीख/Date of hearing	:	1 <sup>st</sup> June, 2015
घोषणाकीतारीख /Date of Pronouncement	:	24 <sup>th</sup> July, 2015

**आदेश / ORDER**

**Per Challa Nagendra Prasad, JM:**

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals-VIII), Chennai dated 18.01.2012 for the assessment year 2009-10 arising out of the order passed under section 154 of the Act.

2. Brief facts are that assessee filed return of income for the assessment year 2009-10 electronically on 30.09.2009 admitting income of ₹ 37,12,030/- under normal computation after adjusting brought forward loss of ₹ 8,64,454/-. Intimation under section 143(1) was passed on 4.9.2010 assessing the

income at ₹ 45,76,420/-. While passing the intimation the Assistant Commissioner of Income Tax, CPC, Bangalore, did not consider brought forward loss of ₹ 8,64,454/-. The assessee moved application under section 154 of the Act stating that carried forward business loss of ₹ 8,64,454/- was not adjusted against the income and this resulted in demand of ₹2,64,463/-. The assessee requested for rectification of intimation passed under section 143(1). Against this rectification application, a communication was sent by Assistant Commissioner of Income Tax, CPC, Bangalore stating that as seen from the schedule of carry forward loss and return of income filed, no details have been given as to the brought forward losses, therefore the system has correctly not allowed the same for set off. Assessee filed appeal before the Commissioner of Income Tax (Appeals) stating that in the return filed by the assessee business loss of ₹8,64,454/- relating to the assessment year 2003-04 was wrongly shown as loss from other sources instead of business loss. Therefore assessee prayed that there is a mistake in filling up the column in the return of income filed electronically and requested for direction to rectify mistake by

accepting set off of carry forward business loss of the assessment year 2003-04 against the business income of the assessment year 2009-10. Commissioner of Income Tax (Appeals) rejected the appeal of the assessee stating that no details of loss incurred by the assessee during the assessment year 2003-04 have been filed and it is also not known on what occasion loss arose and why this loss is carry forward to the year under consideration for set off. Therefore, in the absence of the above details, Commissioner of Income Tax (Appeals) rejected the claim of the assessee.

3. Counsel for the assessee before us filed two paper books containing copy of return for the assessment year 2009-10 filed electronically and the other paper book contains pages 1 to 39, wherein copies of returns filed for assessment years 2003-04 to 2006-07 electronically, return for the assessment year 2007-08, intimation for the assessment year 2007-08, application under section 154 for the assessment year 2007-08 for rectification of intimation passed under section 143(1) electronically return filed for the assessment year 2008-09, intimation issued under section 143(1) for

assessment year 2009-10. Referring to page 25 of the paper book, which contains electronic return filed for the assessment year 2009-10 in the schedule for carry forward of losses, wherein the assessee mentioned other sources loss adjusted at ₹ 8,64,454/-. Counsel for the assessee submits that in fact this loss of ₹ 8,64,454/- is not loss from other sources but business loss pertaining to assessment year 2003-04 which was wrongly shown as loss from other sources. Referring to various pages from 1 to 16 of the other paper book, counsel submits that these are representing copies of returns and computations filed by the assessee wherein it was shown that there was business loss for the assessment years 2001-02 and 2003-04. Counsel submits that these returns are part of records filed before the Assessing Officer in the normal course and the Commissioner of Income Tax (Appeals) without verifying all these records simply rejected the contention of the assessee that assessee incurred business loss of ₹ 8,64,454/- for the assessment year 2003-04. Therefore, he prays that a direction may be given to the Assessing Officer to set off of

business loss of ₹ 8,64,454/- against the income for the assessment year 2009-10 and recompute the income.

4. Departmental Representative supports the orders of lower authorities. He further submits that in the absence of any details filed before the lower authorities they are right in rejecting the claim of the assessee.

5. Heard both sides. Perused orders of lower authorities and the materials placed before us. Assistant Commissioner of Income Tax, CPC, Bangalore, rejected the assessee's rectification petition for the reason that assessee has not mentioned in the return filed electronically about the business loss said to have been incurred for the assessment year 2003-04 at ₹ 8,64,454/-. The Commissioner of Income Tax (Appeals) also rejected the claim of the assessee observing that no details have been filed by the assessee before him suggesting that assessee had incurred loss of ₹ 8,64,454/- during the assessment year 2003-04. Therefore, in the absence of any details, he rejected the claim of the assessee. Now the assessee files copies of return for assessment years

2003-04 to 2009-10 and return filed electronically for the assessment year 2009-10 and submits that there was business loss for the assessment year 2003-04 and the assessee has wrongly mentioned the business loss as other sources in the return filed electronically. On hearing both the parties, we are of the view that this matter has to be examined by the Assessing Officer in detail with reference to the returns filed by the assessee for the assessment years 2003-04 to 2009-10 and to see whether the assessee has any business loss as contended and whether such business loss is still remaining for set off or not for the assessment year 2009-10. All these issues have to be examined with reference to records. Thus, we restore this issue back to the file of the Assessing Officer with a direction to examine the issue afresh after providing adequate opportunity to the assessee. If it is found that assessee has business loss to the extent of ₹ 8,64,454/-, the same may be set off against the income for the assessment year 2009-10 as such loss for the assessment year 2003-04 is within the period of eight years.

6. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 24<sup>th</sup> July, 2015.

Sd/-  
( चंद्र पूजारी )  
( Chandra Poojari )  
लेखा सदस्य / Accountant Member

Sd/-  
( चल्ला नागेन्द्र प्रसाद )  
( Challa Nagendra Prasad )  
न्यायिक सदस्य /Judicial Member

चेन्नई/Chennai,  
दिनांक/Dated 24<sup>th</sup> July, 2015  
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आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.