

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH 'C', BANGALORE**

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER  
AND  
SHRI VIJAY PAL RAO, JUDICIAL MEMBER**

**ITA No.404 (Bang) 2016  
Assessment year : 2007-08)**

Dr. Syed Anwar,  
No.11, Church Road,  
Basavangudi  
Bangalore-560 004  
**PAN No.AAMPA9074G**

Appellant

**Vs**

The Deputy Commissioner of Income Tax,  
Circle-5(1),  
Bangalore

Respondent

**Assesee by : Shri K.Y.Ningoji Rao, CA  
Revenue by : Shri M.K.Biju, JCIT**

**Date of hearing : 11-01-2017  
Date of pronouncement : 25-01-2017**

**ORDER**

**PER SHRI A.K.GARODIA, AM**

This is assessee's appeal directed against the order of the  
ld.CIT(A)-5, Bangalore dated 31-12-2015 for assessment year 2007-08.

2. The grounds raised by the assessee are as under;

*"1. The impugned order of the Commissioner of  
Income Tax (Appeals) - 5, Bengaluru is liable to set  
aside in so far as it is incorrect, improper, irregular,  
opposed to facts and circumstances of the case  
and opposed to the law.*

2. *The Learned Commissioner of Income Tax (Appeals) erred in upholding the act of the Assessing Officer in denying to compute the Long Term Capital Loss arising on sale of 47 Acres 14 Guntas of Lands, of which the Appellant is held to be the owner by the Hon'ble ITAT, Bengaluru.*

3. *The Learned Commissioner of Income Tax (Appeals) erred in upholding that the Appellant did not make statutory claim of Long Term Capital Loss of RS.42,07,797/- in his Return of Income and that he is not entitled for the benefit set off of the same.*

4. *The Learned CIT (Appeals) erred in upholding the act of the Assessing Officer denying the benefit of Long Term Capital Loss set off u/s 70 of the Income Tax Act, 1961 disregarding the decision of Hon'ble ITAT, Bengaluru "C" Bench in ITA Nos.168 to 170/Bang/2012/A.Y.2007-08 in the case of the land owners viz., Mr. Syed Shafiulla; Mr. Syed Khaleelulla and Mr. Syed Amanulla.*

5. *The Learned CIT (Appeals) erred in upholding the act of the Assessing Officer denying the benefit of Long Term Capital Loss set off u/s 70 of the Income Tax Act, 1961 disregarding the facts and circumstances of the case and refusing to exercise the powers vested in him u/s 250 of the Income Tax Act, 1961.*

6. *The Learned CIT (Appeals) erred in dismissing the grounds of appeal on the allowability of the*

*Capital Loss in the hands of the appellant with complete disregard to scheme of the Income Tax Act.*

*7. The Learned CIT (Appeals) erred in not adjudicating on the Ground Nos. (5) to (6) regarding the impugned levy interest u/s 234A, 234B and 234C in all aggregating to Rs.2,79,392/-.*

**RELIEF CLAIMED:**

*In view of the grounds herein urged and of those which may be urged at the time of hearing, the Appellant prays that the Hon'ble Appellate Tribunal may please:*

*1. direct the Respondent to allow deduction of Long Term Capital Loss of RS.42,07,797/-;*

*2. set aside the impugned levy of interest u/s 234A, 234B and 234C of the Act; and*

*3. to grant such other relief as the Hon'ble Appellate Tribunal may deem fit to meet the ends of natural justice.*

3. It is submitted by the Id. AR of the assessee that the Id. CIT(A) has confirmed the assessment order on this basis that since the assessee has not made the claim regarding capital loss in the return of income, such claim made by the assessee in course of assessment proceedings is not allowable. He submitted that as per the judgment of the Hon'ble Apex Court rendered in the case of M/s Goetze India Ltd vs.

CIT as reported in 284 ITR 323, the embargo is on the AO but not on appellate authorities being the CIT(A) or the Tribunal. He submitted that the CIT(A) should have decided the issue on merit.

4. The ld. DR of the revenue supported the orders of the authorities below.

5. We have considered rival submissions. We find force in the submissions of the ld. AR of the assessee that the ld. CIT(A) should have decided the issue on merit instead of saying that the claim raised by the assessee in course of assessment proceedings is not allowable because the same was not raised in the return of income. Hence, we set aside the order of the ld. CIT(A) and restore the matter back to the file of the ld. CIT(A) for fresh decision on merit regarding the claim of the assessee in respect of long term capital loss of Rs.42,07,797/- after affording adequate opportunity of being heard to both sides.

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

Order pronounced in the open court on the date mentioned on the caption page.

**Sd/-**  
**(VIJAY PAL RAO)**  
**JUDICIAL MEMBER**

Place: Bangalore:  
D a t e d : 25.01.2017  
**am\***

**Sd/-**  
**(A.K. GARODIA)**  
**ACCOUNTANT MEMBER**

**Copy to :**

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-II Bangalore
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

By order

AR, ITAT, Bangalore

1. श्रुतलेख की तारीख.....  
DATE OF DICTATION.....
2. तारीख, जिस पर टाइप किया हुआ मसौदे, संबंधित सदस्य के सामने रखा गया है  
DATE ON WHICH TYPED DRAFT IS PLACED BEFORE THE DICTATING  
MEMBER.....
3. तारीख जिस पर अनुमोदित मसौदे व. निजी सचिव/निजी सचिव के पास वापस आए  
DATE ON WHICH THE APPROVED DRAFT COMES TO THE PS/Sr.PS.....
4. घोषणा के लिए आदेश संबंधित सदस्य के सामने रखने की तिथि  
DATE ON WHICH THE ORDER IS PLACED BEFORE THE DICTATING MEMBER  
FOR PRONOUNCEMENT.....
5. आदेश नि.सचिव/व.नि.सचिव के पास वापस आने की तिथि  
DATE ON WHICH THE ORDER COMES BACK TO THE PS/Sr.PS.....
- 6 आदेश अपलोड करने की तिथि  
DATE OF UPLOADING THE ORDER ON WEBSITE.....
7. अगर अपलोड नहीं किया तो, उसका कारण  
IF NOT UPLOADED, FURNISH THE REASON FOR DOING SO.....
8. बेंच लिपिक के पास फाइल जाने की तिथि  
DATE ON WHICH THE FILE GOES TO THE BENCH CLERK.....
9. आदेश ज़ेरोक्स/पृष्ठांकन के लिए भेजने की तिथि  
DATE ON WHICH ORDER GOES FOR XEROX & ENDORSEMENT.....
10. फाइल मुख्य लिपिक के पास जाने की तिथि  
DATE ON WHICH THE FILE GOES TO THE HEAD CLERK.....
11. आदेश पर हस्ताक्षर के लिए फाइल सहायक रजिस्ट्रार के पास जाने की तिथि  
THE DATE ON WHICH THE FILE GOES TO THE ASSISTANT REGISTRAR FOR  
SIGNATURE ON THE ORDER.....
12. अधिकरण आदेश के प्रेषण के लिए फाइल प्रेषण विभाग में जाने की तिथि  
THE DATE ON WHICH THE FILE GOES TO DESPATCH SECTION FOR DESPATCH  
OF THE TRIBUNAL ORDER.....
13. आदेश की प्रेषण की तिथि  
DATE OF DESPATCH OF ORDER.....