

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.832/Mds/2017

निर्धारण वर्ष / Assessment Year : 2012-13

The Deputy Commissioner of
Income Tax,
Corporate Circle – 5(1),
Chennai - 600 034.

(अपीलार्थी/Appellant)

M/s Omnex India Pvt. Ltd.,
v. No.1/807-A, Pillayar Kovil Street,
Thuraipakkam, Chennai - 600 097.

PAN : AAACO 7454 F

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. P. Radhakrishnan, JCIT

प्रत्यर्थी की ओर से/Respondent by : None

सुनवाई की तारीख/Date of Hearing : 27.06.2017

घोषणा की तारीख/Date of Pronouncement : 27.07.2017

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) – 3, Chennai, dated 30.12.2016 and pertains to assessment year 2012-13.

2. No one appeared for the assessee inspite of receipt of notice by RPAD. The Registry has placed postal acknowledgement as proof of service of notice on the assessee. Therefore, we heard Ld. Departmental Representative and proceeded to dispose of the appeal on merit.

3. Sh. P. Radhakrishnan, the Ld. Departmental Representative submitted that the assessee claims set off of brought forward business loss of ₹43,56,464/- for the assessment year 2010-11 under Section 139(3) of the Income-tax Act, 1961 (in short 'the Act'). According to the Ld. D.R., the assessee is eligible to carry forward the business loss and set off in that year provided the return of income was filed within the time limit prescribed under Section 139(1) of the Act. In this case, according to the Ld. D.R., for assessment year 2010-11, the return was not filed within the time limit provided under Section 139(1) of the Act, therefore, the business loss said to be suffered in assessment year 2010-11 cannot be carried forward to set off against the income in the subsequent year. Therefore, according to the Ld. D.R., the CIT(Appeals) is not correct in allowing the claim of the assessee.

4. We have heard the submission of Ld. Departmental Representative and perused the material available on record. The Assessing Officer rejected the carry forward of business loss of ₹49,23,846/- on the ground that the assessee has not filed return of income under Section 139(1) within the due date. However, the CIT(Appeals) allowed the claim of the assessee on the ground that the return filed by the assessee for the assessment year 2010-11 was not rejected by the Assessing Officer. Therefore, in view of the return filed for the assessment year under consideration, the same has to be allowed. The main contention of the Ld. Departmental Representative before this Tribunal is that for the purpose of allowing the claim of carry forward of business loss, the assessee has to necessarily file the return within the time provided under Section 139(1) of the Act.

5. We have carefully gone through the provisions of Section 139(3) of the Act which reads as follows:-

“139(3) If any person who 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 73A or sub-section (1) or sub-section (3) of section 74 or sub-section (3) of section 74A, he may furnish, within

the time allowed under sub-section (1) a return of loss in the prescribed form 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. When the assessee claims business loss for the assessment year 2010-11 and claims the same to be carried forward, it has to file the return of income under Section 139(3) of the Act within the prescribed time provided under Section 139(1) of the Act. The rejection of return of income would come into operation when there is a defect in the return filed by the assessee. In this case, it is nobody's case that there is defect in the return. The assessee claims to carry forward the losses suffered in the assessment year 2010-11 to the subsequent year, but the return was not filed within due date prescribed under Section 139(1) of the Act. Therefore, the loss said to be suffered in the assessment year 2010-11 cannot be brought forward to subsequent year. Hence, the CIT(Appeals) is not justified in allowing the claim of the assessee. Therefore, we are unable to uphold the order of the CIT(Appeals). The order of the CIT(Appeals) is set aside and that of the Assessing Officer is restored.

7. In the result, the appeal filed by the Revenue is allowed.

Order pronounced on 27th July, 2017 at Chennai.

sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 27th July, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-3, Chennai-34
4. Principal CIT- 5, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.