

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "J", MUMBAI**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND  
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA NO. 5522/MUM/2016 : A.Y : 2012-13**

ITO-23(2)(2),  
Mumbai (Appellant)

Vs. M/s. IKP Trust  
ICICI Bank Tower, North F, 7<sup>th</sup>  
floor, East Wing, Bandra Kurla  
Complex, Bandra (E),  
Mumbai 400 051. (Respondent)  
**PAN : AAATI7067F**

**Appellant by : Ms. Aarju Garodia**

**Respondent by : Shri Abhishek Tilak**

**Date of Hearing : 09/04/2018**

**Date of Pronouncement : 06/07/2018**

**ORDER**

**PER G.S. PANNU, AM :**

The captioned appeal by the Revenue is directed against the order of CIT(A)-32, Mumbai dated 13.06.2016 pertaining to Assessment Year 2012-13, which in turn has arisen from the order passed by the Assessing Officer, Mumbai, dated 24.09.2015 u/s 271(1)(c) of the Income Tax Act, 1961 (in short 'the Act').

2. In this appeal, Revenue has raised the following Grounds of appeal :-

*“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty levied on account of assessee claiming carry forward losses which were not found allowable for AY 2012-13.*

*2. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the penalty levied on the incorrect claim of carry forward of losses as being a genuine inadvertent error, when in fact such was not the case as the assessee had not contested the quantum of carry forward losses disallowed in the assessment order of AY 2012-13.*

*3. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in holding that the assessee’s claim of brought forward losses in AY 2012-13 was due to a genuine inadvertent error in making the claim of brought forward losses in AY 2011-12, when in fact the matter before him pertained to the penalty levied for AY 2012-13 and not the appeal for AY 2011-12 contested separately by the assessee.*

*4. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the penalty levied in AY 2012-13 by holding the assessee's claim as being due to a genuine inadvertent error in A. Y 2011-12, when in fact such is not the case and the assessee has contested the issues in an appeal for A. Y 2011-12, both on issue of loss of that year and if losses which were not carried forward as is evident from the order of Ld CIT(A).*

*5. On the facts and circumstances of the case & in law the Ld.CIT(A) erred in finding the decision of the Hon'ble Supreme Court, in the case of M/s, Price Water House Coopers Pvt. Ltd. 348 1TR 306, being squarely applicable to the instant matter when the facts completely differ. In the matter before the Hon'ble Supreme Court, the incorrect claim arose due to a non allowable claim in the return of income which was pointed out in the audit report of the same year, where as in the instant matter such is not the case.*

*6. The appellant prays that the order of the Ld.CIT(A) on the above grounds be set aside and that of the A. O be restored.”*

*3. The entire dispute in this appeal relates to the decision of CIT(A) in deleting the penalty levied by the Assessing Officer u/s 271(1)(c) of the Act*

relating to the incorrect claim of the assessee of brought forward losses from earlier years.

4. In order to appreciate the controversy, the following facts are relevant. The respondent-assessee is a private trust established under the Indian Trusts Act, 1882 on 14.09.2006 and it enables research in pharmaceuticals, healthcare and agriculture and Point of Care (POC) diagnostics. The short point relating to the Grounds of appeal raised is with regard to carry forward of brought forward losses. It transpires that in the course of assessment proceedings for the instant Assessment Year 2012-13, the Assessing Officer noted that the losses stated to have been brought forward from the earlier years by the assessee comprised of losses pertaining to Assessment Years 2009-10 and 2010-11 also, whereas the same were not shown as being carried forward in the return of income for Assessment Year 2011-12. As per the Assessing Officer, only the losses which were shown as carried forward in the immediately preceding Assessment Year of 2011-12 were alone required to be considered. Therefore, he disallowed losses to the tune of Rs.4,40,17,411/- shown to be carried forward for future years in the return of income for the instant Assessment Year of 2012-13 because the same were not shown to be carried forward in the immediately preceding Assessment Year of 2011-12. The aforesaid finding of the Assessing Officer in the assessment finalised u/s 143(3) of the Act dated 30.03.2015 formed the basis for the Assessing Officer to levy the penalty u/s 271(1)(c) of the Act vide order dated 24.09.2015.

5. On this aspect, the CIT(A) deleted the penalty on the ground that incorrect mentioning of the statement of losses to be carried forward in the return of income for Assessment Year 2011-12 was only an inadvertent mistake which cannot constitute 'furnishing of inaccurate particulars' within the meaning of Sec. 271(1)(c) of the Act for the instant assessment year. The factual finding of the CIT(A) in this regard is contained in para 5.5 of his order, which reads as under :-

*"5.5 From the above, it is evident that no penalty should be levied u/s 271(1)(c) on inadvertent errors made by the assessee. From the facts narrated by me above, it is evident that the statements of losses was incorrectly mentioned in the return only for A.Y. 2011-12 and correctly mentioned for the other assessment years. However this cannot be held to be filing of inaccurate particulars as all disclosures are made in the return of income. There is one more discrepancy of fact in the AO's order. From the facts it is clear that the losses of AY 2009-10 & 2010-11 are the ones in question. This totals to Rs.297.58 lakhs (Rs. 181.19 lakhs + Rs. 115.68 lakhs). I am at a loss to understand where the AO obtained the figure of Rs.4,40,17,411 from? Be that as it may, respectfully following the decision of the Hon'ble Supreme Court cited supra I hold that there is no case for levying penalty on the incorrect brought forward loss of Rs.4,40,17,411. The levy of penalty on this amount is therefore deleted."*

Against the aforesaid decision, Revenue is in appeal before us.

6. Before us, the Id. DR referred to the discussion in the penalty order dated 24.09.2015 (supra) by pointing out that non-mentioning of carried forward of losses of Assessment Years 2009-10 and 2010-11 in the return of income for the Assessment Year 2011-12 had an effect of foregoing of such losses by the assessee and, therefore, it was wrong on the part of the assessee to claim carried forward of such losses in the return for the instant Assessment Year of 2012-13.

7. On the other hand, the learned representative for the assessee defended the decision of the CIT(A) and placed reliance on the reasoning contained therein.

8. We have carefully considered the rival submissions. Factually speaking, it is not in dispute that so far as the losses in question are concerned, they have arisen in Assessment Years 2009-10 and 2010-11 and such a fact is also accepted by the Assessing Officer in para 2.4 of the penalty order dated 24.09.2015 (supra). So however, the case made out by the Assessing Officer to levy the penalty is that such losses were not mentioned to be carried forward in the return of income for Assessment Year 2011-12 and, therefore, in the subsequent year, i.e. Assessment Year 2012-13 in question, such losses could not be allowed to be carried forward. As per the Revenue, non-depiction of carry forward of such losses in the return of income for Assessment Year 2011-12 implied that the claim of losses stood discontinued. This has led the Assessing Officer to treat the claim of such losses in the instant assessment year as being 'furnishing of inaccurate particulars of income' within the meaning of Sec. 271(1)(c) of the Act.

9. Before going to the reasoning prevailing with the CIT(A) to delete the penalty, we may briefly touch upon the proposition of law laid down by the Hon'ble Supreme Court in the case of *CIT vs Manmohan Das*, 59 ITR 699 (SC) dealing with carry forward and set-off of losses in a subsequent year. As per the Hon'ble Supreme Court, whether the loss in any year may be carried forward to the following year and set-off against the profit and gains of the subsequent year is an issue which is required to be determined by the Assessing Officer who deals with the assessment of the subsequent year. A

decision recorded by the Assessing Officer who computed the loss in the previous year that the loss cannot be set-off against the income of the subsequent year is not binding in the later year. Thus, the ratio which is enumerated by the Hon'ble Supreme Court in the case of *Manmohan Das (supra)* is to the effect that the veracity of carry forward and set-off of loss has to be determined by the Assessing Officer who deals with the assessment of the subsequent year in which the loss is sought to be set-off. Further, it is laid down that the decision of the Assessing Officer in the earlier year that the loss cannot be set-off against the income of subsequent year is not binding. Considered in this light, in the instant case, when the Assessing Officer himself finds it is "*true that the assessee filed ITRs for AY 2009-10 & 2010-11, where carry forward losses were mentioned*", then in Assessment Year 2012-13, he could not find fault with the claim of carry forward of such losses merely because of the fact that in the return for Assessment Year 2011-12 assessee did not carry forward the said losses for future years, especially considering that it was competent for him while making the assessment for the instant Assessment Year of 2012-13 to decide the validity of the set-off in light of the judgment of the Hon'ble Supreme Court in the case of *Manmohan Das (supra)*. Be that as it may, we are conscious that we are not on the merits of the dispute, but what we are only trying to emphasise is that such a factual matrix cannot be construed to be falling within the rigours of Sec. 271(1)(c) of the Act. When the Assessing Officer does not dispute that the instant losses relate to Assessment Years 2009-10 & 2011-12 and the same find a mention in the respective returns, the non-mentioning in the return of income for Assessment Year 2011-12 cannot be construed as a discontinuation of claim; therefore, the claim of carry forward of such loss made in the return of income for Assessment Year

2012-13 cannot be construed to be furnishing of inaccurate particulars within the meaning of Sec. 271(1)(c) of the Act. In this background, we find no reasons to interfere with the decision of the CIT(A) in holding that it was only an inadvertent error on the part of the assessee in not correctly mentioning the statement of carried forward losses in the return of income for Assessment Year 2011-12. Thus, we hereby uphold the decision of CIT(A) in deleting the penalty.

10. Apart therefrom, the CIT(A) has also brought out that the figure of Rs.4,40,17,411/- taken by the Assessing Officer as the disputed loss is also wrong. According to the CIT(A), the losses for Assessment Years 2009-10 & 2011-12 which are in dispute total to only Rs.297.58 lacs. This aspect of the order of CIT(A) is a factual aspect which has not been assailed by the Revenue, as is evident from the Grounds of appeal raised before us. Thus, on this aspect also, the decision of CIT(A) is affirmed.

11. In view of the aforesaid discussion, we hereby uphold the decision of CIT(A) in deleting the penalty and accordingly, Revenue fails in its appeal.

12. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 6<sup>th</sup> July, 2018.

Sd/-  
**(RAM LAL NEGI)**  
**JUDICIAL MEMBER**

Sd/-  
**(G.S. PANNU)**  
**ACCOUNTANT MEMBER**

Mumbai, Date : 6<sup>th</sup> July, 2018

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "J" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai