

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B" (SMC), HYDERABAD**

**BEFORE SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER**

<b>ITA No.</b>	<b>Asst. Year</b>	<b>Appellant</b>	<b>Respondent</b>
275/Hyd/17	2001-02	P.C. Pantulu, HYDERABAD <b>[PAN: AGEPP3005G]</b>	ACIT, Circle-1(2), HYDERABAD
277/Hyd/17	2002-03		DCIT, Circle-1(2), HYDERABAD
278/Hyd/17	2003-04		ACIT, Circle-1(2), HYDERABAD

For Assessee : Shri P. Murali Mohan Rao, AR  
For Revenue : Shri Nilanjan Dey, DR

Date of Hearing : 26-07-2018  
Date of Pronouncement : 03-08-2018

**ORDER**

These three appeals are filed by assessee against the respective orders of the Commissioner of Income Tax (Appeals)-1, Hyderabad, dated 17-05-2016. Since common issues are involved in all these appeals, these are heard together and decided by this common order.

2. Briefly stated facts are that assessee is an individual, has declared income from salary, loss from business and loss from capital on sale of shares. Returns have been accepted originally u/s. 143(1) of the Income Tax Act [Act] in AY. 2003-04. Assessing Officer (AO) made an adjustment u/s. 143(1)(a) of the Act in AY 2003-04 which assessee has objected to. The proceedings u/s. 154 were dropped and assessments have been reopened in all the three assessment years. AO noticed that assessee has claimed capital loss in all the years from sale of shares and set off to salary income apart from business loss. As capital loss is not allowable for set-off u/s. 71(3) of the Act, proceedings u/s. 147 were initiated and notices u/s. 148 were issued. In response to the notices, assessee filed same returns of income however, claiming loss on sale of shares as business loss, instead of capital loss.

2.1. AO in the consequential assessments has opined that the change of capital loss to business loss was an afterthought and disallowed the amount of Rs. 5,25,000/- in AY. 2001-02; Rs. 7,03,489/- in AY. 2002-03 and an amount of Rs. 11,50,000/- in AY. 2003-04. In re-assessment proceedings, AO also restricted the claim of interest on house property to an amount of Rs. 30,000/- and balance of the claim was disallowed. Thus, he disallowed an amount of Rs. 45,000/- in the AYs. 2001-02, 2002-03 and 2003-04. Another issue which was considered by AO is claim of interest on the car loan, which was disallowed for want of evidence. There

was one more issue of disallowance of depreciation on computers, which was not pressed in the course of present proceedings and disallowance of extra depreciation.

3. Assessee questioned before the Ld.CIT(A) and raised issues on reopening of assessment, claim of business loss, claim of interest u/s. 24(1), interest on car loan and depreciation, which Ld.CIT(A) did not agree and confirmed the action of AO. Hence, the present appeals.

4. It was the submission of Ld. Counsel that assessment was reopened without there being any fresh information and so the reopening itself is bad in law.

4.1. Coming to the merits of the addition, it was the submission that assessee is doing trading in shares and has incurred loss in three assessment years, these were shown as 'business losses' in the statements of income but at the time of filing the return wrongly shown as 'capital loss' but was correctly set-off to other incomes. It was the submission that the provisions of Section 71(3) does not apply to the facts of the case. It was further submitted that Section 71(2A) was introduced w.e.f. 01-04-2005, wherein business loss cannot be set-off to salary income but for the impugned assessment years, the business loss can be set-off to salary income and therefore the action of AO in disallowing the business loss is not correct.

4.2. Coming to the claim of interest u/s. 24(1), it was submitted that AO has not correctly applied the provisions. For the impugned assessment years even though Section 24(2) of the Act restricts the amounts to Rs. 30,000/-, there were further provisos which allows the amounts upto Rs. 1 Lakh, if the property was purchased after 01-04-1999 and construction was completed before 01-04-2003. AO has not applied the provisions correctly.

4.3. Coming to the claim of interest on car, it was the submission that assessee has correctly claimed the amount which should be allowed as he is physically handicapped and there is requirement of a car. Ld. Counsel referred to Paper Book placed on record that returns filed in AY. 1999-2000 onwards to submit that assessee was in the business of trading of shares and interest was being allowed on the house property.

5. Ld.DR, however, relied on the orders of AO and CIT(A) on the facts.

6. I have considered the rival contentions. As far as the reopening of assessment is concerned, I do not find any merit in assessee's contentions. It is admitted that assessee has shown 'capital loss' in the computation and filed return of income setting off the capital loss to the salary income. Since the provisions of Section 71(3) of the Act are applicable and AO has reopened the assessment only on that reason, I am of the

opinion that there is a reasonable cause for reopening of the assessment. Moreover, the returns were accepted u/s. 143(1) and there was no scrutiny u/s. 143(3) of the Act. Consequently, the principles laid down by the Hon'ble Supreme Court in the case of ACIT Vs. Rajesh Jhaveri Stock Brokers P. Ltd [291 ITR 500] (SC) will equally apply to the facts of the case. Accordingly, grounds pertaining to reopening are dismissed.

6.1. Coming to the issue of business loss, admittedly assessee has originally filed return of income showing the capital loss on sale of shares, whereas the enclosed statement indicates that assessee was trading in the shares and the loss arose of trading in shares. There was opening stock and also closing stock, which indicate that assessee has shown the shares only as 'current assets' and not as 'investments'. In view of that after verifying the earlier year's returns also which were placed on record, it is very clear that assessee is consistently showing the transactions as trading transactions. Consequently, any loss arising in the share transactions has to be considered as 'business loss'. Just because, it was wrongly mentioned in the computation of income, the actual nature of transaction does not change and the opinion of AO that it was an after thought cannot be accepted, on the reason that in the earlier years in which returns were filed and also enclosed statement filed along with return do indicate that the shares were shown in a trading format with opening stock, closing stock and sales. In view of that, I direct the AO to allow the

loss as 'business loss' which can be set-off to other incomes as restrictions u/s. 71(2A) of the Act were applicable only from AY. 2005-06 and not before. In view of that, grounds on this issue are considered allowed.

6.2. Next issue for consideration is the claim of interest on house property. By stating that proviso to Section 24 restricts the amount to Rs. 30,000/-, the excess deduction of Rs. 45,000/- was disallowed by the AO. Ld.CIT(A) also confirmed the same. However, the second proviso clearly states that whether the property is acquired or constructed with capital borrowed on an asset after first day of April, 1999 and such acquisition or construction is completed before the first day of April, 2003, the provisions of first proviso shall have effect as if for the words 'Rs. 30,000/-' the words 'Rs. 1 Lakh' had been substituted. This proviso has not been examined by the AO. Therefore, he has restricted it to Rs. 30,000/- as per proviso-1. I am of the opinion that assessee is eligible for higher amount if the property was acquired before 01-04-2003. Since the claim was made in AY. 2001-02 also, this condition is satisfied but the amount has to be borrowed after 01-04-1999. The second aspect that the amount was borrowed after 01-04-1999 requires to be examined. Not only that in AY. 2000-01 ie. in earlier year, the interest claimed was only Rs. 30,000/-. How this has become Rs. 75,000/- also require examination. Assessee is directed to furnish the certificate from the respective person or working of the interest and details to whom it was paid so that AO can examine whether

the conditions in second proviso have been satisfied or not? Subject to verification directed as above, the ground is considered allowed for statistical purposes.

6.3. Another issue which was raised in the grounds of appeal is with reference to disallowance of depreciation on computers. This has not been pressed. However, there were disallowance of excess depreciation in AYs. 2002-03 and 2003-04, the details of which are not forthcoming either in the order of AO or in the submissions made by assessee. How the excess depreciation has been worked out, on what assets is not verifiable. Therefore, in the interest of justice, I set aside the order on this issue and direct AO to re-examine the claim of depreciation and allow the correct depreciation, after giving due opportunity to assessee. Assessee is also directed to furnish the nature of assets, the cost/WDV and claim of depreciation on each asset/block of assets, so that the same can be verified by AO and allow the amount correctly, as per the provisions of law. With these observations/directions, the grounds are considered allowed for statistical purposes.

6.4. One more issue raised as Ground No. 10 in AY. 2003-04 is with reference to interest paid of an amount of Rs. 2,40,000/- claimed in business. Before the AO, no details were furnished by assessee and accordingly, the same was disallowed by the AO, while working out the business loss. Before the Ld.CIT(A) also no information has been furnished and no information furnished even before the ITAT. Since the

claim is not substantiated, I am of the opinion that AO is justified in disallowing the amount. Accordingly, grounds on this issue are dismissed.

7. In the result, appeals for the AYs. 2001-02 & 2002-03 are considered allowed for statistical purposes and appeal for the AY. 2003-04 is considered partly allowed for statistical purposes.

*Order pronounced in the open court on 3<sup>rd</sup> August, 2018*

Sd/-  
**(B. RAMAKOTIAH)**  
**ACCOUNTANT MEMBER**

Hyderabad, Dated 3<sup>rd</sup> August, 2018

TNMM

*Copy to :*

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- 3. ACIT, Circle-1(2), Hyderabad.*
- 4. CIT (Appeals)-1, Hyderabad.*
- 5. Pr.CIT-1, Hyderabad.*
- 6. D.R. ITAT, Hyderabad.*
- 7. Guard File.*