

*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "SMC" KOLKATA*

Before **Shri S.S, Godara, Judicial Member**

ITA No.1328/Kol/2018 Assessment Year:2009-10
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Dilip Kumar Modi C/o Subash Agarwal & Associates, Siddha Gibson, 1, Gibson Lane, Suite-213, 2 nd Floor, Kolkata-69 [PAN No.AJNPM 0415 D]	<u>बनाम/</u> V/s.	Income Tax Officer Ward-34(3), Aayakar Bhawan, Poorva, Room 711, 110, Shantipally, E.M. Byepass, Kolkata-107
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Subash Agarwal, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Kapil Mondal, JCIT-DR
सुनवाई की तारीख/Date of Hearing	18-09-2018
घोषणा की तारीख/Date of Pronouncement	28-09-2018

आदेश /O R D E R

This assessee's appeal for assessment year 2009-10 is directed against the Commissioner of Income-tax (Appeals)-10, Kolkata's order dated 24.05.2018 passed in case No.376/CIT(A)-10/W-34(3)/2009-10 affirming the Assessing Officer's action taking recourse to re-opening/re-assessment thereby disallowing loss claim of ₹1,34,515/- as bogus in his order dated 27.12.2016, involving proceedings u/s. 147/143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. Learned counsel does not press for assessee's former substantive ground challenging validity of reopening the same is therefore declined as not pressed. Coming to merits *qua* correctness both the lower authorities action holding assessee's

loss amounting to ₹1,34,515/- as bogus learned counsel's only case as per the taxpayer's reply dated 09.12.2016 submitted to Assessing Officer is that he had nowhere claim of such loss. Learned Departmental Representative is unable to rebut correctness thereof during the course of hearing. I therefore delete the latter disallowance / addition loss of ₹1,34,515/- since not claimed at assessee's behalf.

3. This assessee's appeal is partly allowed in above terms.

Order pronounced in open court on 28/09/2018

Sd/-
(S.S. Godara)
Judicial Member

*Dkp/Sr.PS

दिनांक:- 28/09/2018 कोलकाता

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Dilip Kr. Modi, C/o Subash Agarwal & Associates, Siddha Gibson, 1, Gibson lane, Suite-213 2nd Floor, Kolkata-69
2. प्रत्यर्थी/Respondent-ITO Ward-34(3), Aayakar Bhawan Poorva, Room No.711, 110 Shantipally, E.M. Byepass, Kolkata-107
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary, Head of
Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता ।