

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

**Before Sh. N. K. Saini, Hon'ble Vice President
and**

Smt. Beena A. Pillai, Judicial Member

ITA No. 158/Del/2015 : Asstt. Year : 2010-11

Deputy Commissioner of Income Tax, Central Circle-28, New Delhi	Vs	Sh. Gurnam Arora, 201, Vipps Centre, 2, Community Complex, Masjid Moth, G.K.-II, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAJPA1064F		

**Assessee by : Ms. Ananya Kapoor, Adv.
Revenue by : Sh. Amit Katoch, Sr. DR**

Date of Hearing : 06.12.2018	Date of Pronouncement : 07.12.2018
-------------------------------------	---

ORDER

Per N. K. Saini, Vide President:

This is an appeal by the department against the order dated 07.10.2014 of Id. CIT(A)-III, New Delhi.

2. Following grounds have been raised in this appeal:

"1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred allowing the claim of carry forward of short term capital loss amounting to Rs. 1,37,89,600/- contrary to the express provisions of Section 80 of the IT Act.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has failed to appreciate that so far as any loss is concerned, it can be carried forward only if it is

determined in pursuance of return filed u/s 139(3) and not u/s 139(1), as provided in section 80 of the I T. Act.

3. On facts and in the circumstances of the case, the reliance of Ld. CIT(A) on judicial decisions was unwarranted as the facts involved in this case are distinguishable.

4. On the facts and in the circumstances of the case, the Ld. CIT(A) has failed to appreciate that the question of considering revised return is not applicable to the returns filed u/s 139(3) read with section 80 of the I.T. Act.

5. The order of the CIT(A) is erroneous and is not tenable on facts and in law.

6. The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”

3. From the above grounds, it is gathered that only grievance of the department relates to the claim of the assessee for short term capital loss allowed to be carried forward.

4. As regards to this issue, the Id. Counsel for the assessee at the very outset stated that it is covered in favour of the assessee and against the department in ITA No. 157/Del/2015 in the case of DCIT, Central Circle-28, New Delhi Vs Sh. Jugal Kishore Arora, New Delhi vide order dated 21.06.2018. It was submitted that facts are identical and even the grounds raised in the said appeal and the assessee's appeal are worded similarly.

5. In his rival submissions, the ld. Sr. DR although supported the order of the AO but could not controvert the aforesaid contention of the ld. Counsel for the assessee.

6. We have considered the submissions of both the parties and perused the material available on the record. It is noticed that an identical issue having similar facts was a subject matter of the departmental appeal in the case of DCIT, CC-28, New Delhi Vs Sh. Jugal Kishore Arora in ITA No. 157/Del./2015 for the assessment year 2010-11 i.e. the assessment year under consideration wherein vide order dated 21.06.2018, the issue has been decided in favour of the assessee and against the department. The relevant findings have been given in paras 3 to 5 of the said order which read as under:

“3. Ld. CIT(A) considering the explanation of assessee and material on record held that assessee is not legally barred from making a fresh claim even if the revised return could not be filed. A.O. was, therefore, directed to carry forward all the short term capital loss as per law, after due verification of the claim made by assessee. The findings of the Ld. CIT(A) are reproduced as under:

6. I have gone through the appellant's submissions, facts and evidences available on records and considered the decision relied upon by the appellant and AO.

With regard to the appellant's contention that the AO's order is not valid on the ground that it does not allow the appellant to carry forward of the short term capital loss since the appellant did not file the revised return of income under section 139 of the Act, it is stated that this objection of the appellant has some force. The AO has failed to consider that after the decision of Goetze (India) Ltd. vs. CIT 284 ITR 323 (SC) there have been a number of decisions that have held that just because the assessee could not file a revise return, the claim made by the assessee cannot be ignored.

In the case of CIT vs. Sam Global Securities Ltd. 360 ITR 682 Delhi, it has been held that if the assessee files a revised computation of income before the AO during the assessment proceedings the same needs to be considered by the AO and the claim of the assessee should be verified and examined. The Hon'ble Delhi High Court has relied on a number of previous judgments. The appeal filed by the revenue in the Supreme Court against the decision of Delhi High Court has also been dismissed in the above case.

The appellant has also relied upon a decision of ACIT vs. NHK Spring India Ltd. ITA No. 285/Del/2012. The ITAT in this case has observed that the decision of Goetze (supra) does not lay any fetters on the power of appellate authorities.

Thus, from the above, in my humble view there is no impediment under the law for the AO to consider the claim of the appellant of carry forward of short term capital loss that the appellant sought to claim by filing a revised computation of income before the AO in assessment proceedings. The appellant is not legally barred from making afresh claim even if the revised return could not be filed. Hence the AO is directed to allow the carry forward of short term capital loss as per law after due verification of the claim made by the appellant since the verification of the claim was not made by the AO earlier.

4. The Ld. D.R. relied upon the order of the A.O. However, none appeared on behalf of the assessee.

5. After considering the submissions of the Ld. D.R. we do not find any merit in the Departmental Appeal. The A.O. did not allow the claim of assessee of carry forward of the short term capital loss because no revised return have been filed. However, assessee has filed a revised computation before A.O. and also made a claim for deduction. It is well settled law that even if A.O. could not have considered the claim of assessee but there is no bar on the powers of the appellate authority to consider the claim of assessee as per law. The powers of the Ld. CIT(A) are co-terminus powers to that of the A.O. Therefore, being the first appellate authority, Ld. CIT(A) correctly directed the A.O. to consider the claim of carry

forward of the short term capital loss. The assessee is, therefore, not legally barred from making such claim. Ld. CIT(A), therefore, correctly directed the A.O. to consider the claim of assessee for carry forward of short term capital loss. However, the directions of the Ld. CIT(A) are modified to that extent that the A.O. shall verify the claim of assessee of carry forward of the short term capital loss as per law and shall pass the order accordingly, by giving reasonable, sufficient opportunity of being heard to the assessee. With these directions and modifications in the order of the Ld. CIT(A), the departmental appeal stands dismissed.”

7. So, respectfully following the aforesaid referred to order dated 21.06.2018, we do not see any merit in this appeal of the department.

8. In the result, the appeal of the department is dismissed.

(Order Pronounced in the Court on 07/12/2018)

Sd/-
(Beena A. Pillai)
JUDICIAL MEMBER

Sd/-
(N. K. Saini)
VICE PRESIDENT

Dated: 07/12/2018

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR