

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

[Before Hon'ble Shri S.S. Godara, JM]

I.T.A Nos. 1213 & 1633/Kol/2018

Assessment Year : 2011-12

Niraj Mancchanda
[PAN: AEZPM 4344 L]
(Appellant)

-vs-

ITO, Ward-31(1), Kolkata
(Respondent)

For the Appellant : Shri M. D. Shah, Advocate

For the Respondent : Shri C.J. Singh, JCIT, Sr. DR

Date of Hearing : 04.03.2019

Date of Pronouncement : 22.03.2019

ORDER

1. These two assessee's appeals for assessment year 2011-12 arise from the CIT(A)-9, Kolkata's separate orders dated 28.03.2018 and 25.5.2018 in case Nos. 198/CIT(A)-9/Wd-31(1)/2015-16/Kol and 103/CIT(A)-9/Wd-31(1)/2016-17/Kol involving proceedings u/s 143(1) and 154 of the Income Tax Act, 1961 (in short the Act) respectively.

Heard both the parties. Case file perused.

2. It transpires during the course of hearing the assessee's single substantive grievance challenging correctness of disallowance of brought forward loss. He had filed return u/s 134(1) of the Act on 13.07.2012 stating commission income of Rs. 8,23,841/-, brought forward losses of Rs. 18,75,271/-and TDS claimed Rs. 17,020/-. The same stand processed on 16.2.2011 u/s 143(1) of the Act determining the assessed income of Rs. 8,23,841/- without allowing the set off of brought forward losses / TDS credits.. The

said processing stood served on the assessee on 27.05.2013. He filed section 154 rectification dated 29.10.2015 following by his appeal dated 09.11.2015 before the CIT(A). The same stood rejected on 20.06.2016 and 28.03.2018; respectively. His appeal against section 154 order dated 23.07.2016 stands declined on 09.05.2018. It is in this backdrop of facts that the assessee has preferred his twin appeals u/s 143(1) and section 154 raising very same issue of disallowance of brought forward losses as well as TDS credit (supra).

3. I have given thoughtful contention to rival submissions. It emerges during the course of hearing that neither the Assessing Officer nor the CIT(A) has adjudicated assessee's grievance on merits in section 154 rectification or regular appellate proceedings as they have gone by technical objections regarding non-maintainability of the former and that of limitation in latter grievance. I therefore deem it appropriate to restore the instant issue of brought forward from 2008-09 amounting to Rs. 18,75,279/- and TDS credit to claim of 17,020/-back to the Assessing Officer for necessary adjudication on merits after affording three effective opportunities of hearing to the taxpayer who shall be at liberty to file on record all necessary evidence.

4. These two assessee's appeals are allowed for statistical purposes in above terms.

Order pronounced in the Court on 22.03.2019

Sd/-

[S.S.Godara]
Judicial Member

Dated : 22.03.2019

SB, Sr. PS

Copy of the order forwarded to:

1. Niraj Manchanda, 2, G.C. Avenue, 2nd Floor, Room No. 5, Kolkata-700013
2. ITO, Ward-31(1), Kolkata
- 3..C.I.T(A).- 4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

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By Order

Assistant Registrar
ITAT, Kolkata Benches