

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-A” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No. 2581/Bang/2018
Assessment Year : 2015-16

Shri Ataippa Varadarajan, No. B-3/525, Godavari Block, National Games Village, Koramangala, Bangalore – 560 047. PAN: AAIPV0611N	Vs.	The Income Tax Officer, Ward – 7 (2) (3), Bangalore.
APPELLANT		RESPONDENT
Assessee by	:	Shri Sripada M, CA
Revenue by	:	Shri Tshering Ongda, JCIT (DR)
Date of hearing	:	15.05.2019
Date of Pronouncement	:	31.05.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the order of Id. CIT (A)-7, Bangalore dated 13.07.2018 for Assessment Year 2015-16.

2. The grounds raised by the assessee are as under.

“Ground No.1

On the facts and in the circumstances of the case and in law, the order passed by the learnedAO is bad in law and facts.

Ground No.2

On the facts and in the circumstances of the case and in law, the learned Assessing Officer erred by not setting off the losses pertaining to earlier assessment year in arriving at the total taxable income.

The Appellant craves leave to add, omit or alter grounds of appeal before or during the hearing of the appeal.”

3. It is submitted by Id. AR of assessee that this is the assessee’s claim that there is carry forward loss in Assessment Year 2014-15 and therefore, it should be allowed as set off in the present year. But this claim of the assessee was rejected by Id. CIT (A) by saying that as per the assessment order for Assessment Year 2014-15, there is no mention of any carry forward loss. In this regard, he submitted that assessee has moved an

application for rectification in Assessment Year 2014-15 and copy of the same is available on pages 17 and 18 of the paper book. He pointed out that this application was filed before the AO on 05.10.2018 and the same is still not disposed of by the AO. At this juncture, the bench pointed out that under these facts, the matter may be restored back to the file of AO in the present year for a fresh decision after rectification order is passed by the AO in Assessment Year 2014-15. In reply, the Id. AR of assessee agreed to this proposition put forward by the bench. The Id. DR of revenue supported the order of CIT(A).

4. I have considered the rival submissions. I find that dispute is this that as per the assessee, there was loss in Assessment Year 2014-15 and for similar transaction in that year, such loss was assessed by the AO as short term capital loss whereas in the present year, the AO has assessed the income under similar transaction as income from business. The assessee has made an application before the AO for rectification in Assessment Year 2014-15 in which it is requested by assessee to the AO that in Assessment Year 2014-15, the loss of Rs. 29,02,980.94/- should be assessed as loss from business as against short term capital loss assessed by the AO in that year because in the present year, the income from similar transaction has been assessed by the AO as income from business. Since this rectification petition for Assessment Year 2014-15 is pending, I set aside the order of CIT(A) in the present year and restore the matter back to the file of AO for fresh decision after disposing of assessee's request for rectification u/s. 154 in Assessment Year 2014-15. In view of this decision, no adjudication on merit is called for at the present stage.
5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 31st May, 2019.
/MS/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.