

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No.5905/Del/2016  
Asstt. Year: 2011-12

Shri Pavan Vaish 4223, B-5 & 6, Vasant Kunj New Delhi – 110 070 PAN AABPV7527N	Vs.	Addl. CIT, Range 46, New Delhi.
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by:	Shri Piyush Arora, CA
Department by :	Shri Surender Pal, Sr. DR
Date of Hearing	30/07/2019
Date of pronouncement	30/07/2019

**ORDER**

**PER AMIT SHUKLA, J.M.:**

The aforesaid appeal has been filed by the assessee against impugned order dated 19.9.2016, passed by Ld. CIT (Appeals) 21, New Delhi in relation to the penalty proceedings u/s 271(1)(c) for the assessment year 2011-12. Assessee is mainly aggrieved by imposition of penalty amounting to Rs. 1,29,017/- on account of excess claim of brought forward losses of earlier years of Rs. 4,17,531/-.

2. The facts in brief are that assessee is an individual who has declared total income of Rs. 5,66,98,243/-. During the course of the assessment proceedings the assessee noted that there were certain

inadvertent error which had occurred while filing the income tax return thereby affecting the tax liability, which were as under :-

<i>Error</i>	<i>Amount of Income</i>	<i>Excess/ (Shortfall) in tax payment</i>
Short term capital gain wrongly taxed at normal slab rate (30%) instead of special rate (15%)	17,45,011/-	2,61,751/-
Long term capital gain shown inadvertently in excess	7,59,609/-	1,02,000/-
Brought forward losses claimed in excess	4,17,531/-	(1,25,259/-)
<b><i>Excess tax paid</i></b>		<b><i>Rs. 2,38,492</i></b>

3. After incorporating the aforesaid rectification, assessee *suo moto* emphasised the computation of income before the AO, which stood accepted by the AO and addition was made accordingly. However, AO initiated the penalty proceedings u/s 271(1)(c) on account of excess brought forward loss of Rs. 4,17,531/- claimed by the assessee and thereby levied the penalty of Rs. 1,29,017/-. Such penalty has also been confirmed by the Ld. CIT (A) on the ground that assessee has failed to explain the reason as well as the circumstances which led the assessee to commit such type of error.

4. Before us Ld. Counsel submitted that assessee while filing the income tax return for the assessment year 2010-11 had claimed brought forward losses of Rs. 1,59,89,070/- which included long term capital losses of Rs. 4,17,531/-, which was on account of capital asset. In the assessment year 2011-12 also the said loss was included in the figure of brought forward loss and in this year by mistake the said loss was brought forward and instead of Rs. 32,19,145/- the figure of Rs. 36,36,676/- was taken. In support, he has filed the copy of computation of income tax return for assessment years 2010-11 and 2011-12. Thus, he submitted that it was purely an inadvertent

error and there was no furnishing of any inaccurate particulars of concealment of income. He further submitted that assessee had suo moto reduced the computation and also paid excess tax for which no adverse inference has been drawn by the AO. Due to inadvertent error and without being pointed out by the AO, if the assessee has paid excess tax on two counts, then it should not be said that the error with regard to brought forward loss was not clerical mistake or intentional. Thus, he submitted that on this ground no penalty should be levied.

5. Alternatively he also submitted that in the show cause notice issued by the AO u/s 271(1)(c) AO has not specified the charge and therefore in view of various decisions such penalty cannot be sustained.

6. On the other hand, Ld. DR strongly relied upon the order of the Ld. AO and Ld. CIT(A) and submitted that it is not a case of inadvertent mistake and had the assessee's case was not selected for scrutiny then the assessee would not have adjusted the said loss.

7. After considering the rival submissions and on perusal of the relevant findings given in the impugned orders, it is seen that the assessee had following loss in assessment years 2009-10 and 2010-11 which was to be claimed as brought forward loss:-

Assessment Year	Particulars	Amount(Rs.)
2009-10	Loss carried forward	1,92,08,215/-
2010-11	Brought loss of A.Y. 2009-10 claimed	(1,59,89,070/-)
	Balance loss carried forward for A.Y. 2011-12	(32,19,145/-)

The assessee's explanation has been that she has inadvertently claimed Rs. 36,36,676/- as brought forward loss as the difference amount of Rs. 4,17,531/- was taken as a part of total loss in Asstt. Year 2010-11, which was on account of capital loss on sale of capital asset in the earlier year. The said loss was wrongly included in the return of income in the claim for brought forward losses. This capital loss of Rs. 4,17,531/- was also included in the figure of brought forward business loss which otherwise could not have been included. During the course of the assessment proceedings, the assessee noted certain error in filing of income tax return and carried out necessary rectification and filed revised computation and due to this error, in fact assessee has paid higher amount of income tax. This inadvertent error had occurred on account of the following:-

- a) The appellant earned a short term capital gain amounting to Rs. 17,45,011/ - on sale of securities in Reliance Capital Asset Management Company on which the amount of SIT was duly paid. However, the appellant has inadvertently taxed it at the rate 30% (slab rate) instead of 15% (special rate). Hence, excess tax was paid.
- b) The appellant has earned long term capital gain on sale of securities of Birla Floating rate long term growth option amounting to Rs. 7,59,609/-. However, in the return of income it has been inadvertently taken at an amount of Rs. 12,69,609/-. Hence, excess tax was paid.
- c) The appellant has inadvertently adjusted loss incurred at an amount of Rs.36,36,676/ -instead of Rs. 32,19,145.

Accordingly, revised computation was filed and in so far as other two errors on which assessee have paid excess tax, same has been

accepted by the AO. It is only with regard to inadvertent and adjusted loss of Rs. 4,17,531/-, the AO has levied the penalty.

8. On the facts and circumstances of the case it is quite apparent that mistake was unintentional and appears to be purely on account of clerical mistake while taking up the figure of brought forward loss. Nowhere it has been pointed out that revised computation of adjusted loss was only when assessee was cornered by way of specific query by the AO. It is purely a case of wrong assumption of loss amounting to Rs. 4,17,531/- which was on account of capital loss unabsorbed in the earlier year, but the same has been added back to the carried forward business loss. Here the mistake cannot be held to be done advertently as it prima facie appears to be clerical and bonafide mistake. Such kind of errors and mistakes have also been noted by the Hon'ble Supreme Court in the case of Price Waterhouse Coopers Pvt. Ltd. wherein the Lordship has observed and held as under :-

*"The contents of the Tax Audit Report suggest that there is no question of the assessee concealing its income. There is also no question of the assessee furnishing any inaccurate particulars. **It appears to us that all that has happened in the present case is that through a bona fide and inadvertent error, the assessee while submitting its return, failed to add the provision for gratuity to its total income. This can only be described as a human error which we are all prone to make. The calibre and expertise of the assessee has little or nothing to do with the inadvertent error. That the assessee should have been careful cannot be doubted, but the absence of due care, in a case such as the present does not mean that the assessed is guilty of either furnishing inaccurate particulars or attempting to conceal its income.**"*

9. Thus, on the facts and circumstances of the case we hold that no penalty is leviable on such inadvertent mistake and same is directed to be deleted.

10. In the result appeal of the assessee is allowed.

Order Pronounced in the open court on 30<sup>th</sup> July, 2019.

sd/-  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

sd/-  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Dated: 30/07/2019

***Veena***

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi