

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD "SMC" BENCH, HYDERABAD**

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER**

**ITA No. 803/HYD/2017  
(Asst. Year : 2010-11)**

Liaqatullah Khan,  
C/o Mohd. Afzal, Advocate,  
11-5-465, Sherson's  
Residency, Flat No. 402,  
Criminal Court Road,  
Red Hills, Hyderabad.

vs. ITO, Ward-7,  
Hyderabad.

PAN No. AENPK 9509 F  
(Appellant)

(Respondent)

Assessee by : Shri Mohd. Afzal- Advocate.  
Department By : Shri Sunku Srinivas - Sr.DR

Date of hearing : 02/12/2019.  
Date of pronouncement : 22/01/2020.

**ORDER**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-3, Hyderabad, dated 14/02/2017 for the Assessment Year 2010-11.

**2.** Facts of the case, in brief, are that assessee is in the business of trading of shares and also having income from property. For the year assessment year under consideration, the assessee has filed his return of income by admitting loss of Rs.7,08,187/- from trading of shares and income from property of

Rs.50,820/-. Subsequently, a revised return was filed on 30/09/2011, as per the revised return trading resulted into profit of Rs. 10,58,953/-. The assessee was having carry forward loss of Rs. 17,87,935/- from the trading of shares after setting off of carry forward loss, the balance to be carried forward remained at Rs. 7,28,982/-, as per the schedule CFL i.e. details of losses to be carried forward for future years. The return was processed u/sec. 143(1) and allowed Rs. 7,08,187/- as loss to be carried forward as per S.No. 13 of the intimation. However, a rectification order u/sec. 154 was passed on 22/04/2013 determining the total income at Rs. 11,09,770/- which includes income from property at Rs. 50,820/- and income from business at Rs. 10,58,953/-. In this rectification order the Assessing Officer (CPC) has not adjusted brought forward loss of Rs. 17,87,935/- and no opportunity was given before passing the order.

**3.** On being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A), who dismissed the appeal on the ground that there is no mistake apparent on record in the 154 order. Further, there is no information as to what is the nature of business carried on by the assessee for the A.Ys. 2009-10 & 2010-11.

- 4.** Aggrieved by the order of the Id. CIT(A), the assessee is in appeal before this Tribunal.
- 5.** Ld. counsel for the assessee has submitted that 154 order passed by the Assessing Officer (CPC) is without giving opportunity to the assessee. As per section 154(3), the rectification order is invalid and contrary to law and therefore submitted that order of the Id. CIT(A) may be set aside and remit the matter back to the Assessing Officer (CPC) for fresh adjudication after providing opportunity of hearing to the assessee.
- 6.** On the other hand, Id.DR relied on the orders of the authorities below.
- 7.** I have heard both the parties and perused the material available on record.
- 8.** In this case, the assessee has filed his return of income admitting loss of Rs. 7,08,187/- and subsequently revised return has been filed by showing trading profit of Rs. 10,58,953/-. In his return, he has claimed set off of carry forward loss of Rs.17,87,935/-. The return was processed u/sec. 143(1) and allowed carry forward loss claimed by the assessee. Subsequently, the Assessing Officer (CPC) has passed rectification order u/sec. 154 by denying set off of carry forward loss and also

income from property without giving opportunity to the assessee, which was confirmed in appeal by the Id. CIT(A). We find that when the assessee has claimed set off of carry forward loss, he has to be given opportunity to substantiate his case before the Assessing Officer. Without giving opportunity denying the claim of the assessee is not in accordance with law, therefore assessee should be given opportunity before denying claim made by the assessee. In view of the above, I set aside the order passed by the Id. CIT(A) and remit the matter back to the Assessing Officer (CPC) to adjudicate the issue *denovo* in accordance with law after providing reasonable opportunity of hearing to the assessee. Thus, this appeal filed by the assessee is allowed for statistical purpose.

**9.** In the result, appeal filed by the assessee is allowed for statistical purpose.

Order Pronounced on this 22<sup>nd</sup> day of Jan., 2020.

Sd/-  
**(V. DURGA RAO)**  
**Judicial Member**

**Dated: 22<sup>nd</sup> January, 2020.**

**vr/-**

*Copy to:*

1. *The Assessee - Liaquatullah Khan, C/o Mohd. Afzal, Advocate, 11-5-465, Sherson's Residency, Flat No. 402, Criminal Court Road, Red Hills, Hyderabad.*
2. *The Revenue - ITO, Ward-7, Hyderabad.*
3. *The Pr.CIT-3, Hyderabad.*
4. *The CIT(A)-3, Hyderabad.*
5. *The D.R., Hyderabad.*
6. *Guard file.*

By order

Sr. Private Secretary,  
ITAT, Visakhapatnam.