

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH '(B)', KOLKATA  
[Before Shri P.M. Jagtap, Vice President (KZ) & Shri Aby T. Varkey, JM]

I.T.A. No. 2119/Kol/2018  
Assessment Year: 2014-15

*Smt. Kanta Agarwal.....Appellant*  
*C/o. V.N. Purohit & Co., Chartered Accountants,*  
*Diamond Chambers, Unit-III, 4<sup>th</sup> Floor,*  
*Suite No. 4G, 4, Chowringhee Lane,*  
*Kolkata - 700 016.*  
*[PAN: AEXPA 2210 D]*

*Vs*

*ACIT, Circle - 32, Kolkata.....Respondent*  
*10B, Middleton Row,*  
*Kolkata - 700 071.*

**Appearances by:**

*Shri H.V. Bhardwaj, FCA appearing on behalf of the Assessee.*

*Smt. Ranu Biswas, Sr. DR, Addl. CIT appearing on behalf of the Revenue.*

Date of concluding the hearing : February 26, 2020

Date of pronouncing the order : May 22, 2020

**ORDER**

**PER P.M. JAGTAP, VICE-PRESIDENT (KZ)**

This appeal filed by the assessee is directed against the order of Ld. CIT(A) - 9, Kolkata dated 28.08.2018 whereby he upheld the order passed by the AO u/s 154 rejecting the application filed by the assessee for rectification.

2. The assessee in the present case is an individual. The return of income filed by her for the year under consideration was processed u/s 143(1) of the Act on 30.04.2018. According to the assessee, there was a mistake in the said intimation issued u/s 143(1) in as much as the long term capital loss of Rs. 3,80,298/- and Rs. 1,54,577/- carried forward from A.Y. 2010-11 & 2013-14 was not set off against the long term capital gain of Rs. 4,52,596/- for the year under consideration. She, therefore, filed an application u/s 154 seeking rectification of the

said mistake. The AO however found that the assessee in the return of income filed for the year under consideration had not claimed such set off and the long term capital loss pertaining to A.Y. 2010-11 and 2013-14 was actually carried forward by the assessee to the future years. The AO accordingly held that since no claim for such set off had actually been made by the assessee in the return of income, there was no mistake in the intimation issued u/s 143(1) in not allowing such set off as alleged by the assessee. He accordingly rejected the application filed by the assessee for rectification u/s 154 vide an order dated 08.06.2018 holding that there was no mistake apparent from the record in the intimation issued u/s 143(1).

3. Against the order passed by the AO u/s 154 rejecting her application for rectification, the assessee filed an appeal before the Ld. CIT(A) and since the Ld. CIT(A) did not find merit in the submission made on behalf of the assessee in support of her case, he upheld the order passed by the AO u/s 154 and dismissed the appeal of the assessee. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

4. The learned counsel for the assessee invited our attention to the relevant portion of the return of income filed for the year under consideration placed at page no. 57 to 62 of his Paper Book to show that the long term capital loss of Rs. 3,80,298/- and Rs. 1,54,577/- carried forward from A.Y. 2011-12 and 2013-14 was clearly indicated by the assessee in her return of income. He contended that there was however a clerical mistake committed by the Office Staff of the Tax

Advisor of the assessee in not claiming the set off of the said long term capital loss carried forward from the earlier years against the long term capital gain of the year under consideration while filing the return on-line and the same is liable to be rectified u/s 154. In support of this contention, he relied on the decision of Mumbai Bench of this Tribunal in the case of Shrikant Real Estates (P) Ltd. vs ITO rendered vide its order dated 19.10.2012 in ITA No. 4304/Mum/2012.

5. The ld. DR, on the other hand, strongly relied on the orders of the authorities below in support of the revenue's case that there being no claim made by the assessee in her return of income for set off of the long term capital loss carried forward from the earlier years against the capital gain for the year under consideration, the intimation issued u/s 143(1) not allowing such set off cannot be said to have any error apparent from record.

6. We have considered the rival submissions and also perused the relevant material available on record. It is not in dispute that there was a long term capital loss of Rs. 3,80,298/- and Rs. 1,54,577/- carried forward from A.Y. 2010-11 and 2013-14 in the case of the assessee. There is also no dispute that the said long term capital loss carried forward from the earlier years was shown by the assessee in the return of income filed for the year under consideration. The dispute is whether the clerical mistake stated to be committed by the Office Staff of the Tax Advisor of the assessee in not claiming the set off of the said loss against the long term capital gain of the year under

consideration while filing the return on-line can be corrected by rectifying the intimation issued u/s 143(1) of the Act. In this regard, it is observed that the similar issue was involved in the case of Shrikant Real Estates (P) Ltd. vs ITO (ITA No. 4304/Mum/2012 dated 19.10.2012) before the Mumbai Bench of this Tribunal and the same was decided by the Tribunal in favour of the assessee for the following reasons given in paragraphs no. 7 & 8 of its order: /

*"7. We have heard the rival submissions and perused the orders of the lower authorities and the copy of the revised e-return filed by the assessee, In the present system of e-filing of return which is totally depended upon the usage of software, it is possible that some clerical errors may occur at the time of entering the data in the electronic form. The return is prepared electronically which is converted into an XML file either through the free down loaded software provided by the CBDT or by the software available in the market. In either of the case, there is every possibility of entering incorrect data without having the expert knowledge of preparing an XML file. XML file so created is uploaded to the official Website i.e. www.incometaxindiaefiling.gov.in. Once the return is up loaded ITR- V, which is the acknowledgement of the return so filed, is generated by the system itself and if, the return is not signed digitally, then ITR- V so generated has to be signed and sent to Central Processing Centre, Bangaluru within 120 days.*

*8. Keeping in mind this system of e-filing of the returns, coming back to the facts of the case. we find that the assessee has claimed Short Term Capital Gains and has shown it in the revised e-return but the same figure did not appear under the item where the short term capital gain is to be taxed at special rate u/s. IIIA of the Act i.e. internal page-19 of the return under Schedule CG – Capital gains under item No.7. However, at the same time we find that under Schedule SI-income chargeable to income tax at special rates IB which is at internal P-24 of the return, the assessee has shown Short Term Capital Gains (iiia) special rate 10% income Rs. 26585/- which clearly established that the assessee has shown Short Term Capital Gains liable to be taxed at special rate of 10%. Accordingly, reversing the finding of the Ld. CIT(A), we direct the AO to allow credit of the Short Term Capital Gains subject to special to tax as per provisions of Sec. IIIA of the Act and rectify the intimation u/s 143(1) accordingly.*

7. As the issue involved in the present case as well as all the material facts relevant thereto are similar to the case of M/s. Shrikant Real Estates (P) Ltd. (supra), we respectfully follow the decision of the Coordinate Bench of this Tribunal rendered in the said case and direct the Assessing Officer to rectify the intimation issued under section 143(1) as sought by the assessee thereby allowing the claim of the assessee for set off of long term capital loss carried forward from the earlier years against the long term capital gain of the year under consideration.

**8. In the result, the appeal of the assessee is allowed.**

Order Pronounced in the Open Court on 22<sup>nd</sup> May, 2020.

Sd/-  
(A.T. VARKEY)  
JUDICIAL MEMBER

Sd/-  
(P.M. JAGTAP)  
VICE PRESIDENT

**Dated: 22/05/2020**

Biswajit, Sr. PS

Copy of order forwarded to:

1. Smt. Kanta Agarwal, C/o. V.N. Purohit & Co., Chartered Accountants, Diamond Chambers, Unit-III, 4<sup>th</sup> Floor, Suite No. 4G, 4, Chowringhee Lane, Kolkata – 700 016.
2. ACIT, Circle – 32, Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar / H.O.O.  
ITAT, Kolkata