



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK 'SMC' BENCH, CUTTACK**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER**

**ITA No.456/CTK/2019**

Assessment Year : 2009-2010

Sarada Bhusan Mohanty, House No.3, Ratna Niwas, Tankapani Road, Bramheswar Patna, Bhubaneswar.	Vs.	ACIT, CPC, Bangalore/ACIT, Circle 1(1), Sambalpur
PAN/GIR No.ACCPM 9354 M		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : None  
Revenue by : Shri J.K.Lenka, DR

**Date of Hearing : 12 /06/ 2020**  
**Date of Pronouncement : 12/06/2020**

**ORDER**

This is an appeal filed by the assessee against the order of the CIT(A), Sambalpur dated 15.11.2019 for the assessment year 2009-2010.

2. The effective ground taken by the assessee in grounds of appeal is that the Id CIT(A) has erred in confirming the disallowance of claim of loss from house property of Rs.1,50,000/- by passing an order u/s.154 of the Act by the AO after accepting the same in intimation u/s.143(1) of the Act.

3. None appeared on behalf of the assessee when the matter was called for hearing. Since the matter can be decided in the absence of Id A.R. of the assessee, the appeal is taken up for hearing and disposal on the basis of material on record and submission of Id D.R.

4. I have heard Id D.R. and perused the record of the case. The brief facts of the case are that the assessee had filed return of income on 31.7.2009 declaring salary income and claiming loss in current year to be carried forward of Rs.15,00,000/-. The return was processed u/s.143(1) of the Act on 3.7.2010 accepting the returned income of the assessee and allowed deduction under Chapter VIA of Rs.1 lakh.

5. Later on, the ACIT, CPC issued notice u/s.154 of the At on 3.3.4.2013, in which the mistake regarding adjustment of current loss of Rs.1,50,000/- was disallowed by an order dated 10.12.2010 u/s.154 of the Act raising a demand of Rs.77,390/-. Against the rectification order, the assessee filed appeal before the Id CIT(A) and Id CIT(A) dismissed the appeal of the assessee holding that the loss of Rs.1,50,000/- was not claimed in the original return and it was claimed later on.

6. Aggrieved by the order of the Id CIT(A), the assessee is in appeal before the Tribunal.

7. Ld D.R. supported the orders of lower authorities and submitted that the assessee had not claimed the loss in the original return, therefore, it cannot be given for set of loss later on. He submitted that as per section 154 of the Act, the mistake was rectified. Hence, the order of the Id CIT(A) should upheld.

8. On careful consideration of the submission of Id D.R. and perusing the material on record, I find that the assessee had claimed Rs.1,50,000/- but not

mentioned that same should be allowed under the head income from house property. Although the return was accepted under section 143(1) of the Act but later on the AO vide rectification u/s.154 of the Act has disallowed the same as the same was not claimed originally under the head "income from house property". The CBDT Circular No.14 of 1955 dated 11.04.1955 has clarified that the officers of the department must not take advantage of ignorance of the assessee about his rights and it is their duty to assist the tax payer in every reasonable way particularly in the matter of claiming and securing relief is due to him. This attitude would, in the long run, benefit the Department for it would inspire confidence the assessee that he may be sure of getting a square deal from the Department. The intention of this circular is not that tax due should not be charged or that any favour should be shown to anybody in the matter of assessment, or that where investigations are called for, they should not be made. Whatever the legitimate tax it must be assessed and must be collected. The purpose of this circular is merely to emphasise that we should not take advantage of an assessee's ignorance to collect more tax out of him than is legitimately due from him. In this case, the Id CIT(A) has rejected the claim of the assessee on the ground that the assessee has not claimed any loss under the head "income from house property" and the said loss of Rs.1,50,000/- has been claimed for set off after the computation of total income. I also find that the Id CIT(A) has passed the order exparte without hearing the assessee without giving opportunity of hearing to the assessee. Hence, it would meet the ends of natural justice, if the matter is restored back to the file of the AO to decide the issue keeping in mind

the CBDT Circular No.14 of 1955 dated 11.04.1955(supra) and after allowing opportunity of hearing to the assessee.

9. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced on 12 /06/2020.

Sd/-  
**(Chandra Mohan Garg)**  
**JUDICIAL MEMBER**

Cuttack; Dated 12/06/2020  
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The Appellant : Sarada Bhusan Mohanty, House No.3, Ratna Niwas, Tankapani Road, Bramheswar Patna, Bhubaneswar.
2. The Respondent. ACIT, CPC, Bangalore/ACIT, Circle 1(1), Sambalpur
3. The CIT(A), Sambalpur
4. Pr.CIT- , Sambalpur
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

**By order**

Sr.Pvt.secretary  
**ITAT, Cuttack**