

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'C' BENCH, KOLKATA
[Virtual Court Hearing]**

**Before Shri P.M. Jagtap, Vice-President
&
Shri A.T. Varkey, Judicial Member**

**I.T.A. No. 126/KOL/2021
Assessment Year: 2016-2017**

CD Equifinance Pvt. Limited,.....Appellant
SB Tower,
37, Shakespeare Sarani,
Kolkata-700017
[PAN:AACCP7333A]

-Vs.-

Principal Commissioner of Income Tax-1,.....Respondent
Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069

Appearances by:

Shri Akkal Dudhwewala, FCA, appeared on behalf of the assessee
Shri Praveen Kishore, CIT (DR), appeared on behalf of the Revenue

Date of concluding the hearing : July 01, 2021

Date of pronouncing the order : July 09, 2021

O R D E R

Per Shri P.M. Jagtap, Vice-President:-

This appeal filed by the assessee is directed against the order of the Id. Principal Commissioner of Income Tax (Appeals)-1, Kolkata dated 27.03.2021 passed under section 263 of the Income Tax Act, 1961.

2. The assessee in the present case is a Company. The return of income filed by it for the year under consideration was selected for complete scrutiny and the assessment was completed by the Assessing

Officer under section 143(3) of the Act vide an order dated 28.12.2018. The records of the said assessment subsequently came to be examined by the Id. Principal CIT and on such examination he found the following error in the order passed by the Assessing Officer under section 143(3):-

"It was noticed that the assessee claimed carry forward of long-term capital loss of Rs.4,41,60,604/- in his return of income. During assessment the long-term capital loss (Non-STT paid) of Rs.3,22,30,814/- was disallowed by the Assessing Officer due to such loss had been arisen from listed securities. However, s per ITBA CFL schedule the whole long-term capital loss i.e. Rs.4,41,60,604/- as claimed by the assessee was allowed to be carried forward for the future years instead of only Rs.1,19,29,790/- (Rs.4,41,60,604/- minus Rs.3,22,30,814/-). Hence excess carried forward of long term capital loss of Rs.3,22,30,814/- has resulted in potential tax effect of Rs.70,90,779/-".

3. The Id. Principal CIT accordingly issued a notice under section 263 requiring the assessee to show-cause as to why the order passed by the Assessing Officer under section 143(3) should not be treated as erroneous as well as prejudicial to the interest of the revenue and should not be revised/set aside by exercising his revisionary powers.

4. In reply to the show-cause notice issued by the Id. Principal CIT under section 263, the following submission was filed by the assessee in writing:-

"..... 2. At the outset it is submitted that the impugned disallowance of long term capital loss has been disputed by the company before the Ld. CIT(A) and copy of the acknowledgement evidencing the filing of such appeal is enclosed and marked as Annexure-1. It is thus submitted that since this issue is the subject matter of appeal, in terms of the provisions contained in clause (c) of Explanation 1 to Section 263, such matter cannot be now considered by exercise of revisionary jurisdiction u/s 263 of the Act. It is thus submitted that the impugned notice being bad in law and in excess of jurisdiction deserves to be set aside and/or dropped.

3. Even otherwise, and on the merits it is submitted that your allegation that the AO inspite of disallowing the long term capital loss to the extent of Rs.3,22,30,814/- erroneously

allowed the whole long term capital loss of Rs.4,14,60,604/- is also factually incorrect. On perusal of Pages 11 & 12 of the assessment order, it shall be noted that the AO had denied the carry forward of long term capital loss to the extent of Rs.3,22,30,814/- and had allowed the carry forward of short term capital loss of Rs.2,82,23,130/-. Reference is invited to Sl. No. 18 of the ITNS annexed to the assessment order [Annexure-2], wherein the AO has specified and allowed only the carry forward of short term capital loss of Rs.2,82,23,130/-. In fact the AO denied the carry forward of the entire long term capital loss and failed to grant the carry forward of the assessed LTCL of Rs.1,19,29,790/- (Rs.4,41,60,604 - Rs.3,22,30,814). The company had filed an application u/s 154 dated 31.01.2019 seeking carry forward of the such assessed loss of Rs.1,19,29,790/-, copy of which is enclosed and marked as Annexure-3. The said application is still pending and the AO is yet to allow the carry forward of the same. In view of the foregoing therefore, it shall therefore be noted that the AO never allowed the carry forward of the returned Long term capital loss. In fact, even the carry forward of assessed loss was denied to the company. Accordingly, the order passed by the AO u/s 143(3) is neither erroneous nor prejudicial to the interests of the Revenue.

4. For the foregoing reasons therefore it is submitted that it is a fit case where proceedings u/s 263 should be dropped”.

5. The Id. Principal CIT did not accept the above submission made on behalf of the assessee-company for the following reasons given in paragraph no. 5 of his impugned order:-

“5. I have considered the facts of the case and also the submission of the assessee. Scrutiny of assessment records revealed that the assessee claimed for carry forward of long term capital loss of Rs.4,41,60,604/- in his return of income. During assessment the Long term capital loss of Rs.3,22,30,814/- was disallowed by the assessing officer due to such loss had been arisen from listed securities. From ITBA CFL schedule it is seen that the whole long term capital loss i.e. Rs.4,41,60,604/- as claimed by the assessee was allowed to be carried forward for the future years instead of only Rs. 1,19,29,790/- (Rs.4,41,60,604 - Rs.3,22,30,814). The A.O. has passed the assessment order without making enquiries or verification which should have been made in the instant case. Clause (a) and (b) of Explanation-2 to Section 263(1) is attracted in this case. Accordingly, it is held that the assessment order is erroneous in so far as it is prejudicial to the interest of revenue”.

6. For the reasons given above and by relying on the various judicial pronouncements referred to in his impugned order, the Id. Principal CIT set aside the order dated 28.12.2018 passed by the Assessing Officer under section 143(3) by treating the same as erroneous as well as prejudicial to the interest of the revenue by an order dated 27.03.2021 passed under section 263 with a direction to the Assessing Officer to frame the assessment afresh after considering the observations recorded by him. Aggrieved by the order of the Id. Principal CIT passed under section 263, the assessee has preferred this appeal before the Tribunal.

7. The Id. Counsel for the assessee, at the outset, invited our attention to the assessment order dated 28.12.2018 passed under section 143(3) of the Act to show that the claim of the assessee-company for capital loss of Rs.4,41,60,604/- was disallowed by the Assessing Officer to the extent of Rs.3,22,30,814/-. He then invited our attention to the computation sheet annexed to the assessment order to show that even the balance long-term capital loss of Rs.1,19,29,790/- was not allowed to be carried forward by the Assessing Officer. He contended that an application therefore was moved by the assessee-company before the Assessing Officer under section 154 on 31.01.2019 seeking rectification of the said mistake apparent from record. He invited our attention to the copy of the said application placed at page nos. 33-34 of the paper book and submitted that the said application has not been disposed of by the Assessing Officer till date and it is still pending with the Assessing Officer. He also contended that even the disallowance made by the Assessing Officer on account of the assessee's claim for long-term capital loss to the extent of Rs.3,22,30,814/- has been challenged by the assessee-company in the appeal filed before the Id. CIT(Appeals). In this regard, he drew our attention to the copy of relevant Form No. 35 placed at page no.23 to 25 of the paper book. He contended that the long-term capital loss of Rs.4,41,60,604/- as claimed by the assessee thus was not allowed to be carried forward by the Assessing Officer vide his order dated 28.12.2018

passed under section 143(3) and there was no error in the said order as alleged by the Id. Principal CIT in his impugned order calling for any revision. He contended that this factual aspect was clearly brought to the notice of the Id. Principal CIT on behalf of the assessee-company during the proceedings under section 263, but without verifying or ascertaining the actual position, the Id. Principal CIT simply proceeded to set aside the order of the Assessing Officer passed under section 143(3) by treating the same as erroneous as well as prejudicial to the interest of the revenue. He contended that since there was no error in the order of the Assessing Officer as alleged by the Id. Principal CIT in his impugned order passed under section 263, the order passed by the Id. Principal CIT is not sustainable and the same is liable to be quashed.

8. The Id. CIT(DR), on the other hand, relied on the impugned order passed by the Id. Principal CIT under section 263 in support of the revenue's case.

9. We have considered the rival submissions and also perused the relevant material available on record. It is observed that the order passed by the Assessing Officer dated 28.12.2018 under section 143(3) was set aside by the Id. Principal CIT vide his impugned order passed under section 263 alleging by that there was an error in the said order in allowing the entire long-term capital loss of Rs.4,41,60,604/- to be carried forward for the subsequent years when the same was actually allowed by the Assessing Officer only to the extent of Rs. 1,19,29,790/-. In this regard, the Id. Counsel for the assessee has demonstrated before us on the basis of the assessment order passed by the Assessing Officer under section 143(3) read with the computation sheet annexed thereto that even though the claim of the assessee-company for long-term capital loss of Rs. 4,41,60,604/- was allowed by the Assessing Officer only to the extent of Rs.1,19,29,790/-, no amount of long-term capital loss was actually allowed by the Assessing Officer to be carried forward in the

computation sheet. He has also invited our attention to the copy of application filed by the assessee under section 154 on 31.01.2019 placed at page no. 33 & 34 of the paper book to show that this mistake committed by the Assessing officer was pointed out by the assessee-company seeking rectification of the same. He has also invited our attention to the copy of appeal filed before the Id. CIT(A) in Form No. 35 placed at page no. 23 to 25 of the paper book to show that the disallowance made by the Assessing Officer on account of long-term capital loss to the extent of Rs.3,22,30,814/- was challenged by the assessee in the appeal filed before the Id. CIT(Appeals). This documentary evidence placed on record clearly establish that even though the claim of the assessee for long-term capital loss of Rs.4,41,60,604/- was allowed by the Assessing Officer only to the extent of Rs.1,19,29,790/-, even the said loss to the extent allowed in the assessment was not allowed to be carried forward by the Assessing Officer to the subsequent years as per the computation sheet annexed to the assessment order. Even the Id. CIT(DR) has not been able to rebut or controvert this position which is clearly evident from the assessment order passed by the Assessing Officer under section 143(3) read with computation sheet annexed thereto and further corroborated by the application filed by the assessee under section 154 before the Assessing Officer and the appeal filed before the Id. CIT(Appeals). We, therefore, find merit in the contention of the Id. Counsel for the assessee that there was no error in the order of the Assessing Officer dated 28.12.2018 passed under section 143(3) in allowing to carry forward the entire long-term capital loss of Rs.4,41,60,604/- claimed by the assessee instead of Rs.1,19,29,790/- only allowed in the assessment order, as alleged by the Id. Principal CIT in his impugned order. The order passed by the Assessing Officer under section 143(3) thus was not erroneous as well as prejudicial to the interest of the revenue and the Id. Principal CIT, in our opinion, was not justified in revising the same vide his impugned order passed under section 263. We,

therefore, set aside the order passed by the Id. Principal CIT under section 263.

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

Order pronounced in the open Court on July 09, 2021.

**Sd/-
(A.T. Varkey)
Judicial Member**

**Sd/-
(P.M. Jagtap)
Vice-President**

Kolkata, the 9th day of July, 2021

- Copies to :*
- (1) CD Equifinance Pvt. Limited,
SB Tower,
37, Shakespeare Sarani, Kolkata-700017*
 - (2) Principal Commissioner of Income Tax-1,
Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069*
 - (3) Commissioner of Income Tax (Appeals)-3, Kolkata,*
 - (4) Commissioner of Income Tax ,*
 - (5) The Departmental Representative*
 - (6) Guard File*

By order

*Senior Private Secretary/DDO,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.