

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E" MUMBAI**

**BEFORE SHRI SHAMIM YAHYA (ACCOUNTANTMEMBER) AND
SHRI PAVAN KUMAR GADALE (JUDICIAL MEMBER)**

**ITA No. 4787/MUM/2019
Assessment Year: 2011-12**

Shri Satish Mayekar,
404, Geetanjali, Ranade Road,
Dadar, Mumbai-400028.

DCIT-28(3),
Erstwhile DCIT-22(3),
Vs. Navi Mumbai-400703.

PAN No. AGAPM 2915 J
Appellant

Respondent

Assessee by : Mr. SandipKejariwal, AR
Revenue by : Mr. Vijay Kumar Menon, DR

Date of Hearing : 13/07/2021
Date of pronouncement : 15/07/2021

ORDER

PER PAVAN KUMAR GADALE, J.M.

The assessee has filed an appeal against the order of Commissioner of Income Tax (Appeals)-26, Mumbai passed u/s 143(3) and 250 of the Income Tax Act, 1961. The assessee has raised following grounds of appeal as under :

- 1. On the facts and circumstances of the case and in law, the teamed Commissioner of income Tax Appeals-26 (CIT(A)) erred in not allowing the set off of F&O loss of Rs.22,88,642/- against business income stating that the Appellant had not furnished revised return of Income under section 139(5) of the Act, without*

considering the facts that the Appellant had filed revised computation of income during the course of scrutiny assessment since due date of filing revised return of income was over.

- 2. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not allowing carry forward of short term capital Loss of Rs.30,99,430/- to the subsequent years, stating that the Appellant had not furnished revised return of income under section 139(5) of the Act, without considering the facts that the Appellant had filed revised computation of income during the course of scrutiny assessment since due date of filing revised return of income was over.*
- 3. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not allowing the set off of F&O loss of Rs.22,88,642 against business income and carry forward of short term capital Loss of Rs.30,99,430 to the subsequent years, relying on decision of Apex Court in case Of Goetze India Ltd (SC) 2006 284 ITR 323 without considering the facts that the said decision restricts the Assessing Officer to allow the claim made during the course of scrutiny assessment and not the Appellate authorities.*

2. The brief facts of the case are that the assessee is an individual and engaged in the business of IOC Petrol & Diesel retail outlet and filed the return of income for the assessment year 2011-12 on 23.09.2011 declaring a total income of Rs.66,19,717/-. The return of income was processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny and notice u/s 143(2) and u/s 142(1) of the Act along with the questionnaire was issued. In compliance, the Ld.AR of the assessee appeared from time to time and submitted the details. The Assessing Officer has called for the information in respect of individual transaction statement of investments and the income offered for taxation and the sources of investments. The assessee has filed a letter dated 02.12.2013 explaining the nature of business and the personal income details, investment activities, interest income and other information.

2.1 The assessee has filed a revised computation of income excluding an amount of Rs.22,88,642/- being loss from the business income of proprietary concern and the revised income was offered at Rs.43,39,824/-. But the Assessing Officer observed that the revised statement filed by the assessee cannot be accepted as the assessee has to file revised return of income u/s 139(5) of the Act. The contentions of the assessee are that the loss of Rs.22,88,642/- was incurred and should be reduced from business income of Rs.66,28,466/- and the same was not accepted. Further the assessee claimed in the revised computation of income carried forward of short term capital loss of Rs.30,99,430/- for set off for future years. Similarly, the Assessing Officer called for bank accounts of the assessee and identified the credit of Rs.21,61,200/- and called for the explanations. Since, the assessee could not give proper explanations and has offered the income for taxation in the revised computation statement. Hence addition of Rs.21,61,200/- was treated as undisclosed income and finally the A.O. determined the total income of Rs.89,07,020/- and passed order u/s 143(3) of the Act dated 28.01.2014.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A) on the disputed issue of setoff of loss and carry forward of short term capital loss. But the CIT(A) has confirmed the action of the Assessing Officer and dismissed the assessee's appeal.

4. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Tribunal. At the time of hearing, the Ld. AR submitted that CIT(A) and Assessing officer has erred in not considering the fact that the assessee is entitled to set off loss against the business income and

the Assessing Officer has denied the claim in the revised computation of income and the time limit to file the revised return of income has lapsed. Further the Assessing Officer has not allowed the carried forward of short term capital claimed in the revised computation of income and prayed for allowing the appeal.

5. Contra, the Ld. DR supported the lower authorities orders and submitted that the assessee is not eligible to claim set off of loss in the revised computation of income and carry forward of short term capital loss filed in the scrutiny proceedings.

6. We heard the rival submissions and perused the material on record. The sole crux of the issue envisaged by the Ld.AR is with respect to set off of loss against the business income as it was not claimed in the original return of income and but in scrutiny proceedings revised computation of income was filed. Similarly, the assessee has a carried forward short term capital loss and was disclosed in the statement of revised total income before the Assessing Officer but the same claim was rejected by the Assessing Officer and CIT(A). We find that the assessee in the original return of income has not claimed the set off and carried forward of short term capital loss for various reasons and in the assessment proceedings, the assessee has filed revised computation of income with the Claims. The assessing officer has rejected the claim and observed that the assessee should file revised return of income .

6.1.The Ld.AR submitted that the time limit for filling the revised return of income was over. We find the submissions of the Ld.AR are realistic and the A.O. has not doubted the claim but rejected only on the ground of non filling of revised return of income. We considering the overall facts,

circumstances and judicial decisions are of the opinion that the assessee should not be deprived his legitimate right to claim set off of loss which is genuine and carry forward of short term capital loss which is not fictitious. We considering the principles of natural justice and the judicial decisions admit the claims of the assessee and restore the disputed issues to the file of Assessing Officer for limited purpose to examine and verify the claims and adjudicate on merits. The assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information and allow the grounds of appeal for statistical purpose.

In the result, the assessee's appeal is allowed for statistical purposes.

Order pronounced in the open Court on 15/07/2021.

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai;

Dated: 15/07/2021

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai