

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC-1 : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.1870/Del/2020
Assessment Year: 2018-19

Sudipta Basu,
C/o Rohit Tiwari,
8024, ATS Green Paradiso,
CH-IV, Greater Noida,
Noida,
Uttar Pradesh ó 201310.

Vs. ITO,
Ward-52(4),
New Delhi.

PAN: AAGPB2606K

(Appellant)

(Respondent)

Assessee by	:	Shri Rohit Tiwari, Advocate
Revenue by	:	Ms Sangeeta Yadav, Sr. DR
Date of Hearing	:	27.10.2021
Date of Pronouncement	:	23.12.2021

ORDER

This appeal filed by the assessee is directed against the order dated 24th September, 2020 of the CIT(A)-18, New Delhi, relating to Assessment Year 2018-19.

2. Facts of the case, in brief, are that the assessee is an individual and filed his return of income on 29th August, 2018 declaring taxable income at Rs.11,67,960/- after claiming carried forward loss of Rs.8,67,803/- pertaining to AY 2017-18. The CPC, Bangalore, in the intimation issued on 20th May, 2019 u/s 143(1),

disallowed the setting off of the above carried forward loss of Rs.8,67,803/- on the ground that the return for AY 2017-18 was furnished on 22nd January, 2018 as against the due date of 5th August, 2017 and, therefore, it is beyond the due date specified under subsection (1) of section 139 of the IT Act.

3. Before the CIT(A), it was submitted that the assessee could not file the return timely owing to severe matrimonial dispute with his wife and also because of restraint order dated 09.11.2015 passed by the Honøble Metropolitan Magistrate, Patiala House Courts, New Delhi. This had barred the assessee from entering into the terrace portion of the flat in Vasant Kunj where all his business and financial documents were kept which resulted in the late filing of the IT return. It was argued that the delay has happened for the first time in the last 25 years for a situation totally beyond his control. The assessee also enclosed a copy of the restraint order dated 09.11.2015 passed by the Court of the Metropolitan Magistrate, Patiala House Courts, New Delhi.

4. However, the Id.CIT(A) was not satisfied with the arguments advanced by the assessee and upheld the intimation issued by the CPC Bangalore disallowing the claim for setting off of the carried forward loss by observing as under:-

õ5.1 I have carefully considered the assessment order and submissions furnished by the AR that õReturn for AY 2018-19 was filed on 29.08.2018 declaring taxable income of Rs.1167960 after claiming carried forward loss of Rs.867803 pertaining to AY 2017-18. In the intimation dated 20.05.2019 u/s 143(1) of the Income Tax Act, 1961 for AY 2018-19, setting off the above carried forward loss has been disallowed on the ground that Return for AY 2017-18 was furnished beyond due date specified under subsection 1 of section 139.

The b/f losses can be allowed only if return is filed in time hence the action of the AO is justified. The appeal is dismissed.ö

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

ö1. On the facts and circumstances of the case and in law, the Order passed u/s. 143(1)(a) of the Income Tax Act, 1961 (the Act) by the Assessing officer is bad in law, without jurisdiction and illegal and therefore the notice along with the assessment order passed on the foundation of such notice is liable to be quashed.

2. On the facts and circumstances of the case and in law, the Ld CIT Appeals erred in making addition of Rs 8,67,803/- on account of disallowing set of carried forwards losses on ground of that return of A.Y 2017-18 is filed beyond due date without appreciating and facts of the case and ignoring submissions made by the appellant.

3. On the facts and circumstances of the case and in law the learned CIT(A) erred in rejecting the submission made by the appellant merely on assumptions, presumptions and apprehensions, without appreciating the factual, legal and statutory position.

That the above grounds of appeal are without prejudice to each other.

That the appellant reserves its right to add, alter, amend or withdraw any ground of appeal either before or at the time of hearing of this appeal.ö

6. I have heard the rival arguments made by both the sides and perused the record. It is an admitted fact that the assessee filed his return of income for AY 2017-18 on 22nd January, 2018 as against the due date of 5th August, 2017. Since the assessee did not file the return within the specified due date u/s 139(1) of the IT Act, the assessee is not entitled to carry forward the loss of Rs.8,67,803/- pertaining to AY 2017-18 to be set off in AY 2018-19. The submission of the ld. Counsel that the assessee was not able to enter into the terrace portion of his flat in Vasant Kunj where all his business and financial documents were kept due to

the restraint order passed by the court, in my opinion, cannot be a ground to enable the assessee to claim the benefit of set off of carried forward loss of AY 2017-18 since the said return was not filed on or before the specified date. The statute is very clear on this issue that for claiming the benefit of setting off of carried forward loss against the income of the subsequent year, the return for the assessment year in which loss was incurred has to be filed in time as specified u/s 139(1) of the IT Act. If the assessee was prevented from filing the return within the due date, the remedy lies elsewhere, but, definitely not before the Tribunal. Since the assessee, in the instant case, has not filed the return of income for AY 2017-18 within the due date returning the loss of Rs.8,67,803, therefore, the same cannot be carried forward to the subsequent assessment year to be set off against the income of AY 2018-19. In this view of the matter, I do not find any infirmity in the order of the CIT(A) upholding the intimation issued by the CPC, Bangalore rejecting the claim of set off of carried forward loss of Rs.8,67,803/- pertaining to AY 2017-18 from the income of AY 2018-19. The order of the CIT(A) is accordingly upheld and the grounds raised by the assessee are dismissed.

7. In the result, the appeal filed by the assessee is dismissed.

The decision was pronounced in the open court on 23.12.2021.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 23rd December, 2021

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi