

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 114/Kol/2022
Assessment Year : 2016-17

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| Shri Vivek Saraogi (PAN: AMOPS 3266 J) | Vs. | DCIT, CPC, Bangalore |
| Appellant | | Respondent |

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|-----------------------|-------------------------------|
| Date of Hearing | 05.05.2022 |
| Date of Pronouncement | 13.05.2022 |
| For the Appellant | Shri S.K. Tulsian, Advocate |
| For the Respondent | Smt. Ranu Biswas, Addl. CITDR |

ORDER

Per Shri Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Commissioner of Income Tax(Appeals)-21, Kolkata [hereinafter referred to as ‘CIT(A)’] dated 15.12.2021 for the assessment year 2016-17.

2. Though the Registry has pointed out that the appeal is time barred, however, in view of the decision of the Hon’ble Supreme Court in the case of Miscellaneous Application No. 665 of 2021 in SMW(C) No. 3 of 2020, the period of filing appeal during the COVID-19 pandemic is to be excluded for the purpose of counting the limitation period. In view of this, the appeal is treated as filed within the limitation period.

3. The assessee has assailed the order of Ld. CIT(A) on the ground of not deciding the issue of allowing the setting off of short term capital loss of Rs. 11,42,997/- u/s 74 of the Act as claimed by the assessee in AY 2016-17 despite all the facts were available before him and set aside the issue to the file of AO to verify and decide the same which is in violation of provision of section 251(1)(a) of the Income Tax Act, 1961 (hereinafter referred to as the Act) w.e.f 01.06.2001.

4. The facts in brief are that the assessee filed the return of income on 01.08.2016 declaring total income of Rs. 42,58,417/- after claiming the set off of brought forward loss of Rs. 11,42,997/-. The return of income was processed u/s 143(1) of Act vide intimation/order dated 26.10.2016 assessing the income at Rs. 54,01,414/- by rejecting the claim of the assessee in respect of brought forward loss. The assessee moved a rectification application to DCIT, CPC which was also decided vide order dated 10.01.2017 passed u/s 154 of the Act rejecting the lawful claim of brought forward losses of Rs. 11,42,997/-. The facts qua the brought forward loss are that the assessee incurred loss of Rs. 63,47,756/- in AY 2009-10 in the return filed u/s 139(1) of the Act and the said loss was carried forward for setting off to the subsequent orders. In AY 2013-14 out of said loss, a sum of Rs. 39,09,975/- was allowed to be set off against the current business profit and the remaining unabsorbed loss of Rs. 24,37,781/- was further carried forward. In AY 2015-16 the assessee claimed brought forward loss to the tune of Rs. 2,76,710/- and the remaining unabsorbed loss of Rs. 21,61,071/- was carried forward for subsequent years. Similarly in the instant assessment year, the assessee claimed set off of Rs. 11,42,997/- out of this brought forward short term capital loss of Rs. 21,61,071/- however the same was not allowed to the assessee despite the fact that all the details pertaining to the brought forward of loss and claim of the assessee duly appearing in the original return filed u/s 139(1) of the Act on 01.08.2016.

5. The assessee challenged the order passed u/s 154 of the Act before the Ld. CIT(A), however the Ld. CIT(A) instead of deciding the issue himself set aside the same to the file of the AO to examine and check the issue despite all the documents and records being available before Ld. CIT(A) and to decide the same. By setting aside the issue to the file of the AO, the Ld. CIT(A) has also exceeded his jurisdiction in terms of section 251(1)(a) of the Act as with effect from 01.06.2001 setting aside powers which were earlier vested with the Ld. CIT(A) has been taken away.

5. The Ld. A.R. vehemently submitted before us the order passed by the Ld. CIT(A) is patently wrong as the Ld. CIT(A) has failed to decide the issue despite the

all the records being available before him right from AY 2009-10 to 2016-17. The Ld AR contended that the assessee is entitled to set off the brought forward short term capital loss and claimed the same against the current year's income to the tune of Rs. 11,42,997/- in accordance with the provision of Section 74 of the Act. The Ld. A.R. took us through the various documents/evidences in the form of ITRs, computation of income, extracts of the uploaded ITR on Web Portal of the Department which clearly proved that the assessee has rightly claimed the setting off the brought forward loss to the tune of Rs. 11,42,997/- . The Ld. A.R. therefore prayed that the order of Ld. CIT(A) may kindly be reversed and the AO be directed to allow setting off brought forward loss to the tune of Rs. 11,42,997/- as claimed.

6. The Ld. D.R on the other hand argued before us that the Ld. CIT(A) has already set aside the order to the file of the AO with the direction to decide the same in accordance with law and therefore the assessee should not have any grievance before the Ld. CIT(A).

7. Having heard the rival contentions and after perusing the material on record, we find that the assessee has brought forward short term capital loss of Rs. 21,61,071/- out of which Rs. 11,42,997/- was claimed as set off during the year and remaining of Rs. 10,81,071/- was carried forward for future set off. We observe from the evidences and records as placed before us during the hearing , the assessee has brought forward loss which was incurred in AY 2009-10 and was being carried forward for setting off against the income of the assessee. We have also examined the return of income uploaded by the assessee on the web portal of the department and find that the assessee has duly filled the return of income filed on 01.08.2016 claiming the set off of loss to the tune of Rs. 11,42,997/- however while uploading the same mistake has happened in the portal of department resulting into denial of claim to the assessee. Thereafter the assessee filed rectification petition before the DCIT, CPC, Bangalore against the intimation u/s 143(1) of the Act but again the same was rejected. The Ld. CIT(A) ,instead of deciding the issue in the appellate stage ,restored the same to the file of the AO despite the issue being apparent on the basis of records available before

him which was against the provisions of section 251(1)(a) of the Act. We have examined the evidences placed before us by the assessee from FY 2009-10 to 2016-17 and find that the claim of the assessee is genuine and in accordance with the provision of Section 74 of the Act. Accordingly we set aside the order of Ld. CIT(A) and direct the AO to allow the claim of the assessee in setting off of brought forward loss of Rs. 11,42,997/-.

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

Order is pronounced in the open court on 13th May, 2022

Sd/-

(Sonjoy Sarma)
Judicial Member

Sd/-

(Rajesh Kumar)
Accountant Member

Dated: 13th May, 2022

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Shri Vivek Saraogi (L/H of Kamal Nayan Saraogi, Deceased), 504, woodburn Central, 5A, Bibhabati Bose Sarani, Kolkata-700020.
2. Respondent – DCIT, CPC, Bangalore.
3. The CIT(A)- 21, Kolkata (Sent through e-mail)
4. Pr. CIT- Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata