

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “C” DELHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.5535 /DEL/2015
Assessment Year 2010-11

M/s. Angelic Construction (P) Ltd., H. No.-119, G/F Gali No.-1, KH No. Khajuri Khas, Near Shiv Mandir, New Delhi.		DCIT, Central Circle-17, New Delhi.
TAN/PAN: AAFCC1080F		
(Appellant)		(Respondent)

Appellant by:	Shri Suresh K Gupta, CA		
Respondent by:	Smt. Sunita Singh, CIT-DR		
Date of hearing:	30	05	2022
Date of pronouncement:	07	06	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Assessee against the order of the Commissioner of Income Tax (Appeals)-XXVII, New Delhi ('CIT(A)' in short) dated 02.03.2015 arising from the assessment order dated 09.05.2013 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2010-11.

2. The grounds of appeal raised by the assessee reads as under:

1. *“On the facts of the case and as per law, the Ld. CIT(A) erred in upholding the initiation of proceedings u/s 147 of the Act without judicially appreciating the facts of the case and the law.*

1.1 *That the Ld. CIT (A) erred in holding that the appellant*

did not make full and true disclosure of facts on the plea that the income tax return was not taken up for scrutiny and no Order was passed u/s 143(3) of the Act. The Ld. CIT(A) did not appreciate that the fact that the appellant filed Income Tax Return u/s 139(1) and the return was processed u/s 143(1) of the Act. The selection of the case under scrutiny is the prerogative of the Income Tax Department. The reason for not putting the case under scrutiny cannot be the ground for alleging that the appellant did not make full and true disclosure of facts which entitled the Revenue Officer for initiating the proceeding u/s 147 of the Act.

2. The Ld. CIT(A) erred on facts and law in upholding the Order dated 28.03.2013 passed by the Assessing Officer wherein the objections filed by the appellant, challenging the initiation of proceedings u/s147 of the Act were rejected arbitrarily.

3. On the facts of the case and as per law, the Ld. CIT(A) erred in upholding the arbitrary Order of the Ld. Assessing Officer in disallowing Short Term Capital Loss of Rs. 11,65,00,000/-, incurred on sale of commercial FSI in Agra Project, merely on his whims and fancy. The Ld. CIT(A) erred in upholding the Order of the Assessing Officer who challenged the business prudence of the appellant without any cogent material and disallowed Short Term Capital Loss merely on suspicion.

4. That the Orders of the Assessing Officer & CIT (A) is highly arbitrarily, capricious, unwarranted and are not based on the facts of the case & as per law and consequently therefore not sustainable as per law.

5. On the facts of the case and as per law, the Order passed by the Ld. CIT(A) in upholding the Order passed by the Assessing

Officer who disallowed the actual capital loss of Rs. 11,65,00,000/- merely on whimsical grounds without pursuing the bonafide explanation and evidences produced by the appellant. The Order of the Ld. CIT(A) and the Assessing officer is totally perverse and arbitrarily and hence not sustainable in the law.

6. *That levying the interest u/s 234B & 234C is not in accordance with the law.”*

3. When the matter was called for hearing, ld. counsel for the assessee, at the outset, adverted to the additional grounds with a prayer for its admission and the adjudication in terms of Rule 11 of the ITAT Rules, 1963. The additional grounds so raised read as under:

“Additional Ground No. 1

The Ld. CIT(A) has erred both in law and circumstances of the case in upholding the reassessment proceedings-initiated u/s 147 of the IT Act ignoring the contention of appellant that the proceedings have been initiated by the AO without correct appreciation of facts. In view of the above defects in the compliances the resultant reassessment proceedings are required to be set aside. ”

Additional Ground No. 2

“That on the facts and in circumstances of the case, the reassessment proceedings and impugned reassessment order is bad in law as the assessing officer has proceeded with the assessment immediately disposing off initial objection without providing reasonable time of four weeks to the appellant to seek remedy against rejection of objection.

Additional Ground No. 2

“That on the facts and in circumstances of the case, the reassessment proceedings and imp~ led reassessment order is bad in law as the assessing officer has proceeded with the assessment immediately disposing off initial objection without providing reasonable time of four weeks to the appellant to seek remedy against rejection of objection and the jurisdictional notices are not as per the requirement of law. ”

Additional Ground No.3

That on the facts and in circumstances of the case, the impugned reassessment order computing the short term capital gain at Rs. 11,61,04,370/- needs be set aside as the same has been computed without allowing the set off the brought forward losses under the head capital gain aggregating Rs.14,35,23,779/- which is part of the statement of computation of income and the return of income for the assessment year under consideration filed in response to notice u/s 148.”

4. Having regard to the contention that such grounds are pure legal grounds and their adjudication does not require any fresh investigation into facts, the additional grounds are admitted for adjudication in view of the decision of Hon’ble Apex Court in the case of *National Thermal Power Co. Ltd. vs. Commissioner of Income Tax 229 ITR 383 (SC)*, and *Jute Corporate of India Ltd. vs. CIT, 187 ITR 688 (SC)*.

5. At the time of hearing, the ld. counsel submitted that although several main grounds and additional grounds have been raised, however to cut the matter short, the grievance of the assessee would be, by and large, satisfied where the Short Term

Capital Gains in dispute amounting to Rs.11,61,04,370/- assessed by the Assessing Officer is allowed to be set off against the brought forward losses under the head 'Capital Gains' stated to be available to the tune of Rs.14,35,23,779/- at the disposal of the assessee. The ld. counsel for the assessee thus sought remedy on the aspects of set off at the time of hearing as per additional Ground No.3 of its appeal to bring an end to the protracted litigation.

6. The ld. CIT-DR submitted that while she seeks to support orders of the lower authorities but however has no real objection to such set off, if available in accordance with law. It was further suggested that the matter should be restored to the file of the Assessing Officer for examination and verification of availability of carry forward losses and its set off in accordance with law.

7. Having heard the rivals submissions, we set aside the orders of the lower authorities and restore the issue arising from Ground No.3 of additional grounds regarding set off of Short Term Capital Gains assessed against available capital losses as eligible and entitled in accordance with law. It shall be open to Assessing Officer to suitably verify the claim of set off and carry forward of losses against impugned capital Gains as propagated by the assessee. Needless to say, the assessee shall be given proper opportunity for determination of set off and carry forward of capital gains/losses in accordance with law.

8. Additional Ground No.3 is allowed for statistical purposes.

9. All other grounds and additional grounds do not call for adjudication in view of assertions made on behalf of assessee.

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

Order pronounced in the open Court on 07/05/2022.

Sd/-
[SAKTIJIT DEY]
JUDICIAL MEMBER

DATED: **/05/2022**

Prabhat

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER