

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER**

**ITA No.269/M/2022
Assessment Year: 2018-19**

M/s. Financial Benchmarks India Pvt. Ltd., Unit No.202 & 203, Peninsula Centre, S.S. Road, Off Dr. Babasaheb Ambedkar Road, Parel, Mumbai-400 012 PAN: AACCF5045K	Vs.	Income Tax Officer 1(1)(4), Aayakar Bhavan, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Bhupendra Shah, A.R.
Revenue by : Shri Kiran P. Unavekar, D.R.

Date of Hearing : 01 . 06 . 2022
Date of Pronouncement : 21 . 06 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

Appellant M/s. Financial Benchmarks India Pvt. Ltd. (hereinafter referred to as 'assessee') by filing present appeal sought to set aside the impugned order dated 13.12.2021 passed by the National Faceless Appeal Centre (NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)) filed against the order of rectification under section 143(1) of the

Income Tax Act, 1961 (for short 'the Act') by DCIT-CPC, Bengaluru (Assessing Officer) on the grounds inter alia that:

“1) In the facts and circumstances of the case and in law the Assessing Officer (CPC) erred in adding Rs.24,65,183/- by not allowing inter head adjustment of Business loss of Rs.24,64,991/- against income from other sources of Rs.24,65,183/- in the same year.

2) In the facts and circumstances of the case and in law, the Assessing Officer (CPC) erred in not rectifying the error of setoff of inter head income in the same year u/s 154 even though the same is a mistake apparent from the record.

3) In the facts and circumstances of the case and in law the Assessing Officer (CPC) erred in making a prima facie adjustment u/s 143(l)(a) of disallowing inter head adjustment of business loss of Rs.24,65,991/- against income from other sources of Rs.24,65,183/- even though the same is not permissible u/s 143(l)(a) and the CIT(A)-NFAC, Delhi also erred in confirming the same by passing the Appellate order.

[C] Relief Prayed:

The appellant therefore prays follows,

1. To allow the inter head adjustment of business loss of Rs.24,65,991/- against income from other sources of Rs. 24,65,183/-.

2. To direct the AO (CPC) to rectify the mistake apparent from the record u/s 154.

3. To direct the AO (CPC) to delete the prima facie adjustments made u/s 143(l)(a) being not permissible.”

2. Briefly stated facts necessary for adjudication of the controversy at hand are : during the processing of return under section 143(1) of the Act it was noticed by the Assessing Officer (AO) that some inconsistent claims are made by the assessee in the return of income. It was noticed by AO that in item No.45 of part –A – P&L the assessee provided “nil” towards profit before tax as per profit & loss account which was computed by AO at Rs.24,46,183/- for which detailed working was made part of the intimation sheet. AO made adjustment on the basis

of information furnished in the return of income by the assessee, which resulted into no business loss to the assessee during the year under consideration for inter head 'set off' under section 171 of the Act. Assessee challenged the order passed by AO under section 154 of the Act which was dismissed by the AO.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal against dismissal of appeal under section 154 of the Act who has dismissed the same. Feeling aggrieved the assessee has come up before the Tribunal by way of filing preset appeal.

4. We have heard the Ld. Authorized Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. At the very outset, it is brought to the notice of the Bench that the Ld. CIT(A) vide impugned order has dismissed the appeal filed by the assessee merely on the ground that "the claim of the assessee doesn't fall under the ambit of section 154 of the Act rather assessee should have challenged the order of intimation under section 143(1) of the Act by filing appeal before the competent authority".

6. We are of the considered view that when the assessee has approached the appellate authority with specific grounds, dismissing the appeal merely on the ground of technicalities is not sustainable in the eyes of law rather Ld. CIT(A) was required to decide the appeal on merits as well. Assessee has merely sought

the inter head adjustment of business loss of Rs.24,64,991/- against the income from other sources of Rs.24,65,183/- which occurred due to some inconsistency crept in the return of income filed by the assessee and appears to be admissible under law and it might have occurred due to error in the software. To substantiate the cause of justice and to decide the issue once for all we are of the considered view that the case is required to be decided afresh on merits by Ld. CIT(A) after providing opportunity of being heard to the assessee. Resultantly, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 21.06.2022.

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 21.06.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.