

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER

ITA No. 1894/Del/2021
(Assessment Year : 2017-18)

Harvinder Singh Girgla J-8/59, Rajouri Garden, New Delhi – 110 027 PAN No. AAKPG 0139 N (APPELLANT)	Vs.	Ward – 43(3) New Delhi (RESPONDENT)
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Assessee by	Shri S. Kumar, Adv.
Revenue by	Shri Om Prakash, Sr. D.R.

Date of hearing:	16.06.2022
Date of Pronouncement:	15.09.2022

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 16.11.2021 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi relating to Assessment Year 2017-18.

2. Brief facts of the case as culled out from the material on record are as under :-

3. The assessee is an individual who filed his original return of income on 25.07.2017 for the A.Y. 2017-18 declaring total income of Rs.11,43,530/-.

4. The assessee had received intimation under section 143(1) of the Act dated 29.03.2019 vide No.CPC/1718/A3/1886472963 wherein the total income was determined at Rs.15,41,050/- by *inter alia* disallowing the claim of set off of brought forward loss of Rs.3,97,520/-.

5. Aggrieved by the order of CPC, assessee carried the matter in appeal before the Ld CIT(A). Before the Ld CIT(A) the grievance of the assessee was that the claim of set off of capital loss at Rs.3,97,520/- which was brought forward from earlier years should have been allowed to assessee but the same has not been allowed to the assessee.

6. Before CIT(A) it was *inter alia* submitted that assessee had filed original return of income for A.Y. 2016-17 on 05.08.2016 and since the revised return was filed on 12.11.2016 which was in response to notice under section 139(9) of the Act and was filed within the stipulated period of 15 days as provided under the provisions of section 139(9), the revised return should be treated as the original return of income and, therefore, the assessee was eligible to carry forward the capital loss to that years to subsequent years.

7. The submissions of the assessee was not found acceptable to Ld CIT(A). The Ld CIT(A) noted that assessee had filed the original return of income for the A.Y. 2016-17 on 05.08.2016 which was within the due date. However, notice under section 139(9) of the Act was issued to the assessee to rectify the defects in the return filed therein. He noted that since assessee had filed the revised return on 12.11.2016 which was after the due date of filing the return of income, the benefit of carry forward of losses cannot be allowed to assessee. He thus upheld the order of CPC.

8. Aggrieved by the order of the Ld CIT(A), the assessee is now in appeal before the Tribunal and has raised the following grounds:

“1. On the given fact, the Ld CIT(A) erred in disallowing the adjustment of long term capital gain against B/F assessed long term loss of 2016-17. Computation show adjustment allowed at one place.”

9. Before me, Ld AR submitted that the assessee had filed original return of income for A.Y. 2016-17 on 02.08.2016 which was within the time prescribed under section 139(1) of the Act. He submitted that thereafter pursuant to the notice u/s 139(9) of the Act, to remove the defects filed in the original return of income, assessee had filed the revised return within the prescribed time. In such a situation, he submitted that since the revised return of income was in continuation to the original

return of income filed by the assessee, it should be considered to have been filed in time. He submitted that the return filed to remove the defects u/s 139(9) of the Act would be a correct return and would relate back to the date of filing of original return and, therefore, assessee should have been allowed the benefit of carry forward losses reflected therein.

10. The Ld DR on the other hand supported the orders of the lower authorities.

11. I have heard the rival submissions and perused the material on record. The issue in the present case is with respect to set off of brought forward long term capital losses. It is an undisputed fact that assessee had filed original return of income for A.Y. 2016-17 u/s 139(1) on 05.08.2016. It is also an undisputed fact a notice u/s 139(9) of the Act was issued to the assessee wherein assessee was called upon to remove the defects in the return of income filed u/s 139(1) of the Act. Consequent to the notice u/s 139(9) of the Act, assessee corrected the defects in the original return of income by filing the revised return, within the prescribed period stated in the notice u/s 139(9) of the Act.

12. Sub Section (9) of Section 139 of the Act is attracted when the AO considers the return of income filed by the assessee to be defective. If the AO considers the return of income to be defective, he is required to intimate such defects to the assessee and give

him an opportunity to rectify such defect within a period of 15 days from the date of such intimation or within such further time as granted by the AO. If the defects are not removed within 15 days or such extended time granted by AO, then the return of income shall be treated as invalid return and the provisions of the Act would apply as if the assessee has failed to furnish his return of income. Once the defects which existed into original return of income are removed within 15 days or such extended time granted by AO, the original return upon removal of defects u/s 139(9) of the Act becomes a valid return.

13. I find that Hon'ble Bombay High Court in the case of Prime Securities Ltd vs. Varinder Mehta (2009) 317 ITR 27 (Bom) has held that once the defects in the return filed u/s 139(1) are removed within the time permitted by the Department, the same would relate back to the original date of filing of the return.

14. In the present facts, once the defects in the original return of income have been removed, then seen in the light of the ratio of Hon'ble Bombay High Court decision cited herein above, it would relate back to the original date of filing of return of income, which was within the prescribed time and therefore the benefits of filing the return of income u/s 139(1) of the Act shall follow. In such a situation, I am of the view that the CPC and CIT(A) was not justified in denying the benefit of setting of brought forward

losses of A.Y. 2016-17 while computing the total taxable income for A.Y. 2017-18.

15. I accordingly, set aside the order of CIT(A) and direct that the benefit of carry forward of losses of A.Y. 2016-17 be allowed for set off against the income for A.Y. 2017-18 to the assessee.

Thus the ground of assessee is allowed.

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

Order pronounced in the open court on 15.09.2022

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 15.09.2022

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI