

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 188/Chny/2020
निर्धारण वर्ष / Assessment Year: 2012-13

Deputy Commissioner of
Income Tax,
Non-Corporate Circle-2,
No. 67-A, Race Course Road,
Coimbatore – 641 018.

M/s. The Coimbatore District
v. Consumer Co-operative
Wholesale Stores Ltd.,
No. 12/1, Krishnasamy Road,
R.S. Puram,
Coimbatore – 641 002.

(अपीलार्थी/Appellant)

[PAN: AAAAC-0985-F]
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri. P. Sajit Kumar, JCIT
: Shri. S. Sridhar, Advocate

सुनवाई की तारीख/Date of Hearing

: 12.10.2022

घोषणा की तारीख/Date of Pronouncement

: 19.10.2022

आदेश / O R D E R

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is directed against the order passed by the learned Commissioner of Income Tax (Appeal), Coimbatore, dated 29.11.2019 u/s. 250 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") and pertains to assessment year 2012-13.

2. The grounds raised by the Revenue read as under:

"The Ld.CIT(A) erred in the finding that in the appellant's case a loss of Rs.5,84,33,048/- is available for set off, out of the total loss of Rs.11,43,04,748/- carried forward during the preceding 8 assessment years. Though the assessee is eligible for set off of earlier A.Yrs losses, here the addition was on account of LTCG and this can be set off only with earlier assessment year's carry forward Long Term capital Losses and not with any other carry forward losses. In the assessee's case, the past years carry forward loss was from the head "Business and Profession" and there was no eligible Long Term Capital Loss carry forwarded from the past assessment years. Hence the net of Rs.2,61,71,474/- becomes taxable in the hands of the assessee in this assessment year."

3. The brief facts of the case are that the assessee, M/s. Coimbatore District Consumers Co-operative Wholesale Stores Limited, filed its return of income for the assessment year 2012-13 on 01.10.2012 admitting total loss of Rs. 1,00,92,657/-. The assessment has been completed u/s. 143(3) of the Act on 29.03.2015 and determined total income at Rs. 2,61,71,474/- by making addition towards long term capital gains from sale of property at Rs. 3,62,64,131/-. The assessee carried matter in appeal before the first appellate authority and challenged addition made by the AO towards computation of long term capital gains by quantifying cost of acquisition as on 01.04.1981 at Rs. 12,000/- as against value adopted by the assessee at Rs.91,560/-. The assessee had

also claimed to have filed additional grounds for set off of brought forward losses against current year income. The CIT(A), for the reasons stated in their appellate order dated 29.11.2019, rejected arguments of the assessee on the issue of cost of acquisition of property as on 01.04.1981. However, directed the AO to allow set off of brought forward losses against current year income. Aggrieved by the CIT(A) order, the Revenue is in appeal before us.

4. The Ld. Sr. DR appearing for the Revenue submitted that the Ld. CIT(A) erred in allowing set off of brought forward losses of earlier years against income of current year, even though there is no specified ground from the assessee before the CIT(A) on said issue. He, further submitted that the CIT(A) without verifying facts as regards to nature of losses brought forward from earlier years has allowed set off of capital gains against business loss and thus, the matter may be set aside to the file of the AO for further verification.

5. The Ld. Counsel for the assessee supporting the order of the CIT(A) submitted that no doubt the CIT(A) has allowed set off of brought forward losses of earlier years against current

year income. However, the assessee could not collect any evidence to prove its case that brought forward losses of earlier years is on account of unabsorbed depreciation or capital loss. The Ld. Counsel further referring to petition filed u/r. 27 of the Income Tax Appellate Tribunal Rules, 1963 (hereinafter referred to as "the AT Rules, 1963") submitted that although the CIT(A) decided the issue against the assessee, the assessee could not file the appeal as well as cross objection on the above issue, with inadvertent error, however filed a petition u/r. 27 of the AT Rules, 1963 and justified its case on fair market value adopted as on the date of 01.04.1981. The AO without considering the relevant facts and also without referring the matter to the valuation cell, disallowed the fair market value adopted by the assessee and computed long term capital gains. Therefore, the issue may be set aside to the file of the AO and the AO may be directed to refer to the Valuation cell.

6. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. As regards petition filed by the assessee u/r. 27 of the AT Rules, 1963 on the issue of computation of cost of

acquisition as on 01.04.1981, we find that there is no justification for the assessee to file petition u/r. 27 of the AT Rules, 1963 on 10.10.2022, after a delay of more than three years, even though, the assessee has contested the issue of computation of long term capital gains by re-computing fair market value of property sold by the assessee. Although, Rule 27 of the AT Rules, 1963 permits the respondent, though he may not be appealed, may support the order appealed against on any of the ground decided against him, but said petition should be filed within a reasonable time and also the assessee needs to explain the reasons for not filing the appeal. In this case, the assessee has taken a conscious decision not to file appeal against the order of the CIT(A) and also cross objection, because the assessee has got the relief from the CIT(A) on alternate plea. Therefore, we are of the considered view that, filing the petition u/r. 27 of the AT Rules, 1963, after a gap of three years, that to without any valid reason is not maintainable and thus, petition filed by the assessee is dismissed as not maintainable.

7. Having said so, let us come back to the issue in hand, the sole issue needs to be resolved in the given facts and

circumstances of the case is, whether the CIT(A) is right in directing the AO to allow set off of brought forward losses against the current year income contrary to provisions of section 72 of the Act. First of all, as per grounds filed by the assessee before the CIT(A), there is no specific ground on set off of brought forward losses against current year income. Although, the assessee claims to have filed additional grounds before the CIT(A), but from the orders of the CIT(A) nothing is emanating on additional ground filed by the assessee. Therefore, on this ground itself the order passed by the CIT(A) needs to be set aside. However, the facts remains that the issue of set off of brought forward losses against current year income is a factual issue which needs to be ascertained from the return of income filed by the assessee for earlier assessment years and availability of brought forward losses. In this case, the CIT(A) has directed the AO to allow brought forward losses against current year income, however, there is no details as to nature of losses whether it is unabsorbed depreciation, capital loss or brought forward business losses. As per provisions of section 72 of the Act, only brought forward capital loss can be set off against capital gains. Further, if any unabsorbed depreciation brought forward from

earlier years then same can be set off against any income of current year without giving particulars as to whether brought forward losses is unabsorbed depreciation or capital loss. Therefore, we are of the considered view that the issue needs to go back to the file of the AO to ascertain facts with regard to nature of brought forward losses of earlier years. Hence, we set aside the issue to the file of the AO and direct the Assessing Officer to examine the case of the assessee according to provisions of section 72 of the Act and decide the issue in accordance with law.

9. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced in the court on 19th October, 2022 at Chennai.

Sd/-
(वी दुर्गा राव)
(V. DURGA RAO)
न्यायिकसदस्य/Judicial Member

Sd/-
(जी. मंजुनाथ)
(G. MANJUNATHA)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,
दिनांक/Dated: 19th October, 2022

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF