

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI ABY T VARKEY (JUDICIAL MEMBER)
AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 2969/MUM/2022
Assessment Year: 2013-14**

Sarita Sunil Mantri,
Flat 3 and 4, Kamal Building,
69 Walkeshwar Road, Opp.
Gopi Birla School, Walkeshwar,
Mumbai-400006.

PAN No. ADXPM 8070 E

Appellant

ITO-7(2)(1),
Aayakar Bhavan,
Mumbai-400020.

Vs.

Respondent

Assessee by : Mr. Abhishek Jhunjunwala, AR
Revenue by : Mr. Aditya Rai, DR

Date of Hearing : 17/01/2023
Date of pronouncement : 19/01/2023

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by the assessee against order dated 22.09.2022 passed by the Ld. National Faceless Appeal Centre, Delhi [in short 'the Ld. CIT(A)'] for assessment year 2013-14, raising following grounds:

1.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition of deemed rent u/s.23(4)



of Rs.4,83,140/- on estimating the fair rent on flat no. 1606 and 305 @ 7% of cost of property;

1.1 The Ld. CIT(A) ought to have considered the fact that the provisions of Sec.23(4) shall not apply, since the flats, being adjacent and interlinked to each other, comprises of a residential house;

1.2 The Ld. CIT(A) ought to have held the flat no.305 bearing cost of Rs.64,70,100/- as Self occupied property, as against flat no. 1606 bearing cost of Rs.38,82,900/- held as SOP in the assessment order;

1.3 Without prejudice, the set-off of the brought forward loss from hous property ought to have been allowed for set-off us.71B with the renta income of impugned year

2.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in not allowing the interest u/s.24(b) on housing loan paid of Rs.4,24,285/-;

3.0 On facts and circumstances of the case and in law, Ld. AO, merely following AIR information, erred in making the addition of Undisclosed interest income of Rs.2.380/-;

4.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the disallowance of expenses debited to profit and loss account of Rs.2,21,974/-;

2. Before us, the Ld. Counsel of the assessee submitted that except ground No. 1.3 of the appeal raised, other grounds were not



pressed and therefore, ground No. 1 to 1.2 and ground No. 2 to 4 of the appeal are accordingly dismissed as infructuous.

3. The Ld. Counsel of the assessee also referred to additional ground filed by the assessee which reads as under:

1.0 On facts and circumstances of the case and in law, a prayer is made to direct the Ld. AO to allow the Set-off of the eligible brought forward Long Term Capital Loss u/s.74(1) of Rs.36,37,562/- and eligible brought forward loss from House Property u/s.71B of Rs.3,38,198/-.

4. The additional ground raised by the assessee being related to only matter of verification and no investigation of fresh facts is required, therefore, same is admitted in view of settled law in the case of **NTPC Ltd. 229 ITR 283 (SC)**.

5. Since, the ground NO. 1.3 and additional ground raised both are connected, same are adjudicated in combined manner.

6. We have heard rival submission of the parties on the issue-in-dispute and perused the relevant material on record. The contention of the assessee that brought forward losses under the head 'income from house property' as well as under the head 'capital gain' should be set off against current years income under the head 'income from house property' and income under the head 'capital gain' respectively. The details of said brought forward losses filed by the assessee, is reproduced as under:



Particulars	Assessment Order	CIT(A)
Income from House property	3,38,198	3,38,198
Income from Business	6,92,506	NIL
Income from Long term capital gain	84,40,500	36,37,562
Income from other sources	34,36,37,298	NIL
Assessed Total Income	35,36,37,298	39,75,760

Brought Forward Loss to be allowed

Set off of B/f loss on House property u/s 71B [available loss :-₹11,94,250/-] 3,38,198

Set off of B/f loss on long term capital asset u/s 74 [Available loss :-₹50,86,006/-] 36,37,562

39,37,562

6.1 The Ld. Counsel of the assessee referred to the return of income filed for assessment year 2012-13 and 2013-14 and submitted that assessee had duly claimed carry forward of the loss of ₹11,94,250/- under the head 'income from house property' and long term capital loss of ₹50,86,006/- and same might be allowed to set off against respective income in current year. We find that for set off carry forward losses of income from house property, section 71B has prescribed as under :

"71B. Where for any assessment year the net result of computation under the head Income from house property" is a loss to the assessee and such loss cannot be or is not wholly set off against income from any other head of income in accordance with the provisions of section 71, so much of the loss as has not been so set-off or where he has no income under any other head, the whole loss shall, subject to the other provisions of this Chapter, be carried forward to the Following assessment year and-



(i) be set off against the income from house property assessable for that assessment year; and

(ii) the loss, if any, which has not been set off wholly, the amount of loss not so set off,

shall be carried forward to the following assessment year, not being more than eight assessment years immediately succeeding the assessment year for which the loss was first computed.]”

6.2 Similarly, for set off brought forward losses under the head ‘capital gains’ the section 74 has prescribed as under:

“74. (1) Where in respect of any assessment year, the net result of the computation under the head "Capital gains is a loss to the assessee, the whole loss shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and-*

(a) in so far as such loss relates to a short-term capital asset, it shall be set off against income, if any, under the head "Capital gains" assessable for that assessment year in respect of any other capital asset;

(b) in so far as such loss relates to a long-term capital asset, it shall be set off against income, if any, under the head "Capital gains assessable for that assessment year in respect of any other capital asset not being a short-term capital asset;*

(c) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on.]



(2) No loss shall be carried forward under this section for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed.

(3) "[Omitted by the Finance Act, 2002, w.e.f. 1.4-2003.]"

6.3 The assessee is seeking set off of losses under the head 'house property' against income of ₹3,38,198/- and losses under the head capital gain against capital gain of ₹36,37,562/- for assessment year under consideration. Since set off require verification of the origin in which year these losses arose to the assessee as set off is available upto certain period of year therefore, we feel it appropriate to restore this matter to the file of the Ld. Assessing Officer for verification and allow the set off in accordance with law. The ground No. 1.3 and the additional ground raised by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced under Rule 34(4) of the ITAT Rules, 1963 on 19/01/2023.

Sd/-
(ABY T VARKEY)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 19/01/2023
Rahul Sharma, Sr. P.S.



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai