

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

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

**ITA No. 1402/MUM/2021
Assessment Year: 2016-17**

Chalet Hotels Limited,
Raheja Tower, Plot No. C-30,
Opp. SIDBI,
Bandra Kurla Complex,
Bandra (East),
Mumbai-400051.

PAN No. AAACK 0411 E

Appellant

Vs.

Dy. Commissioner of
Income Tax, Central Circle-
4(2),
Room No. 1918, Air India
Building, Nariman Point,
Mumbai-400021.

Respondent

Assessee by : Mr. Madhur Agrawal, &
Mr. Manan Mathuria AR
Revenue by : Mr. Chetan Kacha, CIT-DR

Date of Hearing : 17/02/2023
Date of pronouncement : 11/05/2023

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee was adjudicated by the Tribunal on 14.06.2022, however same has been recalled by way of the order in Miscellaneous Application No. 358/Mum/2022, and therefore, both the parties were again



heard on the ground raised in the appeal. The relevant ground of appeal is reproduced as under:

“On the facts and circumstances of the case, the Ld. CIT(A) erred in law by upholding the action of the AO and thereby not allowing carry forward of Short Term Capital Loss amounting to ₹57,22,815/-. The Appellant humbly prays before your Honor that the appellant be granted the carry forward of the short term capital loss.”

2. The issue-in-dispute in the appeal is whether the claim of the long-term capital loss made in the return u/s 153A of the Act, which has been further revised and claimed as short-term capital loss, should be allowed to carry forward to subsequent years or not. The assessee is entitled for carry forward of the loss if return of income claiming said loss is filed within the due date prescribed u/s 139(1) of the Act. Further, we find that Hon'ble Jurisdictional High Court in the case of **JSW Steel Ltd. (2021) 115 taxmann.com 164 (Bombay)** held that in case of abated assessment, return of income filed u/s 153A has to be considered as 'regular return' of income and it is upon for the assessee to lodge a new claim in the return of income filed u/s 153A which was not claimed in his original return of income. Since, in the case of the



assessee, the original return u/s 139(1) of the Act for the year under consideration was filed on 17.10.2016, however, due to search action at the premises of the assessee on 30.11.2017, the assessment for the year under consideration got abated and consequently notice u/s 153A of the Act was issued. In the return of income filed u/s 153A, the assessee claimed long term capital loss on the sale of the shares of “Intime Properties Pvt. Ltd”. Subsequently, the said return was revised and the assessee claimed that since shares of Intime Properties Ltd. held only for the period of 35 months and therefore, loss of Rs.57,74,866/- arising from the same of those shares was in the nature of the short-term capital loss. In view of the decision of the Hon’ble Supreme Court in the case of JSW Still Ltd. (supra), the return claiming the loss has been filed in terms of section 139(1) of the Act and therefore, the assessee is eligible for carry forward of the loss as per the provisions of law. In the facts of the case, the Assessing Officer need to verify and compute the quantum of loss, therefore , in the interest of substantial justice, we feel it appropriate to restore this issue back to the file of the



Assessing Officer for examining the computation of claim of loss sought to be carried forward by the assessee. The ground of appeal of the assessee is accordingly allowed for statistical purpose.

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

Order pronounced in the open Court on 11/05/2023.

Sd/-

**(KULDIP SINGH)
JUDICIAL MEMBER**

Sd/-

**(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;

Dated: 11/05/2023

Dragon Legal/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