

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.293/Bang/2023
Assessment Year: 2020-21

Mr. Vikram Dhondu Rao Villa 112, Adarsh Palm Retreat Outer Ring Road Bellandur Post Devarabeesaahalli, Bangalore 560 103  <b>PAN NO : AIMPA7536M</b>	<b>Vs.</b>	Deputy Commissioner of Income- tax Circle-4(1)(1) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Sandeep Chalapathy, A.R.
<b>Respondent by</b>	:	Smt. Priyadarshini Besaganni, D.R.

<b>Date of Hearing</b>	:	26.06.2023
<b>Date of Pronouncement</b>	:	26.06.2023

**O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

This appeal by assessee is directed against order passed by NFAC u/s 250 of the Income-tax Act,1961 [‘the Act’ for short] for the assessment year 2020-21 dated 16.3.2023. The only issue in this appeal is with regard to taxability of Rs.6,57,138/- declared under the head “Profit & gains of business”.

2. Facts of the case are that the assessee is an individual and Management Consultant having income under various heads of income. For AY 2020-21, he filed his return of income on 02-11-2020 declaring total income of Rs. 2,71,02,910/-. During processing the return of income, a proposal for adjustment u/s 143(1)(a) of the Income-tax Act,1961 [‘the Act’ for short] was sent towards incorrect

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claim u/s 143(1)(a)(ii) of the Act. However, no response was filed to the above proposal.

2.1 The return of income was processed and an intimation u/s 143(1) of the Act was served on the assessee wherein the total income was assessed at Rs. 2,77,68,440/- against the income of Rs. 2,71,02,910/- declared in the return of income. The difference is Rs. 6,65,530/- which is arising under the head "Profits and gains of business or profession". The reason for the difference is that the assessee has reduced a sum of Rs. 6,57,138/- while arriving at the income under the head "Profits and gains of business or profession" as "income credited to profit and loss account but considered under capital gains". However, the same was not declared under the head capital gains in the return of income. Hence, the difference arises and the addition was made. The remaining sum of Rs. 8,384/- is a disallowance of personal expenses debited to Statement of profit and loss.

2.2 The above income of Rs. 6,57,138/- was not declared due to oversight by the assessee. Further, the sum of Rs. 6,57,138/- is after set-off of long-term capital gains of Rs. 8,18,960/- with short term capital loss of Rs. 1,61,821/-. However, the taxable long term capital loss is Rs. 1,10,646/- which is computed as per the provisions of Section 112A r.w.s. 55(2)(ac) of the Act. Hence, the assessee is not liable for tax on capital gains instead he is entitled to carry forward the loss to subsequent years. The above workings are demonstrated in the below table.

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Particulars	Amount is Rs.
Long Term Capital Gain as per the	8,18,960
Less: Short Term Capital Loss as per the financials	-1,61,821
Net Long term Capital Gain	6,57,139
Taxable Long Terms Capital Gains	4,49,714
Taxable Long Terms Capital Losses	-5,60,360
Net Long-term Capital Loss eligible to	-1,10,646

2.3 The disallowance of Rs.8,384/- amounts to double disallowance since the same has already been disallowed by the assessee in his return of income.

2.4 The contention of the ld. A.R. is that an amount of long-term capital gain at Rs.6,57,138/- though it was included in the profit & gains of business the same has been excluded while computing the income of assessee since it is a long-term capital gain cannot form part of the business income of assessee. After taking out the said receipt of Rs.6,57,138/-, the long-term capital loss was set off in it at Rs.5,60,360/- and thereafter, long term capital loss was carried forward at Rs.1,10,646/-. The same claim made before the lower authorities, which was denied. Hence, he prayed that the issue may be decided in favour of the assessee.

3. On the other hand, the ld. D.R. relied on the order of lower authorities.

4. We have heard the rival submissions and perused the materials available on record. In this case, main argument of ld. A.R. is that long-term capital gain amount of Rs.6,57,138/- was wrongly

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included in the business receipts and while computing income of the assessee same was excluded from the business income and it has been set off out of long-term capital loss and appropriate correction to be made on this record. In our opinion, this plea of the assessee is to be verified at the end of AO after going through the records filed before the AO. Accordingly, this issue is remitted to the file of AO/NFAC for reconsideration of the issue. Ordered accordingly.

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

Order pronounced in the open court on 26<sup>th</sup> June, 2023

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

Bangalore,  
Dated 26<sup>th</sup> June, 2023.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,**  
**ITAT, Bangalore.**