

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH :H: DELHI)**

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT &
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.1780/Del/2020
Assessment Year: 2018-19**

Virender Gupta, A-88, New Friends Colony, South East Delhi, Delhi-1100 25 (PAN:AAHPG2289P)	Vs.	DCIT, CPC, Bengaluru
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Manu Giri, Adv.
Respondent by : Shri Ramdhan Meena, Sr. DR

Date of Hearing : 05.07.2023
Date of Pronouncement : 06.07.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of learned Commissioner of Income-tax(Appeals)-10, New Delhi vide Appeal No.41/2019-20 dated 04.08.2020 against the order under Section 154 of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 05.04.2019 passed by CPC, Bengaluru for the assessment year 2018-19.

2. Brief facts of the case are that assessee filed his return of income on 22.09.2018 reporting current year loss of Rs.30,15,712. The due date for filing the return was 31.10.2018. Return of the assessee was

processed under Section 143(1)(a) of the Act for which an e.mail communication was made by CPC, Bengaluru dated 19.01.2019. In the said e.mail variance of Rs.37,051 was reported as proposed adjustment. Assessee furnished its reply to this effect. Subsequently, the return was processed for which an intimation was issued under Section 143(1)(a) dated 05.04.2019. In the said intimation at Sr. No. 17 in both the column i.e. "as provided by tax-payer in return of income" and in the column "as computed under Section 143(1)" the loss of current year to be carried forward has been taken at Rs.30,15,712. There is no variation in the amount mentioned in the two columns for the loss of the current year as claimed by the assessee in his original. Thereafter, a rectification order under Section 154 of the Act was passed by CPC, Bengalure dated 17.04.2019. In this order issued by CPC, Bengalure, the loss of current year to be carried forward listed at sr. No., 17 has been restricted to Rs.3,046 in the column "as computed under Section 154" against the amount of Rs.30,15,712 mentioned in the column "as provided by the tax-payer in return of income". Also, it is pertinent to mention that in this order of rectification, date of filing of return has been mentioned as 24.01.2019. Aggrieved by this restricted carried forward of current year loss, by CPC, Bengalure by passing rectification order under Section 154 of the Act, assessee went in appeal before the learned CIT (Appeals) who by referring to section 139(3) and section 80 upheld the rectification

order under Section 154 passed by CPC, Bengaluru. Aggrieved, the assessee is in appeal before the Tribunal.

3. Before us, learned counsel in very specific term pointed out that assessee has filed his original return within the prescribed due date i.e. on 22.09.2018 which is an undisputed fact. Further, assessee filed revised return on 24.01.2019 in response to the proposed adjustment sought by CPC, Bengaluru. In both, original and the revised return, the claim of current year loss by the assessee is the same figure of Rs.30,15,712. Learned counsel submitted that on a wrong interpretation of section 139(3) and section 80, learned CIT(A) has disallowed the claim of carried forward of current year loss. Findings given by the learned CIT(A) are contrary to law as well as facts on record. He, thus, claimed that the current year loss of the assessee be allowed to be carried forward as furnished in the original return of income filed within the limitation prescribed under Section 139(1) of the Act.

4. Per contra, learned Sr. DR placed reliance on the order of the learned CIT(A).

5. We heard the rival contentions and perused the material on record. We take note of the paper book filed by the assessee containing 50 pages. The moot point before us is to allow the claim of carry forward of the current year business loss as claimed by the assessee in return of

income via-a-vis the amount restricted by the CPC, Bengalure by passing an order under Section 154 restricted it to Rs.3,046. There is no dispute as to filing of original return by the assessee within the prescribed limitation under Section 139(1) of the Act. Assessee has claimed the carry forward of the current year business loss in his original return. Subsequently, he filed a revised return pursuant to e.mail communication by CPC, Bengaluru on account of proposed adjustment wherein also the claim of current year business loss for carry forward remained unchanged as claimed in the original return. We note that the learned CIT(A) had referred to section 139(3) read with section 80 of the Act. On perusal of the said sections, we note that both the sections require that in order to claim the carry forward of current year loss, the return must be furnished within the time allowed under Section 139(1) of the Act. In the present case, assessee has filed his return on 22.09.2018, within the stipulated time as per the provisions of section 139(1) i.e. 30.09.2018 which was extended to 31.10.2018. Learned CIT(A) on a mistaken noting of fact that assessee has filed his return only on 24.01.2019 has confirmed the action of CPC, Bengaluru of restricting the carry forward of current year business loss to Rs.3,046. Learned CIT(A) has noted that the return of the assessee is late and not in consonance with the extent provisions of the Act. From the perusal of the record, available in the paper book, we find that learned CIT(A) has wrongly noted the date of filing of return as 24.01.2019 which in fact is the date

of filing of revised return. The original return has been undisputedly filed within the due date prescribed under Section 139(1) of the Act. Accordingly, claim of the assessee of carry forward of current year business loss of Rs.30,15,712 is allowed. Grounds taken by the assessee in this respect are allowed.

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

Order is pronounced in the open court on 06.07.2023.

Sd/-

**(Saktijit Dey)
Vice-President**

Sd/-

**(Girish Agrawal)
Accountant Member**

Dated: 06July, 2023
Mohan Lal

Copy forwarded to:

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

By Order

Assistant Registrar
ITAT, Delhi Benches, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation:	05.07.2023
2.	Date on which the draft of order is placed before the Dictating Member:	05.07.2023
3.	Date on which the draft of order is placed before the other Member:	05.07.2023
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	05.07.2023
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	06 .07.2023
6.	Date on which the final order received after having been singed/pronounced by the Members:	06.07.2023
7.	Date on which the final order is uploaded on the website of ITAT:	08.07.2023
8.	Date on which the file goes to the Bench Clerk	07.07.2023
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	