

IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, MUMBAI

BEFORE SHRI G.S. PANNU, PRESIDENT, AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.1432/Mum./2023

(Assessment Year : 2018-19)

Prem Naraindas Raney (Deceased)
Through L/H Shri Ajay Prem Raney
5, Lalit Prakash, Perry Cross Road
Bandra (West), Mumbai 400 050
PAN – AABPR3285R

..... Appellant

v/s

Dy. Commissioner of Income Tax
Central Processing Centre
Bengaluru 560 500

.....Respondent

Assessee by : None
Revenue by : Shri H.M. Bhatt

Date of Hearing – 12/07/2023

Date of Order – 27/07/2023

ORDER

The present appeal has been filed by the legal heir on behalf of the deceased assessee challenging the impugned order dated 20/03/2023, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2018-19.

2. When this appeal was called for hearing neither anyone appeared on behalf of the assessee nor was any application seeking adjournment filed, despite service of notice of hearing. We find that a factual paper book has been filed on behalf of the assessee. Therefore, in view of the above, we

proceed to dispose off the present appeal ex-parte, qua the assessee after hearing the learned Departmental Representative ("*learned DR*") and based on the material available on record including the paper book filed on behalf of the assessee.

3. In this appeal, the assessee has raised the following grounds.

"1. That the appellate order passed by the Learned CIT(A)-33 is bad in law as the said order does not contain actual facts involved in the appeal before him. The appellant has already filed application under section 154 of the I.T. Act, 1961 for rectification of the order on 23/03/2023 before the learned CIT(A) bearing reference No 990985040230323.

2. Learned CIT(A) 33, Mumbai erred in law in confirming order u/s 143(1) passed by the Dy CIT CPC Bangalore without considering the grounds of appeal raised before him.

3. Learned CIT(A) 33, Mumbai erred in law in confirming the order u/s 143(1) passed by the Dy CIT, CPC which involved debatable issue. The appellant did not make wrong or incorrect claim in the return.

4. The learned CIT(A) erred in law by ignoring the principles of natural justice.

5. Learned CIT(A) 33, Mumbai erred in law in confirming order u/s 143(1) passed by the Dy CIT CPC by misconstruing and misinterpreting the provisions of section 143(1)(a)(ii) of the Income Tax Act, 1961 on the ground incorrect claim by the appellant by not filing special income in Schedule SI correctly.

6. Learned CIT(A) 33 Mumbai erred in law in confirming the order u/s 143(1) passed by the Dy CIT CPC on the alleged ground that subject matter of the present appeal and alleged application u/s 154 by the appellant is the same, hence appeal becomes infructuous and the same is dismissed.

7. The appellant submits that the appellant did not file application u/s 154 of the I.T. Act, 1961, but the assessing officer passed rectification order under section 154 of the I.T. Act, 1961 of his own suo-moto action for giving TDS credit for mis-matching amount Rs.140335, which was not given originally while passing order under section 143(1).

8. The alleged rectification order u/s 154 did not redress grievances raised in appeal against order passed u/s 143(1) of the L. T. Act, 1961, however the learned CIT(A) confirmed the same on the ground that there is no subsisting demand against the appellant due to rectification order u/s 154 of the I.T. Act, 1961.

9. Leaned CIT(A) 33, Mumbai erred in law in confirming order u/s 143(1) passed by the Dy CIT, CPC on the ground that both the authorities ignored the

mandatory and statutory provisions of section 70 and 71 regarding set-off claim of Short Term Capital Loss of Rs 195786 non-STT against STT suffered Short Term Capital Gain Rs 1350726.

10. The appellant filed physical application under section 154 of the I. T. Act, 1961 before the Jurisdictional Assessing Officer on 05/07/2019, which is also not disposed off.

11. The appellant prays that disallowance of set-off of short term capital loss (non STT) suffered Rs.195786 be allowed to be set-off against Short term capital gain (STT) Rs. 1350726 in view of provisions of section 70 and 71 of the Income Tax Act, 1961."

12. The appellant craves leave to add, amend, alter, substitute and/ or modify any of the ground/s of appeal as may be advised and permitted by the Honourable Members of the Tribunal."

4. The brief facts of the case as emanating from the record are: The assessee was an individual and partner in the firm Raney & Co. For the year under consideration, the assessee filed its return of income on 15/10/2018 declaring a total income of Rs.78,45,880. The return filed by the assessee was processed vide intimation dated 17/05/2019, issued under section 143(1) of the Act computing the total income of the assessee at Rs. 80,41,660, inter-alia, after disallowing short-term capital loss of Rs. 1,95,786 and after making intra head adjustment short-term capital gains was determined at Rs. 13,50,726 as against Rs. 11,54,940 declared by the assessee.

5. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee on the basis that pursuant to the rectification order dated 22/11/2019 passed under section 154 of the Act, there is no subsisting demand against the assessee and therefore the appeal has become infructuous. Being aggrieved, the assessee is in appeal before us.

6. We have considered the submissions of the learned DR and perused the material available on record including the paper book filed on behalf of the

assessee. It is evident from the record that the assessee expired on 27/06/2021 and his son is the legal heir and accordingly has made submissions before the learned CIT(A). As per the assessee, it incurred a short-term capital loss of Rs. 1,95,786, on which no Securities Transaction Tax ("STT") was paid by the assessee. Further, the assessee earned short-term capital gains of Rs. 31,92,003, on which STT was paid. Accordingly, the assessee computed the net short-term capital gains of Rs. 29,96,217. The said gain was set off against the brought forward short-term capital loss of Rs. 18,41,277 and accordingly short-term capital gains of Rs. 11,54,940 was offered to tax by the assessee. However, vide intimation issued under section 143(1) of the Act, the short-term capital loss of Rs. 1,95,786, on which STT was not paid, was disallowed and accordingly, the brought forward short-term capital loss of Rs. 18,41,277 was set off against short-term capital gains of Rs. 31,92,003, on which STT was paid, and thus the total short-term capital gains was computed at Rs. 13,50,726. Before the learned CIT(A), the assessee submitted that it had rightly claimed set off of short-term capital loss (on which STT was not paid) from short-term capital gains (on which STT was paid) under the same head of income, in view of provisions contained under section 70 of the Act. We find that in this regard, the assessee has also filed a rectification application dated 29/06/2019 under section 154 against the intimation issued under section 143(1) of the Act, which is pending consideration before the Assessing Officer. As per the assessee, the rectification order dated 22/11/2019 passed under section 154 of the Act was *suo moto* passed by the Assessing Officer for the purpose of giving TDS credit, and the said rectification order does not redress the grievance raised by the

assessee in the present appeal. Since the rectification application filed by the assessee under section 154 of the Act on a similar issue is currently pending consideration, therefore, we deem it appropriate to restore this issue to the file of the jurisdictional Assessing Officer for *de novo* adjudication as per law, after necessary verification. As a result, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 27/07/2023

Sd/-
G.S. PANNU
PRESIDENT

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 27/07/2023

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai