

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

SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.415/Bang/2023
Assessment year : 2020-21

M/s. Paramanand & Sons, No.7, 2 <sup>nd</sup> Floor, Bajaj Complex, 84/85, Gandhinagar, Bangalore – 560 009. <b>PAN: AABFP 4517A</b>	Vs.	The Assistant Director of Income Tax, Central Processing Centre, Post Box No.1, Electronic City Post Office, Bangalore – 560 500.
APPELLANT		RESPONDENT

Appellant by	:	Shri Prasanna N Urala, Advocate
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel

Date of hearing	:	31.07.2023
Date of Pronouncement	:	01.08.2023

**ORDER**

This appeal is filed by the assessee against the DIN & Order No.ITBA/NFAC/S/250/2023-24/1052363546(1) dated 26.04.2023 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2020-21.

2. The brief facts of the case is that the assessee filed return of income on 09.02.2021 reporting loss of Rs.49,02,660 under the head profits & gains from business or profession, income from other sources

of Rs.2,97,768 and long term capital gain of Rs.17,22,654. The assessee paid tax of Rs.3,58,312 on the long term capital gain.

3. The assessee set off the business loss under the head income from other sources and the balance loss claimed carry forward of unabsorbed business loss amounting to Rs.46,04,890. The CPC processed the return u/s. 143(1) on 20.09.2021 restricting carry forward of unabsorbed business loss of Rs.28,82,236 instead of Rs.46,04,890 as claimed by the assessee in the return of income. The CPC set off the business loss from long term capital gain. The assessee filed rectification application u/s. 154 which was rejected by the CPC on 03.12.2021. The assessee filed second rectification application dated 22.12.2021 u/s. 154. Also, aggrieved by the rectification order dated 03.12.2021, the assessee filed appeal before the CIT(Appeals) on 11.02.2022. The Id. CIT(Appeals) dismissed the appeal of the assessee as infructuous by observing as under:-

“I have perused the matter. In view of the above facts, the present appeal against the order becomes infructuous and the same is accordingly dismissed as the rectification order u/s. 154 has been passed on 16.2.2022, which is reproduced hereunder:

“The above return was processed and subsequently rectified u/s. 154 vide DIN CPC/2021/U5/193524657 dated 03/12/2021. The assessee vide rectification request No.338223560221221 dated 22/12/2021 has stated there is a mistake(s) in the said order u/s. 154 which was apparent from the record within the meaning of Section 154 of Income Tax Act, 1961. The details of the mistake(s) as per the assessee is as under.”

4. Against the above order of the CIT(Appeals) the assessee has filed the appeal before the Tribunal.

5. The Id. AR submitted that even after the second rectification order dated 16.02.2022 passed by the CPC, the income determined is the same. He submitted that setting off of business loss from the capital gain is optional to the assessee and not mandatory to set off in the same year under the inter head adjustments, which the CPC has set off. Therefore the same position as in intimation order is maintained in the second rectification order dated 16.02.2022. The CIT(Appeals) has however observed that in view of the second rectification order dated 16.02.2022 passed by the CPC, the appeal against intimation u/s. 143(1) has become infructuous and accordingly dismissed the appeal. He submitted that the CIT(Appeals) has not taken into account the set off the business loss at Rs.46,04,890 as claimed by the assessee in the return of income which was restricted to Rs. Rs.28,82,236 in the intimation order and maintained the same even in the second rectification order issued by the CPC. He submitted that the CIT(Appeals) should have adjudicated the appeal on merits as per the provisions of the I.T. Act. 1961 and therefore the matter may be remitted to the CIT(Appeals) for fresh consideration for decision on merits.

6. The Id. DR submitted that the appeal filed by the assessee against the order u/s. 143(1) is not maintainable because there was delay in filing the appeal before the CIT(Appeals). I note that the

appeal was filed before the CIT(Appeals) on 11.02.2022. The Hon'ble Supreme Court In Re Cognizance for Extension [2022] 134 taxmann.com 307 (SC) on account of COVID-19, has held that in computing period of limitation, period from 15.3.2020 to 28.2.2022 shall stand excluded and in cases where limitation would have expired during the above period, time limit of 90 days or actual balance time (whichever is higher) shall be available from 01.03.2022 for filing appeals etc. In view of this Hon'ble Apex Court judgment, there is no delay in filing the appeal before the CIT(Appeals).

7. After considering the rival submissions, it is noted that the CIT(Appeals) has dismissed the appeal as infructuous since the rectification application filed by the assessee has been disposed of by the CPC. However, the Id. CIT(Appeals) has not considered the issue on merits about the setting off of loss claimed by the assessee in his return and that even after the rectification order passed by the CPC, the position remains the same as in the intimation order. The assessee has filed appeal against the intimation letter passed by the CPC u/s 143(1) of the Act. Therefore, in the interest of justice, this issue is remitted to the CIT(Appeals) for fresh consideration and decision on merits as per law. Needless to mention that assessee be given reasonable opportunity of being heard. The assessee is also directed to produce all relevant documents and make submissions in support of its claim in the proceedings and avoid seeking unnecessary adjournment for early disposal of the case.

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

Pronounced in the open court on this 01<sup>st</sup> day of August, 2023.

Sd/-

(LAXMI PRASAD SAHU )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 01<sup>st</sup> August, 2023.

*/Desai S Murthy/*

Copy to:

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

By order

Assistant Registrar  
ITAT, Bangalore.