

आयकर अपीलीय अधिकरण न्यायपीठ नागपूर में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL, NAGPUR

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.376/NAG/2017  
निर्धारण वर्ष / Assessment Year : 2014-15

M/s. Shree Traders,  
Baheti Gin, B.G.T.I. Road,  
Malkapur – 443101,  
Dist.-Buldhana

PAN : ABUFS1867L

.....अपीलार्थी / Appellant

बनाम / V/s.

ACIT, Akola Circle,  
Akola

.....प्रत्यर्थी / Respondent

Assessee by : Shri Rachit Thakar  
Revenue by : Smt. Rashmi Mathur

सुनवाई की तारीख / Date of Hearing : 20-07-2023  
घोषणा की तारीख / Date of Pronouncement : 22-08-2023

**आदेश / ORDER**

**PER S.S. VISWANETHRA RAVI, JM :**

This appeal by the assessee against the order dated 08-08-2017 passed by the Commissioner of Income Tax (Appeals)-1, Nagpur [‘CIT(A)’] for assessment year 2014-15.

2. Ground Nos. 1 to 3 raised by the assessee challenging the action of CIT(A) in confirming the order of AO in denying set off of brought forward

business loss of Rs.34,43,552/- of A.Y. 2013-14 against capital gain income for the year under consideration in the facts and circumstances of the case.

3. Brief facts relating to the issue are that the assessee is a partnership firm engaged in the business of manufacturing of cotton bales and cotton seeds and job work of cotton ginning and pressing. The assessee filed return of income declaring a total income of Rs.1,37,18,330/- and under scrutiny by issuing notices u/s. 143(2) and 142(1) of the Act, the AO completed the assessment by determining the income of the assessee at Rs.1,71,61,882/- inter alia denying set off of carry forward business loss against the capital gain. The CIT(A) confirmed the same. Aggrieved by the order of CIT(A), the assessee is before us.

4. Heard both the parties and perused the material available on record. We note that the assessee has shown Long Term Capital Gain in respect of sale of agricultural land and non agricultural land, further, Short Term Capital Gain shown in respect of sale of factory building and plant and machineries. The assessee claimed set off of carry forward business loss of Rs.34,43,552/- of A.Y. 2013-14 against the above said Long Term Capital Gain and Short Term Capital Gain. The AO asked the assessee why the claim of set off of business loss should not be disallowed. The reply of the assessee has been reproduced from pages 3 to 10 of the assessment order. On perusal of the same, we note that the value of purchase of plant and machineries, cost of construction of factory building and purchase value of land is recorded in the books of account. There was either loss or lessor profit, since, inception due to heavy interest on term loan and working capital. In order to clear the loan liabilities, the assessee decided to sell

the fixed assets such as land, building, plant and machineries. By doing so, the assessee cleared all the loan liabilities, the liabilities of sundry creditors, depositors, etc., but however, the business being continued by giving job work of process of cotton on contract basis to other ginning pressing units. The assessee placed on record proof showing the cost of acquisition, sale price, Long Term and Short Term Capital Gain and also copies of sale deed with comments in disclosure of accounting policies and notes to accounts. It is noted, according to the assessee, by sale of fixed assets belonging to the assessee as land, building, plant and machineries and capital gain earned thereon is nothing but profits from business which can be set off of carry forward business loss determined in earlier year i.e. A.Y. 2013-14.

5. According to the AO, the assessee has shown business loss of Rs.54,47,074/- in the computation of income and claimed set off of business loss against the capital gain earned. Further, the AO observed the provision u/s. 72 deal with carry forward and set off of business loss, such set off against the profits and gains of any business or profession carried and assessable for that assessment year. Further, the claim of set off of carry forward loss for A.Y. 2013-14 is not allowable for set off against the income from capital gain of the year under consideration within the meaning of section 72 of the Act. Accordingly, the AO denied set off of carry forward business loss. The CIT(A) confirmed the order of AO primarily placed reliance on the order of ITAT Mumbai Benches in the case of Digital Electronics Ltd. in ITA No. 1658/Mum/2009 vide order dated 20-10-2010. The CIT(A) reproduced the relevant part of the said decision in pages 7 to 9 of the impugned order. On perusal of the same, we note that the assessee therein claimed set off of profit earned on transfer of

depreciable assets against brought forward business losses of earlier years. The AO therein accepted the claim of assessee by allowing set off of brought forward business loss against the profit earned on transfer of depreciable assets. The Tribunal held that the profits earned on transfer of fixed assets are not in the nature of business income and observed the set off of carry forward business loss can be set off of profits and gains of any business but not to profits arising on transfer of capital assets. We note that in order to arrive such conclusion the ITAT, Mumbai Benches distinguished the ratio in the case of Cocanada Radha Swami Bank Ltd. reported in 57 ITR 306, wherein, it held that interest earned on securities held as stock-in-trade is in the nature of business income although taxable under a different head "Interest on securities".

6. By considering above, the issue for our consideration is as to whether the brought forward business loss could be set off against the capital gain earned on sale of depreciable assets for the year under consideration or not. In the present case, the assessee sought set off of brought forward business loss for A.Y. 2013-14 against the capital gain earned in 2014-15 i.e. year under consideration. The AO observed that the assessee shown business income Rs.(-)54,47,074/- which is a loss as per the computation of income for the year under consideration and sought set off of this business loss against the capital gain income shown. According to the AO, no business income could be set off against carry forward business loss for A.Y. 2013-14 within the meaning of section 72 of the Act. The provisions u/s. 72 of the Act explains carry forward and set off of business loss for an assessment year, the computation under profits and gains of business or profession is a loss and such loss cannot be or is not wholly set off against income under any head of income in accordance with

the provisions of section 71 of the Act. Such loss which has not been set off, the whole loss shall be carried forward to the following assessment year in accordance with the clause (i) and (ii) to sub-section (1) of section 72 of the Act.

7. Further, the provisions under sub-section (2) of section 71 of the Act allows set off loss from one head against income from another. Sub-section (2) explains if the net result of the computation under any head of income, other than "Capital gains", is a loss in respect of any assessment year such loss be set off against income under any head under capital gain assessable for that year. We note that the provisions u/s. 71 of the Act relates to current year loss which can be set off of income under the head capital gain assessable for that year.

8. Coming to the facts on hand, the assessee declared business income as loss in the year under consideration and the AO allowed set off of such business loss against the capital gain earned in the year under consideration. The AO actually denied set off of business loss determined in A.Y. 2013-14 against the capital gain assessable under A.Y. 2014-15 in terms of sub-section (1) of section 72 of the Act which in our opinion, is justified. Therefore, we find no infirmity in the order of CIT(A) and it is upheld. Thus, ground Nos. 1 to 3 raised by the assessee fails and are dismissed.

9. Ground No. 4 is consequential in nature, hence, requires no adjudication.

10. Ground No. 5 becomes academic, hence, requiring no adjudication.

11. In the result, the appeal of assessee is dismissed.

Order pronounced in the open court on 22<sup>nd</sup> August, 2023.

Sd/-  
(Inturi Rama Rao)  
ACCOUNTANT MEMBER

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 22<sup>nd</sup> August, 2023.  
रवि

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Nagpur.
4. The Pr. CIT-1, Nagpur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपूर,  
/ DR, ITAT, Nagpur.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune