

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI**

**BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No.329/Del/2023, A.Y.2020-21

Paytm First Games Pvt. Ltd. 136, 1 st Floor, Nehru Place, South Delhi, Delhi-110019 PAN : AAQCA2206H (Appellant)	Vs.	Assistant Director of Income Tax, Centralised Processing Center ('CPC') Bengaluru (Respondent)
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Appellant by	Sh. Salil Kapoor, Adv. Ms. Ananya Kapoor, Adv. Sh. Utkarsa Gupta, Adv.
Respondent by	Sh. P.N.Barnwal, CIT DR

Date of Hearing	15/01/2024
Date of Pronouncement	17/01/2024

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal is filed by the Assessee against the order of Learned Pr. Commissioner of Income Tax(Appeals), National Faceless Appeal Centre ["Ld. CIT", for short], dated 21/12/2022 for the Assessment Year 2020-21.

2. Grounds of the assessee are as under :-

"1. Grounds in respect of disallowance of claim of brought forward loss of AY 2019-20

1.1. *That on the facts and circumstances of the case and in law, the Hon'ble CIT(A) has grossly erred in not allowing the Assessee to carry forward its losses pertaining to AY 2019-20 amounting to INR 23,73,82,507 without appreciating the fact that Appellant had filed its original return of income for AY 2019-20 on 26 November 2019 i.e. within the time limit specified under Explanation 2 to section 139(1) of the Income Tax Act, 1961 (the Act').*

1.2. *That on the facts and circumstances of the case and in law, the Hon'ble CIT(A) has grossly erred in considering the revised return of income filed under section 139(5) of the Act on 20 February 2020 to be a belated return of income filed under section 139(4) of the Act and thereby not allowing the Appellant to carry forward its losses pertaining to AY 2019-20.*

The Appellant craves leave to add, amend, alter, delete, rescind, forgo or withdraw any of the above grounds of appeal either before or during the hearing before the Hon'ble Tribunal. Further, the aforesaid grounds are mutually exclusive and without prejudice to each other.”

3. Brief facts of the case as mentioned in the order of the CIT(A) are that, the assessee filed return of income on 04/02/2021 declaring loss of Rs. 1,02,54,38,755/- claiming tax refund of Rs. 26,102/-. The return of income filed by the assessee was processed u/s 143(1) of the Act and in intimation dated 07/09/2021 was issued by making certain adjustments and also not

granted carry forward of current year's and brought forward loss of Rs. 1,26,29,71,402/-. Aggrieved by the said intimation dated 07/09/2021, the assessee preferred an Appeal before the NFAC (CIT(A), the Ld. CIT(A) affirmed the said disallowance made by the A.O. vide order dated 21/12/2022. Aggrieved by the order of the Ld. CIT(A) the assessee preferred the present Appeal on the Grounds mentioned above.

4. The Ld. Counsel for the assessee submitted that the authorities below have committed error in not allowing the assessee to carry forward its losses pertaining to Assessment Year 2019-20 amounting to Rs. 23,73,82,507/- without appreciating the fact that the assessee had filed its original return for Assessment Year 2019-20 on 26/11/2019 within the time limit specified under Explanation 2 to Section 139(1) of the Act and further erred in considering the revised return of income filed u/s 139(5) of the Act on 20/02/2020 to belated return of income filed u/s 139(4) of the act and thereby not allowed the assessee to carry forward the losses pertaining to Assessment Year 2019-20. The Ld. Counsel for the assessee taken us through the various documents produced in the paper book and submitted that due to the error committed by the CPC in considering the date of filing of the return, the above addition have been made, therefore, sought for allowing the appeal.

5. Per contra, the Ld. Departmental Representative relying on the findings and the conclusion of the Ld. CIT(A), prayed for dismissal of the Appeal.

6. We have heard both the parties and perused the material available on record. It is the case of the assessee that the assessee has mentioned in the Schedule Carry Forward Loss (CLF) for Assessment Year 2018-19, the loss was Rs. 1,50,140/- and the return was filed on 26/09/2018, which was within the due date for filing the return of income, therefore, the said loss of Rs. 1,50,140/- for Assessment Year 2018-19 was allowed to be carry forwarded. For the Assessment Year 2019-20, the amount of loss to be carry forwarded was Rs. 23,73,82,507/-. For the Assessment Year 2019-20, the return was filed on 20/02/2020 and in the year under consideration, due to pandemic the due date for filing the return was extended up to 30/09/2020. Thus, the assessee was eligible for loss to be carry forwarded and set off in the subsequent Assessment Years. But the A.O. has not allowed to carry forward the said loss. During the First Appellate Proceedings after taking into consideration of the assessee's contentions the Ld. CIT(A) rejected the same in following manners:-

“6.4.4. The contention of the appellant cannot be accepted for the following reasons:

The due date for filing of Income Tax Return is mentioned in Section 139(1) of the Income Tax Act (hereinafter mentioned as 'Act'). As per this section the due date for filing of return for the Assessment Year 2019-20 were 31st July, 2019 and 30th _ September, 2019 for different types of assesseees. If the return could not have been filed within the above due dates even then the same can be filed validly as a belated return within the time limit prescribed U/s. 139(4) of

the Act. Under section 139(4) a belated return can be filed before the end of the relevant assessment year or before the completion of assessment whichever is earlier. Thus, the due date for filing the belated return which ought to have been filed before 31.03.2020 was extended upto 30.09.2020 due to COVID pandemic. The assessee who files a return beyond the due date has to pay fee under Sec.234F, is liable for interest under Sec.234A and the current year losses cannot be carried forward to future assessment years. In the case of the appellant, the return of income for Asst Year 2019-20 was filed on 20.02.2020 which is beyond the due date for filing the return of income under Sec. 139(1) of the Act. The return of income was filed under Sec. 139(4) of the Act. Hence it is a belated return of income and the appellant is not eligible for carry forward of losses to the future years. In view of the above facts and circumstances, the loss claimed by the appellant for the Asst Year 2019-20 amounting to Rs.23,73,82,507 cannot be allowed to be carried forward to subsequent years and appellant fails on this ground.”

7. The Ld. Counsel has taken us through the original return filed for the Assessment Year 2019-20 dated 26/11/2019 which depicts that, the assessee has filed the return well within the time limit specified under Explanation 2 to Section 139(1) of the Act which is 26/11/2019. The Ld. CIT(A) by recording wrong date of filing of the return by the assessee i.e. ‘20/02/2020’, for AY 2019-20 erroneously held that the assessee had filed the return belatedly, which ultimately resulted in not allowing the loss claimed by the assessee for Assessment Year 2019-20 amounting to Rs. 23,73, 82,507/-. Considering the

above facts and circumstances, we are of the opinion that the Ld. CIT(A) has committed error in not allowing the carry forward of losses accordingly, we direct the A.O. to allow the assessee to carry forward the loss of amount to Rs. 23,73,82,507/- for the Assessment Year 2019-20 as claimed by the assessee.

8. In the result, the Appeal of the assessee is allowed.

Order pronounced in open Court on 17th January, 2024

Sd/-

(N.K.BILLAIYA)
ACCOUNTANT MEMBER

Dated: 17/01/2024
Binita/R.N Sr. PS

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI