

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 354/DEL/2023  
Assessment Year: 2010-11**

|  |   |                                   |
|--|---|-----------------------------------|
| <b>Gurnam Arora,<br/>10<sup>th</sup> Floor, Pinnacle Business<br/>Tower, Surajkund Road,<br/>Faridabad-121001.</b> | <u>Vs</u>   | DCIT, Circle-14(2),<br>New Delhi. |
| <b>PAN- AAJPA1064F</b>   |   |                                   |
| <b>APPELLANT</b>   |   | <b>RESPONDENT</b>                 |
| <b>Assessee represented by</b>   | Shri Salil Kapoor, Adv.;<br>Ms. Ananya Kapoor Adv.;<br>Shri Vibhu Jain, Adv.,; &<br>Shri Tarun Channa, Adv. |                                   |
| <b>Department represented by</b>   | Shri Vivek Kumar Upadhyay, Sr. DR   |                                   |
| <b>Date of hearing</b>   | 15.02.2024  |                                   |
| <b>Date of pronouncement</b>   | 01.05.2024  |                                   |

**ORDER**

**PER M. BALAGANESH, AM:**

This appeal, by the assessee, is directed against the order of National Faceless Appeal Centre (NFAC), dated 20.10.2023, arising out of assessment order dated 15.11.2019, passed by the Assessing Officer u/s 143(3) of the Income-tax Act, 1961, pertaining to the assessment year 2010-11.

2. The assessee has raised the following grounds of appeal before us:-

*"1. That, in view of the facts and circumstances of the case and in law, the Assessment order dated 15.11.2019 passed under Section 143(3) read with Section 254 of the Income Tax Act, 1961 ('the Act') for Assessment Year ('AY') 2010-11 by the Assessing Officer ('AO') and the disallowance made therein are illegal, bad in law and without jurisdiction. The National Faceless Appeal Centre ('NFAC') vide order*

*dated 20.01.2023 has also grossly erred in sustaining the said disallowance.*

*2. That, in view of the facts and circumstances of the case and in law, the AO/NFAC has grossly erred in disallowing carry forward of short-term capital loss amounting to Rs.1,37,89,600/- on acquisition of share warrant in M/s Kohinoor Foods Limited.*

*3. That, in view of the facts and circumstances of the case and in law, the AO/NFAC has erred in disallowing the claim on the basis that the assessee has not claimed the short-term capital loss of Rs.1,37,89,600/- in the return of income filed under Section 139(1) of the Act and claimed the same during the course of assessment proceedings by filing the revised computation. He has failed to appreciate that the claim was made during the course of assessment and he is bound to assess the correct income/(loss) and to allow the loss which is allowable under the provisions of the Act.*

*4. That, in the view of facts and circumstances of the case and in law, the AO has exceeded its jurisdiction by deciding upon the merits of the claim rather than verifying the claim relating to carry forward of short-term capital losses as directed by the Hon'ble ITAT vide order dated 07.12.2018.*

*5. Without Prejudice, AO/NFAC have erred in facts and in law in ignoring the findings of the Hon'ble ITAT that the allowability of carry forward of loss is already decided in favour of Assessee and as such the AO/NFAC has exceeded its jurisdiction while passing the impugned order.*

*6. That, in the view of facts and circumstances of the case and in law, the reliance placed on the judgment of the Hon'ble Supreme Court in the case of Goetze (India) Limited v. Commissioner of Income-tax, (2006) 284 ITR 323 (SC) by the AO/NFAC is misplaced and based on different facts.*

*7. That, in view of the facts and circumstances of the case and in law, the various observations made by the AO/NFAC are illegal, bad in law and contrary to facts on record and based on surmises and conjectures.*

*8. That the explanations given, evidence produced and material placed and made available on record have not been properly considered and judicially interpreted and the same do not justify the disallowance of loss.*

*9. That, interest under Section 234B of the Act has been wrongly worked out and illegally charged. That the Appellant craves leave to*

*add, amend, alter and/or delete any of the above grounds of appeal at or before the time of hearing."*

3. We have heard the rival submissions and perused the materials available on record. The assessee is an individual and had filed his return of income for the Asst Year 2010-11 on 30.7.2010 declaring total income of Rs 55,49,915/-. During the course of assessment proceedings, the assessee filed a revised computation of income claiming short term capital loss (STCL) of Rs 1,37,89,600/- on acquisition of share warrants of Kohinoor Foods Ltd. Since this was not claimed by the assessee in the return of income, the Id. AO did not entertain the said claim of STCL of the assessee. The assessment was completed u/s 143(3) of the Act determining total income at Rs 55,96,035/-. Aggrieved, the assessee preferred an appeal before the Id. CIT(A). The Id. CIT(A) vide his order dated 7.10.2014 in the first round of proceedings, the Id. CIT(A) had observed that the Id. AO was not justified in stating that due to the decision of Goetze India Ltd of Hon'ble Supreme Court (282 ITR 323) , as subsequent to the said decision of Hon'ble Supreme Court, there have been number of decisions which had held that where assessee could not file a revised return but the claim of the assessee is legitimate , then the same could not be ignored by the authorities. Further the claim made by an assessee in the revised computation of income had been considered valid by the decision of Hon'ble Jurisdictional High Court in the case of CIT vs Sam Global Securities Ltd reported in 360 ITR 682(Del). Further the Id. CIT(A) in

his order had also observed that the decision of Hon'ble Supreme Court in the case of Goetze India Ltd does not lay any fetters on the powers of the appellate authorities. Accordingly, the Id. CIT(A) in the first round of proceedings directed the Id. AO to consider the claim of the assessee of carry forward of STCL and allow the same as per law after due verification of the claim made by the assessee. Against this order of the Id. CIT(A), the revenue preferred an appeal before this Tribunal. This Tribunal in ITA No. 158/Del/2015 dated 7.12.2018 in principle upheld the order of the Id. CIT(A) but slightly modified his directions by stating that the Id. AO shall verify the claim of assessee of carry forward of STCL as per law and shall pass the order accordingly by giving reasonable and sufficient opportunity of being heard to the assessee.

4. The Id. AO in the second round of proceedings, reproduced the directions of this Tribunal but again applied the decision of Hon'ble Supreme Court in Goetze India Ltd supra and denied the benefit of carry forward of STCL. We find that the Id. CIT(A) in the second round of proceedings also joined hands with the Id. AO in completely ignoring the order of his predecessor CIT(A) and also the order of this Tribunal. Hence this appeal is filed by the assessee before this Tribunal.

5. The action of the lower authorities is highly condemnable in as much as they had not followed the directions of both predecessor CIT(A) and the order of this Tribunal. Having said that, it is a fact that the veracity of the claim of

STCL had not been verified by the Id. AO at all in the instant case. But it is also a fact that the Id. AO was given chance twice (once during the original assessment proceedings and again during the set aside proceedings) to verify the same. He has completely chosen not to avail such opportunity. Hence the Id. AO need not be given one more opportunity. In these circumstances, we hold that the assessee's claim of carry forward of STCL need to be accepted without going into the merits of the claim. We direct the Id. AO accordingly to allow the same. Accordingly, the grounds raised by the assessee are allowed.

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

Order pronounced in open court on 01.05.2024.

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

**Dated:01.05.2024.**

\*MP\*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI