

**IN THE INCOME-TAX APPELLATE TRIBUNAL "SMC" BENCH,
MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL
MEMBER**

&

SMT. RENU JAUHRI, ACCOUNTANT MEMBER

ITA No. 4054/Mum/2023

(A.Y. 2018-19)

Sudha Dhoot 29B, Rabindra Sarani, 3 rd Floor, Room No. 10E, Kolkata, West Bangal-700073	Vs.	ADDL. JCIT(A)-12 Pratishtha Bhavan, M.K. Road, Mumbai-400020
स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No: ADEPD2538F		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Shri Himanshu Kumar

Date of Hearing	13.05.2024
Date of Pronouncement	15.05.2024

आदेश / O R D E R

PER RENU JAUHRI:-

This appeal is filed by the assessee against the order of the Ld. Joint Commissioner of Income-tax (Appeals), Kolkata-12 [hereinafter referred to as "JCIT(A)"/National Faceless Appeal Centre, Delhi [NFAC] dated 16/10/2023 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment Year [A.Y.] 2018-19.

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

- “1. That the reopening of assessment was bad in law.
2. That the Learned Assessing Officer has disallowed the amount of Brought Forward Losses amounting to ₹ 43,97,351/- mentioning that the return of 2017 was uploaded after due date but it was not uploaded after due date. The due date for filing return of audited account is 31.10.2017 and we have filed the return with in due date, i.e. on 05.08.2017. Addition by the learned AO proved that there was no tangible material to believe and neither there was not any application of ind and without any basis and ground.
3. No one can be punished twice for some offence for A.Y. 2017-18 is already under scrutiny. So, for same offence assessee cannot be punished in A.Y. 2018-19. AS per the fundamental right secured Article 20 under clause (2) is grounded on the common law maxim *nemo debet bis vexari* offence more than once. If a person is charged again for the same offence, he can plead, as a complete defence, his former acquittal or conviction, or as it is technically expressed take the plea of *autrefois acquit* or *autrefois convict*.

- *R.B. Ram Ratan Seth v. State*, AIR 1959 Punj 69; *State of M.P. v. A.K. Jain*, AIR 1958 MP 162; *Poona Electric Supply Co. Ltd. v. State*, AIR 1967 Bom 27.
- AIR 1958 SC 444: 1958 SCR 1394.
- *S.A. Venkataraman v. Union of India*, AIR 1954 SC 375: 1954 SCR 1150; *Union of India v. Sukumar* AIR 1966 SC of India 1206: (1966) 2 SCR 34.
- *Rao Shiva Bahadur Singh v. State of Vindhya Pradesh*, AIR 1955 SC 446: (1955) 2 SCR 206.
- (2004) 4 SCC 158.
- *Kalawati v. State of H.P.*, AIR 1953 SC 131, 132: 1953 SCR 546. Also see, *Harjinder Singh v. State of Punjab*, (1985) 1 SCC 422: AIR 1985 SC 404; *Mohinder Singh v. State of Punjab*, (1977) 3 SCC 346: AIR 1976 SC 2299.
- *S.A. Venkataraman v. Union of India*, AIR 1954 SC 375: 1954 SCR 1150.
- *Maqbool Hussain v. State of Bombay*, AIR 1953 SC 325: 1953 SCR 730.
- *Thomas Dana v. State of Punjab*, AIR 1959 SC 375: 1959 Supp (1) SCR 274; *Maqbool Hussain v State of Bombay*, AIR

1953 SC 325: 1953. state of Bombay AIR 1953 SC 325: 1953 SCR 730.

- *Ibid. Also, Union of India v. Purushottam, (2015) 3 SCC 779, 793.*
- *Leo Roy Frey v. Supt., District Jail, AIR 1958 SC 119: 1958 SCR 822.*
- *Raja Narayanlal Bansilal v. Maneck Phiroz Mistry, AIR 1961 SC 29, 38: (1961) 1 SCR 417.*
- *AIR 1953 SC 325: 1953 SCR 730.*
- *Yagendra Kumar Jaiswal v. State of Bihar (2016) 3 SCC 183. AIR 1954 SC 375: 1954 SCR 1150.*
- *Union of India v. Sunil Kumar Sarkar (2001) 3 SCC414: AIR 2001 SC 1092.”*

3. Brief facts of the case are that the return of income was filed by the assessee on 30.07.2019 declaring income of ₹2,10,696/-. The return was processed u/s 143(1) of the Act by the CPC, Bangaluru and brought forward losses of ₹ 43,97,451/- were disallowed on the ground that the return was filed late for relevant previous year (i.e. A.Y. 2017-18).

4. Aggrieved with the assessment order, the appellant filed an appeal before the CIT(A)/NFAC on 19.01.2019. The appeal has subsequently assigned to the JCIT(Appeals). The JCIT(A) vide order dated 16.10.2023 has upheld the disallowance of brought forward losses on the ground that the return for A.Y. 2017-18 was not filed by the due date.

5. None appeared on behalf of the appellant before us on the date fixed for hearing. We have gone through the order of JCIT(A) and heard

the Ld.DR. It is seen that the assessee had claimed vide written submission submitted before the JCIT(A) that the return was filed by the due date in both the assessment years, A.Y. 2017-18 & 2018-19. Disallowance of brought forward losses has been made by the CPC while processing the return. From the details stated in the grounds of appeal as well as the appellate order, it is not clear that as to whether the return along with audited accounts was filed by the due date for A.Y. 2017-18.

6. We, accordingly, set aside the order of the Ld. JCIT(A) and restore it to file of the AO to verify the facts and consider the claim of brought forward losses, in case allowable as per law, after giving an opportunity to the assessee.

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

Order Pronounced in Open Court on 15.05.2024

Sd/-

(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER

Sd/-

(RENU JAUHRI)
ACCOUNTANT MEMBER

Place: Mumbai

Date 15.05.2024

ANIKET SINGH RAJPUT/STENO

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.