

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, KOLKATA**

**Before**

**Dr. Manish Borad, Accountant Member**

**&**

**Shri Pradip Kumar Choubey, Judicial Member**

**I.T.A. No.1448/KOL/2023**

**Assessment Year: 2019-20**

Sudha Dhoot 29B, Rabindra Sarani, 3 <sup>rd</sup> Floor, Room No. 10E, Kolkata-700073. (PAN: ADWPD2538F)	<b>Vs.</b>	DCIT, CPC, Bengaluru
<b>(Appellant)</b>		<b>(Respondent)</b>

**Appearances by:**

*No one appeared for the Appellant*

*Shri L. N. Dash, Addl. CIT (DR) appeared for Respondent.*

Date of concluding the hearing : 09.05.2024

Date of pronouncing the order : 28.05.2024

**ORDER**

**Per Manish Borad, Accountant Member:**

This appeal filed by the assessee pertaining to the Assessment Year (in short “AY”) 2019-20 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the “Act”) by Id. Commissioner of Income-tax (Appeals)/Addl/JCIT(AO-12, Mumbai [in short Ld. “CIT(A)"] dated 12.12.2023 arising out of the Intimation passed u/s 143(1) of the Act by DCIT, CPC, Bengaluru (in short “AO”), dated 06.11.2017.

2. When the case was called for, neither any one appeared on behalf of the assessee nor filed any adjournment application. With the assistance of Ld. DR, we dispose of the appeal.

3. However, various documents have been uploaded along with the e-mail filed on the portal of this Tribunal. We, therefore, decide to adjudicate the appeal with the assistance of the Ld. CIT, DR and the material available on record. The only grievance of the assessee is that Ld. CIT(A) erred in confirming the action of the AO disallowing the claim of set off of short term capital loss of Rs.18,98,727/-.

3. We have heard submissions of Ld. CIT, DR and perused the material available on record. We observe that the assessee filed the return of income for AY 2019-20 on 28.09.2019 declaring total income of Rs.26,944/-. The assessee is required to get its accounts audited and the tax audit report has duly been furnished. However, when the return was processed u/s. 143(1)(a) of the Act set off of brought forward of short term capital loss of Rs.17,98,727/- was denied. Assessee made all efforts by filing the application u/s. 154 of the Act stating that the return for Ay 2017-18 was furnished well within the time limit prescribed u/s. 139(1) of the Act and a correct claim of carry forward of short term capital loss was made therein but the CPC did not grant any relief. When the assessee carried the matter before the Ld. CIT(A), submissions were reiterated stating that a valid claim of set off of brought forward short term capital loss has been made. However, the Ld. CIT(A) denied the claim observing that since the assessee has furnished the return for AY 2017-18 after the due date, the loss claimed therein cannot be carried forward.

4. We observe that the books of accounts of the assessee are duly audited and even for AY 2017-18 assessee was required to get its accounts audited. Now, as per section 139(1) of the Act, for the assessee, who are required to get the books of account audited u/s. 44AB of the Act the due date for AY 2017-18 was 31.10.2017. Prior to the due date of 31.10.2017, assessee had filed return of income on

05.08.2017. The copy of the intimation u/s. 143(1) along with the annexures to the Income tax return stands filed before us. Considering the said details, we find merit in the assessee's grounds of appeal and are inclined to hold that since the assessee had filed return for AY 2017-18 within the prescribed time limit under the Act, assessee was required to get the books of account audited which in this case due date was 31.10.2017 and the assessee had filed the return on 05.08.2017 i.e. prior to the due date, therefore, the losses claimed in the return for AY 2017-18 are eligible to carried forward for set off in the subsequent years. Therefore, the assessee has rightly claimed the set off of brought forward short term capital loss of Rs. 17,98,727/-. Thus, the finding of the Ld. CIT(A) is set aside and the ground nos. 1 and 2 raised by the assessee are hereby allowed.

5. Ground no. 3 is general in nature which needs no adjudication.
6. In the result, appeal of the assessee is allowed.

Order is pronounced in the open court on 28<sup>th</sup> May, 2024.

Sd/-  
[Pradip Kumar Choubey]  
Judicial Member

Sd/-  
[Dr. Manish Borad]  
Accountant Member

Dated: 28<sup>th</sup> May, 2024  
*J.D. Sr. PS.*

*Copy of the order forwarded to:*

1. **Appellant** –
2. **Respondent** –
3. CIT(A), NFAC, Delhi
4. CIT
5. Departmental Representative
6. Guard File.

*True copy*

By order  
Assistant Registrar  
ITAT, Kolkata Benches