

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.803/Mum/2024
(Assessment Year :2016-17)**

Shailesh Dhirajlal Shah Sarvodaya Bhuvan Ramchandra Lane Extn Malad (W) Mumbai – 400 064	Vs.	ITO Ward 30(3)(3) Mumbai Presently ITO 41(3)(4) Mumbai
PAN/GIR No.ACLPS2368A		
(Appellant)	..	(Respondent)

Assessee by	Shri Hitesh Shah
Revenue by	Ms. Kakoli Ghosh
Date of Hearing	27/06/2024
Date of Pronouncement	28/06/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 26/12/2023 passed by Addl. / JCIT-9, Delhi for the quantum of assessment passed u/s.143(3) for the A.Y.2016-17.

2. In the grounds, Assessee has raised following grounds of appeal:-

GROUND INCOME I:-

On the facts and in the circumstances of the case, the Joint Commissioner of Income Tax (Appeals) - 9 Delhi (hereinafter

referred to as "CIT(A)") has erred in confirming the addition of Rs. 37,083/- under the head Income from House property though it was vacant during the part of the year

The Appellant therefore prays that the addition of Rs. 37,083/- being baseless, unwanted, illegal and hence be deleted

GROUND II

On the facts and in the circumstances of the case, the Joint Commissioner of Income Tax (Appeals)-9 Delhi (hereinafter referred to as "CIT(A)") has erred in confirming the disallowance of claim under chapter VIA to the extent of Rs. 1,58,667/-

The Appellant therefore prays that the deduction under chapter VIA aggregating to Rs. 1,58,667/- be directed to be allowed

GROUND III-

On the facts and in the circumstances of the case, the Joint Commissioner of Income Tax (Appeals) - 9 Delhi (hereinafter referred to as "CIT(A)") has erred in not allowing the set off of the carried forward business losses including unabsorbed depreciation to the extent of Rs. 21,92,990/-

The Appellant therefore prays that the appropriate set off of the carried forward losses may be granted against the income assessed

3. The assessee is mainly aggrieved by not allowing the set-off of the carried forward business losses including unabsorbed depreciation of the earlier years to the extent of Rs.21,92,990/- out of addition made by the ld. AO u/s.69A of Rs.22,00,600/- The other grounds have not been argued if this issue is decided.

4. Here in this case, there was a cash deposit of Rs.22,00,600/- in the bank account which ld. AO has added u/s.69A in the

assessment order. Such an addition made by the ld. AO has not been contested and has been accepted. However, the claim of the assessee is that since assessee had declared 'Nil' income therefore, it had not claimed carried forward losses and depreciation and now once assessment has been completed at an income of Rs.22,49,400/- therefore, set off of business loss and depreciation from the earlier year is to be allowed. However, the ld. First Appellate Authority had dismissed the appeal on account that assessee did not respond to the various notices. However, he decided the issue on merits and upheld the action of the AO.

5. Before us, ld. Counsel submitted that now this issue is covered by the CBDT Circular No.11 of 2009 dated 19/06/2019 where CBDT has clearly held that prior to A.Y.2016-17, the set off of losses against additions made u/s.68/69/69A/69B/69C/69D should be allowed. The relevant Circular reads as under:-

Circular No. 11/2019

**Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes**

North-Block, New Delhi, dated the 19th of June, 2019

Subject: Clarification regarding non-allowability of set-off of losses against the deemed income under section 1158BE of the Income-tax Act, 1961 prior to assessment-year 2017-18-reg.

With effect from 01.04.2017, sub-section (2) of section 11588E of the Income-tax Act, 1961 (Act) provides that where total income of an assessee includes any income referred to in section(s) 68/69/69A/698/69C/69D of the Act, no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provisions of the Act in computing the income referred to in section 11588E(1) of the Act.

*2. In this regard, it has been brought to the notice of the Central Board of Direct Taxes (the Board) that in assessments prior to assessment year 2017-18, while some of the Assessing Officers have allowed set off of losses against the additions made by them under Section(s) 68/69/69A/698/69C/69D, in some cases, set off of losses against the additions made under Section 115BBE(1) of the Act have not been allowed. **As the amendment Inserting the words or set off of any loss is applicable with effect from 1 of April, 2017 and applies from assessment year 2017-18 onwards, conflicting views have been taken by the Assessing Officers in assessments for years prior to assessment year 2017-18. The matter has been referred to the Board so that a consistent approach is adopted by the Assessing Officers while applying provision of section 115BBE in assessments for period prior to the assessment year 2017-18.***

3, The Board has examined the matter. The Circular No. 3/2017 of the Board dated 20th January, 2017 which contains Explanatory notes to the provisions of the Finance Act, 2016, at para 46.2, regarding amendment made in section 115BBE(2) of the Act mentions that currently there is uncertainty on the issue of set-off of losses against income referred to in section 115BBE. It also further mentions that the pre-amended provision of section 115BBE of the Act did not convey the intention that losses shall not be allowed to be set-off against Income referred to in section

115BBE of the Act and hence, the amendment was made vide the Finance Act, 2016.

4. Thus keeping the legislative Intent behind amendment in section 115BBE(2) vide the Finance Act, 2016 to remove any ambiguity of interpretation, the Board is of the view that since the term 'or set off of any loss' was specifically inserted only vide the Finance Act 2016, w.e.f. 01.04.2017, an assessee is entitled to claim set-off of loss against income determined under section 115BBE of the Act till the assessment year 2016-17.

5. The contents of this Circular may be circulated widely for Information of all stakeholders and departmental officers. The pending assessments and litigations on this issue may be handled accordingly.

6. Hindi version to follow.

**Rajarajeswari R
Under Secretary (ITA.II), CBDT**

(F.No. 225/45/2019-ITA.II)

5. Since, the appeal pertains to A.Y. 2016-17 and CBDT has clarified that denial of set off of any loss is applicable w.e.f. 01/04/2017 i.e. for A.Y.2017-18 onwards, therefore, the CBDT has clarified held that assessee is entitled to set off of loss against income determined u/s.115BBE for the Act which is applicable for the additions made u/s. 68/69/69A/ 69B/ 69C/69D. Thus, we direct the AO to examine the carried forward losses and depreciation and follow the aforesaid CBDT circular and allow the claim of business loss and depreciation to the extent of Rs.21,92,990/- after verification.

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

Order pronounced on 28th June, 2024.

**Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER**

Mumbai; Dated 28/06/2024
KARUNA, *sr.ps*

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

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai