

| आयकर अपीलिय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER

I.T.A. No. 4654/Mum/2023
Assessment Year: 2011-12

Darshan Surendra Tanna 205, Woodstock Yogi Hills Off B. R. Road Mulund (West) Mumbai - 400080 [PAN: AEKPT6005L]	Vs	Income Tax Officer, 41(2)(1), Mumbai
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Aditya Ramachandran, A/R
Revenue by :	Shri Himanshu Sharma, CIT, D/R

सुनवाई की तारीख/Date of Hearing : 03/07/2024
घोषणा की तारीख /Date of Pronouncement: 03/07/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order dt. 17/08/2023 by NFAC, Delhi pertaining to Assessment Year 2011-12.

2. The solitary grievance of the assessee is that the assessee should be allowed the set off of the business loss amounting to Rs.46,16,027/-.

3. This appeal is time barred by limitation for a period of 64 days. We have carefully considered the reasons for delay in filing the appeal. We are convinced that the assessee was prevented by reasonable and sufficient cause for not filing the appeal on time. Therefore, the delay is condoned.

4. Briefly stated facts of the case are that, the Assessing Officer (AO), was in possession of the information that the assessee had entered into commodity transaction in which the assessee had

commodity loss of Rs. 46,16,027/- from MCX and NCDEX. The assessee was asked to explain the source of repayment of the commodity loss. In his reply, the assessee stated that he had outstandings from friends and relatives in earlier years which has been returned and even used for the payment of commodity loss. The reply of the assessee did not find any favour with the AO who made the addition of Rs.46,16,027/- as unexplained income though, it has to read as unexplained expenditure.

5. Be that as it may, the claim of the assessee is that even if it is added back as unexplained expenditure, the set off of the same should be allowed in the light of the CBDT Circular No. 11/2019, dt. 19/06/2019 and the same 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 115BBE of the Income-tax Act, 1961 prior to assessment-year 2017-18-reg.

With effect from 01.04.2017, sub-section (2) of section 115BBE 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/69B/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 115BBE(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/69B/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 1st 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)"

6. Since the loss has not been rejected by the AO, in the light of the aforementioned binding Circular, the AO is directed to allow the set off of the loss to the income determine by him.

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

Order pronounced in the Court on 3rd July, 2024 at Mumbai.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Kolkata, Dated 03/07/2024

**S.C. S.P.*

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

1. ँ पीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (ं पील) / The CIT(A)-
5. विभर्तीय प्रतिनिधि ,आयकर अपीलार्थीय अडिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फार्ड/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलार्थीय अडिकरण
ITAT, Mumbai