

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI SUNIL KUMAR SINGH (JUDICIAL MEMBER)**

**ITA No. 645/MUM/2024  
Assessment Year: 2020-21**

Valuable Technologies Pvt. Ltd.,  
Plot No. 53/1 Media Info Park, Road,  
No.7, MIDC, Near Akruti Trade  
Centre, Andheri (East),  
Mumbai-400093.

**PAN NO. AACCV 2732 P  
Appellant**

**Vs.** CIT(A)-11, DCIT Central Circle 1  
Thane, Ashok IT Park 6<sup>th</sup> floor,  
Ward No. -16, Wagle Industrial  
Estate, Thane (West)-400604.

**Respondent**

Assessee by : Mr. Jagdish Shetty  
Revenue by : Ms. Rajeshwari Menon, Sr. DR

Date of Hearing : 11/07/2024  
Date of pronouncement : 30/08/2024

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the assessee is directed against order dated 13.12.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – Pune-11 [in short ‘the Ld. CIT(A)’] for assessment year 2020-21, raising following grounds:



*1. On the basis of facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals), Pune ["CIT(Appeals)"] has erred in not allowing the legitimate set off of long-term capital loss of Rs.15,72,530/- against Long Term capital gain of Rs 2,67,73,895/- presuming that the said capital loss is a Business Loss.*

*2. The Learned CIT(Appeals) has treated the long - term Capital Gain of AY 20-21 which the assessee has set off against the brought forward Long -term capital loss of the previous years, as Business income and levied tax on such income. The CIT(Appeals) has erred on facts and in law by not allowing the legitimate set off of unabsorbed capital loss of earlier years against the income from capital gains u/s 74 of the Income Tax Act and disallowing the same under section 72(1) of the Income Tax Act.*

2. Briefly stated, facts of the case are that the assessee company was engaged in providing software services etc. For the year under consideration, the assessee filed return of income on 12.01.2021 claiming tax refund of Rs.1,08,17,078/-. The return of income filed by the assessee was processed by the Central Processing Centre, Bangalore (in short 'CPC') wherein certain adjustment to disallowance u/s 43B of the Income-tax Act, 1961 (in short 'the Act') as well as adjustment to set off of current year and brought forward losses to the income reported under capital gain and income from other sources were made. Thereafter, the Assessing Officer CPC passed a rectification order u/s 154 of the Act dated 06.07.2022 reversing the adjustment made u/s 43B of the Act, however the assessee filed rectification application on 15.12.2022 seeking rectification on the adjustment of the set off of brought forward loss. However, same was rejected by the AO CPC and against which the assessee preferred appeal before the Ld. CIT(A). The Ld. CIT(A) though accepted the contention of the assessee that it is at liberty to choose which set off of income it wishes. However,



as far as brought forward loss of Rs.15,72,530/-, is concerned, tThe Ld. CIT(A) noted that it was a **brought forward business loss** and therefore, declined for adjustment of the same against the current years **capital gain** income. Aggrieved, the assessee is in appeal before the Tribunal by way of raising grounds as reproduced above.

3. We have heard rival submission of the parties and perused the relevant material on record. The finding of the Ld. CIT(A) rejecting the set off of brought forward loss of Rs.15,72,530/- is reproduced as under:

*“7.2 It is however seen that the appellant has claimed a set-off of brought forward business loss amounting to Rs. 15,72,530/- against the balance amount of current year's capital gains income of Rs. 1,82,90,006/-. In this connection, it is seen that as per the provisions of section 72(1) of the Act, the unabsorbed business loss can be carry-forward to subsequent assessment years and can be set-off against the business income only. Thus, the appellant cannot be allowed to set-off the brought forward business loss of Rs. 15,72,530/- against the capital gains income or income from other sources, of the assessment year under consideration. The assessing officer is directed accordingly.”*

3.1 Before us, the Ld. counsel for the assessee submitted that the brought forward loss of Rs.15,72,530/- is actually **brought forward capital loss** and not brought forward business loss as noted by the Ld. CIT(A) and therefore, the finding of the Ld. CIT(A) is erroneous.

3.2 In our opinion, the sole dispute is for the characterization of the loss of Rs.15,72,530/-. The Ld. CIT(A) has considered the said amount as **brought forward business loss** whereas, the assessee is claiming the same to be **brought forward capital loss**. If the claim



of the assessee is correct, then assessee is eligible for set off of the brought forward loss of Rs.15,72,530/- against the current years capital gain as per the provisions of section 74 of the Act. For ready reference said provision is reproduced as under:

**“Section 74 in The Income Tax Act, 1961**

74. [ Losses under the head "Capital gains".

(1) Where in respect of any assessment year, the net result of the computation under the head "Capital gains" is a loss to the assessee, the whole loss shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and-

(a) in so far as such loss relates to a short-term capital asset, it shall be set off against income, if any, under the head "Capital gains" assessable for that assessment year in respect of any other capital asset;

(b) in so far as such loss relates to a long-term capital asset, it shall be set off against income, if any, under the head "Capital gains" assessable for that assessment year in respect of any other capital asset not being a short-term capital asset;

(c) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on.]

(2) [ No loss shall be carried forward under this section for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed.]

(3) omitted by Act 20 of 2002, Section 29 (w.e.f. 1.4.2003).]

3.3 In view of the above facts and circumstances, we restore this issue back to the file of the Assessing Officer for verification whether the brought forward loss of Rs.15,72,530/- is in the nature of brought forward capital loss and if so then claim of the assessee shall be allowed in accordance with law. The ground of the appeal of the assessee is allowed for statistical purposes.



4. In the result, the appeal of the assessee is allowed for statistical purposes.

**Order pronounced in the open Court on 30/08/2024.**

**Sd/-  
(SUNIL KUMAR SINGH)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;  
Dated: 30/08/2024  
Rahul Sharma, Sr. P.S.

**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,  
(Assistant Registrar)  
**ITAT, Mumbai**