

आयकर अपीलीय अधिकरण
कोलकाता 'बी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA**

श्री संजय गर्ग, न्यायिक सदस्य
एवं
श्री संजय अवस्थी, लेखा सदस्य
के समक्ष
Before

**SRI SANJAY GARG, JUDICIAL MEMBER
&
SRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No.: 1476/KOL/2024
Assessment Year: 2015-16**

**Sunil Kumar Somani.....Appellant
[PAN: AJIPS 0572 J]**

Vs.

ACIT, Circle-36, Kolkata.....Respondent

Appearances:

Assessee represented by: None.

Department represented by: P.P. Barman, Addl. CIT, Sr. DR.

Date of concluding the hearing : September 23rd, 2024

Date of pronouncing the order : November 18th, 2024

ORDER

Per Sanjay Awasthi, Accountant Member:

In this case, the Assessing Officer (hereinafter referred to as ld. 'AO') had disallowed an adjustment of brought forward short term capital loss amounting to Rs. 5,53,954/- as the same had been already adjusted against the income of the immediately previous year (2014-15). It is a matter of record that on being informed of this wrong claim, the assessee immediately accepted his mistake and pleaded that it was done out of inadvertence and not because of any *mala fide* intention. However, the ld. AO held that this mistake was discovered by him from the legacy assessment records available with him and

hence, he disbelieved the claim of the appellant that he should not be visited with any penalty considering that the action was due to an oversight.

1.1. Since the ld. AO had proceeded to levy the penalty u/s 271(1)(c) of the Act Income Tax Act, 1961 (in short the 'Act'), the appellant approached the ld. CIT(A) who, however, upheld the action of the ld. AO.

1.2. Aggrieved with the action of ld. CIT(A), the appellant is before us through the following grounds of appeal:

“1 For that Ld CIT(A) erred in upholding the penalty of 171,172/- imposed u/s 271(1)(c) for wrong claiming of set off of brought forward capital loss.

2 For that Ld CIT(A) erred in sustaining the finding of Ld AO that claim of set off of brought forward loss was intentional and not an error or mistake.

For that Ld CIT(A) ought to have deleted the penalty levied u/s 271(1)(c) of the Act by appreciating the fact that status of brought forward loss was already available with AO.”

2. Since no one had appeared on behalf of the appellant, the ld. D/R assisted us in perusing the impugned order and the order of the ld. AO. The ld. D/R argued that even though the set off of losses could have been mistakenly done, then also the assessee deserved the penalty that was levied on him since it was detected by the ld. AO only.

2.1. We have considered the document before us and the averments of the ld. D/R. It is clear that the information regarding excessive claim of brought forward losses was not gathered from any independent source which could have led us to believe that there was a real intention to hide the facts for suppressing the quantum of the taxable income. It is clear that the excessive claim of losses was detected from the material available with the ld. AO in the shape of previous year's return of income and computation of income thereon. Accordingly, it is felt that while the ld. AO has justifiably disallowed the excessive loss claimed and levied extra tax and interest on the assessee, but a penalty u/s 271(1)(c) of the Act is not justified considering the totality of facts and circumstances. The penalty levied is hereby deleted.

3. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 18th November, 2024.

Sd/-
[Sanjay Garg]
Judicial Member

Sd/-
[Sanjay Awasthi]
Accountant Member

Dated: 18.11.2024

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Sunil Kumar Somani, 25, Marshall House, Strand Road, Kolkata, West Bengal, 700001.**
- 2. ACIT, Circle-36, Kolkata.**
- CIT(A)-NFAC, Delhi.
- CIT-
- CIT(DR), Kolkata Benches, Kolkata.
- Guard File.

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By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata