

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.1170/Ahd/2024
(Assessment Year: 2016-17)

Assistant Commissioner of Income Tax, Circle-2(1)(1), Ahmedabad	Vs.	Kiri Industries Ltd., 7 th Floor, Hasubhai Chambers, Nr. Townhall, Ellisbridge, Ahmedabad-380006
[PAN No.AAACK9025C]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Tushar Hemani, Sr. Adv. & Shri Parimalsinh B. Parmar, A.R.
Respondent by:	Shri A.P. Singh, CIT DR
Date of Hearing	20.11.2024
Date of Pronouncement	26.12.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Revenue against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), ADDL/JCIT (A)-2, Noida vide order dated 31.03.2024 passed for A.Y. 2016-17.

2. The Revenue has raised the following grounds of appeal:

“1. Whether on facts and circumstances and in law, the Ld. CIT(A) has erred in allowing the carry forward of loss of Rs. 65,39,53,132/- even though there is an anomaly in the date 28.11.2015 mentioned in Form 3CEB for A Y 2016-17?

2. The Ld. CIT(A) has erred not calling for Remand Report under rule 46A to verify the said anomaly.

3. The appellant craves leave to amend or alter any ground or add a new ground, which may be necessary.

4. It is, therefore, prayed that the order of Ld. CIT(A) may be set aside and that of the Assessing officer be restored.”

3. The brief facts of the case are that for the relevant assessment year, the assessee filed its return of income on 30.11.2016, reporting a total loss of Rs. 95,90,04,541/-. However, the return was processed by CPC under Section 143(1) of the Act on 13.08.2017, which calculated the figure of total loss at Rs. 30,50,51,409/- after disallowing the carry forward loss of Rs. 65,39,53,132/-, on the ground that the return of income had been filed belatedly.

4. In appeal before Ld. CIT(Appeals), the assessee raised several grounds, primarily submitting that the disallowance of the carry forward loss of Rs. 65,39,53,132/- was erroneous by CPC. The assessee contended that firstly the adjustment was made without jurisdiction. Since it was beyond what is permitted under Section 143(1) of the Income Tax Act, and secondly the return of income was filed within the due date prescribed by law and therefore no adjustment is called for. The assessee submitted that the disallowance of the carry forward of loss was erroneous, since return of income was filed within the due filing date. The assessee submitted that the AO's decision to deny the carry forward of losses was based on an incorrect interpretation of the due date for filing the return of income. According to the assessee, Section 139 of the Act which defined the due date for filing the return, in this case was 30.11.2016 and not 17.10.2016, as mistakenly noted by the CPC. The assessee pointed out that since the assessee was engaged in "international transactions" and it had to comply with provisions of Section 92E of the Act, it was required to submit Form 3CEB by 30.11.2016, and therefore the correct due date for filing its return was 30.11.2016. The assessee submitted that under the provisions of Section 143(1) of the Act, adjustments can only be made for arithmetical errors or apparent incorrect claims from the return. The Finance Act of 2016 amended

Section 143(1) of the Act, inserting a provision to disallow carry forward of certain losses, if the return was filed beyond the due date specified under Section 139 of the Act. However, this provision was only applicable from the assessment year 2017-18, meaning thereby that the adjustment in this case was not warranted for the assessment year 2016-17.

5. Ld. CIT(Appeals) agreed with the contentions of the assessee, and allowed the appeal of the assessee, with the following observations:

“3. Before me, the appellant contended that the DCIT, CPC erred in denying the carry forward, of loss of Rs.65,39,53,132/- under section 143(1) of the Act which is without jurisdiction and beyond the permissible adjustments contemplated under that section. It was submitted that under section 143(1)(a)(iii) of the Act, as inserted by the Finance Act, 2016, with effect from April 1, 2017, no adjustment could have been made for AY 2016-17 on this count.

4. Without prejudice to the above, the appellant argued that on merits also, such adjustment was not warranted as the return was filed within the due date. Reliance was placed on section 139 of the Act and particularly clause (aa) to Explanation 2 thereof to contend that in case of an assessee who is required to furnish report under section 92E of the Act, the due date for filing return is November 30 of the assessment year. It was pointed out that the appellant had entered into an international transaction and filed Form 3CEB as per-section 92E read with Rule 10E. Therefore, the due date for filing return for AY 2016-17 was November 30, 2016. The appellant also referred to the intimation under section 143(1) dated August 13, 2017 to point out that although the date of filing of return was mentioned as November 30, 2016, the CPC had inadvertently held the due date as October 17, 2016.

5.1 I have carefully considered the facts of the case and the submissions made by the appellant. On a perusal of the intimation passed under section 143(1) dated August 13, 2017, I find that the CPC has denied the carry forward of loss of Rs. 65,39,53,132/- on the erroneous footing that the due date for filing return was October 17, 2016, whereas the actual date of filing of return was November 30, 2016. The reasoning given by the CPC to make the adjustment is palpably incorrect and contrary to the express provisions of the Act.

6. It is pertinent to note that section 143(1)(a)(iii) of the Act empowering the Assessing Officer to make adjustments while processing the return on account of filing of return beyond due date, was inserted by the Finance Act, 2016 with effect from April 1, 2017. relevant to AY 2017-18. This provision was not on the statute for the year under consideration, i.e. AY 2016-17. The action of the CPC in relying on this provision to deny carry forward of losses is thus bad in law and without jurisdiction.

7. Even otherwise, as contended by the appellant, clause (aa) of Explanation 2 to section 139(1) of the Act makes it amply clear that in case of an assessee who is required to furnish a report under section 92E of the Act, the due date for furnishing return of income is November 30 of the assessment year. There is no dispute that the appellant had undertaken international transactions and was thus required to obtain and file an

accountant's report in Form 3CEB in terms of section 92E of the Act. A copy of Form 3CEB along with the acknowledgment as referred to in the written submissions filed by the appellant clearly proves this fact. Consequently, the due date for filing return of income for the appellant for AY 2016-17 was November 30, 2016. The CPC was thus completely unjustified in making the impugned adjustment by treating the due date as October 17, 2016.

8. In view of the above legal position and respectfully following the decision of the Hon'ble Apex Court in Maruti Insurance Distribution (supra), I have no hesitation in holding that the impugned adjustment made by the CPC to the returned loss is unsustainable and deserves to be deleted. The appellant had filed its return of income within the prescribed due date and the same was not hit by the limitation under section 139(1) of the Act.

9.1 I find that there was reasonable and sufficient cause for not filing the appeal within the prescribed time limit from the date of intimation under section -143(1). I have considered the application filed by the appellant seeking condonation of delay in filing the appeal. The appellant has attributed the delay to the pursuance of rectification proceedings before the lower authorities which were finally rejected vide order dated June 15, 2020. Being satisfied with the reasons given, the delay in filing appeal is condoned and the appeal is admitted for consideration on merits. The delay in filing appeal is accordingly condoned.

In the result, the appeal is allowed and the adjustment made in the intimation under section 143(1) dated August 13, 2017 denying carry forward of loss of Rs. 65,39,53,132/- is hereby deleted. The Assessing Officer is directed to allow carry forward of losses as claimed by the appellant in the return of income filed for AY 2016-17."

6. The Department is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals) allowing the appeal of the assessee. Before us, the Ld. DR accepted that there was no specific infirmity in the order of Ld. CIT(Appeals), and therefore, in all fairness, the order passed by Ld. CIT(Appeals) may be upheld.

7. On going through the facts of the instant case, the appeal of the Department is dismissed.

8. In the result, the appeal of the Revenue is dismissed.

This Order pronounced in Open Court on

26/12/2024

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 26/12/2024

TANMAY, Sr. PS

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad