

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'DB', AMRITSAR BENCH, AMRITSAR**

**BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**AND**  
**HON'BLE SHRI UDAYAN DAS GUPTA, JM**

**आयकरअपीलसं./ ITA No. 260/ASR/2022**  
**(निर्धारणवर्ष / AssessmentYear: 2016-17)**

<b>Shri Simerdeep Singh</b> H. No. 833 Urban Estate Phase-I Jalandhar- 144001.	<b>बनाम/ Vs.</b>	DCIT Central Circle-1 Jalandhar.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>ABRPS-8245-F</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	S/Shri J. S. Bhasin (Advocate)& A. P. Singh (CA) –Ld.ARs
प्रत्यर्थीकीओरसे/ <b>Respondentby</b>	:	Ms. Vandana Vijay Mohite (CIT) – Ld. DR

सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	23-04-2025
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	06-06-2025

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by assessee for Assessment Year (AY) 2016-17 arises out of an order of Ld. Commissioner of Income Tax (Appeals)-5, Ludhiana, [CIT(A)] dated 23-11-2022 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s 153A of the Act on 30-12-2018. The assessee is aggrieved by computation of capital gains and denial of carry forward of capital losses. Having heard rival submissions and upon perusal of case records, the appeal is disposed-off as under.

## **Assessment Proceedings**

2.1 The assessee being resident individual returned loss of Rs.140.07 Lacs in his return of income filed u/s 139 on 03-03-2017. The assessee also declared Long-Term Capital loss of Rs.92.18 Lacs. The assessee was searched u/s 132 on 08-09-2016 and accordingly, notice u/s 153A was issued to the assessee on 28-05-2018. The statement of the assessee was recorded u/s 132(4A) on 09-09-2016 and the statement of Shri Kuljeet Singh (buyer of certain plot of land) was recorded on 20-09-2016. In response to notice u/s 153A dated 28-05-2018, the assessee returned loss of Rs.186.23 Lacs. In the original return, the assessee computed capital loss of Rs.92.18 Lacs on sale of plot at 305, Chhoti Baradari, Jalandhar but the loss was not carried forward since the return was filed belatedly. However, in return filed in response to notice u/s 153A, the assessee re-computed loss of Rs.74.65 Lacs and claimed carry forward of the same for set-off in subsequent years.

2.2 From business premises of the assessee, an original agreement dated 10-03-2015 was found and seized. As per this agreement, the assessee agreed to sell this plot to Shri Kuljeet Singh for Rs.155 Lacs out of which the payment of Rs.20 Lacs was stated to be already received by way of RTGS dated 02-03-2015. However, upon being confronted by the investigation wing, Shri Kuljeet Singh denied the existence of this agreement but admitted that the stated property was purchased by him for Rs.90 Lacs under a duly registered sale deed.

2.3 During assessment proceedings, this document was confronted to the assessee. The assessee stated that he was in need for more funds to complete his hotel project and to raise additional funds from the bank, this document was prepared containing inflated rate of the property. However, Ld. AO held that the assessee failed to prove as to how the bank could finance higher funds to the assessee simply on the basis of a fake agreement ignoring the original sale deed. Further, the seller as well as the buyer did not deny the payment that happened through RTGS as mentioned in the seized document. Therefore, the consideration as mentioned therein was the actual sale consideration which exchanged hands. Therefore, capital gains were recomputed by adopting sale consideration of Rs.155 Lacs. After deducting indexed cost of acquisition, Long-Term capital loss was worked out to be Rs.9.65 Lacs which was not allowed to be carried forward since the original return was filed belatedly. Finally, the assessment was framed rejecting various contentions of the assessee, on this issue.

### **Appellate Proceedings**

3. The assessee assailed the impugned computations, inter-alia, on the ground that this document was fake / self-serving documents prepared by the assessee to raise additional funds from the bank. The signature of the buyer Shri Kuljeet Singh on the seized document was different from that appearing on the registered deed and the buyer already denied having paid any cash over and above the registered sale consideration. The buyer as well as seller has denied having exchanged any consideration over and above the registered value of

Rs.90 Lacs and there was no corroborative evidence found in search establishing actual payment of the inflated prices. However, Ld. AO, in the remand report, rejected these arguments and justified the impugned computations. Considering the same, Ld. CIT(A) upheld the action of Ld. AO in assessing capital loss by adopting higher sales value and also held that the loss could not be carried forward for set-off in subsequent year. Aggrieved, the assessee is in further appeal before us.

### **Our findings and Adjudication**

4. From the facts, it emerges that the impugned assessment has been framed on the basis of an agreement which has been found during the search on the assessee. As per this agreement, the assessee agreed to sell this plot to Shri Kuljeet Singh for Rs.155 Lacs out of which the payment of Rs.20 Lacs was stated to be already received by way of RTGS dated 02-03-2015. However, the said document was confronted by investigation wing to Shri Kuljeet Singh who denied the existence of this agreement but admitted that the stated property was purchased by him for Rs.90 Lacs under duly registered sale deed. During assessment proceedings, this document was also confronted to the assessee. The assessee stated that he was in need for more funds to complete his hotel project and to raise additional funds from the bank, this document was prepared containing inflated rate of the property. Pertinently, the signatures of Shri Kuljeet Singh as found recorded on this agreement did not match with the actual sale deed. On these facts, it was to be concluded that this was

only a self-serving document created by the assessee to serve his own interest. There is no admission of higher sale consideration either by the buyer or the seller. During the course of search, there was no incriminating material found from the possession of the assessee to indicate that the assessee had made any unaccounted investment or it had undisclosed income / asset out of higher sale consideration. The assessee as well as the buyer have denied exchange of consideration of Rs.155 Lacs as mentioned on this agreement. There is no dispute that the plot has ultimately exchange hands by way of valid sale deed against sale consideration of Rs.90 Lacs. There is no finding that the aforesaid value was, in any manner, lesser than its market value. There is no corroborative evidence found in search establishing actual payment of the inflated prices. In our opinion, the document as found during search was only a dumb document only having not much evidentiary value in the absence of any corroboration thereof. Therefore, the assessment could not be made by adopting higher sale consideration of Rs.155 Lacs as done by lower authorities. We order so. The Ld. AO is directed to adopt sale consideration of Rs.90 Lacs only.

5. So far as the claim of carry forward of Long-Term Capital Loss is concerned, we find that this year is an abated year. In such a case, the ratio of decision of Hyderabad (Special Bench) Tribunal in the case of **DCIT vs. M/s Sew Infrastructure Ltd. (ITA Nos. 1717/Hyd/2017 &ors. dated 07-10-2024)** would apply wherein the matter stood concluded as under: -

33. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that the assessee cannot make a fresh claim of deduction under Chapter VI-A of the Income Tax Act, 1961, for the first time, in the return of income filed in response to notice issued under Section 153A of the Act, pursuant to search conducted under Section 132 of the Act, in unabated/completed assessment as on the date of search. In case of abated assessments, like the AO who can make assessment based on incriminating materials and any other information made available to him, including information furnished in return of income, the assessee may claim all deductions towards any income or expenditure, as if it is a first return of income and fresh assessment.

It has been held by the special bench that in case of abated assessment, fresh claim could be made by the assessee for the first time in the return of income filed in response to the notice issued u/s 153A of the Act, pursuant to a search conducted under section 132 of the Act. Similarly, Hon'ble High Court of Calcutta in the case of **Shrikant Mohta vs. CIT (257 Taxman 43)** held that when search operations are conducted u/s 132 of the Act, the obligation of the assessee to file any return remains suspended till such time that a notice is issued for such purpose u/s 153A of the Act. If the return is filed by the assessee within the reasonable time as permitted by such notice then such a return would be deemed to have been filed within the time permitted u/s 139(1) of the Act for the benefit under Section 139(3) of the Act to be availed of by the assessee. In the present case, the return of income has duly been filed within time allowed in notice u/s 153A. Therefore, respectfully following these decisions, Ld. AO is directed to allow the carry forward of capital losses as computed by the assessee. No other ground has been urged before us.

6. The appeal stand allowed in terms of our above order.

Order pronounced u/r 34(4) of the Income Tax (Appellate Tribunal Rules), 1963.

*Sd/-*  
**(UDAYAN DAS GUPTA)**  
**JUDICIAL MEMBER**

*Sd/-*  
**(MANOJ KUMAR AGGARWAL)**  
**ACCOUNTANT MEMBER**

Dated : 06-06-2025

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

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF

ASSISTANT REGISTRAR

ITAT AMRITSAR