

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “H (SMC)”, MUMBAI
BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
ITA NO. 2516/MUM/2025 (A.Y: 2018-19)**

Nirmala Nawal Phatarphekar
302, Satguru Simran, Almeida Park,
Bandra West, Mumbai-400 050
PAN: AFNPP9529H

ITO Circle 19(1)
Piramal Chambers,
Vs. Mumbai

(Appellant)

(Respondent)

Assessee Represented by	:	Ms. Ritu Punjabi, Ld. AR
Department Represented by	:	Shri Pravin Salunkhe, Ld. DR
Date of conclusion of Hearing	:	01.07.2025
Date of Pronouncement	:	18.07.2025

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the appellant/assessee against the order of Learned Commissioner of Income Tax (Appeals)/Addl/JCIT (A), Panji [hereinafter referred to as the “CIT(A)”], passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as “the Act”] dated 24.02.2025 for the A.Y. 2018-19 wherein the appeal of the assessee



against disallowing the carrying forward of current year long term capital loss by the CPC, was dismissed.

2. The brief facts as culled out from the orders of the authorities below are that the assessee is an individual and has filed its return of income for the year under consideration on 23.01.2018 which was accepted vide intimation order dated 04.04.2019 u/s 143(1) of the Act. In the said return, the assessee has claimed LTCG on sale of garage i.e. Rs. 20 lakhs and long term capital loss on sale of residential house property situated at B/3505, Oberoi Exquisite, Mumbai of Rs. 82,95,964/-. The assessee has set off a part of the long term capital loss against LTCG of Rs. 20 lakhs and had claimed carry forward of balance loss of Rs. 62,95,964/-. The return was processed by the learned Deputy Commissioner of Income Tax (CPC) wherein he has allowed the set off, of the Long term capital loss with the Long Term Capital Gain as stated above, but has not determined the Long Term Capital Loss in the current year amounting to Rs. 62,95,964/- to be carried forward to subsequent years.
3. Aggrieved by the said intimation, the assessee filed the appeal before the Ld. CIT(A) who has dismissed the appeal vide order dated 24.02.2025 while observing in para no. 7.1 as extracted below:-



“7.1 Ground no.01 raised by the appellant that the learned DCIT (CPC), Bengaluru has not determined the long term capital loss in the current year amounting to Rs.62,95,964/- to be carried forward which is adjudicated on merit of the case, facts, submission filed by the appellant and material available on record, as under:-

Upon careful perusal of the submission filed by the appellant it is seen that the appellant has filed return of income for the year under consideration i.e 2018-19 on 23.09.2018 by declaring net carry forward loss amounting to Rs.62,95,964/-. However, during the appellate proceedings the appellant utterly failed to adduce any clinching documentary evidences for supporting his contention i.e sale/purchase deed of the property against which the said carry forward loss was claimed or documentary evidences showing the cost of acquisition/improvement of the property sold/purchased in spite of multiple hearing opportunities have been provided to the appellant in this regard.

Considering the above facts and in the absence of clinching documentary evidences supporting the contention of the appellant, this appellate authority held that the AO has correctly passed the intimation order by not considering the net long term capital loss amounting to Rs.62,95,964/- during the year under consideration and the intimation order passed by the AO has no infirmity and need not to be interfered with. Therefore, ground no.01 raised by the appellant is held as devoid of merit and dismissed herewith.”

4. Aggrieved by the impugned order, the assessee is in appeal before us raising the following grounds of appeal:-

1. The Commissioner of Income-tax (Appeal), Addl/JCIT (A), Panaji ["the CIT(A)"] erred in upholding the order dated 04-04-2019 passed under section 143(1) of the Act which was passed by the Assistant Director of Income-tax, CPC ("the AO") in violation of the provisions of section 143(1) of the Income-tax Act, 1961 ("the Act"). The Appellant prays that the said order dated 04-04-2019 is in violation of the



provisions of section 143(1) of the Act is bad in law and therefore should be quashed.

2. The learned CIT(A) erred in confirming the action of the AO in not allowing the carry forward of Long Term Capital Loss of Rs. 62,95,964/-. The Appellant prays that Rs. 62,95,964/- be allowed to be carried forward as Long Term Capital Loss available for set-off in subsequent years.

3. The Appellant craves leave to add, to alter and / or amend the above ground of appeal.

5. We have heard the Ld. AR and Ld. DR and examined the record. At the outset Ld. DR submitted that Ground no. 1 is the legal ground which has been raised first time before the Tribunal, therefore objected for raising the legal ground first time in the appeal before the Tribunal. On the other hand, Ld. AR submitted that the intimation order dated 04.04.2019 passed u/s 143(1) of the Act by the Assistant Director of Income Tax (CPC) is in violation of section 143(1) of the Act and is bad in law, and therefore it should be quashed. Ld. AR filed written arguments wherein it was argued that the intimation order dated 04.04.2019 which was upheld by Ld. CIT(A) is bad in law because the claim of carry forward of long term capital loss is beyond the scope of adjustments specified under section 143(1)(a) and therefore the order dated 4th April 2019 passed under section 143(1) should be quashed as ab initio void and bad in law. It is also argued that prior to making of such adjustment,



no prior intimation was given to the Assessee thus violating the requirement of proviso to section 143(1)(a) and therefore, on this ground also the intimation order passed under section 143(1) should be quashed. The written arguments filed by the assessee are extracted below:-

1. The issue in the captioned appeal relates to the claim for carry forward of Long-term Capital Loss claimed by the Appellant in the return of income which has not been allowed in the intimation order dated 4th April 2019 passed under section 143(1) of the Act.

2. During the course of hearing before the Hon'ble Bench today, it was inter alia, contended that the aforesaid intimation order dated 4th April 2019 upheld by the CIT(A) is bad in law inasmuch as the claim for carry forward of long-term capital loss has been denied under the intimation order passed under section 143(1) of the Act. It was submitted that denial of claim for carry forward of long-term capital loss is beyond the scope of adjustments specified under section 143(1)(a) and therefore the order dated 4th April 2019 passed under section 143(1) should be quashed as ab initio void and bad in law.

3. Further it was submitted that prior to making of such adjustment, no prior intimation was given to the Assessee thus violating the requirement of proviso to section 143(1)(a) and therefore, on this ground also the intimation order passed under section 143(1) should be quashed. In support of the above contentions, a copy of the judgment of the Hon'ble Delhi Tribunal in the case of Fortum SAR B.V. v. ADIT, CPC (ITA No. 2028/Del./2023, order dated 27th June 2024) was also handed over. Relevant observations from the decision of the Hon'ble Delhi Tribunal are reproduced below for ready reference:



7. We have considered rival submissions and perused materials on record... While processing the return of income u/s 143(1)(a) of the Act, the CPC, while allowing carry forward of short term capital loss of Rs. 9,30,45,891/-, denied the carry forward of long term capital loss of Rs. 32,11,17,208/- without assigning any reason whatsoever. Against the intimation issued u/s 143(1)(a) of the Act, carrying out such adjustment, assessee preferred an application for rectification u/s 154 of the Act. The said application was disposed of by CPC on 26.11.2022 sustaining the disallowance, again, without assigning any reason. Thus, the action of the CPC in disallowing the claim of carry forward of long term capital loss is out-rightly perfunctory, illegal and without jurisdiction. It is also relevant to observe, as per the First proviso to Section 143(1)(a) of the Act, no adjustment shall be made u/s 143(1)(a) unless an intimation is given to the assessee of such adjustment either in writing or in electronic mode. The second proviso to Section 143(1)(a) says, the response received by the assessee on the show cause notice shall be considered before making any adjustment. In the facts of the present appeal, admittedly, no show cause notice in terms of first proviso to Section 143(1)(a) of the Act was issued by the CPC before carrying out the adjustment. In fact, learned First Appellate Authority has also accepted the aforesaid factual position. Thus, it is a proven fact on record that the assessee has been deprived of its valuable right of representation, thereby, the intimation issued w/s 143(1)(a) of the Act suffers from gross violation of rules of natural justice.

4. It is submitted that by way of Ground No. 1 of the Assessee's appeal before Your Honour, the Assessee seeks to challenge the validity of intimation order dated 4th April 2019 passed under section 143(1) of the Act. Though the said ground was not raised before the CIT(A), it is respectfully submitted that the ground raised by the Assessee challenging the validity of intimation order passed under 143(1) of the Act is a pure legal issue and does not require any fresh investigation of facts. In this regard, reliance is placed on the decision of the **Hon'ble Supreme Court in NTPC Ltd. v CIT 229 ITR 383** wherein it was observed by the Hon'ble Supreme Court as follows:



Under section 254, the Tribunal may after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is, thus, expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, there is no reason why the assessee should be prevented from raising that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of that item. There is no reason to restrict the power of the Tribunal under section 254 only to decide the grounds which arise from the order of the Commissioner (Appeals). Both the assessee as well as the Department have a right to file an appeal/cross-objections before the Tribunal. There is no reason why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier.

5. In the present case, the contention raised before the Hon'ble Tribunal is that denial of claim for carry forward of long-term capital loss is beyond the scope of permissible adjustments specified under section 143(1)(a) of the Act and therefore not permissible under 143(1)(a). Thus, it is humbly submitted that the ground of the assessee that claim for long term capital loss cannot be rejected by way of intimation order under section 143(1) is a pure legal ground and with utmost respect, it is submitted that the same does not need any investigation into the facts. Therefore, it is respectfully submitted that the legal ground challenging the validity of the intimation order under section 143(1) of the Act be disposed taking into consideration the above submissions

6. With regard to challenging the legal ground first time before the Tribunal, Ld. AR submitted that challenging the validity of intimation order passed u/s 143(1) of the Act is a pure legal issue and does not



require any fresh investigation of facts, therefore it can be raised first time before the Tribunal. In this regard, Ld. AR relied on the judgment of Hon'ble Supreme Court in the case of the NTPC Ltd (supra) as noted above. Therefore, Ld. AR argued that the claim of long term capital loss cannot be rejected by way of intimation order passed u/s 143(1) and it is purely a legal question and as such should be adjudicated by the Tribunal in favour of the assessee.

7. On merit, Ld. AR argued that all the necessary documents were submitted before the AO with respect to long term capital gain and long term capital loss claimed by the assessee in the ITR which has not been considered by the revenue authorities and submitted that the intimation order dated 04.04.2019 passed u/s 143(1) of the Act be quashed and the appeal of the assessee be allowed by directing the AO to allow the carry forward of long term capital loss of Rs. 62,95,964/-.

8. On the other hand, Ld. DR relied on the order of Ld. CIT(A) and submitted that Ld. CIT(A) has rightly dismissed the appeal of the assessee because the assessee has not furnished the necessary documents before the revenue authorities. With respect to challenging to the validity of the intimation order, Ld. DR submitted that the there is



no violation of law by passing intimation order dated 04.04.2019 u/s 143(1) of the Act and further submitted that the said issue was not raised before the revenue authorities and the assessee has raised this issue first time before the Tribunal, hence this issue need not be considered by the Tribunal and prayed for dismissal of the appeal.

9. We have considered the rival submissions and carefully examined the record. With regard to raising the legal ground first time before the Tribunal, we are convinced by the arguments of the Ld. AR and follow the judgment of Hon'ble Supreme Court in the case of NTPC Ltd. (supra) relied by Ld. AR wherein it was held that the Tribunal should not be prevented from considering the questions of law arising in assessment proceedings although not raised earlier. Therefore it is to be noticed that the question of determining the long term capital loss by way of intimation u/s 143(1) (a) is beyond the scope of adjustments specified u/s 143(1)(a) of the Act as the Ld. CPC has not followed the first proviso of section 143(1)(a) of the Act, therefore this is purely a legal issue and has rightly been raised first time before the Tribunal as ground no. 1. The objection of revenue in that regard are not tenable and accordingly rejected.



10. With regard to validity of intimation order u/s 143(1)(a) of the Act, we deem it fit to reproduce the provision of section 143(1)(a) of the Act as under:-

“Section 143(1) in The Income Tax Act, 1961

(1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:-

(a) the total income or loss shall be computed after making the following adjustments, namely:-

(i) any arithmetical error in the return,

(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;

(iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;

(iv) disallowance of expenditure [or increase in income] indicated in the audit report but not taken into account in computing the total income in the return;

(v) disallowance of deduction claimed under [section 10AA or under any of the provisions of Chapter VI-A under the heading "C.-Deductions in respect of certain incomes", if] the return is furnished beyond the due date specified under sub-section (1) of section 139; or

(vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:

Provided further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is



received within thirty days of the issue of such intimation, such adjustments shall be made:

Provided also that no adjustment shall be made under sub-clause (vi) in relation to a return furnished for the assessment year commencing on or after the 1st day of April, 2018;”

11. It is thus clear from the provision of Section 143(1)(a) of the Act as reproduced above that no such adjustment as mentioned in the said section including the disallowance of loss claimed shall be made unless an intimation is given to the assessee of such adjustment either in writing or in electronic mode. No such intimation has been given to the assessee before non-determination of carry forward loss as claimed in the ITR. We have also examined the Intimation order of the assessee which is placed in the appeal file and the ITR was accepted vide intimation order dated 04.04.2019 and in annexure the schedule CFL (as entered in the claim of long term capital loss) for AY 2018-19, the long term capital loss of Rs. 62,95,964/- for the current year i.e. 2017-18 was entered to be carried forward to future years. The relevant portion of the intimation u/s 143(1) of the Act showing the total LTCG and total loss carried forward in the future years and disallowance of the same by not determining in the intimation order is clear from the following extracts of the intimation as under:-



पत्र संदर्भ संख्या
Communication Reference No. CPC/1819/A2/1828920519

स्थायी खाता संख्या	PAN:	नाम Name	निर्धारणवर्ष A.Y.	आदेश की तिथि Date of order
AFNPP9529H		NIRMALA NAWAL PHATARPHEKAR	2018-19	04-04-2019

ANNEXURE- SCHEDULE CFL (As Entered)

Assessment Year	Date of Filing (DD/MM/YYYY)	House Property Loss	Business or Profession	Short Term Capital Loss	Long Term Capital Loss	Other Sources Loss (from owning race horses)
2018	23-JUL-18	0		0	6295964	0

Annexure CFL Summary (As Entered)

Total of earlier year losses	0	0	0	0	0	0
Adjustment of above losses in Schedule BFLA	0	0	0	0	0	0
2017-18 (Current Year Losses)	0	0	0	6295964	0	0
Total loss Carried Forward to future years	0	0	0	6295964	0	0

SCHEDULE CFL SUMMARY (As Computed)

Particulars	House Property Loss	Loss from business other than loss from speculative business including unabsorbed depreciation allowance u/s 35(4)	Loss from speculative business including unabsorbed depreciation allowance u/s 35(4)	Loss from specified business	Short Term Capital Loss	Long Term Capital Loss	Other Sources Loss (from owning race horses)
Total of earlier year losses	0	0	0	0	0	0	0
Adjustment of above losses in Schedule BFLA	0	0	0	0	0	0	0
Current Year Losses	0	0	0	0	0	0	0
Total loss Carried Forward to future years	0	0	0	0	0	0	0

12. We have noticed from the intimation order dated 04.04.2019 that the total long term capital loss claimed by the assessee was to the tune of Rs. 82,95,964/-; out of this the total loss of Rs. 20 lakhs has been adjusted



against the long term capital gain and remaining Rs. 62,95,964/- was claimed to be carried forward to the future years, but the Ld CPC has not determined the same. In this respect, the decision of Delhi Tribunal in the case of Fortum SAR B.V. vs. ACIT (ITA No. 2028/Del/2023) order dated 27.06.2024 relied by Ld. AR squarely covers the fact of the case in hand because in the said case while processing the return of income u/s 143(1) of the Act, the CPC while allowing carry forward of short term capital loss, denied the carry forward of long term capital loss without assigning any reason whatsoever. In that case, it was held that *“Thus, the action of the CPC in disallowing the claim of carry forward of long term capital loss is out-rightly perfunctory, illegal and without jurisdiction. It is also relevant to observe, as per the First proviso to Section 143(1)(a) of the Act, no adjustment shall be made u/s 143(1)(a) unless an intimation is given to the assessee of such adjustment either in writing or in electronic mode. The second proviso to Section 143(1)(a) says, the response received by the assessee on the show cause notice shall be considered before making any adjustment. In the facts of the present appeal, admittedly, no show cause notice in terms of first proviso to Section 143(1)(a) of the Act was issued by the CPC before carrying out the adjustment. In fact, learned First Appellate Authority has also accepted the aforesaid factual position. Thus, it is a proven fact on record that the assessee has been deprived of its valuable right of representation, thereby, the intimation issued u/s 143(1)(a) of the Act suffers from*



gross violation of rules of natural justice.” Thus while allowing the appeal, the Delhi Tribunal directed the AO to allow the assessee’s claim of carry forward of long term capital loss.

13. It is to be noticed that the legal ground regarding violation of first proviso of section 143(1)(a) of the Act by not sending the intimation, was not raised before the first appellate authority and has been raised first time before the Tribunal, therefore the concerned revenue authorities could not get the opportunity to rebut the same averment of the assessee and was required to ascertain from the assessment record as to whether the intimation order was communicated in compliance of first proviso of section 143(1)(a) of the Act or not. Further, we notice that the ITR with other documents has not been submitted by the assessee before us and in the absence of ITR and other documents, it cannot be ascertained if the long term capital loss pertains to the current year which can be legally and validly carry forward to the subsequent years. These facts and the documents need to be analyzed and necessary factual position needs to be ascertained and delineated by the concerned revenue authorities. In these facts and circumstances, we restore the case to the file of Ld. CIT(A) who shall examine the question raised by the assessee that no



intimation was communicated as is required in first proviso of section 143(1)(a) of the Act and in case no such intimation was issued/sent to the assessee after verifying the assessment record, the Ld. CIT(A) shall decide the matter afresh on the basis of material and directions given by us in this order. The Ld. CIT(A) shall also examine the issue of carry forward of loss after examining the necessary facts and shall give the benefit to the assessee after satisfying from the record by following the judgment of Coordinate Bench of ITAT Delhi in ITA No. 2028/Del/2023 (supra). Resultantly, the grounds raised by the assessee are allowed for statistical purposes.

14. In the result, appeal filed by the assessee is allowed for statistical purposes in above terms.

Order pronounced in the open court on 18.07.2025.

Sd/-
(OM PRAKASH KANT)
(ACCOUNTANT MEMBER)
Mumbai / Dated 18.07.2025
Dhananjay, Sr.PS

Sd/-
(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT



ITA No. 2516/Mum/2025
Nirmala Nawal Phatarphekar

4. DR, ITAT, Mumbai
5. Guard file.
//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai