

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
[Before Shri Mahavir Singh, JM & Shri Waseem Ahmed, AM]

I.T.A No.2166/Kol/2013
Assessment Year: 2009-10

Income-tax Officer, Wd-52(3), Kolkata. Vs. Ramesh Kr. Jajodia, Kolkata
(Appellant) (PAN: ADUPJ4066G)
(Respondent)

Date of hearing: 17.09.2015
Date of pronouncement: 07.10.2015

For the Appellant: Shri Sanjit Kr. Das, JCIT, Sr. DR
For the Respondent: Shri I. Banerjee, FCA

ORDER

Per Shri Mahavir Singh, JM:

This appeal by revenue is arising out of order of CIT(A)-XXXIII, Kolkata in Appeal No.65/CIT(A)-XXXIII/ITO-Ward-52(3),Kol/11-12 dated 02.05.2013.

2. The only issue in this appeal of revenue is against the order of CIT(A) in allowing carry forward speculation loss transaction not claimed in the original return and the return was not filed u/s.139(1) but filed u/s. 139(4) of the Act. For this, revenue has raised following two grounds:

“1. That on the facts and in circumstances of the case the CIT(A) erred in allowing the carry forward of the loss of speculative transactions of Rs.17,35,409/- not claimed in the original return.

2. That on the facts and in circumstances of the case the CIT(A) erred in appreciating the return claiming loss filed much after the expiry of the due date specified u/s. 139(1) and hence no carried forward and set off of loss is permissible.

3. Briefly stated facts are that the assessee filed his return of income for the relevant Y 2009-10 on 20.09.2009 u/s. 139(1) of the Act through e-filing. The assessee got his accounts audited u/s. 44AB of the Act and accordingly, the due date for filing of return falls on 30.09.2009 whereas he has filed return on 20.09.2009. The assessee disclosed loss u/s. 43(5) of the Act, from derivatives/speculative transaction at Rs.17,35,409/-. The assessee has not claimed this loss in the original return of income but total income was worked out on the basis of positive income. This return was not processed u/s. 143(1) of the Act by CPC, Bangalore accepted the acknowledgment of

return of income. Subsequently, after noticing the omission to incorporate and to give effect to the losses u/s. 43(5) of the Act amounting to Rs.17,35,409/- from derivative/speculative transaction was incorporated in the return of income and the return was revised u/s. 139(5) of the Act on 22.12.2009 which was again revised on 21.03.2010. The CPC, Bangalore vide its intimation u/s. 143(1) of the Act vide document no. CPC/0910/14/1004179889 dated 16.09.2010 allowed the short term capital loss of Rs.17,43,793/- but no effect was given to the speculative loss claimed from derivatives/speculative transaction at Rs.17,35,409/- u/s. 43(5) of the Act. Accordingly, assessee moved rectification application, which was also rejected by the ACIT, CPC, Bangalore. Consequently derivative loss/speculative loss derived u/s. 43(5) of the Act was denied. Aggrieved, assessee preferred appeal before CIT(A), who allowed the claim of the assessee by observing in para 7 as under:

“7. Considering the above facts, I am of the view, that clerical/typographical mistake in filling of columns while filing the return should not deprive the appellant benefit of carrying forward a loss for which he is otherwise entitled. At most it could be said that the columns of the return have not been filled in properly. As per provision of section 139(9), where a return furnished by the assessee is considered to be defective, the assessing officer may intimate the defect to the assessee giving him opportunity to remove the same within fifteen days or further time allowed. Clause (a) to the explanation to the said sub-section clarifies that unless necessary statements and columns in the return have been duly fill in, the return can be treated as defective. Therefore, my opinion this was a case of defect.ive return and the appellant should have been given opportunity to remove the defect by filling in the relevant schedules in a correct manner. The ACIT (CPC) on the other hand straight away disallowed the claim for loss and also rejected the application for rectification, which, for the reasons discussed above, is not proper. The assessing officer is therefore directed to obtain a corrected computation of returned income from the appellant and allow carry forward of the loss as per law.”

Aggrieved, now revenue is in appeal before us.

4. We have heard rival submissions and gone through facts and circumstances of the case. First of all we find that the original return filed by the assessee u/s. 139(1) of the Act was within the time allowed i.e. on or before 30.09.2009 being tax audit report was filed on 20.09.2009. The assessee revised the return finally on 21.03.2010 i.e. within the time allowed u/s. 139(5) of the Act. Even otherwise, this disallowance off loss claimed in speculative transactions u/s. 143(5) of the Act cannot be disallowed by acting u/s. 143(1) of the Act. Because this is a highly debatable issue and debatable issue cannot be adjudicated while passing intimation u/s. 143(1) of the Act.

Accordingly on merits, the CIT(A) rightly deleted the addition. Furthermore, we are of the view that even this being a highly debatable issue no disallowance can be made while passing intimation u/s. 143(1) of the Act. Hence, this appeal of revenue is dismissed.

5. In the result, the appeal of revenue is dismissed.
6. Order is pronounced in the open court on 07.10.2015

Sd/-
(Waseem Ahmed)
Accountant Member

Sd/-
(Mahavir Singh)
Judicial Member

Dated : 07th October, 2015

Jd. Sr. P.S

Copy of the order forwarded to:

1. APPELLANT – ITO, Ward-52(3) , Kolkata.
2. Respondent – Shri Ramesh Kr. Jajodia, 57/1, Kalitala Link Road, North, Purbanchal, Kolkata-700078 .
3. The CIT(A), Kolkata
4. CIT Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.