

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

Before Ms. Sushma Chowla, Vice President

Dr. B. R. R. Kumar, Accountant Member

(E-Court Module)

ITA No. 2789/Del/2015 : Asstt. Year : 2011-12

Sh. Roop Kishore Madan, A-9/4, Vasant Vihar, New Delhi	Vs	DCIT, Central Circle-21, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. ABWPM6914G		

Assessee by : Sh. Salil Agarwal, Adv.

Revenue by : Ms. Sunita Singh, CIT DR

Date of Hearing: 28.07.2020

Date of Pronouncement: 29.07.2020
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-16, New Delhi dated 16.03.2015.

2. Following grounds have been raised by the assessee:

"1. That Id. CIT (A) has grossly erred in confirming the disallowance of claim of set-off of "B/f un-absorbed Short Term Capital Loss Rs.49,83,312/-" against the current year's income from Short Term Capital Gain, which disallowance is bad in law and facts of the case."

3. The assessee filed return of income declaring Short Term Capital gains of Rs.15,22,00,000/- which was offered to tax during the search and seizure proceedings u/s 132(4) of the Income Tax Act, 1961. In the computation of income filed along with return of income, the assessee has filed the same amount under the head "Short Term Capital Gains" for the year. Out of the declared and returned STCG, the assessee has set off unabsorbed STCG which has been brought forward from the assessment year 2008-09 and allowed to be carried forward in the by the assessment order u/s 143(3)/153A for the assessment year 2010-11.

4. The Assessing Officer has disallowed the set off of such brought forward short term capital loss of Rs.49,83,312/- against the short capital gain declared during the year on the grounds that, the claim of the assessee is not tenable in view of the fact that in his statement recorded u/s 132(4), the assessee has not claimed the adjustment of brought forward loss on account of the short term capital gain declared.

5. The Id. CIT (A) supported the contention of Assessing Officer on the grounds that the additional income offered by the assessee was intended to offered to tax, the entire amount of Rs.15.22 crores **while making allowances for all such provisions provided for computation of total income under the Act.** The Id. CIT (A) held that the use of word "additional" has to be taken categorical, unambiguous and unequivocal.

6. Heard the arguments of both the parties and perused the material available on record.

7. The issue before us is whether or not, the brought forward short term capital loss which has been duly allowed by the department in the earlier years is eligible to be set off against the short term capital gains of the current year declared by the assessee ???

8. The relevant fact is that the assessment year in question has been framed consequent to a search action taken place at the premises of the assessee on 17.09.2010 and as such the assessment year under consideration is an assessment to be framed u/s 143(3) of the Act taking into consideration the relevant seized material, if any, being the assessment of the search year.

9. On going through the facts of the case, we do not find any merit in the contention of the Assessing Officer that the assessee has not claimed adjustment of brought forward loss in the statement recorded u/s 132(4). The Assessing Officer can neither expect the assessee to *suo moto* seek such set off against the brought forward losses nor expect the authorized officer recording the statement to pose a question regarding any brought forward losses, during the process of recording of the statement on oath during the search and seizure operation. Hence, we find that the rationale given by the Assessing Officer while disallowing the set off is not statutorily tenable.

10. The Id. CIT (A), having accepted the surrendered income which was offered under the short term capital gain as declared during the search proceedings u/s 132(4), failed to adhere to the provisions of computation of income as provided under the

Income Tax Act. The computation of income of the assessee is as under:

i) <u>Business Income</u> Net Loss as per P&L A/c		(19,08,891.64)
ii) Short Term Capital Gain for the year	15,22,00,000.00	
Less: Unabsorbed Short Term Loss B/f from A.Y.2008-09	<u>49,83,312.64</u>	14,72,16,687.36
iii) Income from House Property		2,69,500.00
iv) Income from other sources		4,44,436.56
Gross Taxable Income		14,60,21,732.00
Less: Deduction u/s 80CCC	1,00,000.00	
: Deduction u/s 80G	2,350.00	1,02,350.00
Net Taxable Income		14,59,19,382.00

11. We find that the assessee has filed the computation of income correctly. The computation filed is as per the scheme of computation provided in the Income Tax Act. The provisions of Section 74 of the Income Tax Act, 1961 clearly provides for set off of short term capital losses which can be allowed to be carried forward and set off against income, if any, under the head "capital gains" assessable for the assessment year in respect of any other capital asset.

12. The statute confers carry forward and set off of losses hence the same cannot be denied in the absence of any specific provisions or conditions laid down in the same statute to disallow such benefits. It is a fact on record that the short term capital loss which has been incurred in the assessment year 2007-08 and the same has been allowed by the revenue to be carried forward till the assessment year 2010-11, hence, the

same cannot be disallowed to be set off against the short term capital gain earned by the assessee during the assessment year 2011-12.

13. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 29/07/2020.

Sd/-

(Sushma Chowla)
Vice President

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 29/07/2020

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR