

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'SMC' BENCH,
NEW DELHI [THROUGH VIDEO CONFERENCE]**

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

**ITA No. 6476/DEL/2019
[Assessment Year: 2012-13]**

Shri Rakesh Kumar Pandita
SRB Instruments Pvt Ltd
B-28/34, Maurya Complex
Laxmi Nagar, Delhi

Vs.

The A.C.I.T
Circle - 24(1)
New Delhi

PAN: AFRPP 2611 N

[Appellant]

[Respondent]

Date of Hearing : 20.10.2021

Date of Pronouncement : 22.10.2021

Assessee by : Shri R.C. Chandiwala, CA

Revenue by : Shri Sanjiv Mahajan, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals] - 8, New Delhi dated 14.06.2019 pertaining to assessment year 2012-13.

2. The sum and substance of the grievance of the assessee is that the Id. CIT(A) erred in not allowing the adjustment of current year losses with income under section 115BBD of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short].

3. Briefly stated, the facts of the case are that the appellant company filed its return of income on 14.09.2012 declaring an income of Rs. 26,26,860/-. The same was processed by the CPC, Bangalore u/s 143(1) of the Act and the assessed income was Rs. 31,51, 660/-.

4. The assessee moved an application for rectification of error in the computation of assessed income while processing the same by CPC, Bangalore.

5. The mistake which was pointed out was that though the loss of current year adjusted was mentioned in the intimation u/s 143 (1) by the CPC at Rs. 22,53,768/- but the same was not adjusted while computing the assessed income. Since there was mistake apparent from record, the assessed sought rectification u/s 154 of the Act.

6. The claim of the assessee was dismissed by the Assessing Officer who was of the opinion that since the assessee has declared income u/s 115BBD of the Act and calculated the tax at special rate of 15%, therefore, the same cannot be set off against losses. Application under section 154 of the Act was rejected.

7. The assessee carried the matter before the Id. CIT(A) and reiterated its claim of set off.

8. The CITA was of the opinion that whether current year loss can be set off from the income declared under section 115BD of the Act is a highly debatable issue and a debatable issue cannot be rectified u/s 154 of the Act.

9. Before me, the learned counsel for the assessee reiterated what has been stated before the lower authorities. It is the say of the Id. counsel that due to inadvertent mistake, the assessee could not file complete details in the return of income which was processed by CPC, Bangalore. The Id. counsel for the assessee vehemently stated that the amount of current year loss has been specifically mentioned in the

intimation u/s 143(1) of the Act received from CPC, Bangalore. Therefore, the claim of set off should be allowed.

10. Per contra, the Id. DR strongly supported the order of the first appellate authority.

11. I have given thoughtful consideration to the orders of the authorities below. It is true that in the intimation u/s 143(1) of the Act, loss of the current year has been mentioned at Rs. 22,53,768/-. It is equally true that the assessee has returned income in respect of dividend received from a foreign company u/s 115BBD of the Act. Section 115BD reads as under:

“115BBD. (1) Where the total income of an assessee, being an Indian company, for the previous year relevant to the assessment year beginning on the 1st day of April, 2012 ²⁸~~28~~*[or beginning on the 1st day of April, 2013]* ^{28a}~~28a~~*[or beginning on the 1st day of April, 2014]* includes any income by way of dividends declared, distributed or paid by a specified foreign company, the income-tax payable shall be the aggregate of—

(a) the amount of income-tax calculated on the income by way of such dividends, at the rate of fifteen per cent; and

(b) the amount of income-tax with which the assessee would have been chargeable had its total income been reduced by the aforesaid income by way of dividends.

(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of this Act in computing its income by way of dividends referred to in sub-section (1).

(3) In this section,—

(i) "dividends" shall have the same meaning as is given to "dividend" in clause (22) of [section 2](#) but shall not include sub-clause (e) thereof;

(ii) "specified foreign company" means a foreign company in which the Indian company holds twenty-six per cent or more in nominal value of the equity share capital of the company.]”

12. As per clause (2), no deduction in respect of any expenditure or allowance should be allowed to the assessee under any provision of this Act in computing its income by way of dividends referred to in sub-section (1). Now, the interpretation of ‘expenditure’ or ‘allowance’ to cover current year loss is, in my considered opinion, a highly debatable issue and no precedences have been made available to me. Therefore, in these circumstances, I have no hesitation in upholding the findings of the Id. CIT(A). Ground raised by the assessee is dismissed.

13. In the result, the appeal filed by the assessee in ITA No. 6476/DEL/2019 is dismissed.

The order is pronounced in the open court on 22.10.2021.

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 22nd October, 2021.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
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