

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH, 'A' PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. /ITA No.35/PUN/2022

निर्धारण वर्ष / Assessment Year : 2015-16

Anagha Vijay Deshmukh, C/o. Shri Jaysing Laxmanrao Deshmukh, E-701, Waterfront Apartments, Kalyani Nagar, Yerawada, Pune 411 006 Maharashtra PAN : CBPPD3956E	Vs.	DCIT, CPC, Bengaluru
Appellant		Respondent

Assessee by

Ms. Seema M. Lonkar

Revenue by

Shri Ramnath P. Murkude

Date of hearing

25-01-2023

Date of pronouncement

30-01-2023

आदेश / ORDER

PER R.S. SYAL, VP :

Assail in this appeal is to not allowing carry forward of loss amounting to Rs.6,14,456/- under the head 'Capital gains' by the ld. CIT(A) in National Faceless Appeal Centre, Delhi u/s.250 of the Income-tax Act, 1961 (hereinafter also called 'the Act') for the assessment years 2015-16.

2. Succinctly, the factual matrix of the case is that the assessee is a non-resident staying in Edina, USA. She filed the return

electronically on 31-08-2015 declaring total income at Rs.1,15,500/- earned from rent and interest on fixed deposits etc., after claiming carry forward of loss under the head 'Capital gains' to the tune of Rs.43,221/-. The assessee filed a revised return on 04-07-2016 claiming carry forward of such loss for a sum of Rs.6,14,456/-. The latter return was processed u/s.143(1) of the Act disallowing carry forward of long term capital loss of Rs.6,14,456/-. A rectification petition was filed on 04-12-2018, which came to be dismissed by means of an order u/s.154 passed on 17-12-2018. The assessee carried the matter before the Id. CIT(A) contending that the revised return filed u/s.139(5), claiming carry forward of long term capital loss of Rs.6,14,456/-, ought to have been permitted. The Id. CIT(A) did not countenance the assessee's claim by holding that the original return filed by the assessee was invalid because of non-receipt of acknowledgement by the CPC. Hence, the so-called revised return was, in fact, a belated return filed beyond the time u/s.139(1) r.w.s.139(3). *Ex consequenti*, the claim of carry forward of loss under the head 'Capital gains' was not admissible. Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

3. We have heard both the sides and gone through the relevant material on record. There is no dispute that the assessee furnished original return electronically u/s.139(1) read with section 139(3) of the Act claiming carry forward of loss at Rs.43,221/- well before the prescribed due date. The authorities below have jettisoned the assessee's claim of carry forward of loss of Rs.6,14,456/- as per the revised return on the ground that the original return filed by the assessee was invalid for her non sending of acknowledgement to the Central Processing Unit (CPC) and hence, the claim of carry forward of the loss was not admissible in terms of section 139(3) of the Act. This section provides that if any person has sustained loss in any previous year, *inter alia*, under the head 'Capital gains' and claims carry forward of such loss, then, he must furnish return within the time allowed u/s.139(1). Thus, it is evident that filing of return u/s.139(1) r.w.s.139(3) before the due date as per section 139(1) is *sine qua non* for carry forward of loss under the head 'Capital gains'. In the instant case, the assessee furnished her original return electronically on 31-08-2015, which is otherwise before the prescribed due date. The only reason assigned for declaring the original return as invalid is her non sending of acknowledgement

of such return to the Central Processing unit of the Department. At the material time, requirement of furnishing the return electronically had another procedural requirement of taking a print out of such electronically filed return and sending it to the CPC as an acknowledgement of having furnished the return electronically. A cursory look of these two requirement transpires that whereas the first one of furnishing the return electronically is a mandatory one, the second one of sending acknowledgement of such filed return to the CPC is only directory. Non-compliance or late compliance of the second procedural requirement cannot invalidate the compliance of the first mandatory requirement, so as to make an otherwise valid return a *non est*. Since the procedural requirement of furnishing the acknowledgement of the electronically filed return is only a directory requirement, one cannot equate the non-submission of such acknowledgement on one hand with not filing of the return at all, so as to make both the cases as those of non-filing of return. Here is a case in which albeit the assessee did not furnish the acknowledgement to the CPC at the material time but filed the same later on with a request to condone the delay. Evidence from the Income-tax Departmental portal in this regard has been placed before us,

which records “*E-verified after due date. Your condonation request is forwarded for approval*”. Notwithstanding the fact that the assessee’s request for condonation of the delay in furnishing the acknowledgement with CPC is still pending, in our considered opinion, this, being a procedural requirement, cannot invalidate the otherwise valid return filed u/s.139(1) of the Act. We order accordingly and hold that the assessee furnished original return within the time allowed u/s 139(1) of the Act.

4. Next relevant issue is as to whether filing of the revised return, after the time stipulated u/s.139(1), claiming carry forward of loss at a higher level, can be allowed to be carried forward within the meaning of section 139(3) of the Act. Stipulation for carry forward of the loss is that the return claiming the loss must be furnished before the time prescribed under section 139(1) of the Act. The Id. DR strenuously argued that even if the original return filed by the assessee is treated as valid, still loss to the extent only of Rs.43,221/- can be allowed to be carried forward, which was the amount as per the original return and not the enhanced amount of loss that was claimed in the revised return filed after the due date u/s.139(1) of the Act, thereby breaching the mandate of section 139(3), which says that the loss can be

carried forward only if the return is filed before the due date as per section 139(1) of the Act. This contention is sans merit. Once a revised return is filed within the time permitted u/s.139(5), it substitutes the original return in all respects. It is construed as if the particulars furnished in the revised return were the particulars furnished in the original return and that such return was filed on the date when the original return was filed. If that is the position, we fail to comprehend as to how the enhanced amount of carry forward of loss of Rs.6,14,456/- claimed in the revised return [filed after the due date u/s.139(1) but within the time prescribed u/s.139(5)] can be restricted only to the extent of loss of Rs.43,221/- [claimed in the original return u/s 139(1)]. Since the assessee furnished the revised return within the stipulated period claiming loss at a higher level, it is this enhanced amount of loss which will be considered for carry forward to the next year(s) as the original return has been held to be validly filed and consequently the revised return will substitute the original return in all respects including the aspect of date of filing also. We, therefore, overturn the impugned order *pro tanto* and direct to allow carry forward of loss of Rs.6,14,456/-.

5. In the result, the appeal is allowed.

Order pronounced in the Open Court on 30th January, 2023.

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 30th January, 2023
सतीश

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The CIT(A) concerned, Pune
4. The Pr.CIT concerned, Pune
5. DR, ITAT, 'A' Bench, Pune
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	25-01-2023	Sr.PS
2.	Draft placed before author	25-01-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

*