

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “D”: NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 2028/DEL/2023
Assessment year: 2022-23**

Fortum SAR B.V. Lage Mosten 55, 4822 Breda, The Netherlands. PAN- AADCF 9813 E	<u>Vs</u>	Assistant Director of Income Tax, Central Processing Centre, Bengaluru DCIT- 1(3)(1), International Taxation, Delhi.
APPELLANT		RESPONDENT
Assessee represented by	Shri S.K. Aggarwal, CA	
Department represented by	Shri Vijay B vasanta, CIT (DR)	
Date of hearing	13.06.2024	
Date of pronouncement	27.06.2024	

ORDER

PER SAKTIJIT DEY, VP:

The captioned appeal, by the assessee, arises out of order dated 18.05.2023 of learned Commissioner of Income Tax (Appeals)-42, New Delhi, pertaining to the assessment year 2022-23. Grounds raised by the assessee are as under:

“1. *The Hon'ble Commissioner of Income Tax (Appeal), Delhi- 42 [the Hon'ble CIT(A)] erred in facts and in law in not allowing carry forward of*

current year's loss of the Appellant to INR 93,045,891 from the returned loss of INR 414,163,099/- under the Act

2. The Hon'ble CIT(A) erred in facts and in law in giving directions to the Appellant and/or CPC/jurisdictional Assessing Officer to submit a reply issue notice for proposed adjustment, without concluding the matter on merits, which is beyond the powers of the Hon'ble CIT(A)

3. The Hon'ble CIT(A) erred in facts and in law in not holding that the order passed by the Ld. AO under section 154 read with section 143(1) of the Act, is bad in law and needs to be quashed despite accepting that there is a clear procedural irregularity by CPC while processing of return

4. The Hon'ble CIT(A) erred in facts and in law in holding that adjustment of denial of carry forward of loss is within the scope of section 143(1) of the Act, despite accepting the fact that the return of income was filed by the Appellant within the due date prescribed under section 139(1) of the Act.

5. The Hon'ble CIT(A) erred in facts and in law in not giving due opportunity of hearing to the Appellant for explaining the relevant facts prior to passing the order under section 250 of the Act.”

2. As could be seen from the grounds raised, the primary issue arising for consideration is with regard to denial of assessee's claim of carry forward of long term capital loss. Of course, there are ancillary grounds challenging the validity of adjustment made u/s 143(1)(a) of the Act as well as the authority of learned First Appellate Authority to remand the matter back to the Assessing Officer (“AO”).

3. Briefly, the facts are, the assessee, as stated, is a non-resident company, incorporated in Netherlands. The assessee is an investment holding company. The assessee had a wholly owned subsidiary in India, namely, Sprng Solar India Private Limited (formerly known as Fortum Solar India Private Limited). Besides

making investment in the Indian subsidiary, the assessee had also subscribed to compulsory convertible debentures ('CCDs'), issued by the subsidiary company. In financial year 2021-22, relevant to the assessment year under dispute, the assessee had transferred its investments in equity shares and CCDs held in Indian subsidiary to a third party investor and incurred short term capital loss of Rs. 9,30,45,891/- and long term capital loss of Rs. 32,11,17,208/-. In the return of income filed for the impugned assessment year on 21.11.2022, the assessee declared income of Rs. 20,62,33,580/- and claimed carry forward of short term capital loss of Rs. 9,30,45,891/- and long term capital loss of Rs. 32,11,17,208/-. While processing the return of income filed by the assessee, the Centralized Processing Centre ('CPC'), though allowed carry forward of short term capital loss of Rs. 9,30,45,891/-, however, carry forward of long term capital loss of Rs. 32,11,17,208/- was denied. After receiving the intimation issued u/s 143(1) by the CPC, the assessee moved an application u/s 154 of the Act seeking rectification of mistake. However, the said application was disposed of against the assessee upholding the disallowance of carry forward of long term capital loss. Against the order passed u/s 154 of the Act, assessee preferred an appeal before learned First Appellate Authority, inter alia, on the grounds:

- That there is no power vested with CPC u/s 143(1)(a) to disallow carry forward of loss;

- That the intimation issued u/s 143(1)(a) and the order passed u/s 154 of the Act are non-speaking, without assigning the reasons for disallowance of carry forward of loss;
- That before disallowing carry forward of loss no show cause notice was issued to the assessee in terms of proviso to Section 143(1)(a) of the Act; and
- That the assessee having filed a return of income within due date prescribed u/s 139(1) of the Act, claim of carry forward of loss could not have been denied;

4. While deciding the appeal of the assessee, the learned Commissioner (Appeals) held that the language of Section 143(1)(a) of the Act provides for adjustment with reference to for the purpose of computation of total income or loss. Therefore, CPC has power to deny carry forward of loss while processing the return u/s 143(1)(a) of the Act. He further held that since the application u/s 154 of the Act is in respect of an order u/s 143(1)(a) of the Act, for processing of return by the CPC through computerized system, without any human interference, therefore, no speaking order is contemplated in law at this stage. As regards assessee's contention that before making adjustment u/s 143(1)(a) of the Act no show cause notice was issued to the assessee, learned First Appellate Authority accepted it and issued the following directions to the CPC/Assessing Officer:

“14.4 The language of proviso makes it clear that the requirement of giving intimation to the appellant before making an adjustment to the returned income/ loss is mandatory in nature. As in this case, it is undisputed that no such notice was issued prior to the issue of intimation, there is a clear procedural irregularity made by the CPC AO while processing the return. The appellant is therefore, given an opportunity to submit reply to the CPC

within 30 days of this order to be considered by the CPC before processing the return, as per law. If the facility of uploading reply is not available on the e-filing portal, the CPC/AO is directed to give an intimation as required under proviso to section 143(1) of the Act so that the appellant can submit reply and take necessary action as per law after considering the response of the appellant, if any received within the statutory time period of 30 days. The re-processing after considering the reply of the appellant, shall take care of all the issues raised in this appeal. These grounds are disposed-off accordingly.”

5. Before us learned counsel appearing for the assessee reiterated the stand taken before learned First Appellate Authority. He submitted that Section 143(1)(a) of the Act does not empower the CPC to deny carry forward of loss once return of income is filed within the due date. He further submitted that under section 250 read with Section 251 of the Act, the First Appellate Authority has no power of remand. He submitted, once learned First Appellate Authority was satisfied that mandatory condition of issuing show cause notice prior to adjustment as provided u/s 143(1)(a) of the Act has not been provided, he should have quashed the order passed by CPC and allowed assessee's claim or, at least, decided the issue on merits instead of remanding the matter to the CPC/Assessing Officer, as no such power of remand is vested with the First Appellate Authority. In support of his contention, learned counsel relied upon the following decisions:

- Arun Kumar Bose v. ITO 158 taxmann.com 282 (Calcutta HC);
- Sapphire Land Development (P) Ltd. v. DCIT 147 taxmann.com 50 (Mum Trib.);
- ACIT v. Sabarigiri Trust 43 taxmann.com 19 (Cochin Trib.);

- Arham Pumps v. DCIT [2022] 140 taxmann.com 204 (Ahmedabad – Trib.);
- ITO v. Camellia Educare Trust 152 taxmann.com 304 (Kolkata-Trib.).

6. Learned Departmental Representative relying upon the observations of learned First Appellate Authority submitted, the directions issued by learned First Appellate Authority is fair and reasonable as he has provided an opportunity to the assessee to represent the case before the CPC/Assessing Officer.

7. We have considered rival submissions and perused materials on record. We have also applied our mind to the case laws relied upon. Undisputedly, in the return of income filed for the impugned assessment year the assessee had claimed carry forward of capital loss amounting to Rs. 41,41,63,099/- comprising of short term capital loss of Rs. 9,30,45,891/- and long term capital loss of Rs. 32,11,17,208/-. 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 u/s 143(1)(a) of the Act suffers from gross violation of rules of natural justice.

7.1 Learned First Appellate Authority has glossed over the issue of violation of the mandatory condition of section 143(1)(a) of the Act by stating that it is a mere procedural irregularity, which, according to us, is unacceptable. More surprising is the way in which assessee's application u/s 154 of the Act was dealt with. A perusal of the order passed u/s 154 of the Act clearly reveals that assessee's application u/s 154 was disposed of in a grossly perfunctory manner without assigning any reasons whatsoever as to why the claim of carry forward of long term capital loss is to be denied and what is the lacuna in assessee's claim. Thus, neither the intimation issued u/s 143(1)(a) nor the order passed u/s 154 of the Act

provides any basis for disallowance of assessee's claim of carry forward of long term capital loss. Unfortunately, learned First Appellate Authority has supported the disposal of assessee's application u/s 154 of the Act through a non-speaking and unreasoned order by stating that since 154 application was to be disposed of by CPC through a computerized system without any human interfere, there is no requirement for passing a speaking order. The aforesaid reasoning of the First Appellate Authority, in our view, is wholly misconceived and against the principle of audi alteram partem. In our view, the assessee cannot be left remediless against an order passed u/s 143(1)(a) of the Act.

7.2 The next issue which arises for consideration is, whether the First Appellate Authority is justified in restoring the issue to the CPC/AO with a direction to issue a show cause notice to the assessee and pass a fresh intimation u/s 143(1)(a) of the Act. On going through the provisions of Section 250 of the Act, we are of the view that learned First Appellate Authority could not have issued such direction as section 250 read with section 251 of the Act does not vest any power with the first Appellate Authority to restore/remand the appeal to the AO. Even otherwise also, it is a fact on record that the assessee has claimed set off and carry forward of loss in a return of income filed u/s 139(1) of the Act within due date. Neither the CPC nor the first Appellate Authority have given any adverse observation with regard to the genuineness of the loss claimed. Thus, once the claim of carry forward of loss

is in accordance with statutory provisions, such claim has to be allowed. There is no observation by the Departmental Authorities that assessee's claim is not in accordance with the statutory provisions. In fact, CPC has allowed carry forward of short term capital loss. However, claim of carry forward of long term capital loss was denied for some unknown reasons. At least, no such reason is forthcoming from any of the orders of the departmental authorities. In this view of the matter, we are unable to uphold the adjustment made by the CPC. The Assessing Officer is directed to allow assessee's claim of carry forward of long term capital loss as well.

8. In the result, appeal is allowed as indicated above.

Order pronounced in open court on 27.06.2024.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

Dated:27.06.2024.

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI

