

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "F", MUMBAI
BEFORE SHRI R.S. SYAL (AM) & SHRI V. DURGA RAO (JM)**

**I.T.A.Nos.3485 & 3487/Mum/2010
(A.Ys. 2002-03 & 2007-08)**

Mr. Faisal Abbas, 405, Venus Apartment, 4 th floor, North Main Rd., Koregaon Park, Pune-411001. PAN: ACPPA6146G	Vs.	Dy. Commr.of Income-tax, Cent.Cir. 2, Mumbai.
Appellant		Respondent

Appellant by		Shri K. Gopal.
Respondent by		Shri Shantam Bose.

Date of hearing	20-10-2011
Date of pronouncement	25-10-2011

ORDER

PER R.S. SYAL, AM :

These two appeals by the assessee relate to assessment years 2002-03 and 2007-08. Since some of the issues raised in these appeals are common, we are, therefore, proceeding to dispose them by a consolidated order for the sake of convenience.

A.Y. 2002-03:

2. The first ground is against confirmation of addition of Rs.2,62,184/- paid in cash out of total disallowance of Rs.5,55,284/- made for purchase of car. Briefly stated, the facts of the case are that search action was taken against the assessee on 05-01-2007. Notice u/s. 153A was issued, in response to which the assessee filed return declaring total income at Rs.2,02,500/-. During the course

of assessment proceedings, it was observed by the AO that the assessee purchased one Maruti Esteem car on 13-11-2001. On being called upon to explain the source of the purchase of car, the assessee stated that a sum of Rs.2,62,184/- was contributed by him in cash out of earnings and the remaining amount of Rs.2,93,100/- came as loan taken from Standard Chartered Bank for the purchase of the car. Not satisfied, the AO made addition of Rs.5,55,284/- towards the purchase price of the car. The Id. CIT(A) allowed relief to the extent of loan taken from the Standard Chartered Bank. The assessee is aggrieved against the sustenance of balance addition.

3. After considering the rival submissions and perusing the relevant material on record, it is observed that the assessee did not file his return of income for the current year within the time allowed u/s.139(1). It was only pursuant to search action taken on 05-01-2007 that the return for the year was filed in response to notice u/s.153A. The assessee purchased car for Rs.5.55 lakhs. Loan of Rs.2.93 lakhs was arranged from Standard Chartered Bank. The remaining amount of Rs.2.62 was claimed to have been contributed out of own funds. It is an admitted position that the assessee did not file return of income for the current year and as such no balance-sheet etc. for the year could have been filed with the Revenue. As regards explanation tendered by the assessee towards source of self finance, it is observed that the explanation so given is devoid of any merit for the reason that the capital account of the assessee, copy placed at page 43 of the paper book, for the year in question does not show the withdrawal for the purchase of car. Total drawings have been shown at Rs.94,508. As against that, the assessee paid Rs.2.62 lakhs in cash for the purchase of car. The drawings so shown are hardly sufficient to meet day to day expenses for the year leaving nothing for the purchase of car. Further car is not appearing on the asset side of

the balance sheet of the assessee. As such, we are of the considered opinion that the Id. CIT(A) was justified in sustaining addition to this extent.

4. The other grounds in this appeal are against the disallowance of set off of brought forward business loss. The facts apropos these grounds are that the assessee in his return u/s.153A claimed set off of business loss of Rs.1,45,021/- and speculation loss of Rs.2,50,950 against the current income. The AO did not grant the set off on the ground that the set off, which was not claimed in the original return of income, could not be allowed in the return filed in response to notice u/s.153A. Before the Id. first appellate authority also, the assessee contended that the loss was incurred by him in assessment year 2001-02 and the same ought to have been allowed. The Id. CIT(A) echoed the assessment order by relying on a judgment in E.K. Lingamurthy & Anr. Vs. Settlement Commission (2007) 293 ITR 76 (Mad.).

5. We have heard the rival submissions and perused the relevant material on record. It is observed from the copy of return filed by the assessee for assessment year 2001-02 on 31-10-2001 that loss of Rs.27,26,360/- under the head "Profits & gains of business or profession" was declared. The said return for the year was duly filed within the time allowed u/s.139(1). We are currently dealing with assessment year 2002-03 in which the assessee has claimed set off of the brought forward business loss against the income for the current year. In our considered opinion, the authorities below were not justified in not granting the set off of the brought forward business loss for the reason that the requirement to file return within the time prescribed u/s.139(1) is for carrying forward the loss. Once loss is determined in the return file u/s.139(3), the assessee becomes eligible for set off against the income of the subsequent years

irrespective of the fact whether the returns of such later years are filed u/s.139(1) or not. Sec. 80 read with sec. 139(3) requires the submission of return for loss before the due date. There is no such requirement that the subsequent years, in which the set off is claimed, must also fulfill the requirement of furnishing the returns within the time required u/s.139(1).

6. It is further important to note that sec. 153A dealing with assessment in case of search provides for the issuance of notice to the assessee in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted. Sec. 153A(1)(a) clearly provides that "the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139". From the prescription of sec. 153A, it is apparent that the return filed in response to notice u/s.153A is treated as the return filed u/s.139. If that is the position, we are unable to appreciate as to how the loss determined for the immediately preceding year will not be available to the assessee for the set off against the current year's income declared in the return filed u/s.153A.

7. In so far as the reliance of the Id. CIT(A) on the case of E.K. Lingamurthy (supra) is concerned, we find that the same is misplaced because this judgment has been rendered in the context of block assessment under Chapter XIVB. Section 158BA requires the assessment of "undisclosed income" as a result of search. Section 158BB(4) clearly provides that the losses brought forward etc. shall not be set off against the undisclosed income determined in the block assessment under this Chapter but may be carried forward for being set off in the

regular assessment. The position is quite different in the case of assessment u/s.153A. Under the substituted mode of assessment pursuant to search, the requirement is to assess or re-assess the "total income" in respect of each assessment year falling within such six assessment years as contrary to the determination of "undisclosed income" u/s.158BC for the block period. There is no provision analogous to sec. 158BB(4) in section 153A etc.

8. In view of the foregoing reasons, we are satisfied that the assessee is entitled to set off of the brought forward business loss against the income of the current year as per law. As the composition of the total income for the current year is not available on record, we set aside the impugned order and restore the matter to the file of AO for allowing the set off of the brought forward business loss against the current year's income as per law after allowing a reasonable opportunity of being heard to the assessee.

9. In the result, the appeal is partly allowed for statistical purposes.

A.Y. 2007-08:

10. The only issue raised in this appeal is against the confirmation of disallowance of set off of brought forward business loss for assessment year 2001-02.

11. We have heard the rival submissions and perused the relevant material on record. The sum and substance of the submissions advanced by both the sides is the reiteration of the arguments made for assessment year 2002-03 above. In the said case for assessment year 2002-03, we have held that the brought forward loss determined for assessment year 2001-02 has to be allowed against

the current year's income. Presently, we are dealing with assessment year 2007-08. The assessee is claiming that the brought forward business loss of Rs.14.07 lakhs be allowed against the current year's income. However, no details have been furnished about the income earned and returned for assessment years 2003-04 upto assessment year 2006-07. The loss determined in assessment year 2001-02 is eligible for reducing the income for assessment year 2002-03 onwards upto the time it is completely exhausted as per the relevant provisions. If, suppose, in assessment year 2003-04 or a later year, there is income below the taxable limit, the assessee cannot claim the benefit of brought forward losses as such without reducing it with the income for such year. The crux of the matter is that the brought forward business loss has to be mandatorily set off against the income of the subsequent year, whether or not it is below the taxable limit. Since the necessary details about the income for assessment years 2003-04 to 2006-07 are not available on record, we set aside the impugned order and restore the matter to the file of AO for deciding this issue as per our above observations after consulting the relevant records. Needless to say the assessee will be allowed a reasonable opportunity of being heard.

12. The appeal is allowed for statistical purposes.

Order pronounced on the 25th day of October, 2011.

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Sd/-
(R.S. SYAL)
ACCOUNTANT MEMBER

Mumbai: 25th October , 2011.

NG:

Copy to :

1. Department.
2. Assessee.
- 3 CIT(A)-36, Mumbai.
- 4 CIT(Central)-1, Mumbai.
5. DR, "F" Bench, Mumbai.
6. Master file.
(TRUE COPY)

BY ORDER,

Asst. Registrar, ITAT, Mumbai.

	Details	Date	Initials	Designation
1.	Draft dictated on	20-10-11		Sr.PS/
2.	Draft Placed before author	21-10-11		Sr.PS/
3.	Draft proposed & placed before the Second Member			JM/AM
4.	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/
6.	Kept for pronouncement on			Sr.PS/
7.	File sent to the Bench Clerk			Sr.PS/
8.	Date on which the file goes to the Head clerk			
9.	Date on which file goes to the AR			
10.	Date of dispatch of order			

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