

**IN THE ITAT CHANDIGARH BENCH 'A'**  
**Ambala Central Cooperative Bank Ltd.**

**v.**

**Income-tax Officer, Ward-1, Ambala**

H.L. KARWA, VICE-PRESIDENT  
AND T.R. SOOD, ACCOUNTANT MEMBER  
IT APPEAL NO. 332 (CHD.) OF 2012  
[ASSESSMENT YEAR 2009-10]  
MAY 23, 2012

**ORDER**

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**T.R. Sood, Accountant Member** - In this appeal the assessee has raised the following grounds:

- "1 As per the facts and circumstances of the case and as per the provisions of law, the Id. CIT(A) has erred in not amending the order of the Assessing Officer by adjusting the brought forward losses claimed in the return and reducing the income to Nil.
2. As per the facts and circumstances of the case and as per the provisions of law, the brought forward losses be set off against the current year income and the intimation as well as the rectification order be amended and the demand be vacated accordingly.
3. As per the facts and circumstances of the case and as per the provisions of law, the assessee has been put to unjustified inconvenience by resorting to appeals at various levels. It is prayed that exemplary cost should be awarded in terms of subsection (2B) of section 254 of Income-tax Act, 1961 for forcing the assessee to file this appeal."

**2. Ground Nos. 1 and 2** - After hearing both the parties we find that the assessee had filed its return through electronic media in which the income of Rs. 9,53,75,262/- was declared. However, there were carry forwarded losses of Rs. 12,43,94,853/- out of which a loss amounting to Rs. 9,53,75,262/- was set off during the year and the balance amount was carry forwarded to the future years. In the electronic processing the loss set off was shown at Zero. Accordingly the assessee made an application u/s 154 of the Act for rectification of the same. The application was rejected by stating that the assessee had filed return declaring income and no loss was claimed by the assessee.

**3.** On appeal, it was mainly stated that the assessee had incurred losses in the earlier year, the same should have been allowed to be set off against the current income and the rejection of set off of losses was not justified.

4. The Id. CIT(A) rejected this application by stating that the scope of rectification proceedings was limited and it was also observed that set off of losses cannot be a matter of rectification and in this regard reliance was placed on *CIT v. Chaltan Vibhag Udyog Khand Sahakari Mandli Ltd.*, 282 ITR 385. It was also observed that after 1.6.1999 no adjustment to the total income declared by the assessee, can be made. Since the intimation was issued to the assessee after 1.6.1999, the rectification was not possible.

5. Aggrieved by the above order, the assessee has filed an appeal before the Tribunal. The Id. counsel of the assessee submitted that the assessee had filed return electronically in which the income of Rs. 9,53,75,262/- was declared. However, the assessee had claimed set off of carry forward losses to this extent out of total carry forward losses of Rs. 12,43,94,853/-. In this regard he referred to page 16 of paper book which is schedule of losses carried over to future years. The schedule clearly shows that the total losses were Rs. 12,43,94,853/- out of which losses amounting to Rs. 9,53,75,262/- was set off during the year and the balance loss of Rs. 2,90,19,591/- was carry forwarded. He referred to page 24 which is a copy of the intimation u/s 143(1) of the Act and pointed out that the first Column which reads – as provided by tax payer in return of income clearly shows the loss of previous year adjusted was at Rs. 12,43,94,853/- which clearly shows that the assessee had made a claim of loss and therefore, the Assessing Officer and the Id. CIT(A) are wrong in saying that the assessee had not claimed any loss. In fact, the loss allowed to be set off is shown as Zero which means electronically no set off of loss was allowed and the demand was raised against which the assessee had filed rectification application. He then referred to page 45 and pointed out that later on rectification order was issued by Centralized Processing Centre (in short 'CPC') through which loss amounting to Rs. 9,53,75,262/- was adjusted. However, it does not show the balance loss to be carry forward. Accordingly the authorities below were wrong in stating that the assessee had never claimed loss and this loss should be allowed to be set off as well as loss which is not absorbed during the year should be allowed to be carry forward.

6. On the other hand, the Id. DR for the revenue strongly supported the order of the Id. CIT(A).

7. We have heard the rival submissions carefully and find force in the submissions of the Id. counsel of the assessee. The copy of return as well as the processing done by the CPC clearly shows that the assessee had claimed set off of losses amounting to Rs. 9,53,75,262/- out of total carry forwarded losses of Rs. 12,43,94,853/-. Further the assessee had also filed the copy of return for earlier years which shows that the losses were returned in those years. Once the losses have been claimed the same were required to be allowed as set off after verification that such losses were determined losses. We do not agree with the findings of the Id. CIT(A) that set off of losses cannot be a matter of rectification in view of the judgment of Hon'ble Gujarat High Court in case of *CIT v. Chaltan Vibhag Udyog Khand Sahakari Mandli Ltd.*, 282 ITR 385. In that case the issue was regarding rectification of priority of carry forwarded items i.e. of deduction of carry forward losses, current development rebate etc. In the background of that decision it was held as under:

"that the question of the order of priority amongst different items like carry forward loss business of earlier years, unabsorbed development rebate of earlier years, etc., was not free

from doubt. The action u/s 154 of the Act could not be sustained in the absence of any mistake apparent from the record and no rectification was permissible."

Therefore, from the above it is clear that the issue was quite different i.e. what is the priority for adjusted carry forward losses, development rebate etc., whereas in case before us, simple issue is whether the carry forward losses can be set off or not? Therefore, we are of the opinion that if the losses have already been determined the same were required to be allowed as set off against current income of the assessee. In fact, the CPC has itself later on issued a rectification order (see page 45) wherein the losses to the extent of Rs. 9,53,75,262/- has been allowed to be set off. However, there is no mention of carry forward of losses. Therefore, we set aside the order of the Id. CIT(A) and direct the Assessing Officer to verify the figures of losses determined already on record and allow the set off as well as carry forward of such losses.

**8. Ground No. 3** - The Id. counsel of the assessee submitted that the assessee has been unnecessarily put to hardship by way of raising a demand in excess of Rs. 3.00 crore and unnecessary litigation by the Department. Therefore, suitable cost should be imposed on the revenue.

**9.** On the other hand, the Id. DR for the revenue submitted that the Assessing Officer was doing his duty while adjudicating the matter and therefore, no cost should be imposed. Further no cost can be possibly imposed on the appellate authority. Therefore, this is not a fit case for levy of cost.

**10.** We have heard the rival submissions carefully and agree with the Id. DR for the revenue that the orders have been passed while performing the statutory duties by the Assessing Officer and therefore, it is not a fit case for levy of cost. The appellate authorities normally express their judicial opinion and therefore, opinion expressed by the Id. CIT(A) in this case also remains only a judicial opinion. His judicial opinion may not be correct but that does not call for levy of cost. Hence we decline to accept the request that the cost should be imposed on the revenue.

**11.** However, we would like to take this opportunity to bring to the notice of CBDT that after the procedure of Central processing of returns, many issues have come before various forums where unnecessary demands have been raised due to non-grant of TDS, wrong computation of income, adjustment of the previous year demand which have already been deleted by the jurisdictional assessing officer. Therefore, we would like to urge the CBDT to take up this matter urgently and establish proper coordination between the assessing authority and Central Processing Authority so that these problems are immediately solved and unnecessary litigation can be avoided. Copy of this order should be forwarded to the Chief Commissioner of Income-tax, Chandigarh and Chairman of CBDT for necessary action.