

TAX FLASH NEWS

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Set-off of brought forward business loss of earlier years is allowed against income from capital gains

Recently, the Karnataka High Court in the case of Nandi Steels Ltd.¹ dealt with the issue of set-off of brought forward business loss of earlier years against income from capital gains. The Karnataka High Court has held that the taxpayer was entitled to set-off brought forward loss of earlier years against income which has the attributes of business income even though the same is assessable to tax under a head other than profits and gains from business. The Karnataka High Court has relied on the decision of the Supreme Court in the case of Cocanada Radhaswami Bank Ltd².

Facts of the case

The taxpayer is a limited company carrying on the business of manufacture of iron and steel. The taxpayer filed a return for the Assessment Year (AY) 2003-04. The return was processed under Section 143(1) of the Income-tax Act, 1961. Thereafter, the Assessing Officer (AO) issued a reassessment notice. Reason for reopening the case was that the taxpayer had set off the carried forward business loss of earlier years against the income declared under the head capital gains arising out of sale of land along with building and bore well. The AO disallowed the set-off of brought forward business loss and held that set-off of brought forward loss against capital gain is contrary to the provisions of law. The CIT(A) upheld the order of AO. Aggrieved, the taxpayer filed an appeal before the Bangalore Tribunal.

In respect of the issue pertaining to set-off of brought forward of business loss, the tribunal made a reference to the President for constitution of Special Bench of the Tribunal. The Special Bench of the Tribunal rejected the grounds raised by the taxpayer in respect of set-off of brought forward business loss. The taxpayer filed an appeal before the High Court.

High Court's decision

Proviso to Section 72(1)(i)³ was omitted by Finance Act, 1999 with effect from 1 April 2000. Therefore, for the AY 2003-04, the taxpayer was not required to have carried on the business for the purposes of set-off of brought forward business. It is a well settled rule of statutory interpretation that intention of statute has to be gathered from the language employed by the legislature which means attention has to be paid to what has been said and what has not been said.

In GVK Industries Ltd.⁴ the Supreme Court dealt with the legal maxim expression *unius est exclusio alterius* and held that express mention of one thing implies the exclusion of another. Section 72(1) employs the expression computation 'under the head profits and gains or profession', whereas, Section 72(1)(i) does not use the expression under the head. Thus, the legislature has consciously left it open that any income from business though classified under any other head can still be entitled to the benefit of set-off.

The special bench of the Tribunal relied on the decision of the Supreme Court in Express Newspapers⁵ and held that the taxpayer was not entitled to brought forward business loss against interest on capital gains. Thereafter the decision of Express Newspapers was considered in Chugandas⁶ and Cocanada Radhaswami Bank Ltd.⁷ subsequently.

In case of Cocanada Radhaswami Bank Ltd. the Supreme Court dealt with the question of set-off of business loss which was brought forward from preceding year against the entire income including interest on securities held by the taxpayer. The decision was held in the favour of taxpayer.

³ Condition regarding continuity of same business for the allowability of loss under Section 72

⁴ GVK Industries Ltd. v. ITO [2011] 332 ITR 130 (SC)

⁵ CIT v. Express Newspapers [1964] 53 ITR 250 (SC)

⁶ CIT vs. Chugandas [1965] 55 ITR 17 (SC)

⁷ Cocanada Radhaswami Bank Ltd. [1965] 57 ITR 306 (SC)

¹ Nandi Steels Ltd. [ITA No. 103/Kar/2012] - Taxsutra.com

In Cocanada Radhaswami Bank Ltd. the Supreme Court dealt with Section 24(2) which is pari materia with Section 72. Therefore, the aforesaid decision applied to the fact situation of the present case. In view of aforesaid enunciation of law, the taxpayer was entitled to set-off brought forward loss against income which has the attributes of business income even though the same is assessable to tax under a head other than profits and gains from business.

Our comments

Set-off of brought forward business losses of earlier year with the income from various other sources has been a matter of debate.

The Special Bench of the Bangalore Tribunal relying on the Supreme Court decision in the case of Express Newspapers rejected the taxpayer's claim to set-off brought forward business loss against income from capital gains.

However, the Karnataka High Court in the instant case relied on subsequent Supreme Court decision in case of Cocanada Radhaswami Bank Ltd. and held that the taxpayer was entitled to set-off brought forward loss against income which has the attributes of business income even though the same is assessable to tax under a head other than profits and gains from business.

It would be interesting to see when this matter will reach before the Supreme Court.



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