

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No. 306/Bang/2018
Assessment year: 2011-12

Netra Software Technologies P Ltd No. 2964, 12 th Main, HAL 2 nd Stage, Indiranagar, Bangalore – 560038. PAN: AADCN 7046D	Vs.	The Assistant Commissioner of Income Tax (CPC), [Assessee is assessed to tax with ACIT Cir 5(1)(1)], Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Sheetal Borkar, Advocate
Respondent by	:	Smt. Priyadarshini Mishra, Addl. CIT(DR), ITAT, Bangalore.

Date of hearing	:	22.02.2022
Date of Pronouncement	:	09.03.2022

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the assessee is directed against the order dated 11.10.2017 of the CIT(Appeals)-5, Bengaluru for the assessment year 2011-12 on the following grounds:-

- “1.1 The learned Commissioner of Income Tax (Appeals)-5, Bangalore has erred in adjudicating the order as passed by him. The order is bad in law and liable to be quashed.
- 2.1 The learned Commissioner of Income Tax (Appeals)-5, Bangalore has erred in confirming the order passed under section 154 by the assessing officer as to allowing only Rs.1,08,668/- towards loss as against the entire value of loss of Rs.1,37,90,289/-.

- 2.2 The learned Commissioner of Income Tax (Appeals)-5, Bangalore has erred in computing the losses as well as denying losses to be carried forward to the extent of Rs. 1,36,81,621/- [1,37,90,289 less 1,08,668]
- 3.1 The learned Commissioner of Income Tax (Appeals)-5, Bangalore has erred in denying the claim of interest deduction based on technical issue in the CPC's system that fails to permit such deduction.
- 3.2 The learned Commissioner of Income Tax (Appeals)-5, Bangalore has erred in disallowing interest on the ground that there is no rental income.
- 4.1 The learned Commissioner of Income Tax (Appeals)-5, Bangalore has erred in the interpretation of the provisions of law. On facts and in the circumstances of the case and law applicable, order of the Assessing Officer ought to be quashed.
- 5.1 The learned Commissioner of Income Tax (Appeals)-5, Bangalore has erred in summarily rejecting the submissions made by the assessee.
- 6.1 In view of the above and other grounds to be adduced at the time of hearing, the appellant prays that the order passed by the learned Commissioner of Income tax (Appeals) 5, Bangalore be quashed

And

Losses of Rs. 1,37,90,289/- be allowed to be carried forward as claimed in the revised return of income.

The appellant prays accordingly.”

2. The facts of the case are that assessee filed a loss return of Rs.1,76,77,280 on 30.9.2011. However, the said return was revised to rectify certain mistakes on 7.3.2013 declaring a loss of Rs.1,37,90,289. In the said revised return, the assessee had claimed interest paid on loan taken for construction of commercial property amounting to Rs.1,38,31,621

as deduction u/s. 24 of the Act while computing loss under the head 'income from house property'. The above sum included 1/5th of pre-construction period interest of Rs.68,36,284. During the year, some balances relating to sundry creditors amounting to Rs.41,332 were written off and offered to tax under the head 'income from other sources'. The loss from house property was set off against income from other sources to arrive at the net loss of Rs.1,37,90,289 and this was carried forward.

3. The ACIT, CPC issued intimation u/s. 143(1) on 1.6.2013 wherein the losses of current year to be carried forward was determined at Rs.1,08,668 as against loss of Rs.1,37,90,289 carried forward in the return of income. The assessee filed rectification petition on 11.3.2014 seeking above correction in the intimation. The order u/s. 154 was passed on 26.3.2014 by ACIT(CPC) wherein it was reiterated that loss to be carried forward was at Rs.1,08,668 as against the claim of assessee at Rs.1,37,90,289. The CIT(Appeals) confirmed the order of the ACIT(CPC). Against this, the assessee is in appeal before us.

4. The Id. AR submitted that there was a payment of interest of Rs.1,38,31,621 out of which Rs.41,332 was set off against income from other sources and balance of Rs.1,37,90,289 has to be carried forward. According to her, there is no necessity of having rental income so as to claim deduction u/s. 24 towards interest payment on construction of commercial building. According to her, the construction of property has been completed and interest has been paid. The annual letting value of the property was NIL on account of non-letting out of the said property. However, the interest incurred by the assessee has to be allowed to set off against income from any other source in the same assessment year and if there is no income under any other head of income, same has to be carried forward. She further submitted that in case annual letting value of the property u/s. 23(1)(c) is to be considered as NIL as the property was not let

out even after best efforts of the assessee to let out the property; that cannot lead to the conclusion that interest incurred by the assessee cannot be allowed. For this purpose, she relied on the decision of the Delhi Tribunal in the case of *Ms. Priyananki Singh Sood v. DCIT, 174 ITD 371 (Del)*.

5. On the other hand, the Id. DR submitted that there is no error in the orders of the revenue authorities as the assessee has not kept the commercial complex ready to let out. It was in the pre-commencement stage that interest was incurred by the assessee on loan availed for construction of the commercial building which is to be capitalized to the cost of the building and it cannot be allowed as deduction, since if the building is ready to let out, assessee has taken no steps to let out the same.

6. We have heard both the parties and perused the material on record. In the present case, the assessee claim is to allow the interest of Rs.1,38,31,621 incurred by the assessee on loan borrowed for the purpose of construction of commercial building. The claim of the assessee is that building construction has been completed and it was ready to let out and assessee always had the intention to let out the property, however due to market conditions the assessee failed to let out and failure to let out cannot be attributable to the assessee. Hence, interest incurred by the assessee towards loan availed for construction of building has to be allowed. However, the assessee has not placed any iota of evidence to suggest that the commercial building was ready to let out and assessee had taken any steps to let it out. Unless and until the building is ready to let out, the interest incurred by the assessee on loan borrowed for construction of building has to be capitalised. Since in the present case, there is no evidence to suggest that the commercial building was ready in all respects by getting the power connection, water connection, occupation certificate,

clearance from fire fighting department, etc., it cannot be presumed that building was ready to let out and assessee taken any steps to let out. The whole plea of the assessee to let out the property is only on presumption basis without any specific evidence on record to suggest that assessee has taken steps to let out the property. In such circumstances, the lower authorities are justified in disallowing the claim of assessee with regard to interest borrowed on loan used for construction of building. In other words, this interest incurred by the assessee is to be capitalised to the cost of building, rather than the claim of deduction u/s. 24 of the Act.

7. Further, it is well settled that a mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long-drawn process of reasoning on points on which there may be conceivably two opinions. In the present case, the Departmental authorities have categorically denied that the construction of commercial building was completed and it was ready to let out and that assessee had taken steps to let out the property. These findings of the revenue authorities cannot be sought to be rectified in the rectification proceedings. Entertaining such a plea of the assessee would only mean review of the order for which the revenue authorities have no power.

8. In the present case, the assessee has not enclosed any evidence along with the return suggesting completion of construction of commercial building and its readiness to let out, as such the ACIT(CPC) denied the interest claimed by the assessee by way of intimation sent to the assessee. The assessee thereafter sought to rectify the same vide proceedings u/s. 154 of the Act which is not permissible. Had there been any evidence furnished along with the return of income with regard to completion of construction of the building and its readiness to let out, then the claim of the assessee could have been entertained in the rectification proceedings u/s. 154 of the Act by the revenue authorities. In the absence of any such

evidence furnished, the CIT(Appeals) was justified in rejecting the claim of assessee. The issue raised by the assessee is a debatable issue which cannot be rectified in the proceedings u/s. 154 of the Act.

9. In view of the above, we do not find any infirmity in the orders of lower authorities and dismiss all the grounds raised by the assessee.

10. In the result, the appeal by the assessee is dismissed.

Pronounced in the open court on this 9th day of March, 2022.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 9th March, 2022.

/Desai S Murthy/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.