IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'C' BENCH, MUMBAI

[Coram: Pramod Kumar (Vice President),
and Ravish Sood (Judicial Member)]

ITA No. 3612/Mum/2019
Assessment year: 2012-13

Cargo Service Centre India Pvt Ltd **…….……Appellant**
 # 301/303, Rangoli Complex, Sahar Road
Opp Air Cargo Complex, Mumbai 400 099
[PAN No. AAACC4945M]

Vs

Deputy Commissioner of Income Tax
Circle 9(2)(1), Mumbai **……Respondent**

Appearances by
Madhur Agarwal *along-with* **Siddarth Banwat** *for the appellant*
R K Sahu *for the respondent*

Date of concluding the hearing: : 07/10/2021
Date of pronouncement of order : 02/11/2021

O R D E R

Per Pramod Kumar, VP:

1. By way of this appeal, the assessee-appellant has challenged the correctness of the order dated 29th March 2019, in the matter of revision order under section 263 r.w.s. 154 and 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act', for the assessment year 2012-13.

2. Grievances raised by the assessee-appellant, which we will take up together, are as follows:

> ***1. The order passed by Learned Principal Commissioner of Income Tax ('Ld. Pr. CIT) u/s. 263 of the Income Tax Act, 1961 ('Act') is bad in law, and in facts as she grossly erred in invoking provisions of section 263 of the Act to set aside an order passed u/s. 154 of the Act by the Assessing Officer ('AO') rectifying her own order passed u/s. 143(3) without satisfying conditions of section 263 of the Act.***

2. ***Without prejudice, to above, order passed u/s. 263 by Ld. Pr. CIT is bad in law and is void ab inito as while passing order u/s. 263 of the Act Ld. CIT issued show cause notice on the appellant's eligibility to claim the deduct ion u/s. 35AD of the Act and having satisfied that the appellant is eligible to claim deduction u/s. 35AD(8)(c) – Ld. Pr. CIT proceeded to set aside over u/s. 154 of the Act on the basis that AO failed to make adequate inquiry without providing any show cause notice in respect of the same to the appellant.***

3. ***Ld. Pr. CIT grossly erred in holding that AO has not made sufficient inquiry in respect of the claim of the appellant while passing an order ignoring the fact that all necessary information or documents were submitted by the appellant in the course of assessment and AO had allowed the claim of expenditure while passing order u/s. 143(3) of the Act.***

4. ***Ld. Pr. CIT grossly erred in setting aside an order passed u/s. 154 of the Act holding it to be prejudicial to the interest of the revenue even when Assessing Officer (AO) had made no modification to the assessed income of the appellant.***

3. The issue in appeal lies in a very narrow compass of material facts. On 29th November 2012, the assessee had filed an income tax return disclosing, inter alia, the taxable income of Rs 2,14,17,110, (being more than book profit under section115JB at Rs 16,18,595) and loss carried forward from the specified business of Rs 19,06,42,620. The case was taken up for scrutiny assessment proceedings, and the returned income was finally accepted. The assessment was finalized under section 143(3) as such. No figures as given in the income tax return were disturbed. There was, however, no specific mention about the eligibility of the loss from specified business of Rs 19,06,42,620 being eligible for being carried forward as such. Upon receipt of this assessment order under section 143(3) dated 27th January 2015, the assessee moved a rectification petition, on 2nd March 2016, seeking a specific mention of the loss of Rs 19,06,42,620 being eligible for being carried forward. The Assessing Officer upheld this plea of the assessee and, vide order dated 12th May 2016, observed that "**on perusal of the record, the contention of the assessee was found to be correct**" and that "**during the year, the assessee is having loss of Rs 19,06,42,620 from the eligible business which is allowed to be carried forward**". This observation in the rectification order was subjected to the revision proceedings under section 263 as the learned PCIT, on a perusal of the material on record, was of the view that as the Assessing Officer had not examined this claim in sufficient detail, the loss cannot be allowed to be carried forward. The rectification order dated 12th May 2016 was thus cancelled. The assessee is aggrieved and is in appeal before us.

4. When this appeal came up for hearing before us, and upon a perusal of the material on record, we had a couple of questions for the parties. Our first question was whether the observations about the eligibility of loss being carried forward does indeed affect the interests of the assessee in any manner inasmuch as, in the light of Hon'ble Supreme Court's judgment in the case of **CIT Vs Manmohan Das [(1966) 59 ITR 699 (SC)],** the eligibility for set-off has to be adjudicated upon by the Assessing Officer dealing with the assessment year in which set-off is claimed and not in the year in which the loss sought to be adjusted is incurred. Our second question was whether the issue of insufficient inquiries before acceptance of the claim for a loss from the specified business could be dealt with, on merits, at the stage of the scrutiny assessment or the stage of rectification of mistakes as well, and, if

it can only be dealt with at the stage of scrutiny assessment, which was completed on 27th January 2015, can this issue be taken up in the revision proceedings in 2019.

5. Having heard the parties on the above propositions, we are of the considered view that the assessee deserves to succeed for these short reasons alone. In the first place, as learned counsel for the assessee vehemently submits, the issue regarding eligibility for set-off is wholly academic so far as the year of incurring loss in question is concerned. As observed by Hon'ble Supreme Court in the case of Manmohan Das *(supra),* "**Whether the loss of profits or gains in any year may be carried forward to the following year and set off against the profits and gains of the same business, profession or vocation…….. has to be determined by the Income-tax Officer who deals with the assessment of the subsequent year. It is for the Income-tax Officer dealing with the assessment in the subsequent year to determine whether the loss of the previous year may be set off against the profits of that year. A decision recorded by the Income-tax Officer who computes the loss in the previous year …… that the loss cannot be set off against the income of the subsequent year is not binding on the assessee".** The very exercise of seeking a specific mention, by moving the rectification petition, about the eligibility for carrying forward of loss was thus, in a way, somewhat academic and more as a measure of abundant caution rather than the requirement of law. The rectification order was thus wholly infructuous in the eyes of the law. Once a loss has been disclosed in the income tax return, and such a loss has not been disturbed in the scrutiny assessment proceedings, such a loss is treated to have been accepted, and quantification thereof cannot be disturbed. What the learned PCIT has done is to disturb this quantum of loss, but then that could have been done within two years from the end of the financial year in which the related scrutiny assessment order was passed. Clearly, that limitation was over on 31st March 2017, whereas the present impugned order was passed on 29th March 2019. The quantification of loss, which is well beyond the limited scope of 'mistake apparent on record' under section 154 and in the light of Hon'ble Supreme Court';s judgment in the case of **ITO Vs Volkart Brothers [(1971) 82 ITR 50 (SC)],** could not have been disturbed in the proceedings under section 154, and what cannot be done under section 154, cannot be done under section 263 r.w.s. 154 either. Whichever way one looks at it, the impugned revision order is vitiated in law. As regards learned Departmental Representative's plea that the quantification of loss in question was never examined at any stage in the scrutiny assessment proceedings, and, therefore, it cannot be allowed to be carried forward, all we can say is that the Assessing Officer could surely have done so in the scrutiny assessment proceedings under section 143(3), but just because he has missed the bus, we cannot bend the law to allow that examination now. The finality of time limits has to be respected and followed.

6. In view of the above discussions, as also bearing in mind the entirety of the matter, we quash the impugned revision proceedings. The assessee gets the relief accordingly.

7. In the result, the appeal is allowed in the terms indicated above. Pronounced in the open court today on the 02nd day of November, 2021.

Sd/-	Sd/-
Ravish Sood	**Pramod Kumar**
(Judicial Member)	(Vice President)

Mumbai, dated the 02nd day of November, 2021

Copies to:	*(1)*	*The appellant*	*(2)*	*The respondent*
	(3)	*CIT*	*(4)*	*CIT(A)*
	(5)	*DR*	*(6)*	*Guard File*

By order

Assistant Registrar/ Sr PS
Income Tax Appellate Tribunal
Mumbai benches, Mumbai