

|आयकर अपीलीय न्यायाधिकरण न्यायपीठ, मुंबई|
IN THE INCOME-TAX APPELLATE TRIBUNAL “K” BENCH,
MUMBAI
BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 2534/MUM/2025
(निर्धारण वर्ष / Assessment Year :2022-23)

Dhiren Ramanlal Shah FC-5011, Bharat Diamond Bourse, Bandra Kurla Complex, Bandra (East), Mumbai- 400051	v/s. बनाम	Income Tax Officer-19(1)(1) 606, Piramal Chambers, Dr. S. S. Rao Marg, Parel, Mumbai- 400012
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAYPS3843B		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

निर्धारिती की ओर से /Assessee by:	Shri Atul Mehta/ Mr. Uday Shah
राजस्व की ओर से /Revenue by:	Shri Bhagirath Ramawat, Sr. DR.

सुनवाई की तारीख / Date of Hearing	08.07.2025
घोषणा की तारीख/Date of Pronouncement	14.07.2025

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the Learned Assessment Unit of Income Tax Department [AO] dated 18.02.2025 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2022-23.

2. The assessee has raised the following grounds of appeal:

1.01. The Learned CIT(A) - NFAC erred in giving direction to the Jurisdictional Assessing Officer to verify the Report u/s 92E of the Act filed by the Assessee for determining the due date for filing of Return of Income and carry forward of losses when the due date i.e. November 30th is applicable to the Assessee as

per the explanation 2(aa) to the section 139(1) of the Act, as he is one of the Partners in a Partnership Firm which was required to file Report u/s 92E of the Act.

2.01 The Learned CIT(A) -NFAC erred in not giving relief for late fees charged under section 234F of the Act of Rs. 5,000/- when the due date applicable to the Assessee was November 30th as per explanation 2(aa) to the section 139(1) of the Act, as he is one of the Partners in a Partnership Firm which was required to file Report u/s 92E of the Act.

3.01 The Appellant craves to consider each of the above Grounds of Appeal without prejudice to each other and craves leave to add, alter, delete, amend and/or modify all or any of the above grounds of Appeal at the time or before the date of hearing”

3. Brief facts of the case are that the assessee filed his return on 26.11.2022 for A.Y. 2022-23 i.e before the due date applicable in his case and declared taxable income of Rs. 2184590/- along with carry forward of loss of Rs. 35892208/-. Centralised Processing Centre, Bangalore (CPC) proposed an adjustment u/s. 143 (1) (a) stating that carry forward of loss is not allowed since return was filed after the due date u/s. 139 of the Act. The assessee replied that he is one of the partners in the partnership firm M/s.Ramson Exports which was required to file the report in prescribed form from an accountant u/s. 92E of the Act. Since, the assessee is one of the partners of the firm, the due date applicable to the partnership firm as well as to the assessee for filing the return was 30.11.2022 as per Explanation 2(aa) to section 139 of the Act. The response filed by the assessee was not accepted by the CPC and intimation was received on 1.2.2023 u/s. 143(1), disallowing the carry forward of Long term capital loss. The assessee filed an application for rectification u/s. 154 of the Act. However, assessee's request was not accepted while passing rectification order u/s. 154 of



the Act. Aggrieved with this order, the assessee preferred an appeal before Ld. CIT(A) who accepted the submissions made by the assessee but directed as under:

“The AO should check whether the appellant has filed the report under section 92E of the Act and may allow the claim of the appellant and pass a speaking order u/s 154 of the Income-tax Act, 1961 after giving opportunity of being heard u/s 154(3) of the Income-tax Act, 1961 to the appellant”

4. Aggrieved with the order, the assessee has filed an appeal before the Tribunal. The only grievance of the assessee is that the Ld. CIT(A) has erroneously directed the AO to verify whether the assessee has filed report u/s. 92E of the Act. Before us, Ld. AR has explained that it is not the assessee but the partnership firm which was required to file report u/s. 92E of the Act. He has further submitted that the requisite report was filed by the partnership firm M/s. Ramson Export on 31.10.2022 and the due date for filing of return in the case of the partnership firm was accepted as 30.11.2022 by the CPC Bangalore. Accordingly, it has been requested that since the assessee is a partner in the above firm, the due date in his case also would be 30.11.2022 as per Explanation 2(aa) to section 139(1) of the Act. He has therefore requested that the carry forward of long term capital loss of Rs. 35892208/- should be allowed to the



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assessee and also late fees of Rs. 5000/- u/s. 234F levied on the assessee should be deleted.

5. We have heard the rival submissions. Admittedly, the partnership firm M/s. Ramson Export has filed the requisite audit report on 31.10.2022. Accordingly, the assessee, being a partner, is entitled to the benefit of Explanation 2(aa) to section 139(1) of the Act. Accordingly, the due date for filing return in his case would be 30.11.2022. Ld. AO is, therefore, directed to allow the benefit of carry forward of loss admissible to the assessee. Penalty of Rs. 5000/- u/s. 234F is also directed to be deleted.

6. In the result, the appeal is allowed.

Order pronounced in the open court on 14.07.2025.

Sd/-

ANIKESH BANERJEE

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 14.07.2025

अनिकेत सिंह राजपूत/ स्टेनो

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.



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सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

