

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad SMC Bench, Hyderabad**  
*(Through Video Conferencing)*  
**Before Smt. P. Madhavi Devi, Judicial Member**

ITA No.377/Hyd/2018		
Assessment Year: 2009-10		
M/s. Chandana Constructions (P) Ltd, D.No.1-1-23-/11/2 Vivek Nagar, Chikkadapalli Hyderabad 500020 PAN:AAACC8227A	Vs.	Income Tax Officer Ward 1(4) Hyderabad
(Appellant)		(Respondent)
Assessee by:	N o n e	
Revenue by:	Sri Waseem-ur-Rehman,DR	
Date of hearing:	03/08/2021	
Date of pronouncement:	30/08/2021	

**ORDER**

This is assessee's appeal for the A.Y 2009-10 against the order of the CIT (A)-1, Hyderabad, dated 24.11.2017.

2. This appeal has been coming up for hearing from 18.5.2018 onwards and the assessee is represented by his Counsel Mr.P.S.S. Kailash Nath, who appeared on some occasions. The last appearance was on 2.12.2020. Thereafter, the Bench did not function and on 8.3.2021, since none appeared for the assessee, a notice was sent to the assessee through RPAD. Further, notices were also sent to the assessee by RPAD and final notice for hearing today i.e. 3.8.2021 has also been served on the assessee. However, none appeared for the assessee even today i.e. 3.8.2021 when the case came up for hearing. Therefore, it is presumed that the assessee is not interested to pursue the appeal

and is therefore, accordingly dismissed. However, liberty is given to the assessee to seek recall of this order by showing sufficient reasons within the specified period under the Act.

3. Even on merits of the issue, I find that the Assessing Officer had applied the provisions of section 50C on sale of an asset and thereafter allowed set off of business loss from the Short Term Capital Gain arising therefrom. Subsequently, he observed that the business loss was wrongly set off from short term capital gain even though the same was not allowable u/s 72 of the Act. Therefore, he issued notice u/s 154 of the Act for rectification of the mistake. And after considering the assessee's submissions, the Assessing Officer brought to tax the brought forward business loss which was reduced from STCG. The assessee filed an appeal before the CIT (A), who confirmed the order of the Assessing Officer u/s 154 of the Act. Aggrieved, the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

*"1) The issue of set off of brought forward business loss against Technical Short Term Capital Gains arising out of the sale of depreciable business assets, which was looked into in depth and allowed in the re-assessment U/s. 147 of the IT Act, should not have been treated as a "mistake apparent from the record" U/s.154 of the IT Act and the issue does not come under the purview of section 154 of the IT Act and the Assessment is liable to be set aside.*

*2) On the facts and in the circumstances and the law, the Learned CIT has grossly erred in upholding Order of the ITO in disallowing the set off of brought forward business loss of Rs.10,63,449 against the Short Term Capital Gains(STCG) arising out of depreciable business assets, which is incorrect and untenable in law and on facts.*

*3) The Learned CIT has not appreciated the fact that STCG was not on account of any sale of "Fixed Assets", but only on account of "Depreciable Business Assets" forming part of "Block of Assets" .*

4) *The Learned CIT has not appreciated the fact that the Block of assets itself got exhausted and accordingly it resulted in the technical STCG.*

5) *The Learned CIT has not appreciated the fact that STCG arose out of excess of sale consideration received over and above the net block of the depreciable assets totally got exhausted. This resulted in Technical STCG U/s.50 of the IT Act, which in effect and means a business profit only.*

6) *The settled legal position clearly shows that profits on sale of depreciable business assets, where the Block itself got exhausted, is a business income only (though technically shown under STCG in the IT Return due to the technicalities in the online e-filing of ITR6 ) and is eligible in all aspects for set off against the brought forward business losses.*

7) *The Learned CIT has not appreciated the fact that it is a well settled proposition of law that the Technical STCG arising out of Sale of depreciable Business Assets U/s.50 of the IT Act can always be set off against the business loss, including the brought forward business losses U/s.72 of the IT Act.*

8) *The Learned CIT has not taken into consideration any of the case laws submitted in support of the claim towards set off of carry forward business loss against the technical STCG arising out of sale of depreciable Business Asset.*

9) *The Appellant Company prays that the brought forward business losses be directed to be set off against the Technical STCGs of the AY 2009-10 ,which resulted from the sale of depreciable business assets.*

10) *The appellant Company craves for the leave to amend, modify, delete, add, alter, substitute, enlarge any further grounds of appeal during the course of the appeal proceedings.”*

4. I find that the assessee itself has offered the income under the head “Short Term Capital Gain” and not as business income. Therefore, under the provisions of section 72(1), the brought forward business loss can be set off only from business income and cannot be set off from STCG. The assessee has not been able to controvert this find of the lower authorities. Therefore, the assessee’s appeal is dismissed on merits as well.

5. In the result, assessee's appeal is dismissed.

Order pronounced in the Open Court on 30<sup>th</sup> August, 2021.

**(P. MADHAVI DEVI)**  
**JUDICIAL MEMBER**

Hyderabad, dated 30<sup>th</sup> August, 2021.

***Vinodan/sps***

Copy to:

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1	M/s.Chandana Constructions (P) Ltd, D.No.1-1-230/11/2, Vivek Nagar, Chikkadapally, Hyderabad 500020
2	Income Tax Officer Ward 1(4) IT Towers, AC Guards, Hyderabad 500004
3	CIT (A)-1, Hyderabad
4	Pr. CIT -1, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

*By Order*