

Amendment to sec. 115BBE denying set off of losses from deemed income is prospective in nature

Summary – The Chandigarh ITAT in a recent case of Famina Knit Fabs., (the Assessee) held that Amendment made to section 115BBE w.e.f. 1-4-2017 denying set off of losses is prospectively applicable; assessee could claim set off of losses, both current and brought forward, against its business income as well as deemed income under sections 68 to 69C in assessment years period to 1.4.2017

Facts

- In the instant case, the assessee surrendered the additional income during the survey operations conducted for the assessment years 2013-14 and 2014-15. The income surrendered were partly in nature of business income and partly deemed income. The assessee had set off debit entries and business loss against the same.
- The Assessing Officer treated the entire additional income surrendered as deemed income as provided under sections 69, 69A, 69B and 69C separately and charged to tax under section 115BBE. He denied the set off of losses.
- In the instant appeal, the assessee contended as follows—
 - The income surrendered was in the nature of business income of the assessee and set off of losses was to be allowed against the same as per the provisions of law.
 - Even if the income was to be assessed under sections 69, 69A, 69B and 69C and taxes charged as a consequence thereto under the provisions of section 115BBE, the set off of losses was to be given since the denial of set off as provided in the section with effect from 1-4-2017 was prospective in nature.
- On the other hand, the revenue contended that the benefit of set off of losses was not available since the amendment made to section 115BBE denying the benefit of set off of losses with effect from 1-4-2017 was retrospective in nature.

Held

- The unrecorded investments/assets/expenditure made out of unexplained sources are treated as deemed incomes of the assessee. The onus is on the assessee to establish the source of the surrendered income failing which it is to be categorized as deemed income under section 69/69A/B/C. In the case of *Pr. CIT v. Khushi Ram & Sons Foods (P.) Ltd.* in [IT Appeal No. 126 of 2015, dated 29-7-2016], the High Court had held that it is for the assessee to establish that the source of the surrendered income was from business to claim it as such and set off business losses against the same.
- Further, the Legislature requires deemed incomes to be taxed on the gross amount so determined without setting off any expenditure or allowances against the same under section 115BBE.

Subsequently the section was amended with effect from 1-4-2017 by the Finance Act, 2016, prohibiting set off of losses also against the said deemed income.

- The income surrendered and to be assessed under sections 69, 69A, 69B and 69C is to be subjected to tax as per the provisions of section 115BBE.
- The question as to whether the set off of losses is to be allowed against the same, which the revenue has vehemently contested saying that the amendment denying the set off of losses which was made by the Finance Act, 2016 with effect from 1-4-2017 was clarificatory in nature and was retrospective, thus entitling the assessee to claim set off losses against the income so surrendered. The assessee, on the other hand, relied on several decisions of the Tribunal, which have held the amendment to be prospective in nature. No contrary decision either of the Tribunal or of any higher judicial authority has been brought to our notice by the revenue. The decisions rendered by the Tribunal will, therefore, apply, following which, it is held that in the impugned year the assessee was entitled to claim set off of losses against the income assessed as deemed income under sections 68, 69, 69A, 69B and 69C as per the provisions of section 115BBE as it stood prior to the amendment by the Finance Act, 2016.
- Thus, it is held that the income surrendered by the assessee is partly assessable as business income and partly assessable as deemed income and against both of them, the assessee was entitled to claim set off of business losses, both the current and brought forward.