

INCOME TAX UPDATE

**Delhi ITAT deletes
disallowance made u/s 143(1)
due to procedural irregularity**



Delhi ITAT deletes disallowance due to procedural irregularity u/s 143(1) and violation of natural justice

The assessee had filed a return of income on November 21, 2022, declaring a short-term capital loss of INR 9,30,45,891 and a long-term capital loss of INR 32,11,17,208. The CPC allowed the carry forward of the short-term capital loss but not the long-term capital loss. The assessee moved for rectification under Section 154, which was denied. The assessee then appealed to the First Appellate Authority, arguing that the CPC had no power to disallow the loss under Section 143(1)(a) and that the adjustments were made without proper notice, violating the principles of natural justice.

The First Appellate Authority acknowledged the procedural irregularity but remanded the matter back to the CPC/Assessing Officer to issue a show cause notice and reconsider the adjustment. The assessee contested this, arguing that the First Appellate Authority does not have the power to remand the matter and that the claim should be allowed or decided on its merits.

The Tribunal found that the CPC's disallowance of the long-term capital loss was perfunctory, illegal, and without jurisdiction, as it was made without providing reasons or a show cause notice. The tribunal observed that no adjustment shall be made u/s 143(1)(a) unless an intimation is given to the assessee and the response is considered before making any adjustment.

The Tribunal also stated that the first appellate authority has grossed over the issue of natural justice by stating that it is mere procedural irregularity.

The Tribunal held that the First Appellate Authority's direction to remand the matter was not justified, as the claim for carry forward of loss was in accordance with statutory provisions and there were no adverse observations regarding its genuineness. The Tribunal directed the Assessing Officer to allow the assessee's claim for carry forward of long-term capital loss. For details, please refer judgement of Delhi ITAT in case of *Fortum SAR B.V* as enclosed.

<https://www.dpncindia.com/wp-content/uploads/2024/07/Delhi-ITAT-deletes-disallowance-under-section-1431-due-to-procedural-irregularity.pdf>

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