

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष  
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.1722/PUN/2016  
निर्धारण वर्ष / Assessment Year : 2010-11

Kirloskar Industries Limited,  
13/A, Karve Road,  
Kothrud, Pune - 411 038  
PAN : AAACP3590P

.....अपीलार्थी/Appellant

Vs.

DCIT, Circle-9,  
Pune

.....प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri C.H. Naniwadekar  
प्रत्यर्थी की ओर से / Respondent by : Shri O.A. Mao

सुनवाई की तारीख / <b>Date of Hearing : 29.01.2019</b>	घोषणा की तारीख / <b>Date of Pronouncement: 30.01.2019</b>
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**आदेश / ORDER**

**PER D. KARUNAKARA RAO, AM :**

This appeal is filed by the Assessee against the order of CIT(A)-2, Pune, dated 02-05-2016 for the Assessment Year 2010-11.

2. Briefly stated, relevant facts include, that the assessee is a company came into existence w.e.f., 31-03-2010 by a scheme of demerger. It filed return of income declaring total income of Rs.13,99,64,208/-. Subsequently, a revised return was filed declaring total income of Rs.14,71,45,097/-. In the assessment, the AO made certain disallowances viz., (1) Disallowance u/s.14A amounting to Rs.1,41,23,169/-; (2) Disallowance of unexplained expenses amounting to Rs.83,02,973/-; and (3) Disallowance of deduction u/s.80IA amounting to Rs.3,18,33,046/-. Thus, in effect, the AO assessed the total income at Rs.20,14,04,290/-.

3. Aggrieved with the said assessment, the assessee filed an appeal before the CIT(A). However, the assessee remained unsuccessful before the First Appellate Authority. Now, against the order of First Appellate Authority, the assessee has come up in appeal before the Tribunal.

4. Before us, Ld. Counsel for the assessee did not press Ground Nos. 1 and 2. Therefore, the said grounds are dismissed as such. Thus, the only effective ground that remains to be adjudicated in this appeal reads as under :

*“3. The ld. CIT(A) erred on facts and in law in upholding disallowance of valid claim u/s.80IA of the Income Tax Act, 1961 contending that, there are no actual profits available with the assessee. He erred in setting off notional losses of the undertaking where there is no such provision in law.”*

5. Briefly stated, relevant facts relating to Ground No.3 include that the assessee reported windmill business from A.Y. 2007-08. The “initial assessment year” at the option of the assessee is A.Y. 2009-10. Assessee reported earning profits of Rs.2.23 crore in that year. AO disallowed the same holding that the losses of the undertaking for A.Y. 2007-08 & 2008-09 are more than the profits reported of Rs.2.23 crore. As per AO, after giving set off, the profits of the undertaking is losses. Hence, the assessee is not eligible for any claim of deduction for A.Yrs. 2009-10 & 2010-11. AO worked out the losses of the undertaking at Rs.18.50 crore as on 01-04-2009. For the A.Y. 2010-11, AO held that, when set off the profits of the year with the said loss of Rs.18.50 crore (rounded off), the claim of deduction is not available for the year under consideration. Accordingly, in Para No.7.11, AO denied the claim of deduction of Rs.3,18,33,046/- u/s.80IA(4) of the Act.

In the First Appellate proceedings, relying on the Karnataka High Court judgment in the case of Microlabs Ltd. Vs. ACIT 230 Taxman 647, CIT(A) confirmed the decision of the AO on this issue. Aggrieved, the assessee is in appeal.

6. Before us, on this issue, Ld. AR submitted the manner of quantifying the allowable deduction u/s.80IA(4) is not in tune with the settled ratio of the binding judgments. Assessee objected to the manner of carry forward of losses notionally to eat away the profit of the year. In this regard, Ld. Counsel for the assessee relied on the judgment of Hon'ble Jurisdictional High Court in the case of CIT Vs. Hercules Hoists Ltd where the Hon'ble Court held that *"Eligible business is only source of income, during previous year relevant to initial assessment year and once set off is taken place in earlier year against other income of assessee, Revenue cannot rework set off amount and bring it notionally."* Thus, Ld. Counsel prayed for allowing Ground No.3 in favour of assessee.

7. Per Contra, Ld. DR for the Revenue relied on the orders of the AO/CIT(A).

8. We have heard the rival contentions and perused the orders of the authorities below on this solitary issue of deduction u/s.80IA. We find that, during the course of assessment proceedings, the AO noticed the claim of deduction u/s.80IA amounting to Rs.3.18 crore is not allowable if the profits are set off against the brought forward losses of the earlier assessment years. Assessee claimed such deduction for the first time in the A.Y. 2009-10. Assessee has the option to choose the initial year for 10 consecutive assessment years out of 15 years beginning the year from which the undertaking starts generating the power. Accordingly, assessee chose the A.Y. 2009-10 as the initial year. AO denied the claim of

deduction for this year too. The claim of such deduction in the current year is the second year. To maintain consistency, the AO disallowed the claim of the assessee in the instant year too on the ground that the notional losses of the windmill undertaken must be first set off against the profits of the windmill. We find the CIT(A) discussed the issue of deduction u/s.80IA vide Para No.7.11 and 7.12 of his order and confirmed the order of AO relying on the judgment of Hon'ble Karnataka High Court in the case of Microlabs Ltd. Vs. ACIT (supra)

8.1 Assessee contested the same holding that the provisions of section 80IA(4) and 80IA(5) allows the computation on standalone basis. If the conclusions of the AO is considered favourably, it defeats the purpose of provisions of section 80IA(4) and 80IA(5) read with umpteen decisions on this subject including the Tribunal's decision in the case of Poonawala Estate Stud & Agro Farm (P) Ltd. Vs. ACIT 136 TTJ 236 (Pune).

8.2 We find that there is no dispute on the fact that the assessment year 2009-10 is the initial assessment year in the hands of Kirloskar Oil Ltd. The dispute is only with respect to the manner of computation of deduction qua the set off of carry forward of losses. Further, we find there is no clarity as to the outcome of appeal by the Revenue for the A.Y. 2009-10 in the hands of Kirloskar Oil Ltd. who is the owner of the unit before demerger.

8.3 In this case, assessee acquired windmill undertaking from the Kirloskar Oil Ltd. A.Y. 2009-10 is the initial assessment year in the hands of Kirloskar Oil Ltd. Hence, the A.Y. 2010-11 is the 2<sup>nd</sup> year in the hands of the assessee. Otherwise, there is no clarity in the orders of the AO on the amount of loss validly quantified in the hands of undertaking at the time of demerger to the assessee. Therefore, there is requirement of basic

details on the said issue qua the figures of losses and profits over the years of the undertaking.

Further, we find the law is more or less settled on this issue on the issue of manner of set off of notional losses of earlier assessment years which was already set off against the profits of the other undertakings. The judgmental law does not permit the set off of notional losses by the AO for eating away the eligible profits for the year under consideration. Apart from others, the jurisdictional High Court judgment in the case of CIT Vs. Hercules Hoists Ltd. (supra) is one such judgment which is required to be regarded and applied to the facts of the present case. In our considered opinion, this issue required fresh consideration at the level of CIT(A) for applying the binding judgments on the issue. Ld. Counsel for the assessee is also directed to supply necessary judgments on the specific issue of the manner of computation of deduction u/s.80IA(4) of the Act in the second year of the block of assessment years specified in the law. With these directions, we allow Ground No.3 for statistical purposes.

9. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced on this 30<sup>th</sup> day of January, 2019.

Sd/-

(विकास अवस्थी /VIKAS AWASTHY)  
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(डी. करुणाकरा राव/D. KARUNAKARA RAO)  
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 30<sup>th</sup> January, 2019  
Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-7, Pune
4. आयकर आयुक्त / The Pr.CIT-6, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" /  
DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.

		Date	
1.	Draft dictated on	29-01-2019	Sr.PS
2.	Draft placed before author	30-01-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		