

IN THE INCOME TAX APPELLATE TRIBUNAL
 "SMC" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER)
 AND
 SHRIMANOJ KUMAR AGGARWAL (ACCOUNTANT MEMBER)

I.T.A. No.3352/Mum/2019
 (Assessment year 2008-09)

M/s Lovely Fragrance 303/A, Skyline Icon Near Mittal Industrial Estate Andheri Kurla Road, Andheri(E) Mumbai-400 059 PAN : AAAFL1837E	vs	DCIT, Circle 24(2), Mumbai
APPELLANT		RESPONDENT

Appellant by	Shri Mahavir Jain, AR
Respondent by	Smt. Smita Verma, DR

Date of hearing	25-03-2021
Date of pronouncement	15-04-2021

ORDER

Per Saktijit Dey, JM:

This is an appeal by the assessee against order dated 07-02-2019 of learned Commissioner of Income-tax (Appeals)-39, Mumbai, for the assessment year 2008-09.

2. The dispute in the present appeal is confined to disallowance of a part of deduction claimed under section 80IA of the Income Tax Act, 1961.

3. Briefly the facts are, the assessee, a partnership firm, is engaged in manufacturing of fragrance, attar and allied products. For the assessment year under dispute, assessee filed its return of income on 30-09-2008 declaring total income of Rs.8,30,100/- after claiming deduction under section 80IA of the Act. In course of assessment proceedings, the assessing officer, while examining the computation of deduction under section 80IA of the Act, noticed that the assessee has claimed the deduction without reducing the loss of the earlier years. Therefore, he re-computed the deduction under section 80IA of the Act, after reducing the loss from the business profit of the current year. Assessee challenged the aforesaid decision of the assessing officer before the first appellate authority stating that loss pertaining to earlier years prior to the initial assessment year, wherein, the assessee first time became eligible for deduction under section 80IA of the Act, cannot be reduced from the business profit of the current year for computing deduction under section 80IA of the Act. The learned Commissioner of Income-tax (Appeals), however, did not accept the aforesaid claim of the assessee.

4. Reiterating the stand taken before the first appellate authority, learned Counsel for the assessee submitted, the issue is squarely covered by the decision of the Hon'ble jurisdictional High Court in case of CIT vs Hercules Hoists Ltd in Income Tax Appeal No.707of 2014 dated 14th June,2017.

5. The learned Departmental Representative submitted, since, the assessee did not furnish the factual details either at the assessment stage or even before the first appellate authority, the claim of the assessee has to be factually examined by the assessing officer.

6. We have considered rival submissions and perused materials on record. Though, we accept the legal proposition advanced by the learned Counsel for the assessee that losses pertaining to assessment years prior to the initial assessment year, wherein, the assessee became eligible to claim deduction under section 80IA of the Act cannot be reduced from the business profit; however, on perusal of the impugned order of learned Commissioner of Income-tax (Appeals), we find that he has disallowed assessee's claim on the reasoning that the assessee raised the issue for the first time before him through an additional ground and the crucial facts relating to the year of commencement of business, the initial year of claim, profits from the unit since the initial year, etc. were not placed before him. In our view, the aforesaid factual details, as mentioned by the learned Commissioner of Income-tax (Appeals), requires to be verified before applying the legal principles for the purpose of allowing assessee's claim of deduction. Since, all these facts have neither been brought on record nor verified by any of the departmental authorities, we are inclined to restore the issue to the assessing officer for fresh adjudication after examining all relevant facts. It is also made clear, the assessing officer, after verifying the facts, must decide the issue keeping in view the decision of Hon'ble jurisdictional High Court in case of CIT vs Hercules Hoists Ltd (supra). Needless to mention, assessee must be provided a reasonable opportunity of being heard before deciding the issue. Grounds are allowed for statistical purpose.

6. In the result, appeal is allowed for statistical purpose.

Order pronounced on 15/04/2021.

Sd/-

sd/-

(MANOJ KUMAR AGGARWAL)	(SAKTIJIT DEY)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dt : 15/04/2021

Pavanoan

Copy to :

1. Appellant
2. Respondent
3. The CIT concerned
4. The CIT(A)
5. The DR, ITAT, Mumbai
6. Guard File

By Order

Asstt. Registrar, ITAT, Mumbai