INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 4192/Del/2017
(Assessment Year: 2013-14)

ACIT, Circle-31(1), New Delhi	/Vs.	Kanidi Cosmeceuticals, 191, Carripa Marg, Sainik Farm, New Delhi PAN: AAIFK2611H
(Appellant)		(Respondent)

Revenue by :	Shri Umesh Takyar, Sr. DR
Assessee by:	None
Date of Hearing	20/10/2021
Date of pronouncement	17/11/2021

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the ld AO/ ACIT, Circle-31(1), New Delhi against the order of the ld CIT(A)-11, New Delhi dated 21.04.2017 for the Assessment Year 2013-14.

2. The ld AO raised the following grounds of appeal:-

"1. "Whether the Ld. CIT(A) was justified in ignoring the finding made by the AO which revealed that the claim of deductions made by the assessee is incorrect as the assessee was not involved in the manufacturing of herbal cosmetics, which was the basis for claiming deduction u/s 80IC(2)(b) in the return filed by the assessee that suited the assessee being sold under "herbal" that catches the fancy of the public.

2. Whether Ld.CIT(A) was justified in allowing the claim of deduction made by assessee despite the fact that the wrongful claim made by the assessee in return of Income was a conscious & deliberate attempt made by assessee to project its manufacturing activity as that of manufacturing "Herbal Cosmetics", being chemical free, and assessee continued to avail deduction on same grounds in previous years as well as till the mistake was identified by A.O.

3. Whether Ld.CIT(A) was justified in allowing the revised claim of deduction made by assessee u/s 80IC(2)(a)(ii) despite the fact that the assessee had made a claim for deduction other than by filing a revised return and this is not in consonance with the legal position, decided by the supreme court in the case of Goetze (India) Ltd. (284 ITR 323) whereas only ITAT, as per NTPC Ltd. case (229 ITR 383) has been vested with the power to entertain only a point of law whereas in the case of assessee there is no point of law, being a fact of manufacturing of herbal products, and no authority vests with the CIT(A) as per ratio of NTPC case.

4. *Whether Ld.CIT(A) was justified in allowing the claim of revised deduction to the assessee by placing reliance on following decision-Ravinder Aggarwal (HUF) vs CIT [ITA.0.5066/Del/2011], ACIT vs Octave Exports [ITAT Chandigarh (2015) 54 Taxman 417], ACIT vs Assam Dyeing Plants (P) Ltd. [ITA No. 46/GAU/2011], & CIT vs GM knitting Industries (P) Ltd. [2016] 376 ITR 456 [SC], wherein the claim of assessee was allowed due to technical mistake, whereas in the present case the assessee was consistently A deliberately presenting wrong facts before the department by consciously presenting itself as involved in manufacturing of "Herbal Cosmetics" so as to influence the public perception being less harmful when termed "herbal"."*

3. Brief facts of the case shows that the assessee is engaged in the business of manufacturing of cosmetics. It claimed deduction u/s 80IC of the Act amounting to Rs. 3,08,17,100/-. The assessee filed return of income on 28.09.2013 declaring total income of Rs. 9,19,51,300/-.

4. During assessment proceedings claim of the deduction u/s 80IC was examined. The assessee was questioned stating that the assessee is not doing any herbal processing at its manufacturing units for the reason that the ld AO found that the content of the medicinal herb or aromatic herbs in the products manufactured by the assessee is either absent or negligible. The ld AO was of the view that the schedule 14th Clause 2 provides for deduction only with respect to manufacturing units which deal in medicinal or aromatic herbs processing. Therefore, he was of the view that deduction u/s 80IC is not available to the assessee. The assessee submitted that it is manufacturing the cosmetics and toilets preparations, sop, ayurvedic medicines which are not specified under para 12 and 13 of that schedule and therefore, which was not required to show that the products of the assessee contains medicinal herb or aromatic herb. Assessee also explained that deduction u/s 80IC of the Act was also allowed to the assessee since it is inception and further for Assessment Year 2009-10 after visit of the ld AO and complete verification, for that year deduction was allowed. The ld AO was not satisfied with the explanation of the assessee. He held that product wise composition submitted by the assessee clearly shows that there is no herb component in the products. He further held that the reliance on 13th Schedule by the assessee is also not correct. He stated that the assessee has submitted in form No. 10CCB that the assessee is manufacturing products listed in the 14th schedule. When the assessee was questioned about the ineligibility under 14th schedule , the assessee sought claim under the 13th schedule. He therefore, disallowed the claim of Rs. 30817100/- u/s 80IC of the Act. Consequent assessment order determined the total income of the assessee at Rs. 12,27,68,400/-as passed u/s 143(3) of the Act on 30.03.2016. The assessee aggrieved with the above order preferred appeal before the ld CIT(A) who allowed the claim of the assessee. Therefore, the ld AO is in appeal before us.

5. Despite notice none appeared on behalf of the assessee. On earlier five occasions also there was no representation from the side of the assessee. Registered notice was issued to the assessee which returned back with a remark that no such firm exists at the above address. Therefore, the issue is now decided on the merits of the case as per information available on record.

6. The ld DR vehemently supported the orders of the lower authorities.

7. We have carefully considered the contentions of the ld DR and information available on record. Briefly stated the facts shows that the assessee is a partnership firm engaged in the manufacturing of cosmetics and toilet preparation. It has a manufacturing unit at specified location in Himachal Pradesh which started manufacturing in FY 2006-07. From Assessment Year 2008-09 the assessee is claiming deduction u/s 80IC and same is being allowed. During this year the assessee made mistake in submitting form No. 10CCB wherein, reference to schedule 14 was made. As soon as mistake came to the notice, the assessee corrected the same. The assessee stated that the products manufactured by it does not fall under schedule 13. It was also stated that claim of the assessee is covered u/s 80IC(2)(a)(ii) of the Act. The ld CIT(A) along with paper book of the assessee asked the ld AO to furnish the comments. Such remand report was furnished on 27.02.2017. The ld AO stated that the assessee has submitted revised form No. 10CCB on 15.11.2016 in which it has corrected the mistake but same should not be considered. The ld AO in remand report submitted that the eligibility of the appellant for claiming deduction u/s 80IC(2)(a)(ii) of the Act has been examined and the assessee is eligible for the same but has not correctly claim in form No. 10CCB, therefore, same should not be allowed. The ld CIT(A) then examined the issue that merely mentioning certain erroneous particular in form no. 10CCB which was specifically corrected by the assessee during the course of assessment proceedings cannot deprive assessee of the benefit of deduction for which it is eligiblet. He relying on the decision of the coordinate bench in ACIT Vs. Octave Exports 54 Taxmann. 417, ACIT Vs. Assam Dyeing Plants Pvt Ltd in ITA NO. 46/Gau/2011 dated 03.02.2012 and Delhi in case of Ravinder Aggarwal Vs. CIT ITA No. 5066/Del/2011 and following the decision of the Hon'ble Supreme Court in case of CIT Vs. GM Knitting Industries Pvt. Ltd 376 ITR 456 allowed the claim of the assessee. He categorically held that when the assessee is eligible for claim of deduction, after correcting any error in the original form 10CCB during the course of assessment proceedings itself the deduction cannot be deprived. The ld DR could not show us any infirmity in the order of the ld CIT(A). Further, this is not the first year of claim of deduction of the assessee. Initial year of the claim of the deduction is Assessment Year 2008-09. There is no change in the manufacturing products by the assessee. Originally claim was allowed to the assessee after

personal visit of the learned assessing officer and after examining the complete details by the ld AO. Thus, we do not find any justification four denial of the claim of the assessee. In the result all the grounds raised by the ld AO are dismissed and the order of the ld CIT(A) is confirmed.

8. In the result appeal of the ld AO is dismissed.

Order pronounced in the open court on 17/11/2021.

Sd/-(AMIT SHUKLA)	Sd/-(PRASHANT MAHARISHI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Dated : 17/11/2021
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	17.11.2021
Date on which the typed draft is placed before the dictating member	17.11.2021
Date on which the typed draft is placed before the other member	17.11.2021
Date on which the approved draft comes to the Sr. PS/ PS	17.11.2021
Date on which the fair order is placed before the dictating member for pronouncement	17.11.2021
Date on which the fair order comes back to the Sr. PS/ PS	17.11.2021
Date on which the final order is uploaded on the website of ITAT	17.11.2021
date on which the file goes to the Bench Clerk	17.11.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	