

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH, 'C': NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.4191/DEL/2017  
[Assessment Year: 2013-14]**

Asst. Commissioner of Income Tax, Circle-31(1), Room No.1303, 13 <sup>th</sup> Floor, E-2, Pratyakshkar Bhawan, Shyama Prasad Mukherjee Civic Centre, Jawahar Lal Nehru Marg, Minto Road, New Delhi-110002	Vs	M/s Lotus Herbals Color Cosmetics 191, Carripa Marg, Sainik Farm, New Delhi-110068
		<b>PAN-AADFL5335L</b>
Revenue		Assessee

**Cross Objection No.63/Del/2021  
(Arising out of ITA No.4191/DEL/2017  
[Assessment Year: 2013-14])**

M/s Lotus Herbals Color Cosmetics 191, Carripa Marg, Sainik Farm, New Delhi-110068	Vs	Asst. Commissioner of Income Tax, Circle-31(1), Room No.1303, 13 <sup>th</sup> Floor, E-2, Pratyakshkar Bhawan, Shyama Prasad Mukherjee Civic Centre, Jawahar Lal Nehru Marg, Minto Road, New Delhi-110002
		<b>PAN-AADFL5335L</b>
Assessee		Revenue

Revenue by	Sh. Jitender Chand, Sr. DR
Assessee by	Sh. Deepender Kumar, CA

<b>Date of Hearing</b>	<b>24.01.2023</b>
<b>Date of Pronouncement</b>	<b>07.02.2023</b>

**ORDER**

**PER SHAMIM YAHYA, AM,**

This appeal by the Revenue and Cross Objection by the assessee is arising out of the order of the Ld. CIT(A)-11, New Delhi, 21.04.2017, pertains to Assessment Year 2013-14.

2. The grounds of appeal reads as under:-

*"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 80IG(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 IT 323) whereas only ITAT, as per NTPC Ltd. case (229 IT 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 & 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 are that the assessee is engaged in the business of manufacturing of cosmetics. The assessee has claimed deduction u/s 80IC of the Act amounting to Rs.7,12,64,161/- as the manufacturing unit is located at Baddi in Himachal Pradesh. During the course of assessment proceedings, the AO noticed that in Column No. 25(ii)(f) of Form 10CCB filed by the assessee, it has been shown that the assessee is manufacturing Herbal Cosmetics as specified in the 14th Schedule. However, the AO observed that the products manufactured by assessee do not contain any herbal component. In view of these facts, the AO questioned the assessee to justify the claim of deduction u/s 80IC of the Act. In response, the assessee claimed that the entry pointed out by the AO in Column No. 25(ii)(f) of Form 10CCB was wrongly made. It was contended that the assessee is manufacturing products which are not specified in the 13th Schedule and therefore, is eligible for deduction u/s 80IC of the Act. The AO was not satisfied with the reply of the assessee and disallowed the entire deduction.

4. Before the Ld. CIT(A), the assessee submitted detailed submission. This submissions were forwarded by the Ld. CIT(A) to the AO. The AO in response, showed his inclination to accept the claim of the assessee. The portion of the order of the Ld. CIT(A) in this regard as under:-

*"The written submissions of the appellant alongwith the paper book filed by the AR were forwarded to the AO vide this office letter dated 16.11.2016 and the AO was asked to furnish his comments in respect of the contentions of the appellant. The AO has furnished the remand report vide his letter dated*

*27.02.2017 in which the AO has reiterated the facts contained the assessment order and has stated that the appellant has submitted the revised Form 10CCB on 15.11.2016 in which it has corrected the mistake made in Form 10CCB submitted earlier. The AO has further stated that the eligibility of the appellant for claiming deduction us 80IC(2)(a)(ii) of the Act has been examined and the appellant seems to be eligible for the same although it has not correctly claimed it in Form 10CCB.”*

5. Thereafter, the Ld. CIT(A) discussed the issue by referring to provisions of section 80IC of the Act then several case laws and was of the opinion that the assessee deserves to succeed and hence allowed the claim of the assessee. The order of the Ld. CIT(A) in this regard is as under:-

*“14.3 I have gone through the complete facts of the case alongwith the detailed submissions made by the AR of the appellant. Before going into the details, reference is made to provisions of the section 80IC of the Act which are as under:*

*"80-IC. Special provisions in respect of certain undertakings or enterprises in certain special category States. (1) Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (2), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains, as specified in sub-section (3).*

*(2) This section applies to any undertaking or enterprise,*

*(a) which has begun or begins to manufacture or produce any article or thing, not being any article or thing specified in the Thirteenth Schedule, or which manufactures or produces any article or thing, not being any article or thing specified in the Thirteen Schedule and undertakes substantial expansion during the period beginning-*

*(i) on the 23rd day of December, 2002 and ending before the 1st day of April, 2012, in any Export Processing Zone or Integrated Infrastructure Development Centre or Industrial*

*Growth Centre or Industrial Estate or Industrial Park or Software Technology Park or Industrial Area or Theme Park, as notified by the Board in accordance with the scheme framed and notified by the Central Government in this regard, in the State of Sikkim; or*

*(ii) on the 7th day of January, 2003 and ending before the 1st day of April, 2012, in any Export Processing Zone or Integrated Infrastructure Development Centre or Industrial Growth Centre or Industrial Estate or Industrial Park or Software Technology Park or Industrial Area or Theme Park, as notified by the Board in accordance with the scheme framed and notified by the Central Government in this regard, in the State of Himachal Pradesh or the State of Uttaranchal; or*

*(iii) on the 24th day of December, 1997 and ending before the 1st day of April, 2007, in any Export Processing Zone or Integrated Infrastructure Development Centre or Industrial Growth Centre or Industrial Estate or Industrial Park or Software Technology Park or Industrial Area or Theme Park, as notified by the Board in accordance with the scheme framed and notified by the Central Government in this regard, in any of the North-Eastern States;*

*(b) which has begun or begins to manufacture or produce any article or thing, specified in the Fourteenth Schedule or commences any operation specified in that Schedule, or which manufactures or produces any article or thing, specified in the Fourteenth Schedule or commences any operation specified in that Schedule and undertakes substantial expansion during the period beginning-*

*(i) on the 23rd day of December, 2002 and ending before the 1st day of April, 2012, in the State of Sikkim; or*

*(ii) on the 7th day of January, 2003 and ending before the 1st day of April, 2012, in the State of Himachal Pradesh or the State of Uttaranchal; or*

*(iii) on the 24th day of December, 1997 and ending before the 1st day of April, 2007, in any of the North-Eastern States.*

4.3.1 A perusal of the section shows that so far as the State of Himachal Pradesh is concerned, an assessee can claim deduction either u/s 80-IC(2)(a)(ii) or u/s 80IC(2)(b) depending on fulfilling of the requisite conditions. Under section 80IC(2)(a)(i), an assessee can claim deduction only if the articles or things are manufactured in the specified area and the articles or things are not covered in the negative list (specified in the Thirteenth Schedule). Therefore, an assessee manufacturing or producing any articles or thing not covered under Thirteenth Schedule is covered within the scope of this provision. There is no specification for what articles or things should be manufactured but the only condition is that it should not be articles or things covered under Thirteenth Schedule. However, u/s 80IC(2)(b), the undertakings or enterprises can be situated anywhere in the State of Himachal Pradesh (No specified area condition is applicable; thus unit situated in any area of the State can claim deduction) if the articles or things being manufactured are specified in the Fourteenth Schedule. In the present case, the appellant claimed deduction u/s 80IC(2)(b) earlier but later on modified its claim for deduction us 80IC(2)(a) (ii) of the Act.

4.3.2 In this regard, reference is made to the decision of Hon'ble ITAT Chandigarh in the case of ACIT vs. Octave Exports [2015] 54 taxman 417 in which it has been held that merely because the auditor had wrongly mentioned the claim under section 80IC(2)B) instead of section 80IC(2)(a) (ii) under which assessee was eligible, same would not disentitle the assessee to claim of deduction which otherwise was allowable to the assessee who conducted manufacturing activity. The relevant portion of the said order is reproduced as under

“52. Another objection raised by the Assessing Officer was with regard to the claim of deduction under section 801C of the Act vis-a-vis the sub-section to be applied. In the audit report furnished alongwith the return of income, the assessee had declared that it was eligible for deduction under section 301C(Y) of the Act. However, Schedule XIV of the Act Prohibited the manufacture of garments as being eligible for deduction under section 80IC(2)(b) of the Act. Consequently, the assessee was show caused as to why the deduction claimed under section 80IC(2)(b) of the Act should not be withdrawn from the assessee. The plea of the assessee before the Assessing Officer and the Commissioner of Income Tax (Appeals) was that by an

*inadvertent error, the auditor in the audit report had reported the deduction claimed under section 80IC(2)(b) of the Act. However, the unit being established in Himachal Pradesh, the assessee was entitled to the claim of deduction under section 80IC(2) a) it) of the Act. We find merit in the claim of the assessee in this regard that after establishing the unit in Himachal Pradesh the assessee had claimed deduction under the requisite provision of the Act but merely a wrong sub-section was mentioned, does not disentitle the assessee from the claim of deduction. The CBDT has time and again prescribed vide circulars that the Assessing Officer is to help the assessee in determining the correct section/ income in his her hands irrespective of the claim made by the assessee. Accordingly, mere reporting of a wrong sub-section does not disentitle the assessee to the claim of deduction which otherwise was allowable to the assessee."*

*4.3.3 Reference is also made to the decision of Hon'ble ITAT Guwahati in the case of ACIT vs. Assam Dyeing Plants (P.)Ltd. in IT Appeal No. 46 (GAU.) of 2011, where the Hon'ble ITAT vide its Order dated 03/02/2012 has held as under:*

*"5. We have heard the rival contentions and perused the material on record as no controverting material has been brought on record by the revenue as to why the deduction u/s 80IC be denied to the assessee merely because the auditor in a report u/s 44AB in Col. "deduction under Chapter VIIA has observed "Nil". This being a technical non-disclosure appropriately was supported by the auditor by claiming deduction u/s 80IC which he had certified therefore cannot be subjected to denial to the assessee being purely of technical nature. We may as a passing reference also mention that the case law cited regarding refund of excise duty was held in favour of the assessee by the jurisdictional High Court for deduction us 80IC.*

*6. In the result, the appeal of the Revenue is dismissed."*

*4.3.4 Reference is also made to the decision of Hon'ble ITAT, Delhi in the case of Ravinder Aggarwal (Huf) vs. CIT in I.T.A. No.5066/Del/2011 where the jurisdictional ITAT has held that-*

*"10. We have heard the rival submissions of both the parties and have gone through the material available on record. We have observed that eligibility of the assessee us 80IC was not questioned, nor books of accounts were*

*questioned nor trading results were questioned. The only reason for rejection of claim u/s 80IC was non furnishing of quantitative details in form 3CD. Form 3CD is required to be filed in case of all assessees where the turnover of that assessee exceeds a particular limit and it has nothing to do with the admissibility of claim u/s 80IC of the Act. Even in cases where there is a claim u/ S 80IC of the Act and turnover of the assessee is below the prescribed limit for 5 ITA No5066/Del/2011 furnishing audit report in form 3CD even then the claim of assessee cannot be denied. In the present case in the succeeding year as well as in the immediate preceding years, the claims of the assessee regarding claim us 80IC were allowed. The defect in form 3CD cannot lead to denial of claim us 80IC. Therefore, we hold that the claim of the assessee cannot be denied merely because of some defects in form 3CD. Therefore, we do not see any reason to interfere in the order of ld CIT(A)."*

*4.3.5 Also in the case of CIT vs G.M. Knitting Industries (P) Ltd. [2016] 376 ITR 456[SC], the Hon'ble Supreme Court has held that even though necessary certificate in Form 10CCB along with return of income had not been filed but the same was filed before the final order of assessment was made, the assessee was entitled to claim deduction under section 80IB.*

*4.3.6 In view of the above facts and the legal position as discussed, I am of the opinion that the appellant is eligible for claim of deduction u/s 80IC(2)(a) (ii) of the Act and therefore, the addition made by the AO is deleted and the grounds of the appeal are allowed."*

6. Against the above order, the Revenue is in appeal and the assessee has filed Cross Objection in support of the order of the Ld. CIT(A).

7. We have heard both the parties and perused the records. The Ld. DR relied upon the order of the AO.

8. Per Contra, the Ld. Counsel for the assessee submitted that the Ld. CIT(A) has duly analyzed the facts and remand report of the AO, where AO himself accepted that the assessee's claim is correct. Hence, he submitted that the order of the ld. CIT(A) needs to be upheld. He further

submitted that the Delhi Bench of the Tribunal in the case of Kanidi Cosmeceuticals in ITA No.4192/Del/2017, vide order dated 17.11.2021 decided similar issue and held as under:-

*“7. We have carefully considered the contentions of the Id 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 w/s 80IC(2)(a)(ii) of the Act. The Id CIT(A) along with paper book of the assessee asked the Id AO to furnish the comments. Such remand report was furnished on 27.02.2017. The Id 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 Id AO in remand report submitted that the eligibility of the appellant for claiming deduction us 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 Id 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 eligible. He relying on the decision of the coordinate bench in ACIT Vs.*

*Octave Exports 54 Taxmann. 417, ACIT Vs. Assam Dyeing Plants Pt 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 IT 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 Id 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 for 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.”*

9. We have carefully considered the submissions and perused the records. The Ld. Counsel for the assessee has summarized his pleading as under:-

*“First of all, the Respondent would like to invite the kind attention of your honor towards the*

*1. COVERED CASE: The Respondent respectfully state that this is the covered case.*

*Recently the Hon'ble jurisdictional TAT vide its Order dated 17.11.2021 has decided the exact same issue in the case of ACIT v Kanidi Cosmeceuticals, ITA No. 4182/Del/2017 (A group Associate of the Respondent) in the favour of the Kanidi*

*Cosmeceuticals. Hon'ble jurisdictional ITAT vide para 7 of its Order upheld the Order of Ld. CIT (A) and allowed the claim of deduction u/s 80IC (2) (a) (li) of the Act. (Please refer Para 7 at Page No. 6 of the Order).*

*[Hon'ble jurisdictional ITAT's Order copy dated 17.11.2021 is enclosed with the Synopsis-Refer Page No.- 4-8]*

*2. REMAND REPORT OF LD. AO DATED 27.02.2017: The Respondent would also like to Invite the kind attention of your honor towards the para 4 of the Remand Report of Ld.*

*AO dated 27.02.2017 wherein the Ld. AO has clearly mention that the Respondent has fulfilled all the necessary conditions for claiming the deduction under section 80IC (2) (a) (it) of the Act and is eligible for claiming the deduction under said section. However, the same has been denied due to very reason that the Respondent has not correctly claimed it in the Form 10CCB. [Please refer Para 4 at Page No. 12 of the Remand Report].*

*On the one hand, Ld. AO confirms the eligibility for claiming the deduction under section 80IC (2) (a) (ji) of the Act, but at the same time rejecting the same just because of quoting wrong section in Form 10CCB by the Respondent despite being the fact that the Respondent corrected it mistake and file the revised Form 10CCB during the Assessment Proceedings.*

*[Copy of Ld. AO's Remand Report dated 27.02.2017 is enclosed with the Synopsis- Refer*

*Page No.- 9-12]"*

10. We find that the AO has denied the assessee's claim because of mistake made in the claim of exemption in Form 10CCB. The assessee during the assessment itself has duly corrected the same but the AO has failed to appreciate the same. However, the Ld. CIT(A) has duly examined the issue and laws and thereafter he obtained the remand report, wherein, the AO himself accepted that the assessee deserves to succeed.

Moreover, the case Kanidi Cosmeceuticals (supra), relied upon by the assessee also supports the case of the assessee. Accordingly, we do not find any infirmity in the well reasoned order of the Ld. CIT(A).

11. The Cross Objection filed by the assessee is only supporting Ld. CIT(A)'s order. Since we have confirmed the order of the Ld. CIT(A) in Revenue's appeal, the Cross Objection becomes in-fructuous and the same is dismissed.

12. In the Result, appeal filed by the Revenue is dismissed and the Cross Objection of the assessee is also dismissed as in-fructuous.

Order pronounced in the open court on 07<sup>th</sup> February, 2023.

**Sd/-**  
**[ANUBHAV SHARMA]**  
**JUDICIAL MEMBER**

**Delhi;** Dated: .02.2023.

*Shekhar*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

**Sd/-**  
**[SHAMIM YAHYA]**  
**ACCOUNTANT MEMBER**

Asst. Registrar,  
ITAT, New Delhi