

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.566/Jodh/2018  
(ASSESSMENT YEAR- 2015- 2016)**

Mithila Drugs Pvt.Ltd., F-70, Road No.2, Mewar Industrial Area, Madri, Udaipur-313003.	vs	ACIT, Circle-1, 102A, Aaykar Bhawan, Sub City Centre, Savina, Udaipur-313001.
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN No.AACCM6767B</b>		

<b>Assessee By</b>	None (W/S)
<b>Revenue By</b>	Shri S.M.Joshi, JCIT DR
<b>Date of hearing</b>	22/03/2023
<b>Date of Pronouncement</b>	23/03/2023

**ORDER**

**PER KUL BHARAT, J.M.:**

The present appeal filed by the assessee for the assessment year 2015-16 is directed against the order of Ld. CIT(A)-1, Udaipur dated 20.09.2018. The assessee has raised following grounds of appeal:-

1. *“The Ld. CIT (Appeals)-1 has also erred on the facts and in law in not allowing brought forward and carried forward total business loss Rs.14266828/- Thus losses deserves to be allowed c/f and b/f.*

2. *The ld. CIT (Appeals)-1 has also erred on the facts and in law in not allowing current year depreciation loss Rs.1584389/-. Thus loss deserves to be allowed carried forward.*

3. *The petitioner craves leave to add, alter any of the grounds of appeal before or at the time of hearing.”*

2. At the time of hearing, no one attended the proceedings on behalf of the assessee. However, a written submission is placed on record by the Ld. Authorized Representative of the assessee. Under these facts, the appeal is taken up for hearing in the absence of the assessee and is being disposed off on the basis of material available on record.

3. The only grievance of the assessee is that business loss of INR 1,42,66,828/- was not allowed to be carried forward by the authorities below.

4. Facts giving rise to the present appeal are that the assessee is a company and involved in the business of manufacturing of bulk drugs and intermediates since Financial Year 2008-09. The Assessing Officer (“AO”) while framing the assessment u/s 143(3) of the Income Tax Act, 1961 (“the Act”) vide order dated 16.11.2017 assessed the income of the assessee at INR NIL and no business loss or unabsorbed depreciation was determined for carry forward.

5. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who after considering the submissions, partly allowed the appeal of the assessee.

6. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

7. On the other hand, Ld. JCIT DR opposed these submissions and supported the order of Assessing authority.

8. We have heard Ld. JCIT DR and perused the material available on record and gone through the orders of the authorities below. We find that the assessee has filed a written submission. For the sake of clarity, the relevant contents of the written submissions are reproduced as under:-

**(A) BRIEF FACTS OF THE CASE**

*1 The business activities has been of manufacturing of Bulk drugs and intermediates since the year 2008-09. However due to disputes aroused between the directors group from the year 2010-11 subsequently litigation was long pending before the Hon'ble Company Law Board, the business activities were completely closed since November,2011 month to till the year under reference. As such , in the year under reference also, there were no business activities. However disputes has been resolved on 18.02.2016 after the due date of filing returns of income.*

2. That present appeal petition has been against the order dated 16.11.2017 of Ld. AO, ACIT, Circle-1, Udaipur, whereby his goodself has not allowed brought forward and carried forward total business loss Rs.1,42,66,828/ and depreciation loss Rs.46,60,897/- respectively without discussing/ mentioning any reason. On further appeal, Id. CIT (A) only allowed the claim of depreciation loss partly to Rs.30,76,508/- and alleged that returns of income were not filed within the time allowed u/s 139(1), in view of the provisions of section 80, business loss as on 31.03.2015, i.e. Rs. 1,42,68,828/- cannot be carried forward.

**(B)OUR SUBMISSION**

**GROUND No : 1**

"That Id. CIT (Appeals)-1 has also erred on the facts and in law in not allowing brought forward and carried forward total business loss Rs. Rs.14266828/-. Thus losses deserves to be allowed c/f and b/f."

1. That returns of income for the following assessment years could not be filed within due date for the reasons beyond the control of the management of the applicant, as details under

S.No.	Assessment year	Date of return filed
1.	2011-12	30.06.2018 & 15.02.2020
2.	2012-13	17.08.2018
3.	2013-14	22.02.2019
4.	2014-15	23.02.2019
5.	2015-16	17.10.2016

However petition for delay condonation for the above said return of income filing were submitted to competent

authorities who have passed the order u/s 119(2)(b) (PB No.01 to 03) , as details under:

S. No.	Asstt. Year	Condonation petition submitted date	Authority to whom submitted	Remarks
1.	2011-12	10.08.2016	The PCCIT, Udaipur	Petition allowed vide order dt.18.01.2019
2.	2012-13	16.08.2016	The CBDT, New Delhi	Petition allowed vide order, dt.03.10.2018
3.	2013-14	16.08.2016	The PCIT, Udaipur	Petition allowed vide order dt.31.12.2018
4.	2014-15	16.08.2016	The PCIT, Udaipur	Petition allowed vide order dt.31.12.2018
5.	2015-16	17.08.2017 10.01.2018	The PCIT, Udaipur The ACIT, Udaipur	<b>Petition pending for decision</b>

2. In the year under reference there were no business activities, only administrative expenses incurred. The return of income for the asstt. year under reference was filed on 17.10.2016 declaring business loss of Rs.4,64,458/- (PB No. 07 to 08). This return of income scrutinized u/s 143(3) of the Act and the order of assessment was passed on 16.11.2017 . In the order of assessment the AO did not discussed about allowability of the returned loss as well as carry forward of the same. Further he also did not discussed about the brought forward and further carried forward of the returned losses of previous asstt. years in the order of assessment as under:

S.No.	Asstt. years	Business loss (Rs.)	Depreciation loss (Rs.)
1.	2011-12	3385234	1556932
2.	2012-13	8729794	1519756
3.	2013-14	864240	--
4.	2014-15	823102	--
	Total	<b>13802370</b>	<b>3076508</b>
5.	<b>2015-16</b>	464458	1584389
	Gross Total	14266828	4660897

3. That being aggrieved from the such unspeaking order passed u/s 143(3) , applicant preferred appeal before the CIT(A) taking above ground of appeal . However ld. CIT (A) also erred and not allowed claim of losses to be carried forward as alleged that returns of income were not filed within the time allowed u/s 139(1) , in view of the provisions of section 80, business loss as on 31.03.2015, i.e. Rs.1,42,68,828/-cannot be carried forward. However it was submitted to the CIT(A) that petition for delay condonation in filing returns of income were submitted before the competent authorities and were under consideration till that time.

4. It is further to submit that order u/s 119(2)(b) for the asstt. year 2011-12 to 2014-15 were passed by the competent authorities viz. Hon'ble CBDT , Id. CCIT and the PCIT , as stated above in para-1, after the date of passing the order by the CIT(Appeal) . In all the asstt. year 2011-12 to 2014-15 ,reasons of delay in filing returns of income were same.

5. In the orders u/s 119(2)(b) for the asstt. years 2011-12 to 2014-15 , a specific direction appended which reproduce here ... after considering the facts and circumstances of the case , the assessee was prevented by reasonable cause from filing of return ,hence, delay in filing the return and claiming loss is hereby condoned u/s 119(2)(b) of the I.T.Act. The A.O. is directed to consider the claim of carry forward of losses on

*merits in accordance with law. Following the direction the AO have rectified the other year's intimation passed u/s 143(1) of the asstt. year 2017-18 and 2019-20 (PB No.10 & 11) and allowed set off losses brought forward of the asstt. year 2011-12 and 2012-13 in the asstt. year 2017-18 and 2019-20.*

*6. The petition for delay condonation in filing return of income for the captioned asstt. year 2015-16 was filed on 17.08.2017 and 09.01.2018(PB No.4 to 6) and still pending for disposal before the ld. PCIT since long.*

*7. Hon'ble, the facts and circumstances in delay filing of returns of income of all the assessment years i.e. 2011-12 to 2014-15 and 2015-16 are absolutely same. And, align on the same, all competent authorities allowed condonation petitions for the asstt. years 2011-12 to 2014-15 (PB No.1 to 3). Subsequently ld. AO also passed orders u/s 154 for the asstt. years 2017-18 and 2019-20, as discussed above . Therefore, in view of these facts, it is humbly prayed that current year as well as brought forward and further carried forward business losses total Rs.14266828/-, as mentioned above, deserves to be allowed in the asstt. year 2015-16 also.*

*Ground No.2:*

*"The Id. CIT (Appeals)-1 has also erred on the facts and in law in not allowing current year depreciation loss Rs.1584389/-. Thus loss deserves to be allowed carried forward."*

*1. The appellant do not want to argue and press this ground of appeal . Hence it is prayed to allow him to withdraw the same.*

*PRAYER*

*In the light of the facts and circumstances of the case and the discussion made hereinabove, appellant prays your honour , may be please allow the ground of appeal . Further appellant beg to your honour to excuse him as under bonafide mistake he certified that documents submitted in the paper book were submitted before the below authorities. Whereas these are being firstly submitted before your honour as was not possessed till the first appeal proceeding.*

*Pleader for the humble appellant.”*

9. The Revenue has not disputed the fact that the business loss was not allowed to be carried forward on the ground that the assessee had filed its return of income belatedly. Further, the Revenue has not disputed the fact that in earlier years, from the years 2011-12 to 2014-15, the condonation has been allowed by the Competent Authority u/s 119(2)(b) of the Act. It is stated that the facts are identical and the petition for condonation of delay qua the year under consideration is pending for adjudication before the Competent Authority. Therefore, looking to the totality of the facts and circumstances of the case, we are of the considered view that the matters need to be

restored to the file of Ld.CIT(A) to decide the issue of allowability of business loss to be carried forward relating to the year under consideration afresh and allow carry forward business loss relating to the Assessment Years 2011-12 to 2014-15 where the Competent Authority has allowed condonation of delay in filing the return of income. Thus, grounds raised by the assessee are allowed in the terms indicated herein above.

10. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 23/03/2023.

**Sd/-**

**(MANISH BORAD)  
ACCOUNTANT MEMBER**

**Sd/-**

**(KUL BHARAT)  
JUDICIAL MEMBER**

*\*Amit Kumar\**

Copy to:

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

Asstt. Registrar  
Jodhpur Bench