

आयकर अपीलिय अधिकरण  
मुंबई पीठ "एच", मुंबई  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री अमरजीत सिंह, लेखाकार सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH " H ", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आअसं. 1558 / मुं/ 2019 (नि. व. 2012-13)  
ITA NO.1558/MUM/2019(A.Y.2012-13)

Strides Pharma Science Limited  
[Formerly known as Strides Arcolab Limited/  
Strides Shasun Limited]  
201, Devavrata, Sector -17,  
Vashi, Navi Mumbai – 400 703  
PAN: AADCS-8104-P

..... अपीलार्थी/ Appellant

बनाम Vs.

The Deputy Commissioner of Income Tax  
Circle – 15(3)(2), Mumbai  
Room No.451, 4<sup>th</sup> Floor,  
Aaykar Bhavan, M.K.Road,  
Mumbai – 400 020

..... प्रतिवादी/ Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Nitesh Joshi, Advocate with  
Shri Ninand Patade  
प्रतिवादी द्वारा/ Respondent by : Shri Anoop Hiwase &  
Dr.Samuel Pitta

सुनवाई की तिथि/ Date of hearing : 30/10/2023  
घोषणा की तिथि/ Date of pronouncement : 15/01/2024

आदेश/ ORDER

**PER VIKAS AWASTHY, JM:**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-24, Mumbai [in short 'the CIT(A)'] dated 24/01/2019, for the Assessment Year 2012-13. This appeal emanates from the proceedings u/s. 154 of the Income Tax Act, 1961 [in short 'the Act'].

2. Shri Nitesh Joshi appearing on behalf of the assessee submitted that the assessee had claimed set off of brought forward business losses from Assessment Year 2008-09, 2009-10 and 2010-11. The same was allowed, thus, the income of the assessee was assessed as 'Nil' under normal provisions vide assessment order dated 23/01/2017. Thereafter, the assessee filed petition u/s. 154 seeking rectification on the ground that the assessee had filed appeal before the Tribunal against the final assessment orders for Assessment Year 2008-09, 2009-10 and 2010-11, respectively. In the said application the assessee had pointed that if, the appeals of the assessee are allowed by the Tribunal the adjustments/additions made in the respective Assessment Years would be deleted and it would result in increase in losses. In such circumstances, the assessee would be entitled to claim set off of higher losses of Assessment Years 2008-09, 2009-10 and 2010-11 against income assessed during Assessment Year 2012-13. The said prayer of the assessee was rejected by the Assessing Officer vide order dated 24/10/2018. The assessee carried the issue in appeal before the CIT(A). The CIT(A) upheld the order of Assessing Officer passed u/s. 154 of the Act.

2.1 The Id.Counsel for the assessee submitted that after the impugned order was passed by the CIT(A), the Tribunal allowed appeal of the assessee for Assessment Year 2008-09 in ITA No.124/Mum/2013 decided on 02/09/2022 and for Assessment Year 2009-10 in ITA No.2877/Mum/2014 dated 18/02/2023. The Assessing Officer passed order giving effect to the order of Tribunal for Assessment Year 2008-09 on 15/09/2022 and for order of Tribunal for Assessment Year 2009-10 on 26/04/2023. Consequent to the order of Tribunal, business loss in Assessment Year 2008-09 has increased. Thereafter, the appeal of assessee for Assessment Year 2010-11 in ITA

No.1903/Mum/2015 was also allowed by the Tribunal vide order dated 23/05/2023. The Assessing Officer has yet to pass order giving effect. The Id.Counsel for the assessee prayed that the Assessing Officer may be directed to consider the losses as enhanced after giving effect to the order of Tribunal in Assessment Years 2008-09, 2009-10 and 2010-11.

3. Per contra, Shri Anoop Hiwase representing the Department vehemently defended the impugned order. The Id. Departmental Representative submitted that the assessee u/s. 154 of the Act is seeking relief which was uncertain and had not crystallized as the appeals of the assessee for Assessment Years 2008-09, 2009-10 and 2010-11 were still pending before the Tribunal. The sequence of events furnished by the assessee before the Bench would show that the appeals of the assessee for Assessment Years 2008-09, 2009-10 and 2010-11 were decided by the Tribunal much after the passing of the impugned order hence, the relief claimed in petition u/s. 154 before the Assessing Officer was premature and does not fall within the meaning of rectification of the mistake apparent on record.

4. We have heard the submissions made by rival sides and have examined orders of authorities below. The short issue before us is allowability of set off of assessee's claim of enhanced brought forward business losses of Assessment Years 2008-09, 2009-10 and 2010-11 consequent to the order of Tribunal in the respective Assessment Years. It is an undisputed fact that the Assessing Officer while passing the final assessment order has accepted assessee's claim of set off of brought forward business losses of Assessment Years 2008-09, 2009-10 and 2010-11 in the impugned assessment year. The assessee had filed appeal

assailing the additions/adjustments before the Tribunal for Assessment Years 2008-09, 2009-10 and 2010-11, respectively. The assessee filed an application under section 154 of the Act in anticipation that the appeals of the assessee for Assessment Years 2008-09, 2009-10 and 2010-11 would be allowed and in such circumstances the loss of preceding Assessment Year would increase and hence, the assessee would be eligible for set off of higher losses for Assessment Years 2008-09, 2009-10 and 2010-11 in the impugned assessment year. For the sake of completeness the relevant extract of the submissions of the assessee filed before the Assessing Officer in proceedings u/s. 154 of the Act are reproduced herein below:

*“(a) The company believes that the above losses are available for set off against the assessed income of the subject AY. Further, in our opinion, adjustments/additions made during the assessment proceedings of prior AYs not restrict the company from claiming the set off of such eligible tax losses (as duly claimed in the return of income of respective AYs) against the income assessed during the subject AY (i.e. AY 2012-13).*

*(b) The company also wishes to humbly submit that it has filed appeals with the Mumbai Income-tax Appellate Tribunal (ITAT) against the final assessment orders passed by the AO for respective AYs i.e. for AY 2008-09, 2009-10 and 2010-11) and the company has strong legal/technical/factual arguments based on which, it believes that the adjustments made in the respective assessment orders would get deleted at the ITAT level. Such facts support the company's position that it is entitled to claim the set-off of the tax losses against the income assessed during the subject AV i.e. AY 2012-13.*

*(c) in this regard the assessee relied on the judgment in the case of CIT v Raison Industries Ltd/2007) [ 288 ITR 0322](SC) wherein it was held that power of correction, is neither a power of review nor a power of revision but is only u peer to rectify a mistake apparent on the face of the record. Further reference is also made to Mepco Industries Ltd vs. CIT92009) 319 ITR 208(SC) wherein the Court has held that the right to rectify mistakes under section 154 could not be invoked in a case of mere change of opinion. A rectifiable mistake was a mistake, which was obvious and not something which had to be established by a long drawn process of reasoning.”*

It is pertinent to mention here that when application u/s. 154 of the Act was filed before the Assessing Officer the appeals of the assessee for Assessment Years 2008-09, 2009-10 and 2010-11 before the Tribunal were still pending for final adjudication. The Assessing Officer rejected the contentions of the assessee as the same were only in anticipation. The assessee remained unsuccessful before the CIT(A) as well. The CIT(A) held that the assessee has failed to establish that there is any mistake apparent from the record.

5. The Id.Counsel for the assessee has filed before us sequence of events that show that the appeals of the assessee for Assessment Years 2008-09, 2009-10 and 2010-11 filed before the Tribunal were decided on 02/09/2022, 28/02/2023 and 23/05/2023, respectively. Consequent to the Tribunal order the Assessing Officer passed order giving effect for Assessment Year 2008-09 on 15/09/2022 and for Assessment Year 2009-10 on 26/04/2023 and the order giving effect for Assessment Year 2010-11 is yet to be passed. Thus, the orders of the Tribunal deciding appeal of the assessee for Assessment Years 2008-09, 2009-10 and 2010-11 were passed much after the impugned order. Hence, there was no occasion for the Assessing Officer to rectify the mistake u/s. 154 of the Act.

6. Now that the appeals of the assessee for Assessment Years 2008-09, 2009-10 and 2010-11 have been decided by the Tribunal and order giving effect thereto have been passed by the Assessing Officer at least in Assessment Year 2008-09 and 2009-10, which has resulted in increase in losses in the respective Assessment Years. The assessee is eligible for set off of brought forward losses of the said Assessment Years. To avoid multiplicity of litigation further, we deem it appropriate to restore the issue to the file of Assessing

Officer to allow set off of brought forward business losses for Assessment Year 2008-09, 2009-10 and 2010-11 consequent to the Tribunal orders for the respective Assessment Years. The Assessing Officer shall allow assessee's claim, in accordance with law.

7. In the result, appeal of assessee is allowed for statistical purpose.

Order pronounced in the open court on Monday the 15th day of January, 2024.

Sd/-

(AMARJIT SINGH )

लेखाकार सदस्य / ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/ Dated 15/01/2024

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

**प्रतिलिपि अग्रेषित Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant ,
2. प्रतिवादी / The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि. , मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल / Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, Mumbai