

**IN THE INCOME TAX APPELLATE TRIBUNAL “D”, BENCH MUMBAI  
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

**&  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.6703/Mum/2018  
(Assessment Year :2012-13)**

ACIT, Circle-4(2)(2) Room No.640, 6 <sup>th</sup> Floor Aaykar Bhawan, M.K.Road Mumbai-400 020	Vs.	Marks & Spencer Reliance India Pvt.Ltd. 4 <sup>th</sup> Floor, Court House Lokmanya Tilak Road Dhobi Talao Mumbai-400 002
		<b>PAN/GIR No.AAFCM5990D</b>
<b>Appellant)</b>	<b>..</b>	<b>Respondent)</b>

Revenue by	Shri Kamal Mangal, JCIT-DR
Assessee by	Shri Nimesh Vora, AR
<b>Date of Hearing</b>	<b>14/01/2020</b>
<b>Date of Pronouncement</b>	<b>22/01/2020</b>

**आदेश / O R D E R**

**PER G.MANJUNATHA (A.M):**

This appeal filed by the revenue is directed against order of the Ld. Commissioner of Income Tax (Appeals)–09, Mumbai, dated 10/09/2018 and it pertains to Assessment Year 2012-13.

2. The revenue has raised the following grounds of appeal :-

1. *“On the facts and the circumstances of the case and in law, the Learned CIT(A) erred in dismissing the appeal considering the claim of loss by the assessee company in the revised return when the same was not claimed in original return as legal and valid, which is contrast with the section 80 and section 139(3) of the I.T.Act, 1961.”*
2. *“The appellant craves leave to amend or alter any ground or add new ground which may be necessary.*

3. The brief facts of the case are that the assessee has filed its return of income for AY 2012-13 on 29/11/2012, declaring total income of Rs. Nil, being income from business of Rs. 8,18,81,234/-, less set off of brought forward loss of earlier years. The assessee has considered brought forward losses for AY 2009-10 at Rs. 5,75,97,803/- as per revised return filed for that year. The Ld. AO, however restricted the brought forward loss for AY 2009-10 to Rs. 1,33,52,450/-, as per original return of income filed for that year by invoking the provisions of section 80 of the I.T.Act, 1961 and accordingly, disallowed excess loss claimed by the assessee, as per the revised return of income. The assessee carried matter in appeal before the first appellate authority. The Ld.CIT(A), for the detailed reasons recorded in his appellate order, dated 10/09/2018 allowed brought forward loss claimed by the assessee, on the basis of revised return filed for that year, on the ground that provisions of section 80 cannot be invoked, when the assessee has filed revised return of income within the due date allowed under the Act, because, the revised return would take place the original return for that year. Aggrieved by the Ld.CIT(A) order, the revenue is in appeal before us.

4. The Ld. DR submitted that the Ld.CIT(A) was erred in considering the claim of loss, as per revised return of income filed by the assessee, when the same was not claimed in original return as legal and valid, which is contrast with the provision of section 80 and section 139(3) of the I.T.Act, 1961.

5. The Ld. AR for the assessee, on the other hand, strongly supporting order of the Ld. CIT(A) submitted that once, original

return of income was filed within the due date specified u/s 139(1), then any loss claimed by filing revised return within the due date specified u/s 139(5) can be allowed to be carried forward and set off against income of subsequent years.

6. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. The assessee has claimed set off for brought forward business loss, as per revised return of income filed for that year. The Ld. AO has allowed loss, as per original return of income filed for that year. According to the Ld. AO, losses of earlier years can be allowed to be set off, as per the provision of section 80, which states that any loss return filed, as per the provision of section 139(3) only can be allowed to be set off, but not loss as per revised return of income filed u/s 139(5) of the I.T.Act, 1961. In the background of above factual position, if you examine the claim of the assessee, we noted that the assessee has filed original return of income for AY 2009-10 within the due date, as per provision of section 139(1) of the I.T.Act, 1961 and declared loss of Rs. 1,33,52,450/-. Subsequently, it has filed a revised return on 26/03/2011 and declared loss of Rs. 5,75,97,803/- and said revised return is as per provision of section 139(5) of the I.T.Act, 1961. As per the provision of section 80 of the I.T.Act, 1961, loss determined in pursuance of return filed in accordance with the provision of section 139(3) of the Act, shall be allowed to be carried forward under the relevant, provisions of the Act. Section 139(3) of the Act, specifies that loss sustain under the head income from business shall be allowed to be carried forward under the relevant provisions of the Act, provided the return is filed within the due date as prescribed under the provisions of section

139(1) of the Act. Similarly, as per section 139(5) of the Act, an error or omission in the return filed u/s 139(1) can be rectified by filing a revised return on or before the expiry of one year from the end of relevant assessment year or before the completion of assessment whichever is earlier. In the present case, the original return was filed on 24/09/2009, which is before the due date of filing return u/s 139(1) of the Act. Similarly, the assessee has filed revised return on 26/03/2011, which is before the due date of filing revised return i.e 31/03/2011. From the plain reading of section 139(3) r.w.s. 80 of the Act, it is clear that if assessee incurred a loss, which it claims to be carried forward, then it has to file its return of income within the time stipulated in section 139(1) of the Act, otherwise, the loss will not be carried forward. Since, the assessee has filed original return within the due date prescribed u/s 139(1), then any revised return filed, subsequently within the due date prescribed u/s 139(5) partakes, the nature of original return filed u/s 139(1) and consequently, the conditions prescribed u/s 139(3) of the Act, is fulfilled and accordingly, loss claimed shall be allowed to be carried forward under the relevant provision of the Act. Therefore, we are of the considered view that the Ld. AO was incorrect in invoking the provisions of section 80 of the I.T.Act, 1961 to allow loss as per original return filed u/s 139(1) of the Act. The Ld. CIT(A) after considering the relevant facts has rightly allowed set off of loss as per revised return filed for that year and rightly held that provision of section 80 of the Act, cannot be invoked in the present case. Hence, we are inclined to uphold the findings of the Ld.CIT(A) and dismissed appeal filed by the revenue.

7. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on this 22/01/2020

**Sd/-**  
**(SAKTIJIT DEY)**  
JUDICIAL MEMBER

**Sd/-**  
**(G. MANJUNATHA)**  
ACCOUNTANT MEMBER

Mumbai; Dated : 22/01/2020  
Thirumalesh Sr.PS

**Copy of the Order forwarded to :**

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

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai