

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, एफ, मुंबई ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "F", MUMBAI**

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं

श्री रमित कोचर, लेखा सदस्य, के समक्ष

**Before Shri Joginder Singh, Judicial Member, and
Shri Ramit Kochar, Accountant Member**

**ITA NO.3706/Mum/2011
Assessment Year 2007-08**

M/s Furniture Concepts (I) Ltd. 1 st Floor, Vikas Center, S.V. Road, Santacruz (West), Mumbai-400054	बनाम/ Vs.	Asst. Commissioner of Income Tax, Range-9(1), Room No.223, 2 nd Floor, Aayakar Bhavan, Mumbai-400020
(निर्धारिती / Assessee)		(राजस्व / Revenue)
PAN. No.AABCC1243K		

निर्धारिती की ओर से / Assessee by	Ms. Lata Sunder
राजस्व की ओर से / Revenue by	M.S. Matnuria-DR

सुनवाई की तारीख / Date of Hearing :	08/10/2015
आदेश की तारीख /Date of Order:	13/10/2015

आदेश / O R D E R

Per Joginder Singh (Judicial Member)

The assessee is aggrieved by the impugned order dated 17/02/2011 of the ld. First Appellate Authority, Mumbai. The first ground raised by the assessee pertains to sustaining the disallowance made by the assessee which was a legal claim amounting to Rs.1,79,24,751/-, made by the assessee.

2. During hearing, the crux of argument advanced on behalf of the assessee is that the assessee filed revised computation before the ld. Assessing Officer which was not considered by him and further revised return could not be filed as time for filing the revised return has already been elapsed. Reliance was placed upon the decision in CIT vs Pruthvi Brokers and Share Holders Pvt. Ltd. (2012) 349 ITR 336 (Bom.) and order of the Tribunal in CHICAGO PNEUMATIC INDIA LTD. vs DCIT 15 SOT 252 (Bom.). On the other hand, the ld. DR, though defended the conclusion arrived at in the impugned order, but had no objection if the matter is remanded to the file of the ld. Assessing Officer for fresh consideration.

2.1. We have considered the rival submissions and perused the material available on record. The facts, in brief, are that the assessee, a limited company, engaged in the business of trading/reselling of imported/local furniture and other related items. The assessee for the impugned assessment year, filed its return on 26/11/2007, declaring nil assessable income after adjusting the previous brought forward losses. The return was accompanied by audited accounts along with audit report u/s 44AB of the Income Tax Act, 1961 (hereinafter the Act). Subsequently, the case of the assessee was selected for scrutiny. During course of assessment, the counsel for the assessee realized that in original computation of income in the net profit, the assessee wrongly showed Rs.1,11,25,326/- which was set off by

claiming losses of previous year instead of net loss of Rs.67,96,925/- as the company failed to make further claim on account of remission by bank under one time settlement (OTS) of Rs.1,79,24,751/-. The counsel for the assessee, therefore, vide letter dated 14/10/2009 informed the Assessing Officer of the correction, accordingly, the corrected computation was filed with a request to treat the same as revised return since the time limit, prescribed for filing the revised return, had elapsed. However, the Assessing Officer completed the assessment u/s 143(3) of the Act, based upon, original computation showing net profit of Rs.1,12,40,326/- after disallowing certain expenses which were set off by earlier losses. On appeal, the conclusion drawn by the Assessing Officer was affirmed. The assessee is aggrieved and is in further appeal before this Tribunal.

2.2. Now, question arises whether the revised computation was to be considered by the Assessing Officer specially when time for filing revised return had elapsed? Under the facts, stated hereinabove, the Hon'ble Bombay High Court in CIT vs Pruthvi Brokers and Share Holders Pvt. Ltd. (2012) 349 ITR 336 (Bom.) held that appellate authorities have power to consider the claim not made in the return by following the decision from Hon'ble Apex Court in CIT vs Gurjagravureous P. Ltd. (1978) 111 ITR 1 (SC), wherein, it was held that the assessee is entitled to raise not merely additional legal submissions, before the appellate authorities, but also entitled to raise additional claim before them and

further appellate authorities have discretion to permit such additional claims. Thus, we are of the view, that even otherwise, the mandate of the constitution is to levy and collect due taxes, therefore, we remand this issue to the file of the Id. Assessing Officer to examine the claim of the assessee afresh and decide in accordance with law. The assessee be given opportunity of being heard. Thus, this ground of the assessee is allowed for statistical purposes.

3. The next ground raised by the assessee pertains to sustaining the disallowance amounting to Rs.1,12,500/- made by the Assessing Officer u/s 40(a)(ia) of the Act. The crux of argument advanced on behalf of the assessee is that the amount was deposited before filing the return by placing reliance upon the decision in 43 SOT 619 (Bom.) and 40 SOT 361 (Bom.). The Id. DR defended the conclusion arrived at in the impugned order.

3.1. We have considered the rival submissions and perused the material available on record. If the observation made in the assessment order, leading to addition made to the total income, conclusion drawn in the impugned order, material available on record, assertions made by the Id. respective counsel, if kept in juxtaposition and analyzed, and without going into much deliberation, we find that the ratio laid down by the Hon'bel Apex Court in CIT vs Alom Extrusions Ltd. (2009) 319 ITR 306, when a proviso in a section is inserted to remedy unintended consequences and to make the section workable, the proviso which supplies an

obvious omission therein is required to be read retrospectively in operation, particularly to give effect to the section as a whole. As per the sub-clause (ia) of clause (a) of section 40 when tax is deductible at source on the payment under Chapter XVII and such tax has not been deducted or after deduction has not been paid then the said deduction is not allowable. As per the sub-clause (A) of sub-clause (ia) if the tax is deducted during the last month of previous year and paid on or before the due date of filing of return as per the provisions of section 139(1) then such sum shall be allowed as deduction. In the cases where the tax is deducted during previous year other than the last month of previous year but is deposited before the last day of previous year then it will be allowed as deduction. Therefore, the conditions for allowability of the deduction is prescribed under section 40(a)(ia) itself and provisions of Chapter XVII and section 194C under Chapter XVII-B at that relevant point of time are relevant only for the purposes of ascertaining the deductibility of the tax on the payment. Once, the nature of payment is falling under the provisions of Chapter XVII/VIIB then the disallowance under section 40(a)(ia) shall be as per the condition as provided under this section itself. The proviso to section 40(a)(ia) makes it further clear that even in the case when the tax has been deductible as per the provisions of Chapter XVII but deducted in the subsequent year or deducted during the last month of previous year but paid after the due date under section 139(1) or deducted during the other month of the previous year except last month but paid after the end of the said previous

year then the said sum shall not be allowed as deduction in computing the income of the previous year but allowed in the previous year in which the said tax has been paid. If the condition of deduction and payment prescribed under Chapter XVII/XVII-B are applicable for disallowance of the deduction under section 40(a)(ia) then the provisions of section 40(a)(ia) will be rendered as meaningless, absurdity and etiose. As per the provisions of section 40(a)(ia) the deduction is disallowed only in the case when either no tax was deducted or it was not paid after deduction. But when the tax is deducted may be belatedly and deposited belatedly then deduction is allowable in the previous year in which it was so deposited. Therefore, if the provisions of section 194C with respect to the time of deduction and payments are applied for the disallowance under section 40(a)(ia) then there will be no purpose or object for providing the certain conditions of actual deduction of tax and payment of tax under section 40(a)(ia). In our view, the provisions of Chapter XVII are relevant only for ascertaining the deductibility of the tax at source and not for the actual deduction and payment for attracting the provisions of section 40(a)(ia). Since in the case in hand when the assessee had deducted the tax in the last month of the previous year i.e., March 2005 and deposited the same before the due date of filing of the return under section 139(1) then it is covered under clause (A) of section 40(a)(ia). Therefore, when the assessee's case covered under the main provisions of existing law then we need not to go to the issue of prospective or retrospective effect of the amendment in the provisions by the

Finance Act, 2010. As regards the decision relied upon by the learned DR when the proviso to section 40(a)(ia) is not contrary to the main section/enactment then the said decision will not help the case of the revenue. The assessee find support from the decision of the Tribunal in *BAPUSHAEB NANASAHEB DHUMAL vs ACIT (40 SOT 361)(Bom. Trib.)*. Since, it was not controverted by the Revenue that the tax so deducted was deposited before filing of return, therefore, we find merit in the ground of the assessee, consequently, in view of the aforesaid discussion, the ground raised by the assessee is allowed.

Finally, the appeal of the assessee is partly allowed for statistical purposes.

This Order was pronounced in the open court in the presence of ld. representatives from both sides at the conclusion of the hearing on 08/10/2015.

Sd/-
(Ramit Kochar)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 13/10/2015

Shekhar, P.S. नि.स.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai

6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai.