

**IN THE INCOME TAX APPELLATE TRIBUNAL,
BANGALORE BENCH 'A'**

**BEFORE SHRI VIJAYPAL RAO, JUDICIAL MEMBER
AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA No.1596/Bang/2016
(Asst. Year 2011-12)

CPG Consultants India Pvt. Ltd.,
21/30, Prestige Craig House,
Craig park Layout, M.G Road,
Bengaluru.

. Appellant

AACCP8208P.

Vs.

The Dy. Commissioner of Income-tax,
Circle – 5(1)(1),
Bengaluru.

. Respondent

Appellant by : Shri R Srinivasan, CA
Respondent by : Smt. Swapna Das, JCIT

Date of Hearing : 31-5-2017
Date of Pronouncement : 31-5-2017

ORDER

PER SHRI JASON P BOAZ, ACCOUNTANT MEMBER :

This appeal by the Revenue is directed against the order of the
Commissioner of Income-tax (Appeals) – 1, Bangalore dated 9/6/2016
for the Assessment Year 2011-12.

2. Briefly stated, the facts of the case are as under:-

2.1 The assessee, a company engaged in the business of architectural and engineering consultancy, filed its return of income for asst. year 2011-12 declaring loss of (-) Rs.4,75,10,788/- The case was selected for scrutiny and the assessment was completed u/s 143(3) of the Income-tax Act, 1961 (in short 'the Act') vide order dated 19/3/2014; wherein the loss returned at Rs.4,75,10,788/- was accepted and assessed as such.

2.2 Aggrieved by the aforesaid order of assessment for asst. year 2011-12, dated 19/3/2014, the assessee preferred an appeal before the CIT(A)-2, Bangalore. Before the Id CIT(A)-2, the assessee challenged the action of the Assessing Officer ('AO') in disallowing its claim for bad debts amounting to Rs.4,31,73,431/- written off in its books of account. It was submitted that since the claim for allowing write off of the aforesaid bad debts was put forth in the course of assessment proceedings but was neither made in the original return of income filed for asst. year 2011-12 nor by way of a revised return of income, the same was rejected by the AO. The Id CIT(A) dismissed the assessee's claim for being allowed the write off of the said bad

debts, stating in view of the decision of the Hon'ble Apex Court in the case of Goetze (India) (284 ITR 323) (SC) the assessee's claim was rightly denied by the AO.

3.1 The assessee, aggrieved by the order of the CIT(A)-2, Bangalore dated 9/6/2016 for asst. year 2011-12, has filed this appeal raising the following grounds:-

“1. The order of the learned Commissioner of Income tax (Appeals) is bad in law and against the facts of the case.

2. Learned Commissioner of Income tax (Appeals) erred in upholding the disallowance of Rs. 4, 31,73,431/- after determining that the same were written off in the books and determining that the same is otherwise allowable.

3. Learned Commissioner of Income tax (Appeals) erred in upholding the disallowance of bad debts written off after determining the fact that the said amount has been included in the income of the appellant for earlier years in accordance with section 36(2) of the Act.

4. Learned Commissioner of Income tax (Appeals) failed to appreciate the fact that no disallowance can be made as the said bad debts' have been written off in the books of accounts of the appellant.”

3.2.1 According to the ld AR for the assessee, the ld CIT(A), in the impugned order, has dismissed the assessee's appeal merely stating that the assessee's claim for write off of bad debts was rightly denied by the AO in view of the decision of the Hon'ble Apex Court in the case of Goetze (India) (284 ITR 323), since the said claim was neither made in the original return of income filed or by way of revised return of income. It is submitted that the assessee had made a provision for bad and doubtful debts amounting to Rs.4,31,73,431/- in its books of account in the period relevant to asst. year 2010-11 and the same was written off in its books of account in the year under consideration, but was inadvertently not claimed in the return of income and computation of income for asst. year 2011-12. On realizing this inadvertent mistake, the said claim for written of bad debts of Rs.4,31,73,431/- was put forth before the AO in the course of

assessment proceedings vide letter dated 7/3/2014, which came to be rejected by the AO by relying on the decision of the Hon'ble Apex Court in the case of Goetze (India) (284 ITR 323) (SC).

3.2.2 Before us, it is contended that the Id CIT(A) instead of considering the assessee's claim for write off of bad debts amounting to Rs.4,31,93,431/- on merits, has dismissed the assessee's appeal summararily holding that the action of the AO in rejecting the assessee's claim was in order in view of the decision of the Hon'ble Apex Court in the case of Goetze (India) (Supra). According to the Id AR, the Id CIT(A) ignored and brushed aside its written submissions dated 13/4/2016 (paced at page 18 to 25 of paper book) wherein the assessee contended that the Hon'ble Apex Court in NTPC Ltd., (229 ITR 383) had held that a taxpayer may make a fresh claim or modify a claim at any stage of proceedings so that the assessing authority can correctly assess the tax liability in accordance with law. It was also submitted that the Hon'ble Karnataka High Court in the case of CIT Vs. Motor Industries Co. Ltd., (229 ITR 137) has held that when the assessment is not u/s 143(1) of the Act, the appellate authority may permit the assessee to claim a deduction or exemption in appeal. It is

prayed that in view of the facts of the case and in the light of the aforesaid judicial pronouncements, the Id CIT(A)/AO be directed to admit the assessee's claim for writing off of bad debts amounting to Rs.4,31,73,431/- for consideration and adjudication on merits.

3.3 Per contra, the Id DR supported the impugned order of the Id CIT(A).

3.4.1 We have heard the rival contentions and perused and carefully considered the material on record. The facts of the case, as emerge from the record, are that in the course of assessment proceedings the assessee raised by way of letter dated 7/3/2014, a claim for deduction of an amount of Rs.4,31,73,431/- as bad debts written off in the assessee's books of account in the year under consideration. It was submitted by the assessee, before the AO, that this claim was not made in the return of income filed for inadvertently in the return of income filed for asst. year 2011-12. The AO rejected the assessee's claim following the decision of the Hon'ble Apex Court in the case of Goetze (India) (Supra) as the said claim was not raised by way of filing of revised return of income.

3.4.2 On a perusal of the impugned order, we find that the Id CIT(A) has dismissed the assessee's appeal without dealing with the grounds raised on the merits of issue of the aforesaid claim for write off of bad debts amounting to Rs.4,31,73,431/- but dismissed the appeal on the ground that the assessee's claim was rightly rejected by the AO in view of the decision of the Hon'ble Apex Court in Goetze (India) (Supra). There is no doubt that the AO has rejected the assessee's claim, for deduction on account of the said bad debts written off in its books of account, in view of the aforesaid decision of the Hon'ble Apex Court (Supra). In our view, however, it was incumbent for the Id CIT(A) to have examine the assessee's claim of the said deduction in appeal in view of grounds raised, and particularly when the relevant material is a part of the records of assessment, as this claim was, put forth before the AO by the assessee in the course of assessment proceeding by virtue of, inter alia, letter dated 7/3/2014. In our considered view, the decision of the Hon'ble Apex Court in the case of Goetze (India) (Supra) does not place fetters on appellate authorities to entertain fresh claims put forth by the assessee on issues which are a part of record, and/or are material for the purpose of

assessing the correct tax liability of an assessee in accordance with law. In coming to this finding we draw support from the ruling of the Hon'ble Apex Court in the case of NTPC Ltd. (229 ITR 383) and of the Hon'ble Karnataka High Court in the case of CIT Vs. Motor Industries Co. Ltd. (229 ITR 137). In this factual and legal matrix of the case, as discussed above, we set aside the impugned order of the Id CIT(A) and after admitting the grounds raised by the assessee on its claim for being allowed write off of bad debts amounting to Rs.4,31,73,431/- (Supra) restore the matter to the file of the Id CIT(A) for examination, verification and adjudication on merits after affording both the assessee and the AO adequate opportunity of being heard and to file details and submissions required in this regard. Consequently, the grounds raised by assessee are allowed for statistical purposes.

4. In the result, assessee's appeal for the Assessment Year 2011-12 is allowed for statistical purposes.

Order pronounced in the open court on **31st May, 2017.**

**Sd/-
(VIJAYPAL RAO)
JUDICIAL MEMBER**

**Sd/-
(JASON P BOAZ)
ACCOUNTANT MEMBER**

Bangalore

Dated : 31/5/2017

Vms

Copy to :1. The Assessee
2. The Revenue
3.The CIT concerned.
4.The CIT(A) concerned.
5.DR
6.GF

By order

Asst. Registrar, ITAT, Bangalore.