

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1340/Mds/2017

निर्धारण वर्ष / Assessment Year : 2014-15

M/s The Ranipet Town Co-operative
Bank Limited,
No.19-A, Mahatma Gandhi Road,
Ranipet, Vellore – 632 401.

v. The Assistant Commissioner of
Income Tax,
Circle – 1,
Vellore.

PAN : AAABT 2406 R

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.1341/Mds/2017

निर्धारण वर्ष / Assessment Year : 2014-15

M/s The Sholinghur Co-operative
Urban Bank Limited,
No.27/50, Sannathi Street,
Sholinghur – 631 102.

v. The Assistant Commissioner of
Income Tax,
Circle – 1,
Vellore.

PAN : AAAAT 4646 C

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellants by : Shri K. Ravi, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri AR.V. Sreenivasan, JCIT

सुनवाई की तारीख/Date of Hearing : 02.08.2017

घोषणा की तारीख/Date of Pronouncement : 23.08.2017

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

Both the appeals of different assessees are directed against the respective orders of the Commissioner of Income Tax (Appeals)-13, Chennai, and pertain to assessment year 2014-15. Since common issue arises for consideration in both the appeals, we heard both the appeals together and disposing of the same by this common order.

2. The only issue arises for consideration in both the appeals is deduction claimed by the assessees under Section 36(1)(viiia) of the Income-tax Act, 1961 (in short 'the Act').

3. Shri K. Ravi, the Ld.counsel for the assessee, submitted that the assessees failed to claim deduction under Section 36(1)(viiia) of the Act in the return of income. The assessees also failed to file the revised return. However, it was claimed before the Assessing Officer during the assessment proceeding. The Assessing Officer by applying the judgment of Apex Court in Goetze (India) Ltd. v. CIT (2006) (284 ITR 323), rejected the claim of the assessees. Placing reliance on the judgment of Madras High Court in CIT v. Abhinitha Foundation (P.) Ltd. (2017) 83 taxmann.com 100, the Ld.counsel

submitted that even if the claim does not form part of original return or even revised return, still it can be considered by the Assessing Officer as well as appellate authorities. This judgment of Madras High Court was not followed by the Assessing Officer. The Ld.counsel has also placed reliance on the decision of Mumbai Bench of this Tribunal in Franco-Indian Pharmaceuticals (P) Ltd. v. ITO (2010) 3 ITR (Trib) 754.

4. On the contrary, Shri AR.V. Sreenivasan, the Ld. Departmental Representative, submitted that the assesseees have not made any claim in their return. Moreover, no revised return was also filed by the assesseees. The assesseees by their letter requested the Assessing Officer to allow deduction under Section 36(1)(viiia) of the Act. Since the revised return was not filed, according to the Ld. D.R., the Assessing Officer rejected the claim of the assesseees by placing reliance on the judgment of Apex Court in Goetze (India) Limited (supra) and the CIT(Appeals) also confirmed the orders of the Assessing Officer.

5. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that the assesseees have not made any claim for deduction under

Section 36(1)(viiia) of the Act. It is also not in dispute that no revised return was filed making the claim under Section 36(1)(viiia) of the Act. We have carefully gone through the judgment of Apex Court in Goetze (India) Limited (supra). The Apex Court found that the Assessing Officer cannot consider any claim unless it is made in the return / revised return. The Apex Court observed that this observation will not impugn the power of the appellate authorities. Moreover, tax can be levied under authority of law. When the assessee is eligible for deduction under Section 36(1)(viiia) of the Act, the Revenue cannot levy tax, merely because the assessee failed to make a claim in their return / revised return. In other words, unless there is an authority of law to levy tax in respect of the amount which is eligible for deduction under Section 36(1)(viiia) of the Act, the Assessing Officer cannot levy tax thereon. This fact can be brought to the notice of the Assessing Officer at any time in the course of assessment proceedings as held by the Apex Court in CIT v. Shelly Products and Another (2003) 261 ITR 367. Therefore, when the assessee brought to the notice of the Assessing Officer in the course of assessment proceedings that a particular amount is eligible for deduction under Section 36(1)(viiia) of the Act, the Assessing Officer is bound to consider the same in view of the

judgment of Apex Court in Shelly Products and Another (supra). Even otherwise, as held by Apex Court in Goetze (India) Limited (supra) itself, the appellate authority have the power to examine the same. Therefore, this Tribunal is of the considered opinion that the matter has to be reconsidered by the Assessing Officer. Accordingly, the orders of the authorities below are set aside and claim of deduction under Section 36(1)(vii) of the Act is remitted back to the file of the Assessing Officer. The Assessing Officer shall examine the matter afresh on merit, after giving a reasonable opportunity to the assessee.

6. In the result, both the appeals stand allowed.

Order pronounced on 23rd August, 2017 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 23rd August, 2017.

Kri.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त (अपील)/CIT(A)-13, Chennai

4. Principal CIT-8, Chennai

5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF.