

## IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH : KOLKATA

[Before Hon’ble Sri N.V.Vasudevan, JM &amp; Shri M.Balaganesh, AM]

I.T.A No. 1882/Kol/2014  
Assessment Year : 2008-09D.C.I.T., Circle-7,  
Kolkata

-vs.-

M/s. East India Business Centre  
(P) Ltd., Kolkata.  
[PAN : AABCE 7659 R]

(Appellant)

(Respondent)

For the Appellant : None  
For the Respondent : None

Date of Hearing : 31.05.2017.

Date of Pronouncement : 02.06.2017.

**ORDER****Per N.V.Vasudevan, JM**

This is an appeal by the Revenue against the order dated.22.07.2014 relating to AY 2008-09.

2. The grounds of appeal raised by the revenue reads thus:

(a) “Whether under the facts and in the circumstances of the case, the direction of Ld. CIT(A) to AO to allow credit of TDS was justifiable in the light of the decision of the Hon’ble Apex Court in the case of Goetz India Vs. CIT 284 ITR 323 (SC).

(b) That the appellant craves leave to add, delete, alter, modify or take new grounds of appeal. “

3. The Assessee is a company engaged in the business of establishing, operating, managing and controlling and dealing with fully and partly furnished commercial accommodation, cyber cafes etc. During the AY 2008-09, the Assessee filed its original return of income on 30 September 2008 declaring total loss at Rs.23,351,825. In the return of income, the Assessee claimed TDS credit of Rs.292, 672. The case was selected for scrutiny and the AO passed the order under section 143(3) dated 22

December 2010 determining returned loss as the assessed loss and granted TDS credit of Rs.292,672.

4. Subsequent to the receipt of the assessment order, the Assessee observed that it has inadvertently not claimed credit for the following TDS amounts in relation to the income offered for tax during AY 2008-09 :

Name of the Deductor	TDS (Rs.)
Motorola India Private Ltd.	2,223,540
Aditya Birla Retail Ltd.	480,160
AON Global Insurance Services Pvt. Ltd.	23,452 817
Control Component India Pvt. Ltd.	39,469
DP World Pvt. Ltd.	94,423
Feedback Ventures Pvt. Ltd.	195,796 4,303
Futuresoft Training Pvt. Ltd.	31,844 1,897
Mitsuit O.S.K.Line (India)Pvt. Ltd.	77,431 43,414 3,724
<b>Total</b>	<b>3,220,270</b>

In view of the above, the Assessee filed a petition under section 154 requesting the AO to grant credit to the Assessee with respect to the above TDS amount. The Assessee submitted the following documents towards its claim for TDS credit of Rs.3,220,270:

- Original TDS certificates aggregating to Rs.3,220,270
- Indemnity Bond in support of the claim of TDS of Rs.3,220,270

5. The AO rejected the petition filed by the Assessee vide his order under section 154 dated 2 March 2012 on the premise that the Assessee should have claimed TDS

credit by filing a revised return. The AO disregarded the original TDS certificates and indemnity bond filed in support of its claim. The Assessee was aggrieved by the aforesaid denial of claim and filed appeal before CIT(A).

6. Before CIT(A), the Assessee, apart from reiterating the stand taken before the AO, also placed reliance on the following decisions, wherein it was laid down that claim for TDS credit can be made without filing a revised return of income.

1. Alpa Laboratories Ltd. vs ACIT [ITA 30/Ind/2012 (Indore)]
2. ITO vs Justice Rajiv Shakti [ITA 50691Delhi/2012]
3. CIT vs Daljit Singh Pyare Lal & Co. 141 Taxman 538 (P&H)
4. CESC (India) Ltd. vs ITO 197 ITR 563 (Cal.)"

7. The CIT(A) agreed with the submission of the Assessee and directed the AO to give credit for TDS. The following were the relevant observations of the CIT(A).

“5.1 I. have gone through the order, the grounds of appeal, the written submission and the other material on record. The AO has not admitted the claim of TDS on the grounds that the appellant had not claimed the same in the Return of Income. The appellant on the other hand has argued that the TDS certificates were received after the ROI was filed and has also supported its argument on the basis of certain judicial precedents. .

5.2 In the written submissions filed during the course of the hearings, the appellant has made available party wise details of the withholding certificates amounting to Rs. 32,20,270/-. From the written submissions filed it is observed :hat the appellant had along with the rectification petition submitted an indemnity bond in support of the claim of TDS wherein the appellant had certified that such taxes were deducted from the income of the Company pertaining to the Ay 2008-09 .

5.3 The facts of the appellant are identical to the cases Alpa Laboratories Ltd. Vs ACIT (supra) and ITO Vs. Justice Rajiv Shakti (supra). In both these cases the judicial authorities have permitted the claim of the TDS even though it was not claimed in the ROI. While allowing such claim the judicial authorities we given directions to the AO to verify the claim and also to verify whether the receipts to which the certificates have been offered to tax in the said year or not.

5.4 Accordingly, based on the above facts including the judicial precedents, I direct the AO to verify the claim of the TDS and allow the credit if found in order

and if the underlying income has been offered to tax in the AY 2008-09. Ground Nos 1 & 2 are, therefore, disposed of accordingly.

8. Aggrieved by the order of the CIT(A), the revenue has preferred the present appeal before the Tribunal. None appeared on behalf of the Assessee. The learned DR filed an application for adjournment. The same was rejected as the issue raised by the revenue in the grounds of appeal is covered against the revenue by several decisions, which we will refer to in the later part of this order. The AO in rejecting the application for rectification of the Assessee has referred to the decision of the Hon'ble Supreme Court in the case of Goetz India Ltd. 157 Taxmann 1 (SC) wherein it was held that the AO has not power to entertain any claim by an Assessee which is not supported by a revised return of income.

9. In the case of **Chicago Pneumatic India Ltd. vs. DCIT 15 SOT 252 (2007) (ITAT) (Del)**. The Delhi ITAT, in the context of allow ability of new claims during the assessment proceedings without having recourse to a revised return, has, placing reliance on principle embedded in Article 265 of Indian constitution (No tax can be collected except by the authority of law), CBDT Circular No. 14 dated 11 April 1955 and explaining the ratio of the Goetz (india) Ltd. (supra) ruling, categorically held that assessee has the right to make new claims during assessment proceedings without recourse to a revised return. The Tribunal dealt with the decision of the Hon'ble Supreme Court in the case of Goetz (India) Ltd., (supra) in the following manner:

*"...As far as the decision of the Hon'ble Apex Court in the case of Goetze (India) Ltd. (supra) is concerned, there is no dispute that the same is binding on everybody concerned. In the said decision, the Hon'ble Apex Court has also ruled that Appellate Tribunal may adjudicate the issue if a claim is made by any party subject to satisfaction of prescribed rules, hence, even the Hon'ble Apex Court has not barred the assessee raise it's legal claim before Appellate Authorities. However, such process would result into undue hardships, delay and multiplicity of proceedings. The Hon'ble Apex Court, on numerous occasions has laid the proposition that the Assessing Authorities are bound to compute the correct income only and collect only legitimate tax, hence, merely for a procedural lapse or technicalities, in our opinion, the assessee should not be compelled to pay more tax than what is due from him. Therefore, this situation has necessarily to*

*be looked upon from the angle of duties of Assessing Authorities as stated earlier, CEDT is the Apex body for tax administration and it can also issue directions which are for the benefit of the assessee's though such directions may not be inconsonance with the provisions of law, hence, if a circular is now issued directing the assessing authorities to grant reliefs/refunds while completing the assessment proceedings, even though such circular may be at variance with the law, as pronounced by the Hon'ble Supreme Court, but the same would be binding on the subordinate income-tax authorities. In our opinion, therefore, circulars of same nature which have been already issued would not become irrelevant or can be ignored. Admittedly, the circular issued in 1995 has not been withdrawn, hence, it has got binding force on the subordinate authorities even as on date. Accordingly, we hold that the Assessing Officer is bound to assess the correct income and for this purpose, the Assessing Officer may grant reliefs/refunds suo motu or can do so on being pointed out by the assessee in the course of assessment proceedings for which assessee has not filed revised return, although, as per law, the assessee is required to file the revised return .....* "

10. Further, in the case **CIT vs Ramco International 221 CTR 491 (2008) HC (P&H)** wherein the Punjab and Haryana High Court, distinguished the judgement of Goetze allowed the claim of the Assessee which was made in course of the assessment proceedings and not by filing revised return.

11. The CIT(A) as a first appellate authority has the power to entertain a new claim even in the absence of a revised return of income. The Supreme Court in case of Goetze (India) Ltd. (supra) has clarified that "the decision was restricted to the power of the assessing authority to entertain a claim for deduction otherwise than by a revised return, and did not impinge on the power of the Appellate Tribunal under section 254 of the Income-tax Act, 1961". This has been interpreted in several judicial pronouncements as applicable even to the first appellate authorities. The Hon'ble Delhi High Court in the case of Jai parabolic Springs 306 ITR 42 (Delhi) has held that the appellate authorities under the Act, were free to consider a claim made by an Assessee even in the absence of a revised return of income and that the requirement for filing a revised return of income as laid down by the Hon'ble Supreme Court in the case of Goetz India Ltd. (supra) is applicable only when a claim is made contrary to the return of income before the AO. The Hon'ble Delhi High Court in the case of Bharat Aluminium 163 Taxman 430J, has inter-alia ruled that assessee can file revised

computation in the course of ongoing assessment proceedings under the Act, without making recourse to revised return, despite the fact that time limit for revising return under section 139(5) had expired. In the light of the aforesaid decisions, we are of the view that the CIT(A) was right in accepting the revised claim regarding grant of credit for TDS. This was a process of determination of correct tax liability of an Assessee and therefore the first appellate authority was fully justified in directing the AO to give credit to TDS on the basis of fresh claim in an application u/s.154 of the Act, supported by TDS certificate. We find no grounds to interfere with the order of the CIT(A).

12. In the result, appeal of the Revenue is dismissed.

**Order pronounced in the Court on 02.06.2017.**

Sd/-  
[M.Balaganesh]  
Accountant Member

Sd/-  
[ N.V.Vasudevan ]  
Judicial Member

Dated : 02.06.2017.  
[RG PS]

Copy of the order forwarded to:

1. M/s. East India Business Centre (P)Ltd., Constantia, 11, Dr.U.N.Brahmachari Street, Kolkata-700017.
2. D.C.I.T., Circle-7, , Kolkata.
3. CIT(A)-VIII, Kolkata
4. C.I.T.-III, Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary  
Head of office/ D.D.O., ITAT , Kolkata Benches