

IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” Bench, Mumbai  
Before S/Shri R.C. Sharma (AM) & Ravish Sood (JM)

I.T.A. No. 334/Mum/2018 (Assessment Year 2011-12)

Smt. Suman Mohatta Flat No. 13, 3 <sup>rd</sup> Floor Lotus Court, J. Tara Road Churchgate, Mumbai-20. PAN : AADPM0305P	Vs.	ITO 12(3)(3) Mumbai
(Appellant)		(Respondent)

I.T.A. No. 335/Mum/2018 (Assessment Year 2011-12)

Shri Shashikumar Mohatta Flat No. 13, 3 <sup>rd</sup> Floor Lotus Court, J. Tara Road Churchgate, Mumbai-20. PAN : ADEPM7286P	Vs.	ITO 12(3)(3) Mumbai
(Appellant)		(Respondent)

Assessee by	Shri Mahesh Saboo
Department by	Ms. N. Hemalatha
Date of Hearing	24.4.2018
Date of Pronouncement	25.4.2018

ORDER

Per R.C. Sharma (JM) :-

These are appeals filed by two different assessees against the order of the learned CIT(A) for A.Y. 2011-12, in the matter of order passed u/s. 143(3) of the I.T. Act.

2. Issue is common in both the appeals. Grounds taken in the case of Smt. Suman Mohatta read as under :-

*“On the facts and circumstances of the case and in law, the authorities below have erred in not treating the sale proceeds of Rs. 1,81,7767-from the agricultural land/Right in the same, as exempt from income tax u/s 10 of the IT Act and the reasons assigned by them were wholly wrong and not in accordance with the facts of the case and provisions of Income Tax Act, 1961 and rules made there under and hence the appellant prays that the said income be treated as exempt from tax.”*

3. Rival contentions have been heard and record perused.
4. The fact of the matter is that in the original Return of Income exemption u/s.10 (agricultural land) was claimed to the tune of Rs. 1,81,776.00. This was followed in course of assessment proceedings by a revised claim of sale of rights in land @ Rs. 2,69,666.00 with expenses of RS. 97,890.00, net result being gain of Rs. 1,81,776.00. This was followed by another claim of agricultural income land @ Rs. 17,366.00. During the course of assessment proceedings, the assessee's representative submitted vide letter dated 23-10-2013 that the income from sale of rights in the agricultural land of Rs. 2,71,166 was wrongly included in the income while filing the return of income for the current C assessment year and claimed that the same should be excluded from the income as the same is exempt u/s. 10 of the Income Tax Act. The Assessing Officer did not accept the assessee's contention and held that the assessee has declared the income from sale of the said land as taxable and if it was a mistake or error, the assessee would have filed a revised return as per section 139(5) of the Income Tax Act. In this case, the assessee has filed a revised return on 08/10/2013 which is beyond the time allowed under section 139(5) of the Income Tax Act. The assessee would have filed the revised return within one year from the end of the relevant Assessment Year i.e. on or before 31-03-2013. Therefore, the assessee's revised return could not be considered, for this purpose, reliance is placed on the decision of the Hon'b/e Supreme Court in the case of M/s. Goetz India vs. C/T. In the case of Goetz India vs. CIT (2006) 284 ITR 323 (SC) wherein it was held that the Assessing Officer cannot allow the claim of the assessee unless the assessee files a revised return u/s. 139(5) of the Income Tax Act. From the decision of the hon'ble Supreme Court it is clear that anything not come through the return or a revised return as per law could not be allowed. Therefore, the income from sale of land shown in the original return of income of Rs. 1,81,776/-, after allowing the expenses, was added to the total income.

5. By the impugned order, the learned CIT(A) confirmed the action of the Assessing Officer against which, the assessee is in further appeal before us.

6. We have heard the rival contentions, carefully gone through the orders of the authorities below. From the record, we find that by relying on the decision rendered by Hon'ble Supreme Court in the case of Goetz India (supra), Assessing Officer has declined the assessee's revised claim filed during the course of scrutiny assessment proceedings on the plea that the assessee has not filed revised return. We find that the assessee has filed revised claim during the course of assessment proceedings itself and the Tribunal is well within its power to ask the Assessing Officer to consider the revised claim as per law. In the interest of justice, we restore the issue back to the file of the Assessing Officer for deciding it afresh, as per law, after giving due opportunity to the assessee.

7. In the result, both the appeals are allowed in part for statistical purposes.

Order has been pronounced in the Court on 25.4.2018.

Sd/-  
(Ravish Sood)  
ACCOUNTANT MEMBER

Sd/-  
(R.C. Sharma)  
JUDICIAL MEMBER

Mumbai; Dated : 25/04/2018

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

( Senior Private Secretary)  
ITAT, Mumbai