

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-B” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.1230/Bang/2018
Assessment Year :2011-12

Smt. Sajida Begum, 2970, Sajjad Ali Street, Mandi Mohalla, Mysore. <b>PAN: AZUPB6194K</b>	Vs.	The Income Tax Officer, Ward – 1 (3), Mysore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Ravishankar, Advocate
Respondent by	:	Smt. Padma Meenakshi, JCIT (DR)

Date of hearing	:	07.05.2018
Date of Pronouncement	:	11.05.2018

**ORDER**

*Per Shri A.K. Garodia, Accountant Member*

This appeal is filed by the assessee which is directed against the order of Id. CIT (A), Mysuru dated 19.09.2017 for Assessment Year 2011-12.

2. The grounds raised by the assessee are as under.

*“1. The learned CIT (Appeals), erred in applying the law established by Goetze (India) Ltd. vs.CIT, reported in (2006) 157 Taxman 1 that no claims were made before the A.O. through a valid return. In fact no returns were filed in this case and the assessment was completed u/s. 144 r.w.s. 147 dt.28.10.2014.*

*2. The learned CIT (Appeals), erred in not remanding the additional evidence produced by the appellant to the A.O., to examine the claim u/s.54F and 80U.*

*3. In view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity.*

*4. The assessment is contrary to facts and law.”*

3. It was submitted by Id. AR of assessee that in Para 3 of his order, it is held by CIT (A) that the assessee had claimed relief for deduction u/s. 54F and u/s. 80U for the first time. He also pointed out that it is also stated by him in same Para of his order that as per the judgement of Hon'ble Apex Court rendered in the case of Goetz (India) Ltd. Vs. CIT as reported in 284 ITR 323, no deduction can be claimed by the assessee without filing revised return of income. He submitted that this is by now a settled position of law that this judgement of Hon'ble Apex Court rendered in the case of Goetz (India) Ltd. Vs. CIT (supra) impinges upon the powers of the AO and not upon the powers of CIT (A) and Tribunal and therefore, the CIT (A) should have decided the issue on merit and since he has not done so, the matter may be restored back to the file of CIT (A) for decision on merit. The Id. DR of revenue supported the order of CIT(A).
4. I have considered the rival submissions and I find force in the submissions of Id. AR of assessee that as per the judgement of Hon'ble Apex Court rendered in the case of Goetz (India) Ltd. Vs. CIT (supra), only the AO cannot entertain a new claim made by the assessee without filing revised return of income but as per this judgement of Hon'ble Apex Court, the CIT (A) and Tribunal has to decide on merit about any such claim if such claim is raised before these authorities. Hence, I set aside the order of CIT (A) and restore the matter back to his file for decision on merit regarding allowability of deduction u/s. 54F and u/s. 80U of IT Act after providing adequate opportunity of being heard to both sides.
5. In the result, the appeal filed by the assessee is allowed for statistical purposes. Order pronounced in the open court on the date mentioned on the caption page.

Sd/-  
(ARUN KUMAR GARODIA)  
Accountant Member

Bangalore,  
Dated, the 11<sup>th</sup> May, 2018.  
/MS/

Copy to:

1. Appellant
2. Respondent
3. CIT

4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Senior Private Secretary,  
Income Tax Appellate Tribunal,  
Bangalore.