

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, BENGALURU**

**BEFORE SHRI N.V.VASUDEVAN, JUDICIAL MEMBER
and
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

ITA No.494/Bang/2018
(Assessment year:2010-11)

Karnataka Co-operative Oil seeds growers
Federation Ltd.,
No.11, Blue Cross Chambers,
Infantry Road Cross,
Bengaluru-560 001. ... Appellant
PAN:AAAK 1189 M

Vs.

Asst. Commissioner of Income-tax,
Circle 8(1),
Bengaluru. ... Respondent

Appellant by : None
Respondent by : Smt.Nandini Das, Addl.CIT(DR)

Date of hearing : 04/10/2018
Date of pronouncement : 10/10/2018

ORDER

Per INTURI RAMA RAO, AM :

This is an appeal filed by the assessee-co-operative society directed against the order of the Commissioner of Income-tax (Appeals)-1,Bengaluru, dated 27/10/2017 for the assessment year 2010-11.

2. The only issue in appeal is the allowability of deduction u/s 80P of the Income-tax Act, 1961 ['the Act' for short]. The Id.CIT(A) had denied the claim solely on the ground that the assessee had not made a claim in the original or in the revised return of income. The reasoning of the Id.CIT(A) cannot be appreciated in the light of law laid down by several High Courts wherein it was held that there is no embargo on the powers of the CIT(A) to entertain the legal claim which the assessee is entitled to. The Hon'ble Gujarat High

Court in the case of *CIT vs. Mitesh Impex* (2014) 46 taxman.com 30 (Guj.), after referring to the judgment of the Hon'ble Supreme Court in the case of *National Thermal Power Co.Ltd. vs. CIT* (229 ITR 383)(SC) and judgments of other High Courts held as follows:

“30. In what manner and to what extent, a ground, a legal contention or a fresh claim can be made at an appellate stage are vexed questions and have occupied the minds of the Courts in numerous occasions.

31. In the case of *Jute Corpn. of India Ltd. v. CIT* [1991] 187 ITR 688 the Supreme Court noted with approval observation of the Court in the case of *CIT v. Kanpur Coal Syndicate* [1964] 53 ITR 225 to the effect that "The Appellate Assistant Commissioner, therefore, has plenary powers in disposing of appeal. The scope of his power is co-terminus with that of the Income-tax Officer. He can do what the Income-tax Officer can do and also direct him to do what he has failed to do." It was observed that there was no reason why the appellate authority cannot modify the assessment order on an additional ground even if not raised before the Income-tax Officer. The Act does not place any restriction or limitation on the exercise of appellate power. It was observed that:ô

"The above observations are squarely applicable to the interpretation of section 251(1)(a) of the Act. The declaration of law is clear that the power of the Appellate Assistant Commissioner is co-terminus with that of the Income-tax Officer, if that be so, there appears to be no reason as to why the appellate authority cannot modify the assessment order on an additional ground even if not raised before the Income-tax Officer. No exception could be taken to this view as the Act does not place any restriction or limitation on the exercise of appellate power. Even otherwise an Appellate Authority while hearing appeal against the order of a subordinate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations if any prescribed by the statutory provisions. In the absence of any statutory provision the Appellate Authority is vested with all the plenary powers which the subordinate authority may have in the matter. There appears to be no good reason and none was placed before us to justify curtailment of the power of the Appellate Assistant Commissioner in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the Income-tax Officer."

32. In case of *National Thermal Power Co. Ltd. v. CIT* [1998] 229 ITR 383 (SC) when the question of law was raised for the first time before the Tribunal though facts were already on record, the Supreme Court observed that there is no reason why the assessee should be prevented from raising such a question before the

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Tribunal for the first time so long as the relevant facts are on record in respect of the item concerned. There is no reason to restrict the power of the Tribunal in such appeal only to decide the grounds which arise from the order of Commissioner (Appeals). The Tribunal should not be prevented from considering the questions of law arising in assessment proceedings although not raised earlier.

33. In case of *Goetze (India) Ltd. (supra)* the Supreme Court distinguished the judgment in the case of *National Thermal Power Co. Ltd. (supra)* on the ground that the same pertained to the power of the Tribunal under section 254 of the Act to entertain a point of law for the first time and commented that such decision does not relate to the power of the assessing officer to entertain a claim for deduction otherwise than by filing a revised return. In the process the Supreme Court recognized that a new claim could not be entertained by the assessing officer without the assessee revising the return. While doing so it was clarified that:ô

"4. . . However, we make it clear that the issue in this case is limited to the power of the assessing authority and does not impinge on the power of the Income-tax Appellate Tribunal under section 254 of the Income-tax Act, 1961. There shall be no order as to costs."

34. In the case of *CIT v. Jai Parabolic Springs Ltd.* [2008] 306 ITR 42/172 Taxman 258 (Delhi), the Delhi High Court held that there is no prohibition on the powers of the Tribunal to entertain an additional ground which according to the Tribunal arose in the matter and for just decision of the case.

35. In case of *CIT v. Pruthvi Brokers & Shareholders (P.) Ltd.* [2012] 349 ITR 336/208 Taxman 498/23 taxmann.com 23 (Bom.) the Bombay High Court considered the issue at considerable length and held that Commissioner (Appeals) as well as the Tribunal have the jurisdiction to consider the additional claim and not merely additional legal submissions. The appellate authorities have discretion to permit such additional claims. Such claims need not be those which became available on account of change of circumstances of law but which were even available when the return was filed.

36. The Delhi High Court once again in recent judgment in the case of *CIT v. Sam Global Securities Ltd.* [2014] 360 ITR 682/[2013] 38 taxmann.com 129 observed that the Courts have taken a pragmatic view and not a technical one as to what is required to be determined in taxable income. In that sense assessment proceedings are not adversarial in nature. With these observations Court confirmed the view of the Tribunal reversing the decision of the assessing officer rejecting the claim of the assessee on the ground that no revised return was filed.

37. In case of *CIT v. Cellulose Products of India Ltd.* [1985] 151 ITR 499 (Guj.), Full Bench of this Court held that merely because a ground has not been raised though it could have been

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raised in support of the relief sought in the appeal, it cannot be said that such ground cannot be raised before the Tribunal. Such ground can be raised provided it falls within the contours of the subject matter of the appeal.

38. It thus becomes clear that the decision of the Supreme Court in the case of *Goetze (India) Ltd. (supra)* is confined to the powers of the assessing officer and accepting a claim without revised return. This is what Supreme Court observed in the said judgment while distinguishing the judgment in the case of *National Thermal Power Co. Ltd.(supra)* and that is how various High Courts have viewed the dictum of the decision in the case of *Goetze (India) Ltd.(supra)*. When it comes to the power of Appellate Commissioner or the Tribunal, the Courts have recognized their jurisdiction to entertain a new ground or a legal contention. A ground would have a reference to an argument touching a question of fact or a question of law or mixed question of law or facts. A legal contention would ordinarily be a pure question of law without raising any dispute about the facts. Not only such additional ground or contention, the Courts have also, as noted above, recognized the powers of the Appellate Commissioner and the Tribunal to entertain a new claim for the first time though not made before the assessing officer. Income-tax proceedings are not strictly speaking adversarial in nature and the intention of the Revenue would be to tax real income.

39. This is primarily on the premise that if a claim though available in law is not made either inadvertently or on account of erroneous belief of complex legal position, such claim cannot be shut out for all times to come, merely because it is raised for the first time before the appellate authority without resorting to revising the return before the assessing officer.

40. Therefore, any ground, legal contention or even a claim would be permissible to be raised for the first time before the appellate authority or the Tribunal when facts necessary to examine such ground, contention or claim are already on record. In such a case the situation would be akin to allowing a pure question of law to be raised at any stage of the proceedings. This is precisely what has happened in the present case. The Appellate Commissioner and the Tribunal did not need to nor did they travel beyond the materials already on record, in order to examine the claims of the assesseees for deductions under sections 80-IB and 80HHC of the Act.ö

In the light of the above decisions, we remit the issue back to the file of the Id.CIT(A) to adjudicate allowability of the claim afresh after affording an opportunity of being heard to the assessee-co-operative society.

3. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 10th October, 2018

Sd/-
(N.V.VASUDEVAN)
JUDICIAL MEMBER
Place : Bengaluru.
D a t e d : 10/10/2018

sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

srinivasulu, sps

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore