

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' 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 Nos.1595 & 1596/Chny/2018

निर्धारण वर्ष / Assessment Years : 2013-14 & 2014-15

M/s Euro Shoe Components Ltd.,
No.478/30A, Coromandal Road,
SIPCOT, Ranipet – 632 403.

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

PAN : AABCE 4723 G

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri A. Mahesh, FCA

प्रत्यर्थी की ओर से/Respondent by : Ms. Anita, JCIT

सुनवाई की तारीख/Date of Hearing : 25.10.2018

घोषणा की तारीख/Date of Pronouncement : 07.11.2018

आदेश /ORDER

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

Both the appeals of the assessee are directed against the respective orders of the Commissioner of Income Tax (Appeals)-13, Chennai, for the assessment years 2013-14 and 2014-15. Since common issue arises for consideration in these appeals, we heard both the appeals together and disposing of the same by this common order.

2. There was a delay of 6 days in filing these appeals by the assessee. The assessee has filed petitions for condonation of delay. We heard the Ld. representative and the Ld. D.R. We find that there was sufficient cause for not filing these appeals before the stipulated time. Therefore, we condone the delay and admit both the appeals.

3. The first ground of appeal is with regard to reversal of excess depreciation and disallowance made under Section 40(a)(ia) of the Income-tax Act, 1961 (in short 'the Act').

4. Shri A. Mahesh, the Ld. representative for the assessee, submitted that in the course of assessment proceeding, the assessee has reversed the excess depreciation and also reduced the disallowance under Section 40(a)(ia) of the Act by letter dated 23.02.2016. According to the Ld. representative, the Assessing Officer as well as the CIT(Appeals) have not considered the claim of the assessee since the revised return was not filed. Placing reliance on various case laws, the Ld. representative submitted that the judgment of Apex Court in Goetze (India) Ltd. v. CIT (2006) 284 ITR 323 is applicable only to the Assessing Officer and not to the

appellate authority, therefore, the CIT(Appeals) at least ought to have considered the same. The Ld. representative placed his reliance on the judgment of Madras High Court in CIT v. Abhinitha Foundation Pvt. Ltd. in T.C (A) No.811 of 2016 dated 06.06.2017, a copy of which is available at page 12 of the paper-book.

5. On the contrary, Ms. Anita, the Ld. Departmental Representative, submitted that unless the claim is made in the return of income, in view of the judgment of Apex Court in Goetze (India) Ltd. (supra), the Assessing Officer is not expected to consider the same. Admittedly, according to the Ld. D.R., the assessee has not made any claim in the return of income and it was made by way of a letter during the course of assessment proceeding, therefore, the Assessing Officer has rightly rejected the claim of the assessee.

6. We have considered the rival submissions on either side and perused the relevant material available on record. In respect of reversal of excess depreciation and disallowance under Section 40(a)(ia) of the Act, the assessee admittedly has not made any claim and it was claimed by way of a letter dated 23.02.2016. The

Assessing Officer by applying the judgment of Apex Court in Goetze (India) Ltd. (supra), disallowed the claim of the assessee. The question arises for consideration is whether this Tribunal can entertain the claim of the assessee even though it has not claimed in the return of income? This issue was examined by the Madras High Court in Abhinitha Foundation Pvt. Ltd. (supra). the Madras High Court found that failure to advert to the claim in the original return or in the revised return cannot denude the appellate authorities of their power to consider the claim if the relevant material is available on record and is otherwise tenable in law. In view of this judgment of Madras High Court, this Tribunal is of the considered opinion that this Tribunal can entertain the claim of the assessee even though it was not made in the return of income. Moreover, the Apex Court itself in the case of CIT v. Shelly Products and Another (2003) 261 ITR 367 found that the assessee can make claim during the course of assessment proceeding which is omitted to be made in the return of income.

7. In view of the above, this Tribunal is unable to uphold the orders of both the authorities below. Therefore, orders of both the authorities below are set aside and the matter is remitted back to

the file of the Assessing Officer. The Assessing Officer shall consider the issue with regard to reduction of reversal of excess depreciation and reduction of disallowance under Section 40(a)(ia) of the Act as claimed by the assessee in the letter dated 23.02.2016 and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

8. The next issue arises for consideration is additional depreciation.

9. Shri A. Mahesh, the Ld. representative for the assessee, submitted that the assessee admittedly purchased a new machinery and eligible for additional depreciation of 20%. During the year under consideration, according to the Ld. representative, the Assessing Officer allowed 10%. The balance amount was to be carried forward and to be allowed for assessment year 2014-15. The Ld. representative further submitted that the appeal of the assessee for assessment year 2014-15 is also before the Tribunal in I.T.A. No.1596/Chny/2018. Referring to the Explanatory Note to proviso to Section 32(1)(iia) of the Act, the Ld. representative submitted that this proviso was held to be prospective in nature by

CIT(Appeals). Accordingly, he rejected the claim of the assessee. Referring to the judgment of Madras High Court in CIT v. T.P. Textiles Pvt. Ltd. (394 ITR 483), the Ld. representative submitted that the Madras High Court found that the amendment is clarificatory in nature, therefore, it is not prospective in operation. In other words, it is retrospective in nature, therefore, the assessee is eligible for additional depreciation.

10. We heard Ms. Anita, the Ld. Departmental Representative also. Admittedly, Section 32(1)(ia) of the Act was amended for granting additional depreciation in the subsequent year in case it cannot be allowed in the year in which machinery was installed. The assessee admittedly installed a new machinery and used the same for less than 180 days. Therefore, the Assessing Officer granted 10% of additional depreciation during the year under consideration and the balance was disallowed on the ground that the amendment will be operative in prospective. The Madras High Court found that the amendment is retrospective in operation. Therefore, both the authorities below are not justified in disallowing the claim of the assessee. Accordingly, the orders of both the authorities below are set aside and the Assessing Officer is directed

to allow remaining 50% depreciation during the assessment year 2014-15.

11. The next issue arises for consideration is grant of interest of ₹2,46,024/- as against the correct interest of ₹4,73,782/-. This issue is raised by the assessee for assessment year 2013-14.

12. We heard Shri A. Mahesh, the Ld. representative for the assessee and Ms. Anita, the Ld. Departmental Representative. The CIT(Appeals) directed the Assessing Officer to verify the claim made by the assessee. This Tribunal is of the considered opinion that the grant of interest has to be verified on the facts available on record by the Assessing Officer. Therefore, the Assessing Officer is directed to verify the claim of the assessee with regard to grant of interest and pass an order afresh after giving a reasonable opportunity to the assessee.

13. The next issue arises for consideration for assessment year 2013-14 is credit of ₹8,27,348/- under Section 115-O of the Act in respect of distribution tax as against the actual tax paid ₹20,92,703/-.

14. Shri A. Mahesh, the Ld. representative for the assessee, submitted that while making payment with regard to distribution tax, the assessee has wrongly uploaded the assessment year. The Assessing Officer claims that he has no power to rectify the mistake committed by the assessee.

15. We heard Ms. Anita, the Ld. Departmental Representative also. This Tribunal is of the considered opinion that even though the payment was made wrongly through online, the Assessing Officer being the assessing authority has the jurisdiction and power to verify the claim of the assessee whether the assessee has wrongly paid the tax for other assessment year or for this assessment year. After verification, if the Assessing Officer finds that there is anything wrong in uploading the payment in respect of the assessment year, necessary correction should be made. Wrong uploading of assessment year through online cannot be taken advantage by the Department. The proceeding before the Assessing Officer being a judicial proceeding under Section 136 of the Act, the Assessing Officer has to Act judiciously and rectify the mistake if any committed by the assessee in making payment of taxes. Therefore, this Tribunal is of the considered opinion that the

matter needs to be verified by the Assessing Officer. Accordingly, orders of both the authorities below are set aside and the matter is remitted back to the file of the Assessing Officer. The Assessing Officer shall verify the distribution tax paid by the assessee under Section 115-O of the Act and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

16. The next issue arises for consideration for assessment year 2013-14 is levy of interest under Section 115P of the Act.

17. We heard Shri A. Mahesh, the Ld. representative for the assessee and Ms. Anita, the Ld. Departmental Representative. Levy of interest is a factual aspect which needs to be verified on the basis of the material. The assessing authority is a right person to verify the claim of interest under Section 115P of the Act. Accordingly, this issue is remitted back to the file of the Assessing Officer.

18. Now coming to assessment year 2014-15, Shri A. Mahesh, the Ld. representative for the assessee, submitted that a revised return was filed within the time limit provided under the Act.

However, the Assessing Officer has not considered the revised return.

19. We heard Ms. Anita, the Ld. Departmental Representative also. The Ld. D.R. submitted that it is not known whether the revised return was filed within the time limit or not.

20. Having heard the Ld. representative for the assessee and the Ld. Departmental Representative, this Tribunal is of the considered opinion that when the assessee has filed the revised return within the time limit provided under the provisions of Income-tax Act, the same has to be considered by the Assessing Officer. However, it is not known whether the revised return was filed within the time provided under the Act or not? Hence, orders of both the authorities below are set aside and the Assessing Officer is directed to re-examine the matter and find out whether the assessee filed the revised return within the time limit provided under the Act and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

21. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the court on 7th November, 2018 at
Chennai.

sd/-
(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)
लेखा सदस्य/Accountant Member

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 7th November, 2018.

Kri.

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-34
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.