

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

ITA No.1589/Bang/2016
Assessment year : 2009-10

Indecomm Global Services India Private Limited (formerly known as IGS Imaging Services India Pvt. Ltd.), 11-12/1, 4 th Floor, Maruthi Infotech Center, Block A, Amarjyoti Layout, Off. Intermediate Ring Road, Bangalore – 560 067. PAN: AABCI 2902H	Vs.	The Deputy Commissioner of Income Tax, Circle 3(1)(1) [formerly Circle 11(4)], Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Rashmi R., Advocate
Respondent by	:	Dr. P.V. Pradeep Kumar, Addl.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	03.12.2018
Date of Pronouncement	:	31.12.2018

ORDER

Per N.V. Vasudevan, Vice President

This is an appeal by the Assessee against the order dated 28.6.2016 of CIT(A)-3, Bengaluru, relating to AY 2009-10.

2. Gr.No.1 raised by the Assessee reads as follows:-

“The learned Assessing Officer ("AO") and the Commissioner of Income Tax (Appeals) ("CIT(A)") have erred in law and facts of the case in determining the total income of the Appellant:

1. Claim of deduction under section 10A for 80Ft Road unit, Indiranagar

- The learned CIT(A) has erred in not granting the deduction under section 10A of the Act amounting to Rs.54,43,656 in respect of profits earned by Appellant's facility at 80Ft Road, Indiranagar, which is a mere extension of an already existing STPI Unit in Koramangala.
- The learned CIT(A) ought to have appreciated that although the Appellant has inadvertently not claimed the deduction u/s 10A in respect of facility at 80Ft Road, Indiranagar (which is an extension of existing Koramangala Unit, a eligible unit under section 10A of the Act), it has made the said claim before the learned Assessing Officer (AO) during the course of assessment proceedings.
- The learned CIT(A) ought to have appreciated that although the Appellant has made the said claim u/s 10A in respect of facility at 80Ft Road (which is an extension of existing Koramangala Unit, a eligible unit under section 10A of the Act) during the assessment proceedings, the learned AO has not granted the same.
- The learned CIT(A) has erred in stating that the Appellant had not placed the relevant details in respect of 80Ft Road unit (which is an extension of existing Koramangala Unit, a eligible unit under section 10A of the Act) before the AO during the assessment proceedings, although the Appellant had actually submitted the same before the AO and thus the relevant facts were always on record in the normal course of assessment.
- The learned CIT(A) ought to have appreciated that the appellate authorities have the power to consider the said claim of deduction u/s 10A as made by the Appellant before

the AO during the assessment proceedings, although such claim was inadvertently not made in the return of income.

- The learned CIT(A) ought to have appreciated that the Appellant has already made the said claim of deduction u/s 10A before the AO during assessment proceedings and hence it is not a case of Appellant making an additional claim for the first time at appellate level.”

3. The Assessee is a company engaged in the business of providing Information Technology Enabled Services (ITeS) and trading in Scanners and imaging equipment. It is not in dispute that the Assessee has 4 units which are approved under the Software Technology Parks of India (STPI) Scheme and therefore entitled to claim deduction u/s.10A of the Income Tax Act, 1961 (Act) in respect of the profits derived from export of computer software. One of the 4 units was a unit at Koramangala, Bengaluru, referred to as Koramangala unit. The Assessee had another unit at Indiranagar, Bengaluru which was also engaged in manufacture of export of computer software, hereinafter referred to as 'Indiranagar unit'. Indiranagar unit was considered by the Assessee as expansion of the Koramangala Unit and therefore profits derived from export of computer software from the Indiranagar unit was also to be regarded as profits of the Koramangala unit and such profits were also eligible for deduction u/s.10A of the Act. The approval of Indiranagar unit as expansion of the Koramangala unit was accorded by the STPI in its letter dated 5.5.2007, a copy of which is at page-59 of the Assessee's paper book.

4. The Assessee in the return of income, inadvertently did not include the profits of Indiranagar unit as profits of Koramangala Unit while claiming deduction u/s.10A of the Act on profits derived by the Koramangala Unit. In the course of assessment proceedings, the Assessee brought to the notice of the AO vide its submission dated 28.1.2013 and 30.12.2012 (filed before

AO on 5.11.2012), the facts with regard to Indiranagar unit stated in the earlier paragraph and claimed that the profits of the Indiranagar unit should be regarded as profits of Koramangala unit and deduction u/s.10A of the Act should be allowed on such enhanced profits.

5. The AO did not make any reference to the above claim of the Assessee in the order of assessment and allowed deduction u/s.10A of the Act as claimed in the return of income by the Assessee thereby not allowing deduction u/s.10A of the Act on the profit of the Indiranagar unit.

6. Before CIT(Appeals), the Assessee submitted that it was not making a new claim for deduction u/s.10A of the Act but was only claiming the correct quantum of deduction u/s.10A of the Act in respect of the profits of the Koramangala Unit and therefore the claim ought to have been entertained and allowed by the AO. The Assessee relied on the decision of the Hon'ble Mumbai ITAT in the case of *XS Cad India Pvt. Ltd. (2015) 61 taxmann.com 82 (Mumbai)* wherein the Assessee wrongly claimed deduction u/s.10A of the Act at 50% of profits whereas the Assessee was entitled to deduction u/s.10A of the Act at 100% of the profits and the Assessee filed a revised computation claiming deduction u/s.10A of the Act at 100% of profits. The AO did not entertain the claim as it was not made in a revised return of income filed but the CIT(A) allowed the claim of the Assessee. The Tribunal upheld the order of the CIT(A). Reliance was also placed by the Assessee on several judicial pronouncements like (i) *Jute Corporation of India Ltd. Vs. CIT (1990) 53 taxman 85(SC)* wherein it was held that the first appellate authority has wide powers u/s.251(1)(a) of the Act and can entertain an additional claim; (ii) *National Thermal Power Co. Ltd. Vs. CIT 229 ITR 383 (SC)* wherein it was held that the purpose of proceedings under the Act is for correct determination of tax liability and examination of claim on the basis of facts already on record should be

entertained; (iii) *CIT Vs. Pruthivi Brokers & Shareholders (2012) 23 Taxmann.com 23 (Bom)*, *Ramco Cements Ltd. Vs. DCIT (2015) 55 taxmann.com 79 (Mad)*, *Rakesh Singh Vs. ACIT (2012) 26 taxmann.com 240(Bang-ITAT)* and *Chicago Pneumatic India Ltd. Vs. DCIT (2007) 15 SOT 252 (Mum-ITAT)* wherein it was held that appellate authorities to entertain a new claim *de hors* filing revised return of income and that the prohibition laid down by the Hon'ble Supreme Court in the case of *Goetz India Ltd. Vs CIT 284 ITR 323 (SC)* is not applicable to the appellate authorities under the Act.

7. The CIT(Appeals) refused to entertain the claim of the Assessee for deduction in respect of the profits of the Indiranagar unit on the ground that relevant facts for verification of the claim of the Assessee was not available on record and that the decision of the Bangalore Tribunal in the case of *Rakesh Singh (supra)* was not applicable because that was a case where dispute was with regard to allowability of depreciation which did not involve examination of facts and facts were already available on record. On the above reasoning and quoting the observations of the Hon'ble Supreme Court in the case of *NTPC Ltd. (supra)* wherein it was observed that question of law which arises for consideration from facts found by lower authorities having a bearing on tax liability should be entertained, the CIT(A) held that facts necessary for adjudication of claim of Assessee u/s.10A of the Act for the profits of the Indiranagar unit were not available on record and therefore the claim cannot be entertained.

8. The CIT(A) on this issue concluded as follows:-

“8. In the present case it is not in dispute that the appellant had not made any claim with regard to deduction u/s 10A of the Act in respect of the Indiaranagar Unit in its return of income. No details relating to the extension of the approval in respect of the

same unit and other relevant details required for verification before allowing the deduction u/s 10A were furnished before the AO. No information relating to the export turnover and total turnover of the unit and other related expenses and the computation of income in respect of the Indiranagar unit for which the deduction u/s 10A is sought to be claimed were furnished by the appellant before the AO. Therefore, it is clearly evident that the relevant facts for adjudicating the issue of allowability of deduction u/s 10A in respect of the Indiranagar Unit of the appellant were not available on record before the AO during the assessment proceedings. Therefore, respectfully following the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. (supra) and considering the specific facts of the present case, the claim of the appellant cannot be accepted. The decision in the case of Rakesh Singh vs. ACTT (supra) cannot be applied for allowing deduction u/s 10A without having the relevant records relating to the claim of deduction by the Indiranagar unit. Therefore, the contention of the appellant for consideration of the additional claim of deduction u/s 10A in respect of the Indiranagar unit of the appellant cannot be accepted. The ground of appeal is accordingly dismissed.”

9. Aggrieved by the order of the CIT(A), the Assessee has raised Gr.No.1 before the Tribunal. We have heard the rival submissions. The learned DR reiterated the stand of the Revenue as contained in the grounds of appeal filed before the Tribunal. He relied on the decision of the Hon'ble Supreme Court in the case of *Goetze (India) Ltd. Vs CIT 284 ITR 323 (SC)* wherein the Hon'ble Supreme Court held that after filing the return of income, an assessee can make further new claim only by filing a revised return of income in time.

10. The Id. Counsel for the assessee brought to our notice that the Hon'ble Supreme Court in the case of *Goetze (India) Ltd vs CIT (supra)* held that the AO cannot entertain any claim by an Assessee which is not made in a return of income, without filing a revised return of income. In the aforesaid decision, the Hon'ble Supreme Court also made reference to the

decision of the Hon'ble Supreme Court in the case of *NTPC Ltd. 229 ITR 383 (SC)*, wherein it was laid down that it was open to the assessee to raise any point of law even before the appellate tribunal. The Id. counsel further brought to our notice that the Hon'ble Supreme court in the case of *Goetze India Ltd* further observed that in para – 4 of its decision that its decision will not have any impact on the power of the Tribunal u/s 254 to entertain for the first time a point of law, provided the fact on the basis of which the issue of law can be adjudicated are already available on record. The Hon'ble Supreme Court made it clear that its decision was limited in the power of the AO. The Id. counsel submitted that in the decision rendered by the Hon'ble Supreme Court in the case of *NTPC Ltd. Vs CIT (supra)* the Hon'ble Supreme Court had placed reliance on its own decision in the case of *Jute Corporation of India vs CIT 1991 AIR 241 (SC)*. In the said decision the Hon'ble Supreme Court, dealt with the power of the first appellate authority to entertain a claim that was not made in the return of income or before the AO. The right to entertain a new plea in the appeal before it was qualified with a rider that the appellate authority must be satisfied that the ground raised was bona fide and the same was not raised earlier for good reasons. The Id. Counsel submitted that the ratio laid down in the case of *Goetze India Ltd.*, regarding the power of the Tribunal to entertain a new plea should be construed as not applicable to the first appellate authority also in view of the decision in the case of *Jute Corporation of India (supra)*. He relied on the decision of Delhi High Court in the case of *E-Funds International India Pvt. Ltd. ITA No.607 & 607/2015*. He reiterated submissions made before the CIT(A). The learned DR relied on the order of the CIT(A).

11. We have considered the rival submissions. In the case of ***Chicago Pneumatic India Ltd. vs. DCIT 15 SOT 252 (2007) (ITAT) (Del)***, the Delhi

ITAT, in the context of allowability 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

12. The Hon'ble Punjab & Haryana High Court in the case ***CIT vs Ramco International, 221 CTR 491 (2008) HC (P&H)*** distinguished the judgement of Hon'ble Supreme Court in the case of *Goetz (India) Pvt. Ltd. (supra)* and allowed the claim of the Assessee which was made in course of the assessment proceedings and not by filing revised return. 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 430*, 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.

13. In the light of the above judicial pronouncements, we are of the view that the CIT(A) fell into an error in refusing to examine the claim of the Assessee for deduction u/s.10A of the Act on the profits of the Indiranagar Unit. We are of the view that interest of justice would be met by directing

the AO to examine the claim of the Assessee in this regard in accordance with law and if the claim is otherwise allowable, to allow the deduction. The AO will afford opportunity of being heard to the Assessee in the set aside proceedings before deciding the issue on merits. We direct the AO accordingly.

14. Gr.No.2 raised by the Assessee reads as follows:

“2. Short credit for tax deducted at Source

- The learned CIT(A) has erred in directing the AO to grant credit of tax deduction at source ('TDS') for an amount of Rs. 13,265,829 as reflecting in Form 26AS, although the Appellant has submitted TDS certificates to the extent of Rs, 14,631,157.

The Appellant craves leave to add, alter, rescind and modify the grounds provided herein above or produce further documents, facts and evidence before or during the course of nearing of this appeal.

For the above and any other grounds which may be raised at the time of hearing, it is prayed that necessary relief may be provided.”

15. As regards Gr.No.2, the CIT(A) gave the following directions to the AO in so far as giving of credit to tax deduct at source is concerned:-

“10. Ground no.4 of the appeal is with regard to the short grant of credit in respect of the tax deducted at source. In this regard the appellant has claimed that the AO had restricted the TDS credit to Rs.71,75,208 thereby not allowing credit for of TDS to the extent of Rs.7,493,203. The appellant has also stated that as per the TDS certificates the company has TDS credit amounting to Rs.1,46,31,157/-. It is further claimed that as per the Form 26AS updated on 02.06.2016, the TDS credit available to the appellant is found to be Rs.1,32,65,829. Therefore the appellant has claimed that necessary TDS credit should be allowed.

10.1 The submissions made by the appellant have been considered during the appeal proceedings the appellant has filed copies of the Form no. 26AS in the case of the appellant updated till 02.06.2016, from which it is seen that the appellant has not been allowed to avail the TDS credit as reflected in the Form 26AS. Therefore, **the AO is directed to verify the updated Form no.26AS and grant credit for the TDS available to the appellant.** The ground of appeal is accordingly allowed.”

16. As can be seen from the grounds of appeal raised by the Assessee and the order of the CIT(A), the grievance of the Assessee is that the AO ought to have given credit for TDS on the basis of TDS certificates to the extent of Rs.1,46,31,157/- which were produced before the AO and should not have restricted giving of credit for TDS only on the basis of the credit as reflecting in Form 26AS. The submission of the learned DR was that the directions of the CIT(A) are in accordance with CBDT Circular No.13/2013. The learned counsel for the Assessee however brought to our notice the following judicial precedents to our notice:-

- “(a) The Hon’ble Delhi High Court on its own motion v. UO & Ors. in W.P.(C) 2659/2012 & W.P.(C) 5443/2012 dated 14.3.2013 held that CBDT Instruction No.5/2013 dated 08th July, 2013 which provides that when an assessee approaches the Assessing Officer with requisite details and particulars in the form of TDS certificate as an evidence against any mismatched amount, the said Assessing Officer will verify whether or not the deductor has made payment of the TDS in the Government Account and if the payment has been made, credit of the same should be given to the assessee.
- (b) The Hon’ble Gujarat High Court in *Smit Devendra Rajani v. ACIT [2014] 49 taxmann.com 31 (Guj)* held that where deductor having deducted TDS, issued Form No.16A, credit of same cannot be denied to assessee deductee solely on the ground that such credit does not appear on ITD system of department and/or same does not match with ITD system of department.

- (c) In the case of *Rakesh Kumar Gupta. UOI [2014] 46 taxmann.com 447 (All)*, the Hon'ble Allahabad High Court held that the refund claim made by the deductee could not be denied by Assessing Officer on the ground that there was mis-match between details furnished by deductee and Form 26AS.

17. We have considered the rival submissions and are of the view that the claim of the Assessee deserves to be accepted in the light of the judicial precedents cited on behalf of the Assessee. The Credit for TDS has to be allowed on the basis of TDS certificates filed subject to verification by the AO. We hold and direct accordingly.

18. In the result, appeal by the Assessee is partly allowed.

Pronounced in the open court on this 31st day of December, 2018.

Sd/-

Sd/-

(INTURI RAMA RAO)
Accountant Member

(N.V. VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 31st December, 2018.

/ Desai Smurthy /

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.