

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCHE, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.63/Ind/2017  
Assessment Year: 2012-13**

|                            |                     |   |
|----------------------------|---------------------|---|
| DCIT(Exemption),<br>Bhopal | <b>बनाम/</b><br>Vs. | Indore Education and<br>Service Society,<br>04, Sita Building, Y.N. Road,<br>Indore |
| (Revenue)                  |                     | (Respondent)  |
| P.A. No.AAATI3186K         |                     |   |

|                               |                           |
|-------------------------------|---------------------------|
| Appellant by                  | Shri V.J. Boricha, Sr. DR |
| Respondent by                 | Shri Sudheer Padliya, CA  |
| <b>Date of Hearing:</b>       | <b>07.03.2019</b>         |
| <b>Date of Pronouncement:</b> | <b>15.03.2019</b>         |

**आदेश / O R D E R**

**PER KUL BHARAT, J.M:**

This is an appeal filed by the Revenue against the order of Commissioner of Income Tax(Appeals)-II Indore

dated 03/10/2016 pertaining to assessment year 2012-13.

The revenue has raised following grounds of appeal:

*“1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in allowing the society benefits of the exemption u/s 10(23C)(vi) of Income Tax Act when such claim of exemption u/s 10(23C)(vi) of the Act was neither made in the return of income nor before the assessing officer. Such claim is not allowable as per the decision of the Hon'ble Supreme Court in Goetze (India) Ltd. vs. CIT reported in 284 ITR 323 Hon'ble Supreme Court [2006].*

*2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in allowing the society benefits of the exemption u/s 10(23C)(vi) of Income Tax Act especially when it was found by the assessing officer that the income of the society was used or applied for the benefit of the interested persons which is contravention as per the 13<sup>th</sup> proviso of section 20(23C) of the Act and hence society cannot be said to be existing solely for educational purposes and nor for the purposes of profit.”*

2. The facts giving rise to present appeal are that the case of the assessee was picked up for scrutiny assessment and the assessment u/s 143(3) of the Income Tax Act, 1961 (hereinafter called as ‘the Act’) was framed vide order dated 18.03.2014. The assessing officer granted exemption/benefit of provisions of section 11 of the Act on the basis that the benefit was given to the related parties.

3. Aggrieved by this the assessee preferred an appeal before the Ld. CIT(A) allowed the appeal. Thereby, ld. CIT(A) given benefit of u/s 10(23C)(vi) of the Act.
4. Against this the Revenue is in appeal before this Tribunal the only effective ground in the appeal is against the granting benefit u/s 10(23C) of the Act.
5. Ld. Departmental Representative (DR) supported the order of the assessing officer and submitted that Ld. CIT(A) was not justified in deleting the addition on granting relief to the assessee.
6. On the contrary ld. counsel for the assessee reiterated the written submissions as made in the written submissions of the assessee are reproduced as under:

*In the Matter of Departmental Appeal in the Case of Indore Education and Service Society. Indore in Appeal No IT -10/14-15/159*

*In connection with appeal filed by the Department against the order of CIT-A-II Indore fixed for hearing on 12.03.2018 we beg to submit as under:*

*1. That the assessee filed his return of income on 30.09.2011 declaring total income of Rs Nil after applying the provisions of section 11 of the Act while computing the income chargeable to tax. Further the assessee has also been accorded approval of exemption of income u/s 10(23C) of the Act vide order passed by the Department of Revenue Central Board of Direct Taxes New Delhi vide order dated 23.04.2001. Thereafter the same was renewed from time to time and the last approval was granted vide CCIT order dated 06.11.2007 vide No F. No.*

CCIT/IND/Tech/10(23C) (vi)/15/07-081 which has become perpetual in view of the amendment made in section 10(23C) by the Finance Act 2008. Since there was no income in the case of the assessee after applying the provisions of section 11 of the Act, at the time of submitting the return of income, therefore, question of claiming any exemption u/s 10(23C) does not arise at the time of submitting the return of income.

2. That the learned A.O. while making the assessment has determined the income of the assessee at a total income of Rs.17370000/- prior to allow benefits of sections 11 and 10(23C)(via) of the Act, to the assessee for the reasons mentioned in the assessment order. Against which the assessee filed an appeal before Honourable Commissioner of Income Tax Appeals-II Indore who had decided the appeal in favour of the assessee by directing the Ld. A.O. to allow the benefits of section 10(23C){via) to the assessee for which he has been accorded approval for exemption of income earned by him out of the Educational activities, vide his order dated 14.09.2016. Against which the Department has preferred appeal before the Honorable Bench for directions issued to allow the benefits of section 10(23C)(via) to the assessee.

3. The Department seek the opinion of the Honourable Bench that in absence of any claim made for such exemption either in the return of income or before the A.O. such exemption was allowed by honorable CIT -A in the appeal so filed by the assessee before him in the light of the decision of Honourable Supreme Court in Goetze (India) Ltd V CIT reported in 284 ITR 323. Thus the Department has the objections of allowing the exemption to the assessee which was neither claimed in the return of income nor claimed the same in the assessment proceedings before the Ld. A.O. as findings given by the Apex Court of India in the cited as above.

The assessee wish to bring the following facts of the case before the Honourable Bench, the circumstances which restrain the assessee to claim the exemption as above.

(i) IN THE RETURN OF INCOME FILED BY HIM

The assessee is duly registered as a Trust u/s 12AA of the Act. As such the provisions of section 11 of the Act applied to the assessee trust. At the time of filing the return of income the assessee has computed the income chargeable to tax before applying the provisions of section 10(23C)(via) of the Act. As per that computation of income

*there was no income earned by the assessee after applying the provisions of Section 11 of the Act as the trust has applied full income derived from the properties of the Trust towards the object of the Trust for which it has been established. In absence of any income to the assessee question of claiming such income for exemption u/s 10(23C)(via) of the Act does not arise. Therefore under the above circumstance of the case question of claiming any exemption does not arise.*

*(ii) NOT CLAIMING THE EXEMPTION BEFORE THE LD. A.O. IN ASSESSMENT PROCEEDINGS*

*In the assessment proceedings the Ld. A.O. has not issued any show cause Notice to the assessee that he will be computing the income of the assessee without applying the provisions of section 11 of the Act. Thus there will be any income in the assessment to the assessee. In absence of any such show cause notice to the assessee from the Ld. A.O. the assessee came to know for the first time that in his case the Ld. A.O. has determined the taxable income in his case on the receipt of the assessment order along with demand notice, which was served upon the assessee after completion of assessment on 18.03.2014. Thus when the assessee came to know about the determination of income as computed by Ld. A.O. before allowing any exemption u/s 10(23C)(via) of the Act, the assessment proceedings were already concluded on 18.03.2014 and the assessee came to know the same on 20.03.2014, by that time there was no scope of claiming any exemption u/s 10(23C)(via) of the Act. However immediately filed an application u/s 154 of the Act and requested him to rectify the order by passing an order u/s 154 by allowing the exemption u/s 10(23C)(via) to the assessee. However, no action on such application of the assessee has been taken by the Ld. A.O. after passing of 4 years.*

*Now we beg to submit before the Honourable Bench as under in connection with directions of the Honourable CIT-A-II Indore in connection with allowing the exemption u/s 10(23C)(via) of the Act irrespective of the facts that the same was neither claimed in the return of income nor before the Ld. A.O.*

*The Honourable CIT -A after considering the submissions of the assessee and relying on Circular No 14 dated 11.04.1955 issued by CBDT in which it had been instructed to all the authorities engaged in collecting the revenue to allow all the benefits to the assessee*

*irrespective of the fact that the same was claimed by the assessee or not. The Honourable CIT-A after em placing the contents of Para 3 of the above said circular which were in nature of instruction to all the authorities engaged in collecting the revenue about the approach of their working in favour of the assessee. And dealing the Duties and Responsibilities of the Assessing Authorities under the Income Tax Act has issued the directions to allow the benefits of section 10(23c)(via) of the Act to the assessee.*

*The instructions as mentioned in Para 3 of the above mentioned circular No 14 dated 11.04.1955 as issued to all the authorities engaged in collecting the revenue is reproduced as under for the your honors' kind consideration.*

*3. Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the Department for it would inspire confidence in him that he may be sure of getting a square deal from the Department. Although, therefore, the responsibility for claiming refunds and reliefs rests with assessee on whom it is imposed by law, officers should:-*

*(a) draw their attention to any refunds or reliefs to which the~ appear to be clearly entitled but which they have omItted to claim for some reason or other;"*

*Thus the intention of Law is that to allow all the benefits to the assessee irrespective of the fact whether the assessee claims it or not but it is the duty of every officer to pass on the benefits to the assessee which is available to the assessee under the provisions of Law.*

*As such it is most humbly submitted that directions issued by the honorable CIT -A in his appeal order dated 03.10.2016 to the Ld. A.O. to allow the benefits of section 10(23C) (vi) to the assessee which were claimed by him through an application u/s 154 of the Act filed before the Ld. A.O. is as per intention of the Statue to pass on all the benefits to the assessee which are available to him as per the provisions of the Law, whether for which he was ignorant or not after considering the various observations of various Courts in the subject matter as under:*

*(i) S.R.Koshti V CIT*

*146 Taxman 335 (Guj)*

*(ii) CIT V Lucknow Public Education Society*

*183 Taxman 62 (All)*

*Further after relying on the validity of Circular No 14 dated 11.04.1955 as examined by Honourable Apex Court in the case of CIT V Makendm Mills reported in 234 ITR 56 in which the Honourable Court has examined the applicability of the above Circular in regime of 1961 Act. And it was opined that the said Circular is still inforce even though issued prior to 1961 Act as the Circular has not been withdrawn till date.*

*Further the honorable CIT -A after giving his findings that the provisions of Section 119(1) of the Act requires every officer to follow orders, instructions and directions of CBOT are binding in nature on the tax authorities, even if the directions given by CBOT are at variance with the provisions of Law. The Circular in effect is as good as law.*

*Further the honorable CIT -A also given his findings that Article 265 of Indian Constitution empowers the Government to levy and collect tax that it can through authority of Law only as such tax cannot be legitimately collected from the taxpayer which is collectable as per the provisions of Law only.*

*The Department in the grounds of appeal has strongly relied upon the ratio of case law as verdict by Honourable Supreme Court of India in the case of Goetze (India) Ltd 284 ITR 323. In this regard it is submitted that the decision of the Apex Court has not laid down as matter of Law that there is a bar for the assessing authority to entertain the claim for deduction otherwise than by filing a revised return. The above views have been taken by Honourable Allahabad High court in the case of Universal subscription Agency (P) Ltd V JCIT reported in 159 Taxman 64. The purpose and intention of Law is to make the correct assessment and to collect correct and legitimate tax from the assessee. If the rightful deduction or relief is not allowed to the assessee, the purpose and intention of the law will be defeated. Reliance is placed on the following case Laws.*

*(i) CIT V Jai Parabolic Springs Ltd 172 Taxman 258 (Delhi)*

*(ii) CIT V Dharampur Sugar Ltd 90 ITR 236 (All)*

*(iii) Bharat starch Industries Ltd V CIT (ITA No 1611/k12003*

*(iv) Thomas Kurian V ACIT 108 TT J 439 (Cochin)*

*(v) Xerox India Ltd V DC IT New Delhi (ITA No 1580/De1/2010)*

*In the case of CIT v. Mahalaxmi Sugar Mills Co. Ltd. (1986) 160 ITR 920 SC, it was observed that:*

*"There is a duty cast on the Income-tax Officer to apply the relevant provisions of the Indian Income-tax Act for the purpose of determining the true figure of the assessee's taxable income and the consequential tax liability.*

*Thus, the assessee failing to claim the benefit of a set-off cannot absolve the Income-tax Officer of his duty to apply section 24 in an appropriate case."*

*4. That the Department in Ground No 2 of its appeal has raised that in the given facts of the case Ld CIT-A was not justified in allowing the society benefits of the exemption u/s 10(23C)(via) when it was found by the A.O. that the assessee has contra vended 13<sup>th</sup> Proviso of Section 10(23C) hence the society cannot be said to be \_ existing solely for education purposes. 13<sup>th</sup> Proviso of section 10(23C) reads as under:*

*Provided also that where the fund or trust or institution or any university or the educational institution or any hospital or other medical institution referred to in sub clause (iv) or sub clause (v) or sub-clause (vi) or sub-clause (via) does not apply its income during the year of receipt and accumulates it, any payment or credit out of such accumulation to any trust or institution registered under section 12AA or to any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause(v) or sub-clause(vi) or sub-clause(via) shall not be treated as application if income to the objects for which such fund or trust or institution or university or educational institution or hospital or other medical institution as the case may be is established.*

*Thus from the reading of the above proviso it is clear that the proviso comes into play if the eligible assessee does not apply its income towards the objects for which he is carrying out his activities and accumulates it, then any payments made out of such accumulation to any assessee registered u/s 12AA then such payment shall not be treated as application of income to the objects for*

*which assessee carries out his activities.*

*Whereas in the case of the assessee who has applied the entire income during the year itself and has not opted any accumulation of income not only during the year under consideration but even since the inception of the assessee as such there is no force in the ground as raised by the Department contra vinding the Proviso 13 of Section 10(23C) of the Act. In support of the same the comparative chart of income and application since 2009 is enclosed for the kind perusal of the Honourable Bench. In the light of the above submissions and the Circular of the Board, it can be safely said that the Department is not permitted to ignore the due claim of the assessee and further is not expected to take advantage of the ignorance of the assessee and if any benefit is available to the assessee in accordance with law, that is expected to be extended to the assessee by the Assessing Officer as directed by honorable CIT -A in his order dated 03.10.2016 as such the same has to be upheld.*

7. We have heard the rival contentions and perused material on record. The Id. CIT(A) has granted the relief by observing as under:

*4.2 Thus, the appellant has argued that the Provisions of section 10(23C)(vi) applies to its and therefore there cannot be any income of the appellant trust which can be charged to tax. The appellant further stated that in view of exempts already granted u/ s 10(23C)(vi) there can't be any income of the appellant trust which is liable to tax even ignoring the Provisions of section 11 of the Act. As such it was submitted by the appellant that even if the benefits of section 11 is denied than too there can be no income of the appellant trust on which tax can be collected from him in view of the provisions of section 10(23C)(vi) of the Act and considering the approval granted **to the** appellant trust. The appellant further claimed that since there was no income in the case of the assessee after applying the provisions of section 11 of the Act, at the time of submitting the return of income, therefore, question of claiming any exemption u/ s 10(23C) did not arise at the time of submitting the return of income. Thus, it was submitted by the appellant*

*that necessary directions be issued to the Ld. AO to consider the provisions of section 10(23C) of the Act the Act before charging any tax from the appellant trust.*

*4. I find that the above aspect of the case has been over looked the Ld A.O. mid has computed the income of the appellant trust ignoring the provisions of section 10(23C) of the Act. I find that the appellant has been accorded approval of exemption of income u/s 10(23C) of the Act vide order passed by the Department of Revenue Central Board of Direct Taxes New Delhi vide order dated 3.04.2001. Thereafter the same was renewed from time to time and the last approval was granted vide CCIT order dated 06.11.2007 vide No F. No. CCIT/IND/Tech/10(23C)(vi)/15/07-08/ which has become perpetual in view of the amendment made in section 10(23C) by the Finance Act 2008.*

*4.4 The relevant submission of the appellant In this context is Reproduced as under:-*

*-it is further submitted without prejudice to the above submissions that whether the assessee claims any benefit or not as available to him under the provisions of Law his rights for such claim does not absolved. In this regard your honour's kind attention is invited to the Circular issued by tile Apex. Body to the Direct Tax Revenue i.e. CBDT circular No 14 elated 11.04.1955 in which it had instructed to all the authorities engaged in the collecting the revenue to allow all the benefits to the assessee irrespective of the fact that the same was claimed by him or not. Para 3 of the above circular reads as under: "3. Officers of the Department must not take advantage of ignorance of on assessee as to his rights. It is one of their duties to assist a taxpayer in event reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a tax payer where proceedings or other particulars before them indicate in some refund or relief is due to him. This attitude would in the long run, benefit the Department for it would inspire confidence in him (hat he may be sure of getting O square deal from the Department. Although, therefore, responsibility for claiming refunds and reliefs rests with assessee on whom it is imposed Ly law, officer's should:-*

*(I) draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other;"*

*Thus the intention of Law is that to allow all the benefits to the assessee irrespective of the fact whether the assessee claims it or not but it is the duty of every officer to pass on the benefits to the assessee which is available to assessee under tile provision of law.*

*As such it is most humbly submitted that necessary directions be issued to the Ld. AO. to allow the benefits of section 10(23C) (vi) to the appellant which were claimed by him through an application u/s 154 of the Act filed before the Ld. A. O. Copy of which is enclosed herewith [or your kind perusal and consideration be allowed to the appellant.*

*Further in support of the appellant's claim he begs to rely on the following decided issues before your honour in order to decide the appeal accordingly and allowing the claim of the Appellant.*

*In Sushil Kumar Das v. Income-tax. Officer (2011) 11 ITR (Trib) 17 it was observed that the moot question arising out of the appeal is whether the income determined by the Assessing Officer on the basis of the return filed by the assessee can be figure lower than the income returned by the assessee. It is a well settled that the principle for determining the taxable income of the assessee under the Income Tax Act should be within the purview of the law in force. If the taxable income determined by the Assessing Officer is not in accordance with such principle it is open to the assessee to contend the same before the higher authorities to follow the correct application of law to determine the actual taxable income of the assessee. An assessee is liable to pay tax only upon the taxable income. The law imposed by the Assessing Officer has to assess the income according to law and determine the tax payable thereon. In doing so, the Assessing Officer cannot assess the income of the assessee in an amount which is not taxable as per law though shown by the assessee in the return filed is always open to the assessee to take a plea that the tax payable income though shown (IS income is not taxable under law before the higher authorities. Central Board of Direct Taxes vide Circular No. 14 (XL-35), dated April 11, 1955 which directs the officers to take advantage of the ignorance of the assessee. The appellate authorities have powers to admit points of law and admit claim for exemption based on the record as per the judgment of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. v. CIT (1998) 229 ITR 383 (SC).*

*4.5 Article 265 empowers the Government to levy and collect taxes. Any act outside the powers of the Government is ultra vires being not legally sustainable. Article 265 of the Constitution is reproduced below:-*

*"No tax shall be levied or collected except by authority of law"*

*Thus, under the constitution, the Government can levy and collect only those taxes and only that much taxes that are provided in the law. The assessing authority should collect the due taxes and in determining the tax, it is duty bound to allow legitimate deductions and reliefs as provided in the Act, even though they are not claimed by the assessee. Collection of any tax not provided under law would be in violation of the provisions of the*

Constitution of India.

#### **4.7 Duties and Responsibilities of Assessing Authorities under the Income Tax Act, 1961**

The Board of Revenue (now CBDT) issued Circular (No. 14 (XL – 35) dated 11<sup>th</sup> April 1955 detailing duty on the assessing authorities to make correct assessments and collect correct taxes. Let us examine the legal validity and legal status of the Circular issued by the Board.

#### **4.8 Circular No. 14 (XL - 35) dated IV" April 1955** The text of the Circular is as follows:

"Officers of the department must not take advantage, of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way particular in the matter of claiming and securing reliefs and in. 'this: regard the officers should take the initiative in guiding a taxpayer where proceedings or other particulars before him indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the department; for it would inspire confidence in him till at the assessee may be sure of getting a square deal from the department. . li ItIWl 19h, therefore, the responsibility of claiming refunds and reliefs rests with the assessee on whom it is imposed by law, officers should:

- (a) Draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or the other.
- (b) Freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming the refunds and relief

4.9 CBDT through this Circular has prescribed the duties of AOs directing them to assist the assessee in every reasonable way, particularly in the matter of claiming and securing reliefs. It further directs them to take initiative in guiding the taxpayer where proceedings or other particulars before him indicate that some refund or relief is due to him. The effect of the Circular is that the assessing authorities are duty-bound:

1. To bring in the notice of the assessee reliefs and deductions that are due to it and not claimed; and
2. To allow the reliefs and deductions upon being claimed during the assessment proceedings where the particulars indicating that the reliefs or deductions are due to the assessee.

4.10 In *S. R. Koshti vs. CIT*; 146 Taxman 335, the Gujarat High Court. observed:

*"The authorities under the Act are under an obligation to act in accordance with law. Tax CCl n be collected only as provided. under the Act. If an assessee, under a mistake, misconception or not being properly instructed is over-assessed, the authorities under the Act Clre required to assist him find ensure that only legitimate taxes due are collected. This Court, in an unreported case of Vinay Chandulal Satia vs. NO.PClrekh, CIT (Spl. Civil Application No. 622 of 1981 dated 20.8. 1981) has laid down ilie approach. that authorities II1USt adopt in such matters in the following terms:*

*"The Apex Court has observed in numerous decisions, including Ramlal vs. Rewa Coalfields Ltd. AIR 1962 SC 361, State of West Bengal vs. Administrator, Hoiurah. Municinalitu AII? 1972 SC 749 and Babuimal Raichand Oswal vs. Laxmibai R. Tarte AIR 1975 Hon'ble Supreme Court 1297, that state authorities should not ra*

*a lawful right and the lawful right is being denied to them merely on technical ground:,. The Stale authorities cannot adopt the attitude which private*

*4.11 The Hon'ble Allahabad High Court in CIT vs. Lucknow Public Education Society 183 Taxman 62 held that assessee authorities should follows Circular No.14.*

*4.12 Legal Validity of the Circular No. 14 (XL - 35) of 1955, dated 11" Apri11955 Hon'ble Apex Court examined this Circular in CIT vs. Makendm iHs (243ITR 56) and held that the Circular was in force even though issued prior to the 1961 Act as the Circular has not been withdrawn*

*4.13 Legal Validity of Circulars Section 119(1) of the Income-tax Act, 1961 requires every officer to follow orders, instructions and directions of CBDT. Circular No. 1-i is issued by CBDT and thus, is binding till date.*

*4.14 The Supreme Court has also on numerous occasions examined the issue and has held that the Circulars issued by CBDT are binding in nature on the tax authorities, even if the direction S given by CBDT are at variance with the provisions of law. The circulars in effect, are as good as law. To quote: Ellcrman Lines I t d . vs. CIT (82 ITR 913), K. P. Varghese vs. ITO (13 l ITR 597), Bank vs. CIT (237 ITR 8S9), CIT vs. Anjurn M. H. Ghaswnla and Spentex ndustries Ltd. vs. CCE (Civil app. No.- 1978 of 2007)*

*4.15 In the light of above discussion let us revisit thc dccision m Goetze (India) Ltd.:*

*Article 265 of the Constitution empowers the Government to levy and collect tax that it can through the authority of law. Circular No. 14 (XI- 35) of 1955 prescribes the duties of assessing authorities with respect to granting legitimate reads deductions available to the assessee . • Section 143(3)(ii) of the Act empowers the assessing authorities to grant refund of amount to the assessee post assessment. It leaves little doubt in the mind that the assessing authorities can assess the income at an amount lower than that returned by the assessee- The decision of the Supreme Court in Goetze (India) Ltd. relates to the AY 1995-06 8.11d the Act did not allow the assessing authorities to grant refund Post assessment. In Universal subscription Agency (P) Ld. vs. JCIT 159Taxman64(ALL), it was held that the decision of the Apex Court in Goetze (India) Ltd. (supra) has not laid down as a matter of law there is a bar for the assessing authority to entertain the claimed deduction otherwise than by filing a revised return.*

*-4.16 "The purpose and intention of law is to make correct assessments and to collect correct and legitimate tax from the assessee. If the rightful deduction or relief is not allowed assessee, the purpose and intention of the law is defeated.*

*4.17 This view finds support from the following decisions of the Honble High courts and also the Income Tax Appellate Tribunal:*

*1. CIT vs. Bharat Aluminium Ltd, 303 ITR 256 (Del):*

*"Thus the case of the assessee had submitted two revised computations of income during the assessment proceedings. It had in its return of income claimed a part of deferred revenue expenditure as revenue expenditure while the reimagining was carried to the balance sheet. In the revised computation, the assessee claimed total deferred revenue expenditure as revenue expenditure. The AO rejected the claim made by the assessee in the revised computation holding the expense to be capital in nature. The matter was decided by the CIT(A) and also by the Tribunal in favour of the assessee holding that there is no concept of deferred revenue expenditure:*

*The Department filed an appeal before the High Court.*

*It was held that the assessee had only corrected the claim allowable by virtue of section 37(1) of the Act on account of the expenditure which was incurred wholly and exclusively for the purpose of business hence) is allowable. In effect, the court upheld that the legitimate claim of the assessee is to be allowed even if claimed subsequently without revising the return of income."*

*2. CIT vs. Jai Parabolic Springs Ltd. 172 Taxman 258 (Delhi)*

*"The assessee claimed 1/3rd of deferred revenue expenditure as was*

debited to profit and loss account. Also, it did not claim the expense as revenue before the AO. The assessee sought relief through additional ground before the CIT (A). The CIT (A) and the Tribunal allowed the claim of the assessee. On appeal, the High Court held that revenue expenditure incurred wholly and exclusively for the purpose of the business must be allowed in entirety in the year in which it is incurred. It further held that there was no infirmity in the order of the Tribunal.

**III** effect, the court upheld that the legitimate claim of the assessee is to be allowed even if claimed subsequently without revising the return of income. )

**3. CIT v. Dhampur Sugar Ltd. 90 ITR 236 (All.).** The Court distinguished between the original return and revised return. It held: "There is a distinction between a revised return and a correction of return. If the assessee files some application for correcting a return already filed or making amendments therein, it would not mean that he has filed a revised return. It will still retain the character of an original return, but once the revised return is filed, the original return must be taken to have been withdrawn and to have been substituted by a fresh return for the purpose of the assessment"

**1. Chicago Pneumatics India Ltd. vs. DCIT (15 SOT 252) (Mumbai)** The Hon'ble Tribunal observed as follows:

"The situation has compelled us to look into the duties of the assessing authorities rather than the powers of assessing authorities because the Government is entitled to collect only the tax legitimately due to it otherwise the tax not so collected would be in violation of Article 265 of the Constitution of India. We have found that the CBDT as back: as in 1955 issued Circular No. 14 as to what should be the department's attitude towards refund and reliefs to the assessee". It further observed that - it is a settled position that the Circulars issued by the Board are binding on the subordinate income tax authorities and if CBDT issues directions which are beneficial to the assessee although the same may not be directly in consonance

The Hon'ble Apex Court, on numerous occasions has laid down the proposition that the assessing authorities are bound to compute the correct income only and collect only legitimate tax; hence, by merely procedural lapse or technicalities, in our opinion, the assessee should not be compelled to pay more than is due from him.

Therefore, this situation has to be looked upon from the angle of duties of assessing authorities, as stated earlier, CBDT is the apex it can also issue directions which are for the benefit of the assessee though such directions may not be in consonance with the provisions of law, hence, if a circular is issued directing the assessing authorities to grant relief/refunds while in the proceedings, even though such

*circular may be at variance with I he la Li', ,IS pronounced by the Hon'ble Apex Court, but same should be build following subordinate IT authorities.*

*In our opinion, therefore, circulars of the same nature which have been already issued would not become irrelevant or can be ignored. Admittedly, the circular issued in 1955 has not been withdrawn hence it has got binding force Oil subordinate IT authorities even as OIL date. accordingly, we hole]: tower bound to assessee the correct income and for this purpose, the relief! refunds suo moto or can pointed out-by the assessee ill the course or assessment proceedings for which the assessee has not filed revised although as per law, the assessee is required to file the refusal return. stated so, in our view, the learned CIT (A) having co-terminus powers will tile powers of AO and the fact that tile appellate proceedings arc the original proceedings, should have entertained the claim of the assessee and the provisions of law are satisfied.*

**5. Bharai Starch Industries Ltd. vs.CIT(URO) (ITA No. 1611jK/200<sup>3</sup>)**

*"The assessee had not claimed deduction for interest paid allowaable 36(1){iii} of the Act in its return oh income. tile complete facts rebuttal(f 10 i/l/(ITS, were disclosed in the tax audit report and notes to account/I(s. The allowed the deduction. The assessee in its appeal before the err (A as an additional ground. The additional ground was admitted and favour of the Cassese. In tile appeal before the Hon'bie ITAT it was held that the decision in tile cu.se of Goetzs India Ltd, (supra) is not applicable to tile case and directed the claim as per law."*

**6. Thomas Kurian vs. ACIT; 108 TTJ439 439 Cochin)**

*"The assessee had not claimed deduction under Section 80HHC. It was allowed by the Tribunal it being the deduction available as it was provided in the Act."*

**7. Xerox India Ltd. vs. DCIT New Delhi (ITA No. 1580/Del./2010) (URO)**

*"Expenses disallowed in the earlier year under section 43B were not claimed on payment in the assessment year by oversight was allowed by the Tribunal as the matter was before the assessing authority i.11 the earlier years."*

*First Time Claim Before the CIT(A): Another related issue that arises is whether the assessee can claim relief before the CIT(A) even though it has not been claimed' before the assessing authority.*

*4.19 Section 251 of the Act empowers CIT(A) to confirmed, reduced enhance or annual the assessment. The powers of the CIT(A) being of terminus with that of the assessing authority, the assessee can claim a relief that is due to him for the first time*

*before the CIT(A).*

*4.20 The view finds support from the decisions in the cases of JCIT vs. Hero Honda Finkas<sup>e</sup> Ltd.: 115 TTJ (Del.) TM) 752, CIT vs, Raiasthan Fastners (P.) Ltd. 100 DTR (Mad.) 393, CIT vs. Jai Parabolic Springs Ltd., 172 Taxman 258 (Delhi), Chicago Pneumatics India vs. DCIT 15 SOT 252 and ACIT vs. Bharat Starch Industrial Ltd. (URO).*

*4.21 Based on the foregoing discussions, a legitimate relief available to the assessee and not claimed in the return of income and the time permitted to revise the return of income under Section 139(5) having elapsed can be claimed by the assessee either before the assessing authorities or before the CIT (A) provided the relevant facts and data with respect to the claim was before the authorities.*

*4.22 In this particular case, the appellant has been granted certificate in connection with exemption of his income under 10(23C)(vi) vide the CCIT order referred above and a finding have already been given with respect to the same by the undersigned. Thus, it is true that the appellant was enjoying exemption u/ s 10(23C) (vi) of the I.T. Act, 1961 which was overlooked by the AO. Thus, I find merit in the submissions of the appellant and this ground of appeal is allowed. The AO is directed to allow the appellant the benefit of the exemption already granted to it u/s 10(23C)(vi) of I.T. Act, 19961. In the result, the appeal is **allowed**.*

8. We do not see any infirmity into the impugned order as the Ld. CIT(A) has followed the binding precedents. Therefore, we do not see any reason to interfere into the finding of Ld. CIT(A) same is hereby affirmed since the Revenue has not brought to our notice to any contrary binding precedent. The grounds raised are hereby dismissed.

9. In the result, the appeal of the Revenue in ITANo.63/Ind/2017 is dismissed.

*Order was pronounced in the open court on 15.03.2019.*

Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER

Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER

Indore; दिनांक Dated : 15/03/2019

*Patel, P.S/.नि.स.*

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order  
**Assistant Registrar, Indore**