

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC-A” BENCH : BANGALORE**

BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER

ITA No.231/Bang/2019
Assessment year : 2014-15

Shri. Vempati Srinivasa Subramanyam, Villa-04, Prestige Bougainvillea, No.59, ECC Road, White Field, Bangalore – 560 06. PAN : ACLPS 6643 N	Vs.	The Income Tax Officer, Ward – 4(2)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri. K. R. Vasudevan, Advocate
Revenue by	:	Shri. Sumer Singh Meena, Addl. CIT

Date of hearing	:	25.04.2019
Date of Pronouncement	:	19.06.2019

ORDER

This appeal by the assessee is directed against the order of CIT(A)-4, Bangalore, dated 02.11.2018 for Assessment Year 2014-15.

2. Briefly stated, the facts of the case are as under:-

2.1 The assessee, an individual, filed his return of income for Assessment Year 2014-15 on 15.07.2014, declaring income of Rs.23,94,220/-, comprising ‘capital gains’ and interest income. The case was case was selected for scrutiny and the assessment concluded under section 143(3) of the Income Tax Act, 1961 (in short ‘the Act’) vide order dated 28.10.2016, wherein the assessee’s income was

determined at Rs.23,94,670/- in view of an addition of Rs.457/- towards interest received from HSBC, USA.

2.2 Aggrieved by the order of assessment dated 28.10.2016 for Assessment Year 2014-15, the assessee preferred an appeal before the CIT(A)-4, Bangalore. Before the CIT(A), the assessee contended that during assessment proceedings he had made submissions before the Assessing Officer (AO) that the amounts offered as dividend income received from HSBC is actually principal repayment of the investment made by the assessee and as such since it does not constitute income, therefore the dividend income of Rs.18,96,216/- offered to tax by the assessee in Assessment Year 2014-15 has to be reversed. Thus assessee contends that submissions put forth by the assessee before the AO in the course of assessment proceedings was not taken cognizance of by the AO. The CIT(A) dismissed the assessee's appeal vide the impugned order dated 02.11.2018; holding that the claim of the assessee cannot be entertained as revised return of income for Assessment Year 2014-15 was not filed by the assessee. In this context, the CIT(A) observed that it is well settled principle that the Hon'ble Apex Court in the case of Goetze India Ltd., reported in 284 ITR 323 (SC), that 'no claim could be made otherwise than by filing a revised return of income.'

3.1 Aggrieved by the order of CIT(A)-4, Bangalore, dated 02.11.2018 for Assessment Year 2014-15, the assessee has preferred this appeal before the Tribunal wherein he has raised the following grounds:-

***I. Reversal of amount offered to tax as dividend income under the head
Income from other sources***

The grounds hereinafter taken by the Appellant are without prejudice to one another.

1. *That, based on the facts and circumstances of the case, the learned Commissioner of Income tax Appeals - 4 ("Learned CIT(A)") has passed the assessment order which is contrary to the provisions of the Income Tax Act, 1961 ('the Act').*
2. *That, based on the facts and circumstances, the Learned CIT(A) has erred in ignoring the submission put forth during the course of appeal proceedings.*
3. *That, based on the facts and circumstances of the case, the Learned CIT(A) has erred in not appreciating the fact that the amount paid out by HSBC was to be treated as principal repayment and not the income from other sources.*
4. *That, based on the facts and circumstances of the case, the amount of dividend offered to tax was to be ignored and reversed, since the same was not in the nature of income.*
5. *That, based on the facts and circumstances of the case, the Learned CIT(A) has ignored the fact that standing adjustment will result in taxation of non-existing income. The Learned CIT(A) has erroneously placed reliance on the decision of the Supreme Court in the case of Goetz India Ltd and has not provided an opportunity for discussion and to enable the appellant to provide the explanation in connection with the reversal of the income offered to tax.*

3.2 The main issue raised by the assessee in the above grounds of appeal (supra) is that the amounts received by the assessee from HSBC, which was treated as dividend income in the return of income filed has to be now treated as principal repayment and not income and that the CIT(A) has erred in not admitting the additional grounds and additional evidence raised by the assessee in this regard.

3.3.1 Before us, the learned AR of the assessee submitted that the assessee has made investments in certain structured bonds of HSBC and was entitled to receive dividends on the same and therefore the amounts received during the year were offered to tax as income from dividends and taxes paid on the same. However, after filing the return of income, the assessee had approached the HSBC with a grievance that the investments made with HSBC was not yielding the promised returns and HSBC had agreed to return the investment made, vide its letter dated 11.01.2016. Accordingly, HSBC returned the investments made, net of the amounts already remitted to the assessee; thereby treating the amounts already remitted earlier as principal repayment. It was submitted that this fact was brought to the notice of the

AO vide letter dated 05.10.2016 (copy placed at page 80 of Paper Book Pages 1 to 591 filed on 19.03.2019) and the AO was requested to reverse the income already offered as dividend income and complete the assessment. The learned AR contends that the AO has completely disregarded this submission put forth by the assessee.

3.3.2 According to the learned AR, in the background of the facts of case on hand as laid out above, the CIT(A) ought to have considered the assessee's contentions and erred in disregarding the same by relying on the decision of the Hon'ble Apex Court in the case of Goetze India Ltd., (284 ITR 323) (SC). It was submitted that the CIT(A), being an appellate authority, not being bound the fetters placed on the AO by the aforesaid decision of the Hon'ble Apex Court (supra), was very well empowered to consider claims / grounds not raised by the assessee before the AO and cited the following decisions in support of the assessee's contentions:-

- i) Jute Corporation of India Ltd., Vs. CIT (1990) 53 taxmann.com 85 (SC);
- ii) CIT Vs. Abhinata Foundation (P) Ltd.,; (2017) 83 taxmann.com 100 (Madras HC);
- iii) ACIT Vs. Dilip Ranjrekar; (2018) 98 taxmann.com 362 (Bang – Tribunal).

3.4 Per contra, the learned DR supported the impugned order of the CIT(A), submitting that if the character of the payment was dividend in the relevant year under consideration and if the character changed subsequently; then the assessee should have shown the change in the year in which the character of the income had changed and therefore the assessee's request for reversal of the claim / admission made in the return of income cannot be acceded to.

3.5.1 I have considered the rival submissions, the facts of the case and perused the material on record; including the judicial pronouncements cited. The facts not disputed are that the assessee made investments in HSBC, in a scheme “Structured Notes” and was to receive dividends on the same. The amounts received during the year from HSBC was Rs.18,96,216/-, which was treated as dividend by the assessee and offered to tax in his return of income for Assessment Year 2014-15. It is the assessee’s contention that subsequently, the investments he made in HSBC was agreed to be returned by HSBC, vide its letter dated 28.01.2016. Due to this, the assessee contends that the dividend income offered to tax earlier had to be treated as principal repayment and the income of the assessee requires to be reworked accordingly. It is contended that this plea was raised during assessment proceedings but the AO had disregarded the submissions put forth by the assessee in this regard. It is also contended that, on appeal, this plea was again raised before the CIT(A), who dismissed the same; stating that such a claim can be made only by filing a revised return of income, by relying on the decision of the Hon’ble Apex Court in the case of Goetze India Ltd., (supra).

3.5.2 In these factual circumstances, as narrated above, the short point before me for adjudication is whether the CIT(A) has erred in not considering the submissions put forth by the assessee regarding the claim made that the amounts earlier considered as “dividends” are not income; but only principal repayment and therefore the assessee’s income needs to be reworked. It is now well settled principle, upheld by the decisions of various High Courts and Tribunals that the judgment of the Hon’ble Apex Court in Goetze India Ltd., (supra) is only in respect of claims before the AO and does not place fetters on the appellate authorities to entertain fresh claims put forth by the assessee which are part of the record and / or are material for the purpose of assessing the correct tax liability in accordance with law. In this regard, the relevant portion of the decision of the Co-ordinate Bench of this Tribunal

in the case of ACIT Vs. Dilip Ranjrekar in ITA No.858/Bang/2016 dated 10.11.2017 at para 6.3.2 thereof is extracted hereunder:-

“6.3.2

.....The ld. DR had placed reliance on the decision of the Hon'ble Apex in the case of Goetze (india) Ltd., (supra) for denial of the assessee's claim, since it was not put forth before the AO in the return of income filed. We are not inclined to accept this argument put forth by the ld DR for Revenue. It has been held in the decisions of various Hon'ble Courts that the decision of the Hon'ble Apex Court in Goetze (India) Ltd., (Supra) is in respect of the claims before the AO and does not place fetters on the appellate authorities to entertain fresh claims put forth by the assessee which are part of the record and/or are a material for the purpose of assessing the correct tax liability in accordance with law. In coming to this view, we, inter alia, draw support from the decision of the Hon'ble Apex Court in the case of NTPC Ltd., (229 ITR 383). We are therefore of the view that it was incumbent on the Id CIT(A) to examine the assessee's claim which was admittedly put forward before the AO in the course of assessment proceedings.”

3.5.3 This issue has been elaborately discussed in the judgment rendered by the Hon'ble Madras High Court in the case of CIT Vs. Abhinitha Foundation Ltd., (supra), wherein the Hon'ble Madras High Court has discussed the decisions of the Hon'ble Apex Court in the case of Jute Corporation of India in 187 ITR 688 (SC) and Goetze India Ltd., (supra) and held that even if the claim made by the assessee does not form part of the original return or even the revised return; it could still be considered, if, the relevant material was available on record, either by the appellate authorities (which includes both the CIT(A) and the Tribunal) by themselves or on remand, by the Assessing Officer. In the case on hand, I find, on a perusal of the record, argument qua the claim put forth by the assessee; in respect of re-working of its taxable income; i.e., of the interest (dividend) income declared from HSBC in the

return to be treated as return of principal investment; was raised / put forth before the CIT(A). Therefore, respectfully following the above cited judgments of the Hon'ble Madras High Court in the case of CIT Vs. Abhinitha Foundation Ltd., (supra) and of the Co-ordinate Bench of this Tribunal in the case of ACIT Vs. Dilip Ranjrekar (supra), I set aside the impugned order of the CIT(A) dated 02.11.2018 for Assessment Year 2014-15 and restore this issue to the file of the CIT(A) for examination and consideration of the claims put forth by the assessee and adjudication thereon in accordance with law. Needless to add, the CIT(A) shall afford both the assessee and the AO adequate opportunity of being heard in the matter and to file details, documents, submissions / rebuttals as required, which shall be duly considered by the CIT(A) before deciding the matter. It is accordingly directed. In this view of the matter, no comments / views are expressed on the merits of the issue which has been remanded.

4. In the result, the assessee's appeal for Assessment Year 2014-15 is allowed for statistical purposes.

Pronounced in the open court on this 19th day of June, 2019.

Sd/-

(JASON P BOAZ)
Accountant Member

Bangalore.

Dated: 19.06.2019.

/NS/*

Copy to:

1. Appellants
2. Respondent
3. CIT
4. CIT(A)
5. DR
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.