

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

ITA NO. 3600/MUM/2017

:

A.Y : 2011-12

Percy E. Vandrevala,
C/o. G.P. Mehta & Co., CA
807, Tulsiani Chambers,
212, Nariman Point,
Mumbai 400 021.

Vs. Dy. Commissioner of Income
Tax - 20(2), Mumbai.
(Respondent)

PAN : AAEPV7645N (Appellant)

Appellant by : None

Respondent by : Shri Uodal Raj Singh

Date of Hearing : 19/10/2020

Date of Pronouncement : 25/11/2020

ORDER

PER SHRI SHAMIM YAHYA, AM

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals) - 39, Mumbai (in short 'CIT(A)') dated 07.02.2017 and pertains to Assessment Year 2011-12.

2. The grounds of appeal read as under :-

"1. The orders passed by the learned lower authorities are bad in law and bad in facts.

2. *The learned lower authorities have grossly erred in not entertaining/considering long term capital gains at Rs.763,474/- (originally shown as profit from share trading under business income) claimed by the appellant during the course of the assessment proceedings and not by way of revised return of income.*

3. *The learned Commissioner of Income Tax (Appeals) has grossly erred in misconstruing the decision of Hon'ble Supreme Court in the case of Goetze (India) Ltd. V. CIT 284 ITR 323 (SC) and has further erred in rejecting appellant's claim of long term capital gain.*

4. *Having regard to the facts of the case, provisions of law and judicial propositions, the claim of the appellant ought to have been accepted."*

3. Brief facts of the case are that the assessee has filed return of income on 06.02.2012 declaring total income of Rs.50,65,990/-. The assessee has income from business, capital gains, other sources, house property and salary. The assessment was completed on 05.02.2014 at total income of Rs.55,14,790/- after making addition under different heads.

4. The issue before us relates to addition of Rs.7,63,474/- on account of profit on share trading which was claimed as long term capital gain. In the assessment order, there is no discussion about the fact that why the long term capital gain claimed by the assessee was treated as profit on share trading. However, it is found that the assessee has originally filed return of income showing business income of Rs.7,43,309/-. During the course of assessment proceedings, the assessee has filed revised computation in which the said amount was claimed as long term capital gain. The revised claim of the assessee was not accepted by the Assessing Officer.

5. Upon assessee's appeal, learned CIT(A) held as under :-

"I have considered the facts of the case. It is found that in the return of income filed originally, the assessee itself has claimed business income from the transactions in shares. The assessee was supposed to file a revised return of income u/s 139(5) of the Act, in case any omission or any wrong statement was filed in the original return of income. But the assessee did not file any revised return of income during the stipulate period of time. During the course of assessment proceedings he filed revised computation but has not assigned any reasons why the business income shown in the return of income was claimed to be long term capital gain. Hon'ble Supreme Court in the case of Goetze (India) Ltd. vs. Commissioner of Income Tax had an occasion to deal with this issue. In this case, the Supreme Court held that additional claim cannot be made before the Assessing officer, as there is no provision under the Income Tax Act to make amendment in the return without filing a revised return. Hence based on the above decision of the Hon'ble Supreme Court, Assessing officer did not had a power to entertain additional claim, unless such a claim is made in the revised return filed within the due date for revised return."

Against the above order, assessee is in appeal before the ITAT.

6. We have heard learned DR and perused the record. We find that Hon'ble Supreme Court in the decision in the case of *Goetze (India) Ltd. (supra)* has already held while concluding that their decision in that case would not impinge upon ITAT's jurisdiction in entertaining claim otherwise than by revised return of income.

7. Accordingly, in the substantial interest of justice, we admit the claim and remit the issue to the file of Assessing Officer to re-examine the same and decide accordingly. Needless to add, assessee should be granted adequate opportunity of being heard.

8. In the result, the appeal stands allowed for statistical purpose.

Order pronounced under Rule 34(4) of ITAT Rules on 25th November, 2020.

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai, Date : 25th November, 2020

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "C" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai