

आयकर अपीलीय अधिकरण, 'ए' न्याय पीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V.DURGA RAO, JUDICIAL MEMBER
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No. 1765/Chny/2017

(निर्धारणवर्ष / Assessment Year: 2008-09)

The Assistant Commissioner of Income Tax, Central Circle-3(4), Chennai-600 034.	Vs	Mr. Arvind Srinivasan 61, Oliver Road, Mylapore, Chennai-600 004.
		PAN: ADCPA0371R
(अपीलार्थी/Appellant)		प्रत्यर्थी/Respondent/

अपीलार्थी की ओरसे/ Appellant by	:	Mr.S.Bharath, CIT
प्रत्यर्थी की ओरसे/Respondent by	:	Mr. B.S.Purushotham, CA

सुनवाई की तारीख/Date of hearing	:	02.12.2020
घोषणा की तारीख /Date of Pronouncement	:	20.01.2021

आदेश / ORDER

PER G.MANJUNATHA, AM:

This appeal filed by the Revenue is directed against common order of the learned Commissioner of Income Tax (Appeals)-19, Chennai dated 17.04.2017 and pertain to assessment years 2008-09.

2. The Revenue has raised the following grounds of appeal:-

"1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.

2. The learned CIT(Appeals) erred in deleting the 50% disallowance amounting to ₹ 26,01 929/- made by the AO towards unproved expenditure claimed by the assessee against business income, in the assessment order passed u/s 153A r.w.s 143(3) of the IT Act for AY 2008-09 in the assessee's case.

2.1 The Id. CIT (A) having deleted the disallowance on the ground that it is not on the basis of any seized documents/materials, ought to have appreciated that u/s 153A of the IT Act, the AO is entrusted with the duty of bringing to tax, the total income of the assessee whose case is covered by Sec. 153A of the IT Act for each assessment year falling within the six assessment years immediately preceding the previous year in which search was conducted and that even if an assessment order was passed u/s 143(1)/143(3)/147, the AO is empowered to reopen those proceedings and reassess the total income taking note of the undisclosed income, if any, unearthed during search and seizure operation.

2.2 Having regard to the fact that in spite of ample opportunity accorded, the assessee failed to produce the original bills/vouchers and the details of all the expenses debited to the P & L account before the AO. the Id.CIT(A) ought to have confirmed the disallowance made by the AC in the assessment order passed u/s 153A r.w.s 143(3) of the IT Act for AY 2008-09 in the assessee's case.

3. The Id. CIT(A) erred in deleting the addition of ₹ 5 crores made u/s 40A(3) by the AC in the assessment order passed u/s 153A r.w.s 143(3) of the IT Act for AY 2008-09 in the assessee's case.

3.1 Having allowed relief on the decision of the Hon'ble TAT in the case of DCIT Vs M/s RK Power Gen Pvt. Ltd. in ITA No.1864 to 1867/Mds/2015 & CO. Nos. 125 to 128/Mds/2015 dated 22.06.2016, the Id. CIT(A) ought to have appreciated that the appeal filed by the revenue against the said decision u/s 260A is was not accepted by the revenue and appeal u/s 260A of the IT Act has been preferred before the Hon'ble High Court.

3.2 The Id.CIT(A) ought to have appreciated that the original MoU was signed on 29.08.2007 and the supplementary agreement on 27.02.2013 which is much after the date of original assessment which was 29.12.2010 and even after search i.e. on 12.06.2011 and that the whole supplementary agreement is just an afterthought to provide legitimacy to the stand of the assessee.

3.3 The Id,CIT(A) ought to have appreciated that the supplementary deal was not within the knowledge of the AO at the time of the original assessment or the search assessment and as such, the Id.CIT(A) ought to have accorded an opportunity to the AO to examine the said proof by calling for a remand report from the AC as envisaged under Rule 46A of the IT Rules 1962.

3.4 Having regard to the fact that as per seized documents and as admitted by the assessee in his sworn statement, Rs.10,00,00,000/- was paid to MIs Kokilam Foundation and out of this payment of ₹ 10 crores. a sum of Rs.5 crores was made in cash in violation of the provisions of sec,40A(3) of the IT Act, the Id,CIT(A) ought to have confirmed the disallowance made u/s 40A(3) by the AO in the assessment order passed u/s 153A r.w.s 143(3) of the IT Act for AY 2008-09 in the assessee's case.

4. The Id. CIT(A) erred in deleting the addition of Rs. 56,97,318/- made by AO, by adopting the income of Rs. 24,40,011/- returned by the assessee in the return of income filed u/s 153A of the IT Act by assessee, in the assessment order passed u/s 153A r.w.s 143(3) of the IT Act for AY 2008-09 in the assessee's case.

4.1 Having allowed relief on the basis of from the letter dated 25/3/2014 written by assessee to Assessing Officer, the learned CIT(A) ought to have appreciated that the date of assessment order is also 25/3/2014 and that the said letter dt. 25/3/2014 is not available on record nor assessee has filed any photocopy of the same duly acknowledged by AO and as such production of letter dated 25/3/2014 before learned CIT(A) is an afterthought on part of the assessee.

4.2 Admitting but not accepting that the letter dt. 25/3/2014 was handed over to the AO. the Id.CIT(A) ought to have appreciated that the same was NOT considered for the simple reasons that the total income could only be revised by filing revised return of income and not by filing a reconciliation statement as laid down by the Hon'ble Supreme Court in the case of M/s Goetz (India) Ltd 284 ITR 323."

3. At the outset, we find that there is a delay of 3 days in filing appeal by Revenue, for which necessary petition along with affidavit has been filed for condonation of delay. The reasons given by Revenue for not filing appeal within the time allowed under the Act is under a bonafide belief. The learned AR has no objection for condoning delay in filing the appeal. Therefore, we

condone the delay in filing appeal by the Revenue and admit the same for hearing.

4. Brief facts of the case are that assessee is a Director of Belair Group of Companies, which is engaged in the business of real estate development. A search and seizure operation u/s.132 of the Income Tax Act, 1961 was undertaken in the case of Belair group on 21.06.2011 at business premises of companies and residential premises of Directors including that of Mr.Arvind Srinivasan. Consequent to search, notice u/s.153A of the Act on 11.11.2011 was issued for which assessee has filed return of income for assessment year 2008-09 on 18.12.2012 declaring total income of ₹ 5,83,130/-. The assessment has been completed u/s.143(3) r.w.s 153A of Act on 25.03.2014 and determined total income of ₹ 5,58,18,668/-, inter-alia, by making additions towards ad-hoc disallowance of 50% of various expenses amounting to ₹ 26,01,929/-, and additions towards cash payment for purchase of property u/s.40A(3) of the Act for ₹ 5,00,00,000/-. The relevant findings of the Assessing Officer are as under:-

“5. The assessment is completed on the basis of details submitted in course of the scrutiny proceedings and the material available on record.

The assessee is having salary income from Belair Enterprises Pvt. Ltd. as a director. Besides, he has house property income and income from business. The assessee has claimed income from salary, house property, capital gains and business of brokerage and commission. In the profit and loss account a number of expenses have been debited for which he was requested to furnish the evidences vide questionnaire dated 11.01.2013, but no evidences whatsoever have been furnished. Only the ledger accounts were furnished. Hence, 50% of the expenses on electricity charges of Rs1,88,414/-, business promotion expenses of Rs,28,000/-, telephone charges of Rs.51,696/-, interest payment of ₹38,12,269/-, consultancy charges of Rs.11,23,479)- which comes to ₹ 26.01,929/- is hereby disallowed and added back to the total income.

During the year. the assessee has entered into joint venture with M/s.Kokilam Foundations Pvt. Ltd. for jointly investing in land measuring 25 acres at Parivakkam village, Poonamallee Taluk. Thiruvallur District. For this he had to pay to Rs.10,00,00,000/-. According to the loose sheets nos.22-28 of ANN/RSK/LS/S7, Rs,10,00,00,000/- was paid to M/s.Kokilam Foundations for this. But in the books only Rs.7,70,00,000/- was accounted. When asked to show cause, the assessee's A'R submitted on 28.03.2014 that the unaccounted investment was from the amount of undisclosed receipt of ₹2,50,00,000/- from Om Shakthy Agencies in the Asstt. Yes 2007-08.

However it was found that out of the total amount of Rs. 10,00,00,000/- paid to Kokilam Foundation it was found that Rs.500,00,000/- was paid in cash. When asked to show cause why it should not be disallowed u/s40A(3) of the Act, the Id. A/R submitted a reply that it was an investment and not an expenditure. It was also submitted that an additional income of Rs,4,25,00,000/- on the investment was being offered for taxation in the Asstt. Year 2009-10. But the contention of the assessee is not correct and acceptable. The assessee is regularly engaged in purchase and sale of land in an organized manner, The land has been shown as stock in trade in the balance sheet, The assessee may, now claim that Rs,4,25,00,000/- is the return on investment. But it is actually the profit of the assessee. Hence the payment of Rs, 10,00,00,000/-

was his revenue expense even though he is now claiming it to be investment and even though it was not paid directly to the persons from whom the land was purchased. For this reason, the amount of Rs.5,00,00,000/- being a revenue expense will attract the provisions of section 40A(3) of the Act.”

5. Being aggrieved by assessment order, assessee preferred an appeal before the learned CIT(A) . Before the learned CIT(A) , assessee has challenged additions made by the Assessing Officer towards ad-hoc disallowance of expenses on the ground that when expenses debited into profit & loss account has been accepted as genuine in the assessment framed u/s.143(3) of the Act, then no ad-hoc or estimated disallowance can be made in the assessment framed u/s.153A of the Act, in absence of any incriminating materials found as a result of search, which indicates inflation of expenditure or expenditure debited into profit & loss account is bogus in nature. The assessee has challenged additions made by the Assessing Officer towards disallowance of cash payment u/s.40A(3) of the Act amounting to Rs.5.00 crores on the ground that although the assessee by inadvertent error has shown purchase of land as stock-in-trade in the financial statement filed for relevant year along with return of income, but facts remains that MoU and subsequent supplementary agreement between

assessee and M/s Kokilam Foundations Pvt.Ltd. clearly indicate that assessee has invested a sum of Rs.10.00 crores in the joint development project with an assured return on the investment and hence, merely for the reason that by inadvertent error the same has been treated as stock-in-trade in the books of account, genuine investments made by assessee cannot be considered as purchase of property to invoke provisions of section 40A(3) of the Act. The assessee has also taken additional ground challenging findings of the Assessing Officer, insofar as computation of profit and gains from business and profession ignoring revised profit & loss account excluding purchase of land and closing stock filed, which resulted in net loss of ₹ 34,57,307/- as against profit of ₹ 24,40,011/-.

6. The learned CIT(A) after considering relevant submissions of the assessee and has also taken various evidences filed during the course of appellate proceedings held that when no additions or disallowances of expenditure was made in 143(3) assessment, there cannot be any disallowance towards similar expenditure in the assessment framed u/s.153A of the Act, without reference to

any incriminating material found during the course of search. The learned CIT(A) further noted that Assessing Officer has not made any reference to search finding which warrants disallowance of expenditure on ad-hoc basis and accordingly deleted additions made towards 50% of ad-hoc disallowance of expenses. As regards additions made towards disallowance of cash payment u/s.40A(3) amounting to ₹ 5.00 crores , learned CIT(A) by taking note of various facts and also by following the decision of ITAT Chennai Bench in the case of M/s. RK Power Gen Pvt. Ltd in ITA No.1864 to 1867/Chny/2015 deleted additions made towards disallowances of expenditure u/s.40A(3) by holding that cash payment made to M/s. Kokilam Foundations Pvt.Ltd. was more like financial arrangement whereby assessee has invested a sum of ₹ 10 crores with an expectation of 24% rate of return. As per the terms of MoU and supplementary agreement dated 27.02.2013, transactions between the parties are akin to investment activity which cannot be considered as payment made for purchase of land merely for the reason that by inadvertent error the same has been shown as stock-in-trade in the relevant assessment year, more particularly, when assessee has

subsequently rectified mistakes in the financial statement by filing revised statement before the Assessing Officer. Similarly, as regards additional claim of assessee regarding revised statement of profit & loss account with a loss of ₹ 34,57,307/- as against profit of Rs.24,40,011/-, learned CIT(A) after considering relevant facts has directed the Assessing Officer to adopt net loss as per revised statement of profit & loss account by holding that when nature of transactions between the assessee and M/s.Kokilam Foundations Pvt. Ltd., is an investment transaction which is by inadvertent error considered as purchase of land and stock-in-trade has to be accepted because the terms & conditions of MoU between the parties and subsequent supplementary agreement, which clearly indicates that payment made to M/s.Kokilam Foundations Pvt. Ltd. is an investment in joint venture for development of property, but not purchase of property by the assessee in his individual capacity. Aggrieved by the learned CIT(A) order, Revenue in appeal before us.

7. The first issue that came up for our consideration from Ground No.2 of Revenue appeal is ad-hoc disallowance of various expenses amounting to ₹ 26,01,929/-. The Assessing Officer has

made disallowance of various expenses like electricity charges, insurance, commission, telephone charges, vehicle maintenance and repairs & maintenance etc. on the ground that assessee has failed to file necessary evidences to justify claim of expenses.

8. The learned DR submitted that learned CIT(A) has erred in deleting additions made towards ad-hoc disallowance of expenses without appreciating the fact that Assessing Officer is entrusted with duty of bringing to tax total income of assessee, whose case is covered by section 153A of the Act for each assessment year falling within six assessment years immediately preceding previous year in which search was conducted. The learned DR further submitted that learned CIT(A) has failed to appreciate the facts that in spite of ample opportunity, assessee has failed to produce bills and vouchers for expenses debited into profit & loss account.

9. The learned AR for the assessee, on the other hand, supporting the order of learned CIT(A), submitted that assessee has maintained complete books of accounts and vouchers to back up its claim and the same were produced before Assessing Officer

for verification. The learned CIT(A) after considering relevant facts has rightly deleted additions made towards 50% ad-hoc disallowance of expenses.

10. We have heard both parties, perused materials available on record and gone through orders of the authorities below. The facts borne out from the records indicate that ad-hoc disallowances made by Assessing Officer towards various expenses have been allowed as genuine in the scrutiny assessment completed u/s.143(3) of the Act for the relevant assessment year. It is also an admitted fact that Assessing Officer has made ad-hoc/estimated disallowance of expenses without making any reference to incriminating materials found as a result of search which indicate that expenditure debited to profit & loss account is not genuine expenditure and which are not incurred for the purpose of business. It is well settled principle of law that unless Assessing Officer makes out a case that expenditure debited to profit & loss account is not genuine and which are not supported by necessary evidences, he cannot make ad-hoc disallowance on the ground that assessee has not produced necessary details and vouchers for verification. In this case, on

perusal of assessment order passed by Assessing Officer, we find that Assessing Officer has failed to make out a case for ad-hoc disallowance of expenses, that too in the assessment framed u/s.153A of the Act. Therefore, considering facts and circumstances of this case and by following the decision of ITAT., Chennai in the case of M/s. Susi Auto Plaza Pvt.Ltd (2010) 3 ITR Chennai 166, we are of the considered view that learned CIT(A) was right in deleting additions made towards ad-hoc disallowance of various expenses, hence we are inclined to uphold findings of learned CIT(A) and reject ground taken by Revenue.

11. The next issue that came up for our consideration from Revenue appeal is addition of Rs.5 crores made u/s. 40A(3) of the Act for cash payment made to M/s. Kokilam Foundations Pvt.Ltd. The facts with regard to impugned dispute are that during the year assessee has entered into joint venture with M/s. Kokilam Foundations Pvt.Ltd. for jointly investing in land admeasuring 25 acres at Parivakkam village, Poonamallee Taluk, Thiruvallur District . As per MoU between the parties, assessee has paid a sum of ₹ 10.00 crores as his investment in joint venture project. Out of total payment of ₹ 10.00 crores, assessee has paid a sum

of ₹ 5.00 crores in cash. The Assessing Officer has disallowed cash payment of ₹ 5.00 crores u/s.40A(3) of the Act, on the ground that amount paid to M/s. Kokilam Foundations Pvt. Ltd. is revenue expenditure, which is hit by the provisions of section 40A(3) of the Act. The Assessing Officer was further of the opinion that assessee has shown investments made in joint venture with M/s.Kokilam Foundations Pvt.Ltd as stock-in-trade in his books of account which clearly indicate nature of transactions between the parties, as revenue in nature.

12. The learned DR submitted that learned CIT(A) has erred in deleting addition of Rs.5.00 crores made u/s.40A(3) of the Act, without appreciating the fact that original MoU signed on 29.08.2007 and supplementary agreement between the parties on 27.02.2013 was two separate documents and as per supplementary agreement, assessee has changed nature of transaction into investments to avoid provisions of section 40A(3), which can be at best said an afterthought, but not a document, which proves legitimacy of the assessee. The learned DR further submitted that as per financial statement filed along with return of income, assessee has shown investments made with joint venture

as purchase of land and stock-in-trade which itself sufficient to hold that transactions between the parties are in the nature of purchase of lands and as such any cash payments made for revenue expenditure was hit by provisions of section 40A(3) of the Act. The learned CIT(A) without appreciating above facts has simply deleted additions made by Assessing Officer by considering supplementary agreement filed by assessee, which is much after the date of search.

13. The learned AR for the assessee, on the other hand, supporting order of learned CIT(A) submitted that assessee has filed necessary evidences before learned CIT(A) to prove that entries in books of account was an inadvertent error committed by Accountant and which is not detrimental to decide the nature of transaction and what is relevant is true nature of transaction as per evidences placed before authorities. In this case, MoU and supplementary agreement between the parties clearly indicate that amount paid to M/s.Kokilam Foundations Pvt. Ltd. is investment in joint venture with assured rate of return, which cannot be considered as purchase and sale of lands merely for the reason assessee by mistake has shown said transaction as stock-in-trade

in his books of account. The learned CIT(A), after considering relevant facts has rightly deleted additions made towards cash payment u/s. 40A(3) of the Act and his order should be upheld.

14. We have heard both parties, perused material available on record and gone through orders of authorities below. The facts borne out from records clearly indicate that assessee has entered into joint venture with M/s.Kokilam Foundations Pvt. Ltd for development of 25 acres of land at Parivakkam village, Poonamallee Taluk. Thiruvallur District. As per terms of MOU between the parties assessee and M/s.Kokilam Foundations Pvt. Ltd., agreed to jointly procure 25 acres of land from various parties for which assessee is required to invest an amount of ₹ 10.00 crores . The agreement further provides for a condition that M/s.Kokilam Foundations Pvt. Ltd., agreed to deposit entire title deeds of M/s. Mercury Foundation with the assessee as a collateral or guarantee for investment. Further, M/s.Kokilam Foundations Pvt. Ltd., assumed total responsibility of procurement of land and has also indemnify the assessee with return of capital and interest at the prevailing rate . An analysis of above

agreement between the parties clearly shows that assessee has invested in joint venture with M/s. Kokilam Foundations Pvt. Ltd., for procurement of land and such lands were agreed to procure in the name of M/s.Kokilam Foundations Pvt. Ltd. Therefore, from the above it is very clear that payment to M/s.Kokilam Foundations Pvt. Ltd. is an investment in joint venture and which cannot at no stretch of imagination be considered as payment made for purchase of land in the hands of assessee.

15. Further, the supplementary agreement dated 27.02.2013 between the parties clearly indicate that assessee was to be compensated with additional payment of ₹ 10.00 crores over and above the investment of ₹ 10.00 crores. The said agreement further states that out of ₹ 8.5 crores repaid by M/s.Kokilam Foundations Pvt. Ltd., a sum of ₹ 4.25 crores is profit element and accordingly, assessee has admitted profit as income from investments for assessment year 2009-10. From over all reading of agreement between parties, it is very clear that transactions between the assessee and M/s.Kokilam Foundations Pvt. Ltd. is only investment in joint venture which cannot be considered as

payment for purchase of land. Further, in order to treat purchase of land as stock in trade, the assessee must be owner of lands and land should be registered in the name of the assessee. However, in this case Assessing Officer has failed to bring on record any evidence to prove that lands have been registered in the name of assessee. In fact, assessee has clearly proved that lands were never purchased in the name of assessee. No doubt, assessee has originally treated payment made to M/s.Kokilam Foundations Pvt. Ltd., as stock-in-trade in his books of account. But, at the time of assessment, assessee has filed revised profit and loss account excluding transactions and stated that by inadvertent error committed by Accountant, the transaction regarded as purchase of land and stock-in-trade in books of account. However, real nature of transaction between the parties was only investment which was supported by necessary MOU between the parties. Therefore, when evidences clearly indicate nature of transaction as only an investment in joint venture, merely for the reason that assessee has shown said transaction as purchase of land and stock-in-trade in his books of account, the same cannot be regarded as purchase and stock-in-trade,

unless the Revenue brings on record further evidences to prove that assessee has in fact, purchased lands in his name and shown as stock-in-trade. Further, it is well settled principle of law that entries in books of account is not determinative to decide nature of transaction, but what is relevant is the correct nature of transactions which is backed by evidences. In this case, evidence in the form of MOU between the parties and subsequent supplementary agreement clearly indicate the nature of transaction and as per which amount paid to M/s.Kokilam Foundations Pvt. Ltd., is only an investment in joint venture and hence, just because assessee has shown said transaction as stock-in-trade, it cannot be considered as revenue in nature to invoke the provisions of section 40A(3) of the Act.

16. The provisions of section 40A(3) of the Act, would come into operation, if an assessee makes cash payment in excess of prescribed limit for any expenditure. In case, any cash payment for purchase of capital asset or investment, the same cannot be bring into the ambit of provisions of section 40A(3) of the Act. In this case, nature of payment between parties on the

basis of MoU and supplementary agreement clearly indicate that it was an investment in joint venture, which is in the nature of capital account transaction. Therefore, the same cannot hit by provisions of section 40A(3) of the Act. We further noted that when payment made for any purpose other than for the purpose of expenditure and which is not debited or routed through profit & loss account, then it is outside the purview of section 40A(3) of the Act, This view is supported by Hon'ble Jurisdictional High Court of Madras in the case of K.R.Ganesh Kumar Vs. ACIT in Tax Appeal No.2408 of 2006, where it was held that when payment is made for any expenditure which is not routed through profit & loss account, then the same cannot be brought within the ambit of section 40A(3) of the Act.

17. Considering facts and circumstances of the case, we are of the considered view that transactions of investment in joint venture cannot be brought into ambit of provisions of section 40A(3) of the Act. The learned CIT(A), after considering relevant facts and by following decision of ITAT., Chennai in the case of M/s. R.K.Powergen Pvt.Ltd.(supra) has rightly deleted additions

made by Assessing Officer towards disallowance of cash payment u/s. 40A(3) of the Act. We do not find any error or infirmity in the order of learned CIT(A) and hence, we are inclined to uphold the findings recorded by learned CIT(A) and reject ground taken by Revenue.

18. The next issue that came up for our consideration from ground no.4 of Revenue appeal is deletion of addition of ₹ 58,97,318/- made by Assessing Officer towards profit and gains from business or profession. The facts with regard to impugned dispute are that assessee has declared profits from business or profession amounting to ₹ 24,40,011/-. Further, at the time of assessment proceedings, he has filed revised statement of profit & loss account and declared loss of ₹ 34,57,307/- by excluding purchase of land and stock in trade from books of account which resulted in reduction of net profit into net loss. The Assessing Officer has rejected revised statement of total income filed by assessee. However, the learned CIT(A) has accepted revised statement of total income

and directed the Assessing Officer to consider net loss as per revised profit & loss account prepared by the assessee.

19. The learned DR submitted that learned CIT(A) has erred in deleting additions made towards profits & gains from business or profession without appreciating the fact that letter dated 25.03.2014 claimed to have filed by assessee before the Assessing Officer was not on record because assessee has failed to file any photocopy of the duly acknowledged letter from the Assessing Officer. The DR further submitted that learned CIT(A) has failed to appreciate the fact that letter dated 25.03.2014 may not be filed before Assessing Officer because Assessing Officer has passed assessment order on 25.03.2014 and hence, it cannot be said that assessee has filed letter with revised profit & loss account. The DR further submitted that even assuming for a moment, assessee has filed letter along with revised statement of total income, but Assessing Officer has precluded from admitting revised total income, unless such revision is made by filing revised return of income as held by

Hon'ble Supreme Court in the case of M/s Goetz (India) Ltd. Vs. CIT reported in 284 ITR 323.

20. The learned A.R., on the other hand, submitted that assessee has filed revised statement of total income before Assessing Officer by filing letter dated 25.03.2014 and evidence for filing letter has been placed before learned CIT(A). The learned CIT(A) after considering relevant facts has rightly deleted additions made by Assessing Officer towards profits and gains from business or profession and hence, his findings should be affirmed.

21. We have heard both parties, perused material available on record and gone through orders of authorities below. As regards first objection of the Revenue with regard to admission of revised statement of total income in absence of revised return, we find that restriction imposed by Hon'ble Supreme Court in the case of M/s Goetz (India) Ltd. Vs. CIT (supra) is only on the Assessing Officer but not on the appellate authorities. Further, appellate authorities are empowered to admit any additional claim or ground, even if, such claim was not before

Assessing Officer, but fact relating to such claim should be on record. In this case, facts with regard to claim of loss from business or profession was already on record and no new facts are required to be verified and hence, we are of the considered view that there is no merit in the ground taken by Revenue in light of Hon'ble Supreme Court judgement in the case of M/s Goetz (India) Ltd. Vs. CIT (supra) and hence, the same is rejected.

22. As regards declaration of loss from business or profession as against profit in the original return filed for relevant assessment year, we find that learned CIT(A) has recorded categorical finding in light of revised profit & loss account filed by assessee that after exclusion of purchase of land and stock in trade from books of account, the net profit from business or profession resulted into net loss. The facts of finding recorded by learned CIT(A) has not been controverted by Revenue with any evidences. On the other hand, assessee has filed necessary evidences to prove that transactions between the assessee and M/s. Kokilam Foundations Pvt. Ltd. was an investment transaction

which has been regarded as purchase of land and stock in trade by inadvertent error and the same has been rectified by passing necessary entries in books of account. The learned CIT(A) after considering relevant facts has rightly directed the Assessing Officer to consider revised statement of total income filed by assessee. We do not find any error or infirmity in the findings recorded by learned CIT(A) and hence, we are inclined to uphold the findings of learned CIT(A) and reject ground taken by Revenue.

23. In the result, appeal filed by Revenue is dismissed.

Order pronounced in the open court on 20th January, 2021

Sd/-
(वी. दुर्गा राव)
(V.Durga Rao)
न्यायिक सदस्य /Judicial Member

Sd/-
(जी.मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 20th January, 2021

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.