



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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA no.4134/Mum./2019  
(Assessment Year : 2016-17)

Shri Omprakash KewalramKakwani  
17/4, 1<sup>st</sup> Floor, Prabhu Niwas Rak Road  
Wadala, Mumbai 400 031  
PAN – AACPK6609F

..... Appellant

v/s

Asstt. Commissioner of Income Tax  
Circle-20(2), Mumbai

..... Respondent

Assessee by : Shri Satyaprakash Singh  
Revenue by : Shri Sanjay J. Sethi

Date of Hearing – 08.12.2020

Date of Order – 28/01/2021

**ORDER**

Captioned appeal has been filed by the assessee challenging the order dated 30<sup>th</sup> May 2019, passed by the learned Commissioner of Income Tax (Appeals)-32, Mumbai, pertaining to the assessment year 2016-17.

2. The dispute in the present appeal is confined to non-consideration of certain claim made in the revised computation of income filed in course of assessment proceedings.

3. Brief facts are, the assessee is an individual. For the assessment year under dispute, the assessee filed his return of income on 31<sup>st</sup> March 2017, declaring total income of ` 39,85,550. The income declared by the assessee included share in profit of partnership firm amounting to ` 8,36,175. Subsequently, in the course of assessment proceedings, the assessee having become aware of the fact that the share in the profit of the partnership firm is exempt under section 10(2A) of the Act, filed a revised computation of income reducing the share income from the total income declared in the return of income. The Assessing Officer, however, relying upon the decision of the Hon'ble Supreme Court in Goetz India Ltd. v/s CIT, [2016] 284 ITR 323 (SC), held that the claim made by the assessee in the revised computation of income cannot be accepted, unless, the assessee makes such claim by filing a revised return of income. Though, the assessee challenged the aforesaid decision of the Assessing Officer before learned Commissioner (Appeals), however, he was unsuccessful.

4. I have carefully considered the rival submissions and perused the material on record. Undisputedly, the share income received by a partner from the firm is exempt from taxation under section 10(2A) of the Act. It is the claim of the assessee that in the return of income

filed for the impugned assessment year, the assessee had wrongly offered the share income received from the partnership firm to tax. Though, the assessee claimed exemption of such income by filing the revised computation of income in course of assessment proceedings, both the Assessing Officer and learned Commissioner (Appeals) have rejected assessee's claim on the ground that such claim was not made by filing a revised return of income within the prescribed time limit. While doing so, they have relied upon the decision of the Hon'ble Supreme Court in Goetz India Ltd. (supra). However, now it is fairly well settled that the assessee can make the revised claim during the assessment proceedings and even before the appellate authorities. Even, in case of Goetz India Ltd. (supra), the Hon'ble Supreme Court has very clearly observed that restrictions imposed on the Assessing Officer with regard to considering a claim made by the assessee otherwise than by way of revised return of income is not applicable to appellate authorities. Moreover, when a particular item of income is exempt under section 10 of the Act, it cannot be brought to tax, even if, the assessee on a mistaken belief has offered it to tax in the return of income. In view of the aforesaid, I set aside the impugned order of learned Commissioner (Appeals) and direct the Assessing Officer to consider the claim made by the assessee in the revised computation of income keeping in view the provisions contained under section 10(2A)

of the Act. Needless to mention, the Assessing Officer has to provide a reasonable opportunity of being heard to the assessee before deciding the issue. Grounds raised by the assessee are allowed for statistical purposes.

5. In the result, appeal is allowed for statistical purposes.

Order pronounced on 28/01/2021

**Sd/-  
SAKTIJIT DEY  
JUDICIAL MEMBER**

**MUMBAI, DATED: 28/101/2021**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury  
Sr. Private Secretary*

By Order

Assistant Registrar  
ITAT, Mumbai