

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

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.847/Bang/2017
Assessment year: 2012-13

Sogo Computers Pvt. Ltd., D-1, Hayes Court, No.11/9, Hayes Road, (Off: Richmond Road), Bangalore – 560 025. PAN: AACCS 8954L	Vs.	The Deputy Commissioner of Income Tax, Circle 6(1)(2), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	None
Respondent by	:	Shri Kannan Narayanan, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	09.03.2021
Date of Pronouncement	:	09.03.2021

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the assessee is directed against the order of the CIT(Appeals), Bengaluru-6, Bengaluru dated 31.01.2017 on the following grounds:-

“On facts and in law,

- 1] The learned Assessing officer has erred in law and on facts in not giving the effect to the findings during the assessment which reduces the taxable income by Rs. 1, 19,67,620/- but considered on the findings which increases the taxable income.

- 2] The learned Assessing officer has erred in law and on facts in not giving the credit for the TDS as per 26AS for Rs.23,37,041/- at the time of assessment and give credit to only Rs. 22,72,562/- as per the return of income filed.
 - 3] Without prejudice, the learned Assessing officer has erred in law and facts in taxing Rs.1,19,67,620/- which was not taxable income as per the Income Tax Act 1961.
 - 4] Without prejudice, the learned CIT Appeal has erred in law and on facts in dismissing the appeal stating that the grounds of appeal do not emanate from the order of the AO without considering the ground on merit.
 - 5] Without prejudice The learned CIT (Appeals)Bangalore 6 failed to allow U/s 251 of the income tax act 1961 the claim made to him to reduce the income by Rs.1,19,67,620/- being the excess income offered by increasing the value of the closing stock by mistake.
 - 6] The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”
2. None appeared for the assessee. We proceed to adjudicate the appeal after hearing the Id. DR and perusing the material on record.
3. The facts of the case are that the assessee has raised the following grounds of appeal before the CIT(Appeals):-

“On facts and in law,

- 1] The order u/s 143(3) passed by the Asst. Commissioner of Income Tax opposed to law and fact of the case.
- 2] The learned Deputy. Commissioner of income Tax erred in not giving the effects to the mistakes happened in the computation of to the extent of Rs. 1,19,67,620/-.
- 3] The learned Deputy Commissioner of income Tax erred in not giving the credit as per 26As for TDS of Rs.23,37,041

but gave credit only the amount claimed in the return of income Rs.22,72,562/-

4] The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”

4. However, these grounds are dismissed by the CIT(Appeals) on the reason that these grounds are not emanating from the assessment order. Against this, the assessee is in appeal before us.

5. In our opinion, the CIT(Appeals) ought to have adjudicated the grounds of appeal raised before him on merits instead of dismissing the same in view of the judgment of the Hon'ble Supreme Court in the case of *Goetze (India) Ltd. v. CIT, 284 ITR 323 (SC)* wherein it was held that the claim for deduction not made in the return cannot be entertained by the AO otherwise than by filing a revised return. However, this does not in any way limit the power of Tribunal u/s. 254 of the Income-tax Act, 1961 [the Act]. Being so, we remand the issue in dispute to the file of the CIT(Appeals) to decide the same afresh in accordance with law, after affording adequate opportunity of being heard to the assessee.

6. In the result, the appeal by the assessee is partly allowed for statistical purposes.

Pronounced in the open court on this 9th day of March, 2021.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 9th March, 2021.

/Desai S Murthy/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.