

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.2555/PUN/2017
निर्धारण वर्ष / Assessment Year : 2012-13

Nagar Urban Co-operative Bank Ltd.,
Post Box No.7, Central Bank Road,
Ahmednagar-414001.

PAN : AAAAN0509L

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Ahmednagar Circle,
Ahmednagar.

.....प्रत्यर्थी / Respondent

Assessee by : None
Revenue by : Shri Vitthal Bhosale

सुनवाई की तारीख / Date of Hearing : 23.03.2021
घोषणा की तारीख / Date of Pronouncement : 24.03.2021

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of the Learned Commissioner of Income Tax (Appeals)- 2, Pune ('CIT(A)' for short) dated 20.07.2017 for the assessment year 2012-13.

2. The appellant raised the following grounds of appeal :-

"1. That the learned ACIT Ahmednagar has erred on the facts and in the circumstances in not allowing claims made during the course of hearing for exempted income of dividend of Rs. 1487135/- and expenses debited to P & L A/c on account of depreciation on Govt. Securities Rs. 11200000/- to be allowed as exempted income as well as allowable expenses and the same were also dismissed by the Commissioner of Income Tax (Appeals) II Pune.

2. That your appellant prays that he may be allowed to add, to alter or amend the above grounds of appeal."

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

The appellant is a Co-operative Bank engaged in the business of carrying on banking business. The return of income for the assessment year 2012-13 was filed on 29.09.2012 declaring total income of Rs.12,59,58,432/-. Against the said return of income, the assessment was completed by the Dy. Commissioner of Income Tax, Ahmednagar Circle, Ahmednagar (the Assessing Officer) vide order dated 31.03.2015 at a total income of Rs.13,31,52,370/- after making the following additions :-

1.	<i>Amortization of premium in respect of Govt. Securities</i>	<i>Rs.4,63,808/-</i>
2.	<i>Amounts directly credited in Reserve Account</i>	<i>Rs.66,36,159/-</i>
3.	<i>Addition u/s 41(1) of the I.T. Act</i>	<i>Rs.93,966/-</i>

4. Being aggrieved by the above additions, the appellant preferred an appeal before the Id. CIT(A) challenging the above additions and also raised the additional grounds of appeal seeking relief in respect of tax exempt income dividend income of Rs.14,87,135/- and depreciation on the Government Securities of Rs.1,12,00,000/-. The Id. CIT(A) had granted relief in respect of following additions :-

- (i) Unclaimed Amount - Rs.26,43,370/-
- (ii) Unpaid Dividend - Rs.20,05,137/-
- (iii) Excess Cash - Rs.83,912/-

5. However, the additional grounds of appeal raised seeking relief in respect of dividend income and depreciation on the Government Securities, the Id. CIT(A) had not allowed the claims on the ground that the issues had not arisen out of the assessment order, the claims were not made in the original return of income placing reliance on the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. vs. CIT, 284 ITR 323.

6. Being aggrieved, the appellant is before us in the present appeal.

7. When the matter was called on, none appeared on behalf of the assessee despite due service of notice. On the other hand, the ld. CIT-DR argued that claim not made in the original return of income cannot be made for the first time before the ld. CIT(A). Thus, he supported the order of the ld. CIT(A).

8. We heard the ld. DR and perused the material on record. From the perusal of the impugned order, it is clear that the ld. CIT(A) had not admitted the additional grounds of appeal nor adjudicated the issues raised in the additional grounds of appeal on merit citing that the issues in the additional grounds of appeal does not emanate from the assessment order placing reliance on the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. (supra). The reasoning of the ld. CIT(A) cannot be appreciated in view of the decisions by the various High Courts that the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. (supra) is limited to the powers of the assessing authority and does not impinge on the powers of the appellate authorities like the CIT(A). The observation made by the Hon'ble Apex Court in the case of Goetze (India) Ltd. (supra) were in relation to the powers of assessing authority not dealing with the powers of appellate authorities. The Hon'ble Jurisdictional High Court in the following decisions held as above :-

- (i) Sesa Goa Ltd. vs. JCIT, 117 taxman 96 (Bom.);
- (ii) CIT vs. Pruthvi Brokers and Shareholders Pvt. Ltd., 349 ITR 336 (Bom.);
- (iii) Ahmedabad Electricity Co. Ltd. vs. CIT, 199 ITR 351 (Bom.)

9. In view of the series of decisions of the Hon'ble Jurisdictional High Court cited above (supra), we find that there are no fetters on the powers of

ld. CIT(A) to admit and adjudicate the additional grounds of appeal made before him, notwithstanding the fact that no such claims were made before the Assessing Officer. That apart, it has been expressly held by the Hon'ble Jurisdictional High Court that the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. (supra) is not applicable to the appellate authorities like the CIT(A).

10. Recently, the Hon'ble Bombay High Court in the case of Sesa Goa Ltd. vs. JCIT, 423 ITR 426 held as follows :-

“39. In CIT v. Pruthvi Brokers & Shareholders (P.) Ltd. [2012] 349 ITR 336/208 Taxman 498/23 taxmann.com 23 (Bom), one of the questions of law which came to be framed was whether on the facts and circumstances of the case, the ITAT, in law, was right in holding that the claim of deduction not made in the original returns and not supported by revised return, was admissible. The Revenue had relied upon Goetze (supra) and urged that the ITAT had no power to allow the claim for deduction. However, the Division Bench, whilst proceeding on the assumption that the Assessing Officer in terms of law laid down in Goetze (supra) had no power, proceeded to hold that the Appellate Authority under the IT Act had sufficient powers to permit such a deduction. In taking this view, the Division Bench relied upon the Full Bench decision of this Court in Ahmedabad Electricity Co. Ltd. v. CIT [1993] 199 ITR 351/66 Taxman 27 (Bom.) to hold that the Appellate Authorities under the IT Act have very wide powers while considering an appeal which may be filed by the Assessee. The Appellate Authorities may confirm, reduce, enhance or annul the assessment or remand the case to the Assessing Officer. This is because, unlike an ordinary appeal, the basic purpose of a tax appeal is to ascertain the correct tax liability of the Assessee in accordance with law.

40. The decision in Goetze (supra) upon which reliance is placed by the ITAT also makes it clear that the issue involved in the said case was limited to the power of the assessing authority and does not impinge on the powers of the ITAT under section 254 of the said Act. This means that in Goetze India Ltd. (supra), the Hon'ble Apex Court was not dealing with the extent of the powers of the appellate authorities but the observations were in relation to the powers of the assessing authority. This is the distinction drawn by the division Bench in Pruthvi Brokers Shareholders (P.) Ltd. (supra) as well and this is the distinction which the ITAT failed to note in the impugned order.”

11. To the same effect, the following are decisions of the various Hon'ble High Courts :-

- (i) PCIT vs. Western India Shipyard Ltd., 379 ITR 289 (Delhi);
- (ii) CIT vs. Sam Global Securities Ltd., 360 ITR 682 (Delhi);
- (iii) CIT vs. Jai Parabolic Springs Ltd., 306 ITR 42 (Delhi);
- (iv) Influence vs. CIT, 55 Taxman 192 (Delhi);

- (v) PCIT vs. E-Funds International India (P.) Ltd., 379 ITR 292 (Delhi);
- (vi) CIT vs. Shaw Wallace Distilleries Ltd., 124 taxman 510 (Karnataka);
- (vii) PCIT vs. Ankit Metal & Power Ltd., 109 taxman 93 (Calcutta);
- (viii) CIT vs. Ramco International, 332 ITR 306 (P&H);
- (ix) CIT vs. Arvind Products Ltd., 339 ITR 643 (Gujarat).

12. In view of the above settled position of law, the reasoning the of the ld. CIT(A) cannot be sustained in the eyes of law. Accordingly, the order of the ld. CIT(A) is set-aside, we remand the matter to the file of the ld. CIT(A) who shall adjudicate the issues in additional grounds of appeal on merit in accordance with law after affording due opportunity of being heard to the appellant.

13. In the result, the appeal of the assessee stands partly allowed for statistical purposes.

Order pronounced on this 24th day of March, 2021.

Sd/-

(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(INTURI RAMA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 24th March, 2021.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Pune.
4. The Pr. CIT-1, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.