

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC-1" MUMBAI**

**BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER) AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 242/MUM/2022
Assessment Year: 2015-16**

Mr. Bhavesh Rajendra Singhi C/o
Sanket Shah,
Flat 1902, 19th floor,
Olympia Tower A Wing,
N.M. Joshi Marg, Byculla (West),
Mumbai-400011.

**PAN No. AQOPS 9227 P
Appellant**

Vs.

Income Tax Officer
Ward 18(1)(2),
Matru Mandir Building,
Grant Road,
Mumbai-400 007.

Respondent

Assessee by : Mr. Suyog Bhave, AR
Revenue by : Mr. Kiran P. Unavekar, DR

Date of Hearing : 31/05/2022
Date of pronouncement : 31/05/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by the assessee against the order dated 16.12.2021 passed by the Ld. Commissioner of Income-Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi [in short 'the Ld. CIT(A)'] for the assessment year 2015-16, raising following grounds :

"1. Erroneous disallowance of deduction claimed in respect of donation made by the Appellant

1.1. That on the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (hereinafter referred to as "the Ld. CIT(A)") was not justified and erred in not granting a complete deduction in respect of donations of INR 9,00,000 made by the Appellant to Ms. Sahara Health & Education Society, being an eligible project notified by the Government of India, without considering the facts and circumstances of the case.

1.2. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in restricting the deduction to 10 percent of Gross Total Income in respect of the donations made by the Appellant to M/s. Sahara Health & Education Society.

1.3. The Ld. CIT(A) ought to have allowed deduction of the entire amount of donation (i.e. IN 9,00,000) made by the Appellant to M/s. Sahara Health & Education Society.

2. Without prejudice to the above grounds, on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified and erred in not exercising his powers to admit the fresh claim made by the Appellant for deduction of donations of INR 9,00,000 made to M/s. Sahara Health & Education Society under Section 80GGA of the Income-tax Act, 1961.

3. Relief

3.1. The Appellant prays that the Ld. CIT(A) be directed to grant all such relief arising from the preceding grounds as also all relief consequential thereto."

2. Briefly stated, the facts of the case are that in the return of income filed, the assessee claimed deduction of ₹9,00,000/- u/s 80G of the Income Tax Act, 1961 (in short 'the Act'). However, during the scrutiny proceedings, the Assessing Officer observed that the assessee had paid donation of ₹9,00,000/- to M/s Sahara Health and Education Society, who issued donation receipt u/s 35AC of the Act to the assessee. In view of this, the AO opined that the assessee was entitled to claim of deduction u/s 80G(5)(vi) of the Act to the extent of 10% of gross total income rather than the entire amount of donation paid of ₹9,00,000/-. On being proposed to restrict the deduction u/s 80G to the extent of 10% of the adjusted gross total income, the assessee requested to allow deduction u/s 80GGA of the Act instead of u/s 80G of the Act. However, the Assessing Officer rejected the claim of the assessee for allowing deduction u/s 80GGA of the Act and he allowed the deduction u/s 80G of the Act to the

extent of ₹86,124/- computed by under the provisions of section 80G(2) and section 80G(1)(ii) of the Act. Before the Ld. CIT(A), the assessee again reiterated its claim for allowing deduction u/s 80GGA of the Act. But the Ld. CIT(A) also rejected the claim of the assessee. According to the Ld. CIT(A), the assessee did not file revise return of income u/s 139(5) of the Act. The Ld. CIT(A) also held that in view of decision of the Hon'ble Supreme Court in the case of **Goetze (India) Ltd. v. CIT (2006) 284 ITR 323 (SC)**. The Assessing Officer is not empowered to entertain claim of deduction otherwise than filing revised return of income by the assessee. The Ld. CIT(A) following the decision of the Hon'ble High Court of Kerala in the case of **PCIT v. Paragon Biomedical India (P.) Ltd. (2021) 438 ITR 227 (Ker)** denied the claim of deduction u/s 80GGA observing as under:

"7.22 Under the circumstances, respectfully following the rulings of Hon'ble High Court of Kerala in the case of Paragon Biomedical India (P.) Ltd. (supra) and the Hon'ble Supreme Court in the case of Goetze (India) Ltd., I am of the considered opinion that, in the instant case,

as a CIT(A), I do not have power to entertain the assessee's alternative claim of deduction u/s. 80GGA of the Act. Accordingly, I do not want to interfere with the addition made by the AO to the extent of Rs.8,13,876/- (9,00,000 - 86,124). Thus, the ground of appeal raised by the assessee on this issue is dismissed."

3. Before us, the Ld. counsel of the assessee referred to the decision of the Hon'ble Jurisdictional High Court in the case of **CIT v. Pruthvi Brokers & Shareholders, (2012) 349 ITR 336 (Bombay)** and submitted that on identical facts, the Hon'ble Bombay High Court has held that the appellate authorities including Tribunal are empowered to admit any fresh claim of deduction.

4. The Ld. DR on the other hand, relied on the order of the lower authorities.

5. We have heard the rival submissions of the parties on the issue-in-dispute and perused the relevant material on record. The assessee in the return of income made claim for deduction u/s 80G of the Act in respect of donation of ₹9,00,000/- to M/s Sahara Health and Education Society. Under section 80G of the Act, the

deduction is allowed limited to 10% of gross total income. During the assessment proceeding, the assessee submitted for revising its claim of deduction u/s 80GGA of the Act wherein 100% deduction is allowable. However, the same was not accepted by the Assessing Officer. The assessee again made this claim before the Ld. CIT(A) but the Ld. CIT(A) also rejected on the ground that he does not have power to entertain fresh claim. We find that identical issue has been decided by the Hon'ble Bombay High Court in the case of Pruthvi Brokers & Shareholders (supra) observing as under :

"28. It was then submitted by Mr. Gupta that the Supreme Court had taken a different view in Goetze (India) Limited v. Commissioner of Income-tax, (2006) 157 Taxman 1. We are unable to agree. The decision was rendered by a Bench of two learned Judges and expressly refers to the judgment of the Bench of three learned Judges in National Thermal Power Company Limited vs. Commissioner of Income-tax 229 ITR 383 (SC). The question before the Court was whether the appellant-assessee could make a claim for deduction, other than by filing a revised return. After the return was filed, the appellant sought to claim a deduction by way of a letter before the Assessing Officer. The claim, therefore, was not before the appellate authorities. The deduction was disallowed by the Assessing Officer on the ground that there was no provision under the Act to make an

amendment in the return of income by modifying an application at the assessment stage without revising the return. The Commissioner of Income-tax (Appeals) allowed the assessee's appeal. The Tribunal, however, allowed the department's appeal. In the Supreme Court, the assessee relied upon the judgment in National Thermal Power Company Limited contending that it was open to the assessee to raise the points of law even before the Tribunal. The Supreme Court held (page 324 of 284 ITR)

4. The decision in question is that the power of the Tribunal under section 254 of the Income-tax Act, 1961, is to entertain for the first time a point of law provided the fact on the basis of which the issue of law can be raised before the Tribunal. The decision does not in any way relate to the power of the Assessing Officer to entertain a claim for deduction otherwise than by filing a revised return. In the circumstances of the case, we dismiss the civil appeal. However, we make it clear that the issue in this case is limited to the power of the assessing authority and does not impinge on the power of the Income-tax Appellate Tribunal under section 254 of the Incometax Act, 1961. There shall be no order as to costs." [emphasis supplied]

It is clear to us that the Supreme Court did not hold anything contrary to what was held in the previous judgments to the effect that even if a claim is not made before the assessing officer, it can be made before the appellate authorities. The jurisdiction of the appellate authorities to entertain such a claim has not been negated by the Supreme Court in this judgment. In fact, the Supreme Court made it clear that the issue in the case was limited to the power of the assessing authority and that the judgment does not impinge on the power of the Tribunal under section 254.

A Division Bench of the Delhi High Court dealt with a similar submission in Commissioner of Income-tax v. Jai Parabolic Springs Limited, (2008) 306 ITR 42. The Division Bench, in paragraph 17 of the judgment held that the Supreme Court dismissed the appeal making it clear that the decision was limited to the power of the assessing authority to entertain a claim for deduction otherwise than by a revised return and did not impinge on the powers of the Tribunal. In paragraph 19, the Division Bench held that there was no prohibition on the powers of the Tribunal to entertain an additional ground which, according to the Tribunal, arises in the matter and for the just decision of the case.”

5.1 We find that the Hon’ble High Court has made it clear that Tribunal can entertain the claim of deduction otherwise than by revised returned. Respectfully following the above decision of the Hon’ble High Court, we admit the claim of the assessee for deduction u/s 80GGA of the Act subject to verification by the Assessing Officer. Accordingly, we restore the issue back to the file of the Ld. Assessing Officer for examining of the documents in support of claim u/s 80GGA and if the claim is found in accordance with law same may be allowed. The grounds of the appeal of the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the open Court.

Sd/-

**(KULDIP SINGH)
JUDICIAL MEMBER**

Sd/-

**(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;

Dated: 31/05/2022

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai