

IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "A" : DELHI]

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
A N D
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No. 6212/Del/2018

निर्धारणवर्ष /Assessment Year: 2014-15

Shri Bhaskar Chakraborty, I-1764, First Floor, C/o. Dipankar Chakraborty, C. R. Park, New Delhi - 110 019.	<u>बनाम</u> Vs.	ACIT Circle : 70 (1) New Delhi.
PAN No. AAAPC0621K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारितकीओरसे /Assessee by :	N o n e;
राजस्वकीओरसे / Department by :	Shri Zahid Parvez, Sr. D. R.;

सुनवाईकीतारीख/ Date of hearing :	13/06/2022
उद्घोषणाकीतारीख/Pronouncement on :	13/06/2022

आदेश / O R D E R

PER C. N. PRASAD, J. M. :

1. This appeal is filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-21, New Delhi [hereinafter referred to CIT (Appeals)] dated 25.06.2018 for assessment year 2014-15.

2. The assessee in his appeal has raised the following grounds of appeal:-

“1. The Hon’ble CIT (A) has grossly erred in the facts and circumstances of the case and in law in not accepting the contention of the appellant for considering the revised computation of income furnished during assessment proceedings on the premise that the claim cannot be entertained unless made in the return of income (original or revised).

2. The Hon’ble CIT (A) has grossly erred in the facts and circumstances of the case and in law in ignoring the following :

(i) the Judicial precedents cited on non-applicability of the decision of Hon’ble Supreme Court in the case of Goetze (India) Ltd, 284 ITR 323 for considering the revised computation during assessment proceedings;

(ii) The order suffers from non-observance of the principles of natural justice as the legal issue of non-applicability of the decision in the case of Goetze basis the several decisions in favour of appellant was neither raised nor any clarification sought on the same;

(iii) There was no fresh claim and there was a mere modification of claim during assessment proceedings;

(iv) The evidence furnished during assessment i.e. foreign tax returns and proof of payment of taxes in host country supporting the modified claim has been ignored. “

3. Several notices were issued by the Registry on various dates fixing the appeal for hearing, however, the assessee did not appear. We proceed to dispose of this appeal on hearing the Id. DR. The Id. DR submits that the Assessing Officer acting upon the original return filed by the assessee completed the assessment under Section 143(3) of the Income Tax Act, 1961 (the Act). However, the assessee approached the Id. CIT (Appeals) stating

that the Assessing Officer ignored the revised computation of income filed in the course of assessment before him revising his income as certain salary components paid by the employer overseas were offered to tax in excess of the amount actually paid by the assessee. The ld. DR submits that the ld. CIT (Appeals) however, since no revised return was filed by the assessee the claim of the assessee was not accepted by the ld. CIT (Appeals). He strongly supported the order of the ld. CIT (Appeals).

4. On hearing the ld. DR and on perusing the order of the ld. CIT (Appeals) it is observed that the revised computation of income filed by the assessee was not acted upon by the Assessing Officer since claim was not made by the assessee by way of revised return. The claim for rejection of salary income by the assessee by way of revised computation of income which was filed before the Assessing Officer in the course of assessment proceedings appears to have not entertained by the authorities below for the reason that there is no revised return filed by the assessee. The ld. CIT (Appeals) placed reliance on the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. 284 ITR 323 (SC).

5. The Hon'ble Bombay High Court in the case of CIT Vs. Pruthvi Brokers & Shareholders Pvt. Ltd. (2012) 349 ITR 336 observed that the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. (supra) was confined to a case where the claim was made only before the Assessing Officer and not before the appellate authorities. It was observed by the Hon'ble Court that Supreme Court did not lay down that a claim not made before the Assessing Officer cannot be made before the appellate authorities. The Hon'ble Bombay High Court held that the jurisdiction of the appellate authorities to entertain such a claim

has not been negated by the Hon'ble Supreme Court in its judgement. Therefore, in our opinion, the ld. CIT (Appeals) should have examined to revise computation or call for a remand report from the Assessing Officer on the claim made by the assessee. The ld. CIT (Appeals) is not justified in not entertaining the claim of the assessee for the reason that assessee has not filed revised return and has only filed revised computation and further observing that the employer has not revised his TDS return showing lesser salary income to the assessee. It is the contention of the assessee before the ld. CIT (Appeals) that in the original return of income filed the foreign tax credit was claimed on an estimated basis and in the revised computation of income the assessee has claimed revised foreign tax credit, on the basis of taxes due and paid in Kenya. The ld. CIT (Appeals) failed to examine the contentions of the assessee. Therefore, taking the totality of facts and circumstances into consideration, we direct the Assessing Officer to examine the revised computation of income filed by the assessee and decide the issue in accordance with law after providing adequate opportunity of being heard. In other words we direct the Assessing Officer to act upon the revised computation filed by the assessee and examine the issues therein in accordance with law.

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

Order pronounced in the open court on : 13/06/2022.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Dated : 13/06/2022.

MEHTA

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1. Appellant;
2. Respondent;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	13.06.2022
Date on which the typed draft is placed before the dictating member	13.06.2022
Date on which the typed draft is placed before the other member	13.06.2022
Date on which the approved draft comes to the Sr. PS/ PS	13.06.2022
Date on which the fair order is placed before the dictating member for pronouncement	13.06.2022
Date on which the fair order comes back to the Sr. PS/ PS	13.06.2022
Date on which the final order is uploaded on the website of ITAT	13.06.2022
Date on which the file goes to the Bench Clerk	13.06.2022
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	