

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. 6983/Del/2019  
निर्धारणवर्ष /Assessment Year: 2016-17

M/s. Asian Hotels (North) Ltd., Hotel Hyatt Regency Delhi, Bhikaji Cama Place, New Delhi - 110 066.	<u>बनाम</u> Vs.	ACIT, Circle : 3 (2) New Delhi.
PAN No. AAACA0125H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारितकीओरसे /Assessee by :	Shri Abhinav Gupta, C. A.;
राजस्वकीओरसे / Department by :	Ms. Suman Malik, Sr. D. R.;

सुनवाईकीतारीख/ Date of hearing :	23/06/2022
उद्घोषणाकीतारीख/Pronouncement on :	23/08/2022

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 ld. Commissioner of Income Tax (Appeals)-1, New Delhi [hereinafter referred to CIT (Appeals)] dated 17.06.2019 for assessment year 2016-17.

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

“1. That the CIT (Appeals), having co-terminus power as that of Assessing Officer, ought not to have denied the claim of the appellant for Rs.2,03,44,553 being the proposed ‘Provision for the property tax payable, not debited in the books of account, but wrongly added u/s 43B while computing the business income for the AY 2016-17.

2. That the CIT (Appeals) has erred on facts and under the law while disallowing the claim of the appellant for the exclusion of Provision of property tax payable Rs.2,03,44,553 neither created in the books of account nor debited to the Statement of Profit & Loss but disallowed u/s 43B while preparing the computation of taxable income by the appellant, merely on the ground that it was not claimed by filing of a revised return in view of the judgment of the Hon’ble Supreme Court in the case of Goetze (India) Ltd. vs. CIT reported in 284 ITR 323.”

3. The Id. Counsel for the assessee submits that in the course of assessment proceedings the assessee by way of letter dated 12.11.2018 requested the Assessing Officer to reduce Rs.2,03,44,553/- which was erroneously added back by the assessee under section 43B of the Income Tax Act, 1961 (the Act) in the computation of income pertaining to a provision for tax dues i.e. Property Tax and interest not made in the books of accounts, but erroneously added back while computing business income for the assessment year. The Id. Counsel for the assessee submits that difference of Property Tax, interest amounting to Rs.2.3 crores was actually not required to be made and the provision was never made in the books of accounts for the year 2015-16 relevant to assessment year 2016-17 and, therefore, nothing was to be added back for the provisions of section 43B of the Act. However, the assessee erroneously added back in the Income Tax computation filed for the assessment year 2016-17. The Id. Counsel submits

that this claim of the assessee was not entertained by the Assessing Officer on the ground that the assessee did not file revised return making this claim. The Id. Counsel submits that on appeal the Id. CIT (Appeals) did not entertain the claim of the assessee quoting the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. Vs. CIT (2006) 284 ITR 323 (SC). The Id. Counsel submits that the appellate authority has the power to entertain the claim of the assessee, which was not made by way of revised return. Reliance was placed on the following decisions:-

- (i) CIT Vs. Jai Parabolic Springs Ltd. (2008)  
172 Taxman 258 (Del.);
- (ii) CIT Vs. Sam Global Securities Ltd. (2014)  
360 ITR 682 (Del.);
- (iii) PCIT Vs. E-Funds International India Pvt. Ltd.  
379 ITR 292 (Del).

4. On the other hand, the Id. DR strongly supported the orders of the authorities below. The Id. DR submits that the issue may be restored back to the file of the Assessing Officer for de novo adjudication.

5. Heard rival parties perused various orders of the authorities below. The claim of the assessee for deduction of the provision for tax dues not made in the books of accounts, but erroneously added back while computing business income for the assessment year under consideration was not entertained by lower authorities for the reason that the assessee did not make its claim in the revised return. The Id. CIT (Appeals) placed reliance on the decision of

the Hon'ble Supreme Court in the case of Goetze (India) Ltd. Vs. CIT (supra).

6. In the case of PCIT Vs. E-Funds International India Pvt. Ltd. (supra) the Hon'ble Delhi High Court held as under:-

"16. Mr. Piyush Kaushik, learned counsel *for* the Assessee, on the other hand, referred to the recent decisions of this *Court* in Commissioner of Income Tax v. Sam Global Securities Ltd. (2014) 360 ITR 682 (Del); M/s. Influence v. Commissioner of Income Tax 2014-TIOL-1741 -HC-DEL-IT and Commissioner of Income Tax v. Jai Parabolic Springs Ltd. (2008) 306 ITR 42 and the *decision of Bombay High Court* in Commissioner of Income Tax v. Pruthvi Brokers & Shareholders (P) Ltd. (2012) 349 ITR 336 (Bom)."

"17. In all the aforementioned decisions cited *by* learned *counsel for* the Assessee, the High Court has considered the effect of *the decision* of the Supreme Court in Goetze (India) Ltd. (supra). *The common* thread running through the ratio in all the decisions of *the High Courts* is that while an AO may not be entitled to grant a *deduction or* an exemption on the basis of a revised computation of income, *there* was no such fetter on the appellate authorities. This was *recently* reiterated by this Court in a decision dated 25th August 2015 in ITA No. 644/2015 (Pr. Commissioner of Income Tax-09 v. Western India Shipyard Limited), in Sam Global Securities Ltd. (supra), *this Court* pointed out that the power of the Tribunal in dealing with appeals was expressed in the widest possible terms and the purpose of assessment proceedings was to assess the correct tax liability. The Court noted that "Courts have taken a pragmatic view and not a technical view as what is required to be determined is the taxable income of the Assessee in accordance with law." In Influence v, Commissioner of Income Tax (supra) a similar approach was adopted when the AO in that case refused to accept the revised computation submitted beyond the time limit for filing the revised return under Section 139(5) of the Act. This Court noted that the decision in Goetze (India) Ltd. (supra) "would not apply if the Assessee had not made a new claim but had asked for re-computation of the deduction."

7. Similarly in the case of CIT Vs. Pruthvi Brokers and Shareholders P. Ltd. (2012) 349 ITR 336 (Bom.) Hon'ble Bombay High Court held as under:-

"22. 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 (supra). 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 Hon'ble Supreme Court held :-

"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 Income tax Act, 1961. There shall be no order as to costs. "[emphasis supplied]

8. As could be seen from the above the appellate authority has ample power to entertain the claim of the assessee even

though not made by way of revised return. In any case it was not a new claim altogether made by the assessee in the course of assessment proceedings. The claim/mistake which was made in the original return of income was sought to be rectified by the assessee through letter dated 12<sup>th</sup> November, 2018, which is as under:-

“The assessee company filed its return of income in Form-6 electronically vide acknowledgment No. 471074511290916 dated 29-9-2016.

Tax Audit report under the provisions of section 44AB of the Income Tax Act 1961 was filed on 19-9-2016.

In the Tax audit report at Annexure- X, Clause 26(B) page-1, it was mentioned that a provision for payment of Property Tax and interest for delayed payment aggregating to Rs.203,44,553/- was made in the previous year relevant to the assessment year 2016-17 which remained unpaid at the end of the financial year 2015-16.

Accordingly, while computing the business income for the assessment year 2016-17 ( please see Part A- OI, item No. 11(a) of the ITR-6), based on the above disclosure in the Tax Audit Report for the AY 2016-17 a sum of Rs.2,03,44,553/-, pertaining to provision made for “Difference of Property Tax and Interest ” and remaining unpaid as on 31<sup>st</sup> March 2016, was added back u/s 43B of the Act.

Subsequently, it transpired that the above PROVISION FOR “Difference of Property Tax and Interest ” amounting to Rs.2,03,44,553/-, was actually not required to be made and the provision was never made in the books of accounts for the year 2015-16 and therefore, nothing was to be added back under the provisions of section 43B of the Act. Thus the addition of Rs.2,03,44,553/-, made u/s 43B was erroneously made in income tax computation filed in the Income Tax Return for the assessment year 2016-17.

It is therefore, humbly requested that the business income computed for the assessment year 2016-17 may kindly be reduced by a sum of Rs.2,03,44,553/- , being addition erroneously made u/s 43B of the Act.

A certificate from the Statutory and Tax Auditors regarding above error occurred in the Tax Audit report and consequent erroneous addition of Rs.2,03,44,553/- made in the ITR-6 filed for

the assessment year 2016-17 is enclosed for your kind perusal and records.

Kindly delete the erroneous addition made by the assessee company in its return of income as aforesaid and oblige.”

9. In our considered view the Id. CIT (Appeals) should have entertained the claim of the assessee and should have decided the issue on merits. Respectfully following the above said decisions, we entertain the claim of the assessee. However, since the claim was not examined by the Assessing Officer or by the Id. CIT (Appeals) we feel it appropriate to restore this issue to the file of the Id. Assessing Officer to examine the contentions raised/claim made by the assessee in its letter dated 12<sup>th</sup> November, 2018 and decide the issue on merits in accordance with law, after providing adequate opportunity of being heard to the assessee.

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

Order pronounced in the open court on : 23/08/2022.

Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

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

Dated : 23/08/2022.

\*MEHTA\*

Copy forwarded to

1. Appellant;
2. Respondent;

3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi.

Date of dictation	05.08.2022
Date on which the typed draft is placed before the dictating member	10.08.2022
Date on which the typed draft is placed before the other member	23.08.2022
Date on which the approved draft comes to the Sr. PS/ PS	23.08.2022
Date on which the fair order is placed before the dictating member for pronouncement	23.08.2022
Date on which the fair order comes back to the Sr. PS/ PS	23.08.2022
Date on which the final order is uploaded on the website of ITAT	23.08.2022
Date on which the file goes to the Bench Clerk	23.08.2022
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	