PIN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA BENCH "C", KOLKATA

BEFORE SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, HON'BLE ACCOUNTANT MEMBER

ITA No.2241/Kol/2019
Assessment Year: 2015-16

M/s. Philips Electronics Nederland B.V. C/o. Deloitte Haskins & Sells LLP, Bengal Intelligent Part, Building Omega, 13th & 14th Floor, Block – EP & GP, Sector-V, Salt Lake Electronics Complex, Kolkata-700091. [PAN: AAFCP 4361 F]	Vs.	DCIT (International Taxation), Circle-2(1), Kolkata
(Appellant)		(Respondent)

Present for:
Appellant by : Shri P.J. Pardiwalla, Sr. Advocate & Shri Ketan K. Ved, CA
Respondent by : Shri Abhijit Kundu, CIT

Date of Hearing : 23.06.2022
Date of Pronouncement : 15.09.2022

O R D E R

PER SONJOY SARMA, JM:

This appeal filed by the assessee against the order dated 24.07.2019 passed by DCIT (International Taxation), Circle-2(1), Kolkata for the Assessment Year 2015-16. The grounds raised by the assessee are as follows:

"(i) The Learned Assessing Officer ['Ld. AO'] and the Hon'ble Dispute Resolution Panel ['Hon'ble DRP'J have erred in disregarding the claim made by the Appellant during the course of the assessment proceedings and in thereby holding the amount of Rs. 85,82,15,139/- received by the Appellant during the year under consideration from Philips India Limited ['PIL'] and Preethi Kitchen Appliances Private Limited ['Preethi'] pursuant to the Global Service Unit Agreement ['GSU'] is taxable in India.

ii. The Ld. AO and the Hon'ble DRP have, inspite of the Ld. AO accepting in the Remand Report, erred in not admitting the additional claim made by the Appellant during the course of the assessment proceedings and in thereby holding the amount

of Rs. 85,82,15,139/- received by the Appellant during the year under consideration from PIL and Preethi pursuant to the GSU is taxable in India.

iii. Considering the facts and circumstances of the case and the law prevailing on the subject, the amount of Rs. 85.82,15,139/- received by the Appellant during the year under consideration is not taxable in India more so, when the AO himself accepts in the Remand Report dated 14 June 2019 that the services provided by the Appellant to PIL and Preethi do not 'make available' technical knowledge, skills, experience, etc. to the latter.

iv. The Appellant submits that the AO be directed to accept the claim made by the Appellant during the course of the assessment proceedings, and hold that the receipts are not taxable in India, more so when the AO himself accepts by the appellant to PIL and Preethi do not 'make available' technical knowledge, skills, experience etc. to the latter."

2. At the time of hearing, ld. AR of the assessee submitted that the dispute resolution panel (Hon'ble DRP) have erred in disregarding the claim made by the appellant during the course of assessment proceedings by holding that the amount of Rs. 85,82,15,139/- received by the appellant during the year under consideration from Philips India Limited (PIL) and Preethi Kitchen Appliances Private Limited (Preethi) pursuant to Global Service Unit Agreement (GSU) is taxable in India in the hands of assessee appellant. He submitted before us that inspite of accepting the remand report and the ld. AO erred in not admitting the additional claim made by the appellant during the courses of assessment proceedings by holding that the amount of Rs. 85,82,15,139/- received by the appellant assessee during the year from PIL & Preethi pursuant to GSU taxable in India and submitted that the alleged amount of Rs. 85,82,15,139/- received by the appellant during the year under consideration is not taxable in India as the AO himself accepts the remand report dated 14.06.2019 wherein stated that the services provided by the appellant to PIL & Preethi do not 'make available' technical knowledge, skills, experience etc., therefore, direction may be given to AO to accept the claim made by the appellant during the course of assessment proceedings, as the receipts are not taxable in India as the ld. AO himself accepts in remand report about the service provided by the appellant to PIL & Preethi do not make available technical knowledge, skills, experience etc.

2.1. The ld. AR further submitted that while passing the impugned order the time of hearing by the authorities below without considering the facts and circumstances of the case mechanically dismissed the claim of the assessee by holding that the original return was filed by the assessee on 28.11.2015 and assessee failed to file revised return u/s 139(5) of the Act in support of its claim, hence the claim made by the assessee cannot be allowed. As such the impugned order passed by the DCIT (International Taxation) needed to be interference and direction may be given to accept the claim made by the appellant during the course of assessment proceedings. The ld. AR substantiate his claim to bring to our notice of order passed by the co-ordinate bench in the case of Howrah Mills Company Ltd. in ITA No. 1994/Kol/2014 and in similar situation relief was granted to assessee and where the limit for revising return u/s 139(5) had expired and the DRP had accepted the revised claim of the assessee. He brought to our notice by stretching in the contents (supra) para no. 18 & 19 held as under:

> *"18. As far as ground no.2 raised by the revenue is concerned the facts are that the assessee in the return of income did not make any claim that receipts on account of carbon credit is not taxable. The facts are that the assessee in the return of income did not make any claim that receipts on account of carbon credit is not taxable but such a claim was made only in the course of assessment proceedings before the AO. The CIT(A) allowed the claim of the assessee. It is the plea of the revenue in ground no.2 that the claim that carbon credit is not chargeable to tax being capital receipt was made by the Assessee without filing the revised return of income and therefore ought not to have been accepted taking up for consideration by CIT(A) in view of the decision of the Hon'ble Supreme Court in the case of Goetz India Ltd. 289 ITR 323(SC) wherein it was held that the AO is not competent to entertain any claim which is not made either in the return or by filing a revised return.*
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> *19. On this issue we have heard the rival submissions and are of the view that there is no merit in this ground raised by the revenue. The CIT(A) being the First Appellate Authority has the power to entertain a new claim even in the absence of a revised return of income. The Supreme Court in case of Goetze (India) Ltd. (supra) has clarified that "the decision was restricted 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 power of the Appellate Tribunal under section 254 of the Income-tax Act, 1961". This has been interpreted in several judicial pronouncements as applicable even to the first appellate authorities. The Hon'ble Delhi High Court in the case of Jai parabolic Springs 306 ITR 42 (Delhi) has held that the appellate authorities under the Act, were free to consider a claim made by an Assessee even in the absence of a revised return of income and that the requirement for filing a revised return of income as laid down by the Hon'ble Supreme Court in the case of*

Goetz India Ltd. (supra) is applicable only when a claim is made contrary to the return of income before the AO. The Hon'ble Delhi High Court in the case of Bharat Aluminium 163 Taxman 430J, has inter-alia ruled that assessee can file revised computation in the course of ongoing assessment proceedings under the Act, without making recourse to revised return, despite the fact that time limit for revising return under section 139(5) had expired. In the light of the aforesaid decisions, we are of the view that the DRP was right in accepting the revised claim that sales tax remission received is capital receipt and not chargeable to tax."

3. On the other hand, ld. DR vehemently argued and in support of the order passed by the authorities below.

4. We after hearing the rival submission and material available on record and examined the impugned order, we find that the assessee did not claim the said deduction in original return filed on 28.11.2015 and failed to file the revised return u/s 139(5) of the Act in support of its claim and claim of the assessee was disallowed by the ld. DCIT (International Taxation) by following the judgement of Hon'ble Apex Court in the case of Goetz India Ltd. 289 ITR 323 (SC). However, after perusing the ld. co-ordinate bench's order, while deciding the similar issue in the case of Howrah Mills Co. Ltd. held that while the assessee in the return of income did not make any claim in respect of carbon credit not taxable but such claim was made only in the assessment proceedings before the AO and such claim of the assessee has been allowed by the ld. co-ordinate bench. We followed the view taken by the co-ordinate bench and allow the claim of the assessee and directed the AO to accept the revised claim made by the assessee. Accordingly, grounds raised by the assessee are allowed.

5. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 15.09.2022.

Sd/-	**Sd/-**
(GIRISH AGRAWAL)	**(SONJOY SARMA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Kolkata, Dated:15.09.2022.
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: M/s. Philips Electronics Nederland B.V.
2. The Respondent: DCIT (International Taxation), Circle-2(1), Kolkata.
3. The CIT, Concerned, Kolkata
4. The CIT (A) Concerned, Kolkata
5. The DR Concerned Bench

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata