

**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH KOLKATA**

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT  
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.231/Kol/2022  
Assessment Year: 2019-20**

Captain Steel India Ltd., 21A, Shakespeare Sarani, 10 <sup>th</sup> Floor, Kolkata-700 017 (PAN: AACCB2921L)	Vs.	Deputy Commissioner of Income Tax, Central Circle- 1(4), Kolkata.
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : Shri Sanjoy Kejriwal & Shri Siddharth  
Kejriwal, AR

Respondent by : Shri G. Hukugha Sema, CIT

Date of Hearing : 02.01.2023

Date of Pronouncement : 01.02.2023

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. CIT(A)-20, Kolkata vide Order No. ITBA/APL/S/250/2022-23/1042894266(1) dated 28.04.2022 passed against the Intimation u/s. 143(1) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 08.05.2020 by Assistant Director of Income Tax, CPC Bangalore.

2. In the present appeal of the assessee, the solitary issue involved relates to disallowance of claim made u/s. 80JJAA of the Act. Before us, Ld. Counsel for the assessee Shri Sanjoy Kejriwal & Shri Siddharth Kejriwal, submitted that the claim made u/s. 80JJAA of the Act was disallowed to the assessee because it was not included in the return of income filed by the assessee. However, against the *prima*

*facie* adjustment on other issues made while processing the return u/s. 143(1) of the Act, assessee filed an appeal before the Ld. CIT(A) and raised its claim u/s. 80JJAA by way of an additional ground of appeal. While raising this additional ground for the claim, it was submitted that this issue of allowing the said claim is squarely covered by the decision of Hon'ble Delhi High Court in the case of International Tractors Ltd. Vs. DCIT 435 ITR 85 (Del.) and hence, is an allowable claim for the assessee also. Before advertng on the issue in hand, we also take note of the fact that an application for grant of out of turn hearing was made by the assessee which was allowed vide interim order dated 20.05.2012.

3. Ld. Counsel submitted that department has processed its return of income filed on 23.11.2019 and issued intimation u/s. 143(1) of the Act dated 08.05.2020. In the course of first appellate proceeding, assessee filed additional grounds claiming deduction u/s. 80JJAA of the Act by stating the fact that it had incurred employee benefit expenses of Rs.24,77,20,581/- as compared to preceding year's expenses of Rs.15,82,59,141/-. It was contended that there was an increase in employee benefit expenses by Rs.8,94,61,440/- as compared to the preceding year owing to which assessee is eligible for deduction u/s. 80JJAA of the Act for Rs.61,64,176/-. Assessee relied on the decision of Hon'ble High Court of Delhi in the case of International Tractors Ltd. (supra) and the decision of Hon'ble High Court of Karnataka in the case of Texus Instruments India Pvt. Ltd. (2021) 435 ITR 1 (Kar.). Since the claim was made at the first appellate stage by way of raising an additional ground, assessee placed its reliance on the following judgments to support its contentions:

- (i) Jute Corporation of India Ltd. Vs. CIT (1991) 187 ITR 688 (SC);
- (ii) Addl. CIT Vs. Gurfargravures Pvt. Ltd. (1978) 111 ITR 1 (SC);

(iii) National Thermal Power Company Ltd. Vs. CIT (1998) 229 ITR 383 (SC);

(i) Union Coal Company Ltd. Vs. CIT (1968) 70 ITR 45 (Cal);

(v) Ramco Cements Ltd. Vs. DCIT (2015) 373 ITR 146.

3.1. Assessee relied on decision of Hon'ble Supreme Court in the case of Goetz (India) Ltd. Vs. CIT (2006) 284 ITR 323 (SC) and submitted that Hon'ble Supreme Court held that AO cannot entertain any new claim other than by way of revised return of income but the appellate authorities can admit such claim and grant relief to the assessee. It was contended that this judgment has been interpreted by several High Courts, allowing the claim of the assessee at the appellate stage, for which reliance was placed on the following decisions:

(i) CIT Vs. Pruthvi Brokers & Shareholders Pvt. Ltd. (2012) 349 ITR 336 (Bom.);

(ii) CIT Vs. Jal Parabolic Springs Ltd. (2008) 306 ITR 42 (Del.);

(iii) Hukumchand Mills Ltd. Vs. CIT (1967) 63 ITR 232 (SC);

(iv) CIT Vs. Sayaji Mills Ltd. (1974) 94 ITR 26 (Guj.)

(v) CIT Vs. Cellulose Products of India Ltd. (1985) 141 ITR 499 (Guj-HC-FB)

(vi) Rajkumar Srimal Vs. CIT (1976) 102 ITR 525 (Cal)

(vii) National Thermal Power Company Ltd. Vs. CIT (1998) 229 ITR 383 (SC)

(viii) ITO Vs. Vintage Distillers Ltd. (2010) 130 TTJ 79 (Del.)

(ix) DCIT (LTU) (2021) 435 ITR 85 (Del.).

3.2. To substantiate its claim, assessee also furnished Form 10DA certifying the number of new employees added to the work-force as

required to claim deduction u/s. 80JJAA of the Act. While deciding the admission of additional ground, Ld. CIT(A) distinguished the judgments referred by the assessee by observing that the present case is an appeal against an intimation u/s. 143(1) of the Act and not against an assessment order made u/s. 143(3) of the Act. He further observed that all the judgments relied upon were against the order passed u/s. 143(3) of the Act and not in respect of appeal filed against intimations u/s. 143(1) and thus, the request for admitting the addition ground for the claim of deduction u/s. 80JJAA of the Act was rejected as it was not claimed in the return of income. Aggrieved, assessee is in appeal before the Tribunal.

4. Before us, Ld. Counsel reiterated the facts narrated above and the same are not repeated for the sake of brevity. Ld. Counsel pleaded on the admission of additional ground for the claim of deduction u/s. 80JJAA of the Act in view of the decision of Hon'ble High Court of Delhi and Karnataka referred above. He also highlighted the fact that in assessee's own case for the immediately preceding year i.e. AY 2018-19, as well as in the immediately subsequent year i.e. AY 2020-21, Ld. CIT(A) has allowed the claim of deduction made by the assessee vide order dated 17.06.2022.

4.1. On the query raised by the Bench in respect of applicability of the decision of Hon'ble Supreme Court in the case of PCIT Vs. Wipro Ltd. in Civil Appeal No. 1449 of 2022 (arising out of SLP Civil) No. 7620/2021 dated 11.07.2022, Ld. Counsel pointed to the relevant part of the decision in para 11 to submit that the issue before the Hon'ble Supreme Court the case of Wipro Ltd. was in respect of claim made under Chapter-III whereas in the present case, it is a claim of the assessee under Chapter-VIA of the Act. He submitted that Hon'ble Supreme Court had distinguished between a claim made in Chapter-

III and Chapter VIA of the Act as they operate under different realms.

To quote, the relevant extract of the judgment is as under:

*“Even otherwise, Chapter III and Chapter VIA of the Act operate in different realms and principles of Chapter III, which deals with “incoms which do not form a part of total income”, cannot be equated with mechanism provided for deductions in Chapter VIA, which deals with “deductions to be made in computing total income.”*

4.2 It was also submitted that the said judgment referred by the Bench has no impact on the claim made by the assessee which is a deduction u/s. 80JJAA of the Act falling under Chapter-VIA of the Act and not under Chapter-III.

5. To buttress the contention on the claim, Ld. Counsel strongly relied on the decision of Hon’ble High Court of Karnataka in the case of PCIT Vs. Karnataka State Cooperative Federation Ltd. in ITA No. 466 of 2016 dated 03.03.2021 in which the substantial question of law before the Hon’ble High Court was as under:

*“Whether on the facts and circumstances of the case, the Tribunal is right in law in holding that the assessee’s fresh claim before CIT(A) is entertain able even when the same is not claimed in original return of income nor the assessee had filed revised return of income to make such claim?”*

5.1 Hon’ble High Court answered the substantial question of law in favour of the assessee, which is extracted below:

*“7. We have considered the submissions made by learned counsel for the parties and have perused the record. The Supreme Court in 'GOETZE (INIDA) LTD. Supra has held that even if a claim is not made before the Assessing Officer it can be made before the Appellate Authority. A division bench of High Court of Bombay in PRUTHVI BROKERS AND SHAREHOLDES LTD. supra, has dealt with the powers of the Appellate Authorities. The division bench of the High Court after noticing the decision of the Supreme Court in NATIONAL THERMAL POWER CO. LTD vs. CIT, 299 ITR 383 (SC) has held that in the aforesaid decision the Supreme Court has not held anything contrary to what was held in Goetze (India) Ltd. and has reaffirmed the legal position that even if the claim is not made before the Assessing Officer, it can be made before the Appellate Authorities and jurisdiction of the Appellate Authorities to entertain such a claim has not been negatived in NATIONAL THERMAL POWER CO. LTD. supra. A division bench of Delhi High Court in CIT VS. JAI PARABOLIC SPRINGS LTD., 306 ITR 42 (DEL) has held that there was no prohibition on the powers of tribunal to entertain ail additional ground, which according to the tribunal arises in the matter and is necessary for just decision of the case.*

8. *In the backdrop of aforesaid well settled principles, the facts of the case in hand may be examined. In the instant case, the claim for eligibility with regard to deduction under Section 80P of the Act was entertained by the Commissioner of Income Tax (Appeals) as the assessee did not have the opportunity to raise the contention before the Assessing Officer as the order of assessment was passed by the CPC and therefore, the assessee had no opportunity to make a fresh claim by way of revised return before the CPC as the process is automated. The claim of the assessee was allowed by the Assessing Officer by placing reliance on the assessee's own case for the Assessment Year 2005-06. It is pertinent to note that in the instant case, we are not required to examine the validity of the claim of the assessee with regard to relief under Section 80P of the Act on merits as the substantial question of law only pertains to power of the Appellate Authority to entertain such a claim in the absence of such a claim being made in the original return or in the revised return. In view of the aforesaid well settled legal principles, which have been referred to in preceding paragraph, we answer the substantial question of law in the affirmative and against the revenue.*

*In the result, we do not find any merit in this appeal, the same fails and is hereby dismissed."*

6. Ld. Counsel also strongly relied on the decision of Hon'ble High Court of Delhi in the case of International Tractors Ltd. (supra) wherein also similar issue was addressed by the Hon'ble High Court and the head notes of which, reads as under:

*"INCOME TAX - Where Assessing Officer had disallowed claim for deduction under section 80JJA on ground that relevant details regarding same were not placed before AO but were claimed by way of a communication, since claim was otherwise sustainable in law, appellate authority was empowered to allow same."*

6.1 The Hon'ble High Court gave its finding in para 16 extracted below:

*"16. In any event, we are of the view that, if a claim is otherwise sustainable in law, then the appellate authorities are empowered to entertain the same. This view finds reflection in a judgment of the coordinate bench of this Court in titled CIT v. Aspentech India (P) Ltd. [IT Appeal No. 1233 of 2011, dated 28-11-2011]. The relevant observations made by the coordinate bench of this court, which are apposite, are extracted hereafter:*

*"5. The ITAT has agreed the reasoning given by the CIT (Appeals) and has relied upon the decision of this Court in CIT v. Jai Parabolic Springs Ltd. (2008) 306 ITR 42 (Del.). In the said case Delhi High Court has referred to the powers of the appellate forum and the decisions of the Supreme Court in National Thermal Power Co. Ltd. v. Commissioner of Income-tax (1998) 229 ITR 383 (SC), Gedore Tools Pvt. Ltd. v. Commissioner of Income-tax (1999) 238 ITR 268, Jute Corporation of India Ltd. v. Commissioner of Income-tax (1991) 187 ITR 688 (SC) and held that the appellate forum could have entertained and decided the said aspect. The decision in the case of Goetze (India) Ltd. (supra) is*

*distinguishable. In the said case the assessee had filed the return of income for the Assessment Year 1995-96 on 30-11-1995. Thereafter, on 12-1-1998, the assessee wrote a letter to the Assessing Officer and made a new claim for a deduction, which was rejected by the Assessing Officer as there is no provision to amend the return. The Supreme Court further clarified that the issue raised in Goetze (India) Ltd. (supra) was limited to the power of assessing authority and did not impinge on the power of the tribunal as was in the case of National Thermal Power Ltd. (supra). In the present case also the appellate forum had entertained the claim made by the respondent-assessee and allowed the same. There is no dispute that the claim/deduction towards the expense is otherwise correct and allowable."*

*Conclusion:*

*17. Therefore, in our view, the judgment of the Tribunal deserves to be set aside. The fresh claims made by the assessee, as allowed by the CIT(A), will have to be sustained. It is ordered accordingly."*

7. Per contra, Ld. CIT, DR placed reliance on the order of Ld. CIT(A) and asserted that since assessee did not claim the deduction in the return filed by it, it cannot be claimed subsequently by way of raising additional ground at the appellate stage.

8. We have heard the rival contentions and perused the material available on record and given our thoughtful consideration to the submissions made before us. We note that it is a case where a return has been processed u/s. 143(1) vide issuance of intimation. Subsequently at the first appellate stage, assessee has claimed a deduction u/s. 80JJAA of the Act by raising an additional ground which the Ld. CIT(A) has not admitted. We note that Hon'ble Supreme Court in Goetz (India) P. Ltd. (supra) has held that even if a claim is not made before the AO, it can be made before the appellate authority and in the said judgment, the jurisdiction of appellate authority to entertain such a claim has not been negated.

8.1. We note that assessee did not have the opportunity to raise the contention before the Ld. AO as its return was processed by CPC, Bangalore and intimation was issued u/s. 143(1) and, therefore, the assessee had no opportunity to make a fresh claim by way of filing a revised return before the CPC, Bangalore since the process is

completed. The claim made by the assessee at the first appellate stage is an allowable claim in view of the judgments of Hon'ble High Courts of Karnataka and Delhi referred in above paragraphs which have dealt with the identical fact pattern, in favour of the assessee.

8.2. We further note that the decision of Hon'ble Supreme Court in the case of Wipro Ltd. (supra) has observed a distinction between the claim made under Chapter-III and that made under Chapter-VIA and, therefore, is not applicable in the present case as it is a claim made u/s. 80JJAA of the Act falling under Chapter VIA of the Act.

8.3. We also note that assessee has been claiming a deduction for the preceding as well as subsequent assessment year i.e. AYs 2018-19 and 2020-21 which has been allowed by the Ld. CIT(A) at the appellate stage. The facts relevant to the claim of deduction made by the assessee were placed before the Ld. CIT(A). Also, the submissions made before the Ld. CIT(A) in respect of the claim of deduction made by the assessee are placed on record in the paper book.

9. Considering the facts on record and the judicial precedence as referred above, we have no hesitation in allowing the admission of additional ground raised by the assessee in respect of claim of deduction u/s. 80JJAA of the Act which has been raised at the first appellate stage. Accordingly, grounds raised by the assessee in this respect are allowed.

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

Order pronounced in the open court on 1st February, 2023.

Sd/-  
(Rajpal Yadav)  
Vice President

Sd/-  
(Girish Agrawal)  
Accountant Member

**Dated: 1st February, 2023**

JD, Sr. P.S.

Copy to:

1. The Appellant:
  2. The Respondent:.
  3. CIT(A)-20, Kolkata
  4. The Pr. CIT, Kolkata.
  5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata