

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH  
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER  
&  
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.3239/Mum/2022  
(Assessment Year :2011-12)**

M/s. IKP Trust IKP Genome Valley Turkapally Shamirpet Telangana- 500 101	Vs.	Income Tax Officer 23(1)(2), Mumbai Room N.108, Matru Mandir Mumbai – 400 007
<b>PAN/GIR No.AAAT17067F</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Siddesh Chaugule
Revenue by	Ms. Indira Adakil
<b>Date of Hearing</b>	<b>15/02/2023</b>
<b>Date of Pronouncement</b>	<b>17/02/2023</b>

**आदेश / ORDER**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No.3239/Mum/2022 for A.Y.2011-12 arises out of the order by the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre(NFAC) in appeal No.CIT(A), Mumbai-32/10275/2014-15 (Manual Appeal Register Number:59/2013-14) dated 27/10/2022 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 22/12/2022 by the Id. ITO WD 19(3)-2, Mumbai (hereinafter referred to as Id. AO).

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

1. *On the facts and in circumstances of the case, and in law, the National Faceless Appeal Centre learned CIT(A) has erred in affirming the order passed by the learned Assessing Officer ["learned AO] of not allowing to the Assessee additional claim of expenses of Rs. 74.87,481 made by it during the assessment proceedings on the premise that the same was not claimed by the Assessee by filing a revised return of income under section 139(5) of the Income Tax Act. 1961 (Act)*

1.2. *On the facts and in circumstances of the case, and in law the learned CIT(A) has erred in applying the ratio of the ruling of Hon'ble Supreme Court in the case of Goetze (India) Limited vs CIT 284 ITR 323 (SC) while rejecting the aforesaid claim of the Assessee without appreciating the principle laid by various judicial fora's which provides that it is the duty of the appellate authorities to apply appropriate provisions of the Act and compute the income of the Assessee correctly and refrain from denying any claim merely because the Assessee had failed to make the claim in the original or revised return of income.*

2. **Denial of TDS Credit amounting to Rs. 30,22,136**

2.1 *On the facts and in circumstances of the case, and in law, the learned CIT(A) has erred in denying to the Assessee TDS credit of Rs 30.22 136 and affirming the order of the learned AO on the premise that the same was not claimed by the Assessee by filing a revised return of income under section 139(5) of the Act.*

2.2 *On the facts and in circumstances of the case, and in law, the learned CIT(A) has erred in applying the ratio of the judgement passed by the Hon'ble Supreme Court in the case of Goetze (India) Limited vs CIT 284 ITR 323 (SC) while rejecting the aforesaid claim of the Assessee without appreciating the fact that the ratio laid down by Hon'ble Supreme Court in the said case can be applied only to deny claim of deduction and not claim of TDS credit as was made by the Assessee during the course of assessment proceedings.*

3. **Not allowing set-off of current year loss against current year income amounting to Rs. 440,653**

3.1 *On the facts and in circumstances of the case and in law, the learned AO has erred in not allowing the Assessee to set-off of current year loss arising under head Profit and Gains from Business and Profession with income*

*arising under head Capital Gains amounting to Rs 66,680 and income under the head Other Sources of Rs. 373.973 and levying tax thereon.*

**4. Interest levied under section 234B and 234C of the Act**

*4.1 On the facts and in circumstances of the case and in law, the learned AO has erred in levying interest under section 234B and 234C of the Act of Rs 9.826 and Rs. 1.069 respectively*

*The Appellant craves leave to add, alter, amend or withdraw all or any of the Grounds of Appeal herein and to submit such statements, documents and papers as may be considered necessary either at or before the appeal hearing*

3. We have heard the rival submissions and perused the materials available on record. We find that the assessee trust is engaged in research activities in the field of healthcare and agriculture. The return of income for the assessment year 2011-12 was filed by the assessee trust on 30.09.2011 declaring total income of Rs.4,40,653/-. The said return was duly processed under section 143(1) of the Act. During the course of assessment proceedings, the assessee made certain additional claim of expenses amounting to Rs.74, 87, 481/- in addition to seeking further credit of TDS amounting to Rs.30,22,136/- and further seeking set off of current year loss against current year income amounting to Rs.4,40,653/-. Accordingly the assessee filed a revised computation of total income declaring loss of Rs.1,68,43,188/- during the course of assessment proceedings. We find that the Id. AO had not considered the revised computation filed by the assessee on the ground that in the said computation, assessee had made several fresh claims and since the said claims were not made by way of filing a valid revised return, those claims cannot be entertained. Accordingly the Id. AO completed the assessment by accepting the income disclosed in the original return by the assessee. This action of the Id. AO was upheld by the Id. CIT(A) ignoring the fact that the decision of Hon'ble Supreme Court in the case of Goetze India

Ltd vs CIT reported in 282 ITR 323 (SC) shall not apply to the appellate authorities. Before us, the Id. AR pleaded that let the additional claims made by the assessee be admitted and the issues be restored to the file of Id. AO for adjudication of those issues, in accordance with law. Per contra, the Id. DR vehemently relied on the orders of the lower authorities.

4. We find that in the instant case, the assessee had indeed made fresh claims before the Id. AO. Since the time limit for filing revised return under section 139(5) of the Act had expired, the assessee chose to make the additional claims by way of filing revised computation before the Id. AO. The Id. AO was however justified in ignoring the same since the claims were not made by the assessee by way of a valid revised return. However, the decision of Hon'ble Supreme Court in the case of Goetze India Ltd referred to supra enables the appellate authority to consider the fresh claims made by assessee during the pendency of appellate proceedings . This has been ignored by the Id. CIT(A). For the sake of convenience, the relevant operative portion of the decision of Hon'ble Supreme Court is reproduced hereunder: –

*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.*

4.1. Since the eligibility of allowability of the expenses together with TDS credit and set off of current year loss with current year income had not been examined by the lower authorities, we deem it fit and appropriate in

the interest of justice and fairplay, to admit the additional claims made by the assessee and restore the issue to the file of Id. AO for denovo adjudication qua these issues, in accordance with law. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced on 17/02/2023 by way of proper mentioning in the notice board.

**Sd/-**  
**(SANDEEP SINGH KARHAIL)**  
JUDICIAL MEMBER

Mumbai; Dated 17/02/2023  
KARUNA, *sr.ps*

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai