

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.833/Bang/2023
Assessment Year : 2018-19

Shri. Vijay Srinivas Bobba, Flat No.502, Indraprastha Ruhe, Pattandur Agrahara Village, Whitefield Main Road, Bengaluru – 560 066. PAN : AITPB 9536 B	Vs.	DCIT, Circle – 2(2)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Prashanth G. S, CA
Revenue by	:	Shri. Ashwin D Gowda, Addl. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	13.02.2024
Date of Pronouncement	:	13.02.2024

ORDER

Per George George K, Vice President:

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 30.08.2023, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2018-19.

2. The grounds raised read as follows:

1. The orders of the authorities below in so far as these are against the appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the appellant's case.

2 (a) The learned assessing officer erred in considering the cost of acquisition of shares at Rs.2,12,22,225/- as against the correct cost of acquisition of

Rs.3,04,78,745/- as adopted in the revised computation filed under the facts & circumstances of the case.

- (b) The learned assessing officer failed to appreciate that the appellant did not consider Rs.56/- being exercise price per share in the return of income filed by oversight and the assessing officer ought not to have taken advantage of the error committed by the appellant under the facts & circumstances of the case.*
 - (c) The assessing officer ought to have assisted the appellant in computing the correct total income & collected only legitimate taxes in consonance with Article 265 of the Constitution of India under the facts & circumstances of the case.*
- 3 (a) The learned CIT(A) failed to appreciate that the appellant could not file the revised return of income during the course of assessment proceedings as the e-filing window was closed and thus the revised computation filed by the appellant ought to have been considered as revised return under the facts & circumstances of the case.*
- (b) The authorities below failed to appreciate that the hyper technical approach should not be adopted in collection of taxes and thus the cost of acquisition of shares ought to have been adopted at Rs.3,04,78,745/- on the facts of the case.*
- 4. Without prejudice, the learned CIT(A) failed to appreciate that the fresh/ new claim before the appellate authorities is entertainable even when the same is not claimed in original return or revised return of income under the facts & circumstances of the case.*

The appellant craves leave of your Honours to add, alter, delete or substitute any of the grounds urged above.

In view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity.

3. Brief facts of the case are as follows:

Assessee is an individual. During the relevant Assessment Year, assessee had disclosed income from business and profession, house property, capital gains

and other sources. For the Assessment Year 2018-19, the return of income was filed on 27.10.2018 declaring total income of Rs.27,40,91,400/-. Subsequently, assessee filed revised return on 26.11.2018 claiming relief under sections 90 and 91 of the Act. The assessment was selected for limited scrutiny under CASS and notice under section 143(2) of the Act was issued on 22.09.2019. During the course of assessment proceedings, assessee had submitted that while arriving at the value of capital gains, the cost of acquisition of shares was taken at lower value in the return of income which led to the capital gains on higher side. The assessee claimed in the return of income that cost of acquisition of shares was wrongly taken at Rs.128.39 per share as against the correct value of Rs.184.09 per share. The assessee submitted revised computation of capital gain during the course of assessment proceedings (on 25.01.2021). The AO completed the assessment under section 143(3) of the Act r.w.s. 143(3A) and 143(3B) of the Act, vide order dated 27.03.2021. In the said assessment completed, the AO did not accept the contention of the assessee that it is entitled to adopt higher value of cost of acquisition.

4. Aggrieved by the Order of Assessment, assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee. The CIT(A) relying on the judgment of the Hon'ble Apex Court in the case of Goetze (India) Ltd., Vs. CIT reported in 284 ITR 323 (SC) held that assessee has to necessarily file the revised return under section 139(5) of the Act, for claiming the benefit of higher value of cost of acquisition.

5. Aggrieved by the Order of the CIT(A), assessee has filed the present appeal before the Tribunal. Assessee has filed two sets of Paper Books. One set of Paper Book enclosed, the case laws relied. In other set of Paper Book comprising of 95, *inter alia*, enclosed the submissions made before the AO/CIT(A), revised income tax computation statement for the relevant Assessment Year, copy of the share

purchase agreement, copy of Form 16 for the Assessment Year 2017-18, etc. The learned AR relied on the grounds and submitted that during the course of assessment proceedings, assessee filed revised computation claiming higher cost of acquisition for the shares sold during the relevant Assessment Year. It was submitted that a fresh claim made before the appellate authority does not impinge / restrict the powers of appellate authority in considering the claim. In this context, the learned AR relied on the following judicial pronouncements:

- i) PCIT vs. Karnataka State Co-operative Federation Ltd. reported in 128 taxmann.com 1
- ii) FNF India (P.) Ltd. vs. ACIT reported in 133 taxmann.com 251
- iii) Hirsh Bracelet India (P.) Ltd. vs. ACIT reported in 109 taxmann.com 50

6. The learned DR supported the orders of the AO and the CIT(A).

7. We have heard the rival submissions and perused the material on record. It is admitted position that assessee had claimed higher cost of acquisition of shares during the course of assessment proceedings (cost of acquisition claimed in the return of income was Rs.128.39/- as against Rs.184.09/- claimed in the revised computation filed before the AO). Similar claim was made before the CIT(A). However, CIT(A) rejected the claim by placing reliance on the judgment of the Hon'ble Apex Court in the case of Goetze (India) Ltd., Vs. CIT (supra).

8. The Hon'ble jurisdictional High Court in case of PCIT Vs. Karnataka State Co-operative Federation Ltd., (supra), after considering the judgment of the Hon'ble Apex Court in the case of Goetze (India) Ltd., Vs. CIT (supra) held that when assessee makes a fresh claim before the appellate authority, even if the same is not claimed in the original return of income or in the revised return of income, the CIT(A) is empowered to consider the fresh claim of the assessee. The Hon'ble

High Court categorically held that the appellate powers of a CIT(A) are not impinged / restricted when a fresh claim is made before him. The relevant finding of the Hon'ble jurisdictional High Court in the case of PCIT Vs. Karnataka State Co-operative Federation Ltd., (supra) reads as follows:

“7. We have considered the submissions made by learned counsel for the parties and have perused the record. The Supreme Court in 'Goetze (India) 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 Shareholders 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. (supra) has held that in the aforesaid decision the Supreme Court has not held anything contrary to what was held in Goetze (India) Ltd. (supra) 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 negated in National Thermal Power Co. Ltd. (supra). A division bench of Delhi High Court in Jai Parabolic Springs Ltd. (supra) has held that there was no prohibition on the powers of tribunal to entertain an 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.”

9. Similar view has been held by Bangalore Bench of Tribunal in the cases cited supra (at para 5). In light of the aforesaid judgment of the Hon'ble jurisdictional High Court, we restore the matter to the AO. The AO is directed to examine whether assessee is entitled to higher cost of acquisition of Rs.184.09 per share. The assessee shall place the necessary evidence in support of his case and shall not seek unnecessary adjournment in the matter. The AO is directed to afford reasonable opportunity of hearing to the assessee. It is ordered accordingly.

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

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(CHANDRA POOJARI)
Accountant Member

Bangalore.
Dated: 13.02.2024.
/NS/*

Sd/-

(GEORGE GEORGE K)
Vice President

Copy to:

- | | |
|---------------|-------------------------|
| 1. Appellants | 2. Respondent |
| 3. DRP | 4. CIT |
| 5. CIT(A) | 6. DR, ITAT, Bangalore. |
| 7. Guard file | |

By order

Assistant Registrar,
ITAT, Bangalore.