

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

I.T.A. No. 1347/Kol/2023

Assessment Year: 2021-22

Maithan Alloys Limited 4 th Floor, Ideal Centre 9, AJC Bose Road Kolkata - 700017 [PAN : AABCM7758B]	Vs	Deputy Commissioner of Income-tax, Circle-1(1), Kolkata
--	----	--

अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
------------------------	--------------------------

Assessee by :	Shri Siddharth Kejriwal, C.A.
Revenue by :	Shri Arun Kumar Meena, JCIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 07/02/2024
घोषणा की तारीख /Date of Pronouncement: 28/02/2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter the "Id. CIT(A)") dt. 29/11/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2021-22.

2. The sole grievance of the assessee is that the lower authorities erred in denying the claim of deduction u/s 80M of the Act towards inter-corporate dividends at Rs.19,48,050/-.

3. At the outset, the Id. Counsel for the assessee submitted that in the Income Tax Return (ITR) originally filed as well as subsequently revised, the assessee did not make the claim of deduction u/s 80M of the Act for inter-corporate dividend. However, during the course of assessment proceedings, this claim was raised and on the strength of the judgement of the Hon'ble Supreme Court in the case of *National Thermal Power Co. Ltd. v. Commissioner of Income-tax* reported in [1998]

229 ITR 383 (SC) Id. Assessing Officer accepted the application entertaining the claim but on merits denied the claim on the ground that the assessee did not raise the claim in its return of income. Subsequently, the assessee did not get any favour from the Id. CIT(A).

4. Before us, the Id. Counsel for the assessee placing reliance on the judgment of the Hon'ble Delhi High Court in the case of *International Tractors Ltd.* [2021] 435 ITR 85 (Delhi) as well as Article 265 of the Constitution of India and also referring to other decisions stated that only legitimate tax can be recovered and even a concession by a taxpayer does not give authority to the tax collector to recover more than what is due from him under the law. He also submitted that the deduction u/s 80M of the Act was newly introduced in the Finance Act, 2020 applicable from Assessment Year 2021-22 and the assessee inadvertently missed the claim of deduction.

On the other hand, the Id. D/R vehemently argued supporting the orders of both the lower authorities and again asserted the fact that in view of the judgment of the Hon'ble Supreme Court in the case of *Goetze (India) Ltd. vs. CIT* (2006) 284 ITR 323 (SC), the Assessing Officer does not have the power to entertain the claim made otherwise than through original/revised return.

5. We have heard rival contentions and perused the material placed before us.

6. The assessee is aggrieved with the order of the lower authorities for not allowing the deduction u/s 80M of the Act at Rs.19,48,050/- claimed on account of inter-corporate dividend. Admittedly, Section 80M of the Act has been introduced by Finance Act, 2020, applicable

from Assessment Year 2021-22. It is also an uncontroverted fact that the assessee did not make the claim in the original as well as revised return. However, during the course of assessment proceedings, this claim has been made. Though the Id. D/R has referred to the judgment of the Hon'ble Apex Court in the case of *Goetze (India) Ltd. (supra)*, as per which the Assessing Officer cannot entertain the claim otherwise than made by way of a revised return, however, as per the ratio laid down by the Hon'ble Apex Court in the case of *National Thermal Power Co. Ltd. (supra)* and *Jute Corporation of India Ltd. vs. CIT* reported in [1991] 187 ITR 688 (SC), appellate authorities have plenary powers to admit a new claim which is necessary to ascertain the correct tax liability of the assessee. The Hon'ble Delhi High Court in the case of *International Tractors Ltd. [2021] 435 ITR 85 (Delhi)*, on observing the fact that claim of deduction u/s 80JAA of the Act was not made in the ITR but was made during the course of scrutiny proceedings, though not allowed by the Assessing Officer as well as the Id. CIT(A) but the Tribunal admitted the claim and remanded the matter back to the Assessing Officer, the Hon'ble Court confirmed the view taken by the Tribunal by observing that the Appellate Authorities are empowered to entertain the claim.

7. Respectfully following the judgments of the Hon'ble Delhi High Court in the case of *International Tractors Ltd. (supra)* and also considering the fact that this was the first year of claiming deduction u/s 80M of the Act and the assessee made this claim even before he Assessing Officer also. We, therefore, admit this claim made u/s 80M of the Act and restore the matter to the file of Id. Assessing Officer who shall firstly verify that the original return has been filed within the

prescribed time limit provided u/s 139(1) of the Act and then check the correctness of the claim made u/s 80M of the Act for which assessee shall file necessary documents on being provided reasonable opportunity of being heard. Accordingly, grounds of appeal raised by the assessee are allowed for statistical purposes.

8. In the result, appeal of the assessee are allowed for statistical purposes.

Order pronounced in the Court on 28th February, 2024 at Kolkata.

Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER

Sd/-
(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 28/02/2024

SJS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
 आयकर अपीलीय अधिकरण
 ITAT, Kolkata