

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: "E" NEW DELHI**

**BEFORE SHRI J.SUDHAKAR REDDY, ACCOUNTANT MEMBER
AND SHRI C.M.GARG, JUDICIAL MEMBER**

**ITA No: 285/Del/2012
Assessment Year : - 2007-08**

ACIT, Circle 13(1)
New Delhi

vs. M/s NHK Spring India Ltd.
Plot no.31, Sector 3, IMT Manesar
Gurgaon, Haryana 12050

PAN: AAACN 3501 G

(Appellant)

(Respondent)

Appellant by : Shri R.S.Negi, Sr.D.R.
Respondent by : Shri Sandeep Sapra, Adv.

ORDER

PER J.SUDHAKAR REDDY, ACCOUNTANT MEMBER

This is an appeal filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-XVI, New Delhi dt. 14.08.2011 pertaining to the Assessment Year 2007-08 on the following ground.

"1. On the facts and in the circumstances of the case, the Commissioner of Income Tax (Appeals) has erred in allowing relief of Rs.12,23,979/- on account of allowable expenses under Section 40(a)(ia) ignoring the decision of the Hon'ble Supreme Court in the case of Geotze (India) Ltd. vs CIT (2006) 284 ITR 323 (SC) that held that the Assessing Officer had no power to entertain a claim made otherwise than by filing of a revised return of income".

2. The assessee is a company and is a Subsidiary of M/s NHK Spring Co.Ltd. Japan. It is engaged in the business of the business of manufacturing and marketing of the automobile suspension parts viz.,

coil spring, stabilizers bars and torsion bars etc. The issue before us is whether the Commissioner of Income Tax (Appeals) was right in allowing deduction of expenses which were disallowed in the earlier year under Section 40A(i)(a), as the tax was deducted at source and paid during the year. The A.O. applied the decision of the Hon'ble Supreme Court in the case of Goetz India Ltd. Vs CIT 284 ITR 323 and held that a claim cannot be made by way of a letter, though the claim of deduction of the assessee appears to be justified keeping in view the relevant provisions of S.40A(i)(a) of the Income Tax Act, 1961. He was of the opinion that the assessee should have filed a revised return. Before the Commissioner of Income Tax (Appeals) the assessee had made a fresh claim. The Commissioner of Income Tax (Appeals) allowed the claim. Aggrieved the Revenue is in appeal before us.

3. Ld.D.R.Mr.R.S.Negi contends that the A.O. was not wrong in applying the judgement of the Hon'ble Supreme Court in Goetz India Ltd. Vs CIT (supra). He referred to the grounds of appeal raised by the assessee before the Commissioner of Income Tax (Appeals) and submitted that the Commissioner of Income Tax (Appeals) was wrong in holding that the A.O. should have allowed the claim. He emphasized that the assessee has not raised a fresh claim before the Commissioner of Income Tax (Appeals).

4. Ld.Counsel for the assessee Mr.Sandeep Sadra on the other hand pointed out that the assessee has made a fresh claim before the

Commissioner of Income Tax (Appeals) and as all the facts are on record and as the Assessing Officer has himself recorded that the claim is correct, the Commissioner of Income Tax (Appeals) was right in allowing the claim.

5. Rival contents heard. Before the Ld.CIT(A) by way of written submissions the assessee pleaded as follows:-

“As per the said judgement, it has not in any way curtailed the authority of the appellate authorities to entertain a claim which is otherwise allowable as per the law. In view of this, it is humbly submitted that the claim which is admitted by the Assessing Officer himself also, as per his own order, is a justified claim but the same can only be claimed before him on the basis of revised return and hence disallowed, may please be entertained being a valid allowance as per the Income Tax Act, 1961. The said fact was also on record since in the tax audit report dated 22nd October, 2007 vide Annexure 6, the amount allowable is certified by the Tax Auditor.”

From the above it is clear that the assessee has requested that the Commissioner of Income Tax (Appeals) should have entertained a fresh claim as the facts are on record.

7. S.40A(ia) has been amended by insertion of a Proviso which reads as follows.

“S.40 Notwithstanding anything to the contrary in sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head “Profits and gains of business or profession”-

- (a) in the case of any assessee
(i)

(ia) any interest, commission or brokerage, fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction has not been paid during the previous year, or in the subsequent year before the expiry of the time prescribed under sub-section (1) of section 200.

Provided that where in respect of any such sum tax has been deducted in any subsequent year or, has been deducted in the previous year but paid in any subsequent year after the expiry of the time prescribed under sub-section (1) of section 200, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid”.

8. As the Statute provides for a deduction and as the facts have not been disputed by the Ld.D.R., and as the Hon’ble Supreme Court in the case of Goetz India Ltd. has stated that the judgement does not effect the powers of the Appellate Authority, we uphold the order of the Ld.CIT(A).

9. In the result the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 29th August, 2012.

Sd/-

(C.M.GARG)
JUDICIAL MEMBER

Sd/-

(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 29th August, 2012

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Copy of the Order forwarded to:

1. Appellant;
2. Respondent;
3. CIT;
4. CIT(A);
5. DR;
6. Guard File

By Order

Dy. Registrar

1. Date of Dictation: 07/8
2. Draft placed before the Author on: 27/8
3. Draft proposed and placed before Second Member on:
4. Draft discussed/approved by the Second Member on:
5. Approved draft came to Sr.P.S. on:
6. Date of Pronouncement :
7. File sent to Bench Clerk on :
8. Date on which file given to Head Clerk on:
9. Date of dispatching the Order on: