IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

BEFORE SHRI PRAMOD KUMAR ACCOUNTANT MEMBER AND
SHRI S.S. GODARA JUDICIAL MEMBER

ITA No.1836/Ahd/2011
A.Y.2008-09

ACIT, Ahmedabad.	Vs	**Amrapali Capital & Financial Services Ltd., 19, 20, 21, 3rd floor, Narayan Chamber, Ashram Road, Ahmedabad.** **PAN: AADCA 4232E**
(Appellant)		(Respondent)

Revenue by :	Shri Dinesh Singh, Sr.D.R.,
Assessee(s) by :	Shri Mehul Thakker, A.R.

सुनवाई क□ तारख/**Date of Hearing** : **28/04/2015**
घोषणा क□ तारख /**Date of Pronouncement**: **9/06/2015**

आदेश/O R D E R

PER SHRI S.S. GODARA, JUDICIAL MEMBER

This Revenue's appeal for A.Y.2008-09, arises from order of the CIT(A)-XVI Ahmedabad dated 26.5.2011 passed in case no.CIT(A)-XIV/ACIT/Cir.-3/700/10-11, in proceedings u/s.143(3) of the Income Tax Act in short 'the Act'.

2. The Revenue's sole substantive ground reads as under:

1. The Ld. CIT(A) erred in law and on facts in directing the AO to adopt Long Term Capital Gain on sale of shares of BSELtd. at Rs.2,03,13,425/-, which is as per revised computation submitted by the assessee during assessment proceedings, instead of Rs.2,37,17,342/- as per the return of income, even though the assessee failed to file

revised return of income within the time available u/s.l39(5) of the IT Act."

2.1 The assessee-company filed its return on 30.9.2008 admitting income of Rs.14,00,83,790/-. The Assessing Officer took up scrutiny. He *inter alia* noticed the assessee to have declared long term capital gains arising from buyback of 4652 shares of Bombay Stock Exchange Ltd. originally allotted @Rs.1 per share. The assessee had taken this allotment price as cost of acquisition. Thereafter, it quoted demutualization and corporatization of recognized stock and insertion of section 55(2)(ab) of the Act providing cost of equity shares allotted to a share holder of the recognized stock exchange to be the cost of acquisition of its membership; for submitting that it had acquired the said membership card at the cost of Rs.65 lacs from 22.7.2004. The assessee accordingly sought to revise its capital gains originally offered to the tune of Rs.2,37,17,342/- to that of Rs.2,03,13,425/- by treating its original computation as suffering from mistake in view of the statutory provision of Section 55(2)(b). It adopted purchase cost of the shares at Rs.651 per share instead of Rs.1. The Assessing Officer declined to accept its recomputation by holding that time limit for filing revised return u/s.139(5) of the Act had already lapsed and the assesseeôs recomputation was not permissible without there being a revised return as per the case law of Goetze (India) Ltd. Vs. CIT (2006) 157 Taxman 1 (SC). He acted accordingly and the assesseeôs capital gains of Rs.2,37,17,342/- stood assessed in assessment order dated 22.12.2010.

3. The CIT(A) has accepted the assesseeôs contentions seeking recomputation as under:

> ***"2.3 I have carefully considered the aforesaid written submissions of the Ld. Counsel and the facts-of-the case. I have carefully considered the finding recorded by the Assessing Officer in para-8.1 to para-8.3 of the assessment order with reference to denying the genuine claim of revised Long- term capital gain furnished during the course of assessment proceedings. I have also considered the decisions relied upon by the Ld. Counsel. As per the facts of the case, the appellant had sold 4,562 shares of BSE Ltd. under the buy back scheme of BSE Ltd. and disclosed the Long Term Capital Gain of Rs. 2,37,17,342/- in the return of income. The cost of acquisition of per share was taken at rupee one with indexing in computing the Long Term Capital Gain. No mistake was noticed by the appellant in computation of the aforesaid Long Term Capital Gain till the lapse of time of filing of revised return. The time of filing of revised return was elapsed on 31.03.2010. However, the course of assessment proceedings, the appellant noticed the mistake in computation of Long Term Capital Gain arised from the sale of shares of the BSE Ltd. The mistake was regarding considering the cost of acquisition of shares of BSE Ltd. The BSE Ltd. had allotted 10,000 shares to the appellant company @ rupee one per share. BSE Ltd. had decided to buy back 4,562 shares on 18.05.2007 at a consideration of Rs. 2,37,22,400/-. The appellant had taken the cost of acquisition of 4,562 shares so sold under the buy back scheme of the BSE Ltd. at Rs. 5,066/- and declared the Long Term Capital Gain of Rs. 2,37,17,342/-. However, during the course of assessment proceedings, it was noticed by the appellant that as per the provisions of sec. 55(2)(ab) of the Act, the cost of 10,000/- shares of BSE Ltd. should have been taken for Rs. 65,10,000/-. Noticing this mistake, the appellant vide its letter dated 16.12.2010 (filed in the office of Assessing Officer on 20.12,2010) furnished the revised computation of Long Term Capital Gain for Rs. 2,03,13,425/-. In the revised computation of such capital gain, the indexed cost of acquisition of 4,562 shares was taken at Rs. 34,03,975/-. The Assessing Officer had neither disputed the indexed cost of acquisition of the sold share nor disputed the cost of acquisition of shares as per provisions of sec. 55(2)(ab) of the Act. The contention of the Assessing Officer was that the time for furnishing the revised return of income had expired on 31.03.2010, therefore, the assessee cannot revise the income by filing of revised statement of income. For this contention, the Assessing Officer had placed reliance on the decision of the***

Hon'ble Supreme Court in the case of Goetze (India) Ltd vs. CIT reported in (2006) 157 Taxman 1 (SC) in which it was held that there is no provision under the Income- tax Act to make the amendment in the return of income by modifying an application at the assessment stage without revising the return. The revised claim of the assessee for the Long Term Capital Gain of Rs. 2,03,13,425/- was .rejected by the Assessing Officer. The Long Term Capital Gain had been retained at Rs. 2,37,17,342/- as declared in the original return of income. The appellant had challenged this finding of the Assessing Officer in the first ground of appeal.

2.4 The Ld. Counsel had submitted that the department is not supposed to take the advantage of any mistake committed by the assessee or ignorance of assessee regarding the provisions of law and that the department is duty bound to even assist the assessee so as to make him aware of the provisions, which may be beneficial to him. Reliance was placed by him on the CBDT Circular No. 14(XL-35) dated 11.04.1955. Reliance was also placed on the decision of the Hon'ble Gujrat High Court in the case of CIT vs. Ahmedabad keiser E Hind Mills Co. Ltd. 128 ITR 486 (Guj.) and on the decision of the Hon'ble Kerala High Court in the case of Parekh Bros 150 ITR 105, 118 (Ker) regarding the scope of the aforesaid Circular. The binding nature of the circulars had been stated to be considered in the decisions reported in CIT vs. B.M. Edward, India Sea Food 119 ITR 334 Ker-FB, CIT vs. Venkiteswaran 120 ITR 675 (Ker) and CWT vs. Gammon (India) (P.) Ltd. 130 ITR 471 (Bom). No doubt, the aforesaid CBDT Circular is beneficial to the appellant and the CBDT Circulars are binding on the departmental officers but CBDT Circular No. 14(XL-35) dated 11.04.1955 had lost its existence after the introduction of Income-tax Act, 1961. Now, the Circular issued under the provisions of sec. 119 are only binding in nature. The appellant therefore, cannot derive any support from the aforesaid Circular and from the aforesaid relied upon decisions as quoted above.

2.5 The Ld. Counsel had made a reference to the powers of the CIT(A) in his second submission and tried to emphasise that the CIT(A) had the powers of the Assessing Officer and that the appellate authority has the jurisdiction as well as duty to correct all errors in the proceedings, which are in appeal. He relied upon the decisions of the Hon'ble Apex Court and of the Hon'ble Kerala High Court. I have considered such submission of the Ld. Counsel. The powers of the CIT(A) for disposing of the appeal and admittance of additional grounds/additional evidence have been well defined not only in the Income-tax Act, 1961 but well explained by the Hon'ble Apex Court and by the various High Courts at several occasions. However, this

submission of the Ld. Counsel has no relevance. This could have been considered if any additional ground or any additional evidence was being admitted. Otherwise, the CIT(A) is duty bound and required to dispose of the appeal filed before him as per law. The present appeal is also decided under the aforesaid powers.

2.6 However, I agree with the contention of the Ld. Counsel that though the assessee had not revised the return of income but the incorrect computation of capital gain was a mere mistake in taking the cost of acquisition shares of BSE Ltd. as per the provisions of sec. 55(2)(ab) of the Act and is merely a correction in the computation of income and not a claim of any fresh expense or deduction and therefore, the decision of the Hon'ble Apex Court in Goetze (India) Ltd. is not applicable. It is an admitted fact that the appellant had not claimed any fresh deduction during the course of assessment proceedings but the appellant had only requested the Assessing Officer vide letter dated 16.12.2010 to modify the computation of Long Term Capital Gain already made. Therefore, in my opinion, the decision of the Hon'ble Appex Court in Goetze (India) Ltd. (supra) is not applicable in facts of the case of the appellant. This perception can be understood by an example. If the appellant had declared the incorrect LTCG say, at Rs. 2,00,00,000/-, what would have been the repercussion of the Assessing Officer. Whether, he would have accepted the claim at Rs. 2,00,00,000/- or revised the computation of LTCG at Rs. 2,03,13,425/- or would have revised the computation of LTCG at Rs. 2,37,17,342/-. Naturally, the Assessing Officer would not have accepted the incorrect computation of LTCG of Rs. 2,00,00,000/- and was required to re-compute the LTCG at Rs. 2,03,13,425/-. There would have been no reason to compute it for Rs. 2,37,17,342/-. Thus, if the upward revision was possible by the Assessing Officer why not the down ward revision which is as per the provisions of the Act. Here, the observations of the Hon'ble Gujrat High Court (as relied upon by the Ld. Counsel) in the case of S.R. Koshti vs. CIT 276 ITR 165 (Guj.) are very much relevant. The Hon'ble High Court in the aforesaid decision had observed in para-20 that "20. A word of caution. The authorities under the Act are under an obligation to act in accordance with law. Tax can be collected only as provided under the Act. If an assessee, under a mistake, misconception or on not being properly instructed, is over-assessed, the authorities under the Act are required to assist him and ensure that only legitimate taxes due are collected. This court, in an unreported decision in the case of Vinay Chandulal Satia v. N.O. Parekh, CIT, Special Civil Application No. 622 of 1981, rendered on August 20,1981, has laid down the approach that the authorities must adopt in such matters in the following terms:

"The Supreme Court has observed in numerous decisions, including Ramlal v. Rewa Coalfields Ltd., AIR 1962 SC 361; State of West Bengal v. Administrator, Howrah Municipality, AIR 1972 SC 749, and Babhutmai; Raichand Oswal v. Laxmibal R. Tarte, AIR 1975 SC 1297, that the State authorities should not raise technical pleas if the citizens have a lawful right and the lawful right is being denied to them merely on technical grounds. The State authorities cannot adopt the attitude which private litigants might adopt." The correct computation of the Long Term Capital Gain on the sale of 4,562 shares of the BSE Ltd. was worked out to Rs. 2,03,13,425/- and the Assessing Officer had also not disputed this computation. The appellant on mistaken .belief had computed it for Rs. 2,37,17,342/-. The Assessing Officer was required to accept the-correct computation of Long Term Capital Gain on the sale of 4,562 shares of the BSE Ltd. for Rs. 2,03,13,425/- when the correct computation was brought to his notice.

2.7 The Ld. Counsel had submitted that a similar issue was decided by the Hon'ble Punjab and Haryana High Court in the case of CIT vs. Ramco International (2011) 332 ITR 306 (P&H) by holding that:
The assessee claimed deduction under section BO-IB of the Income-tax Act, 1961. Though assessee furnished Form 10CCB and other requisite documents, the Assessing Officer without referring to these documents made the assessment. The Commissioner (Appeals) upheld the claim of the assessee and the Tribunal also upheld the view of the Commissioner (Appeals). On appeal by the Department contending that the assessee made the claim by way of an application without filing a revised return and in such a situation deduction could not be allowed.
Held, dismissing the appeal, that the Tribunal had considered that issue and found that <u>according to Form 10CCB filed during the assessment proceedings, the claim of the assessee was admissible. The assessee was not making any fresh claim and had duly furnished and submitted the Form for the claim under section 80-IB, there was no requirement of filing any revised return."</u>
2.8 In the aforesaid case of the Hon'ble Punjab and Haryana High Court, the Counsel the Revenue had submitted that the assessee made the claim by way of an application without filing a revised return and in such a situation, the decision of the Hon'ble Supreme Court in Goetze (India) Ltd. vs. CIT 284 ITR 323 was applicable and deduction could not be allowed. This submission was not accepted by the Hon'ble Court as the assessee was not making any fresh claim. The

ratio laid down in the aforesaid decision is clearly applicable in the facts of the case.

2.9 Considering the facts of the case as well as the legal position as discussed in para-2.3 to para-2.8 above and respectfully following the law laid down in the aforesaid decision of the Hon'ble Punjab and Haryana High Court in the case of CIT vs. Ramco International (2011) 332 ITR 306 (P&H) and the observations of the Hon'ble Gujrat High Court in the case of S.R. Koshti vs. CIT 276 ITR 165 (Guj.), ! am of the opinion that the Assessing Officer was not justified in rejecting the revised working of Long Term Capital Gain on the sale of 4,562 shares of the BSE Ltd. for Rs. 2,03,13,425/-. His aforesaid finding is rejected and he is directed to tax the Long Term Capital Gain for Rs. 2,03,13,425/- only. The first ground of appeal is accordingly allowed."

Therefore the Revenue is in appeal.

4. We have heard both sides and gone through the relevant findings. Admitted facts of the case stand narrated hereinabove. The CIT(A) has accepted the assesseeôs revised computation as per section 55(2)(ab) of the Act. The Assessing Officer had refused the very relief by quoting the case law of Goetze (India) Ltd. (supra) and also the fact that the time limit for filing revised return had already elapsed. This is not the Revenueôs case that the assessee is not otherwise entitled for the relief in question under the provisions of the Act in seeking the impugned recomputation. It only contends that once there was no time left for filing a revised return, the impugned relief ought not to have been granted. A perusal of the case law hereinabove itself clarifies that the same does not impinge upon the jurisdiction of appellate authorities under the Act. Therefore, we refuse to agree with the Revenueôs mere technical

plea and affirm the CIT(A) findings under challenge. The Revenue's ground fails.

5. The Revenue's appeal is dismissed.

Order pronounced in the Court on this day, the 9th June, 2015 at Ahmedabad.

Sd/- Sd/-

(PRAMOD KUMAR) **(S.S. GODARA)**
ACCOUNTANT MEMBER **JUDICIAL MEMBER**

Ahmedabad; Dated /04/2015

Prabhat Kr. Kesarwani, Sr. P.S.

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-III, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad