IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED on : 28.03.2017

DELIVERED on : 06.06.2017

CORAM :

The Hon'ble MR.JUSTICE RAJIV SHAKDHER

AND

The Hon'ble MR.JUSTICE R.SURESH KUMAR

T.C. (A) No.811 of 2016

The Commissioner of Income tax,

Chennai. .. Appellant

-vs-

M/s.Abhinitha Foundation Pvt Ltd.

New No.9, Old No.3, Radhakrishna Street,

T.Nagar, Chennai 600 017. .. Respondent

Appeal filed under Section 260A of the Income-tax Act, 1961, against the order dated 29.04.2016 passed in I.T.A.No.281/Mds/2016 by the Income Tax Appellate Tribunal, Madras "B" Bench, Chennai, for the Assessment Year 2011-12.

For Appellant : Mr.T.Ravikumar

For Respondent : Mr.R.Sivaraman

J U D G M E N T

(Judgment of the Court was delivered by Rajiv Shakdher, J.)

Background facts:

1.This is an appeal preferred under Section 260A of the Income Tax Act, 1961 (in short 'the Act') by the Revenue against the judgment and order dated 29.04.2016 passed by the Income Tax Appellate Tribunal (in short 'the Tribunal') in I.T.A.No.281/Mds/2016.

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2.In the appeal, the Revenue seeks to raise the following questions of law for our consideration:

> *i. Whether on the facts and in the circumstances of the case, the Tribunal was right in directing the AO to consider the claim made under Section 80IB(10) even though the assessee did not make any such claim in the return of income filed ?*
>
> *ii. Is not the finding of the Tribunal bad by directing the AO to consider the claim afresh in respect of deduction u/s.80IB (10) especially when no such claim was made in the original return filed nor any revised return filed claiming the same nor any Petition under Section 264 filed which is against the law laid down by the Apex Court in the case of Goetze India , reported in 284 ITR page 323 ?*

3.In order to adjudicate upon the present appeal, the following broad facts need to be noticed:

3.1.The respondent, i.e. the assessee company, had filed its return of income for the Assessment Year (AY) 2011-12 on 30.09.2011. By virtue of the said return, the assessee company had disclosed a total income of Rs.3,63,39,110/-, after claiming deduction under Chapter VI-A, equivalent to a sum of Rs.6,19,525/-. The return filed by the assessee company was processed under section 143(1) of the Act on 16.02.2012. Thereafter, as it appears, the assessee company's return was picked up for scrutiny and a notice under section 143(2) of the Act was issued to it. Finally, after due opportunity was given to the assessee company, an assessment order was passed under section 143(3) of the Act, whereby, the income, as returned by the assessee company, was accepted.

3.2.It appears, that the assessee company had not made a claim in the return as originally filed on 30.09.2011 for deduction under Section 80IB (10) of the Act. However, during the course of the assessment, the assessee company filed the details of the project executed by it, based on which, it claimed deduction under Section 80IB (10) of the Act. The assessee company, while making the said claim, as required, also filed the details in the prescribed format, i.e. Form No.10CCB. It is pertinent to note that the Assessing Officer, however, bypassed the claim made by the assessee company qua deduction under Section 80IB (10) of the Act, while passing the assessment order.

3.3. The assessee company, being aggrieved, preferred an appeal with the Commissioner of Income Tax (Appeals) [in short "CIT(A)"]. The CIT(A), while noting the fact that the assessee company's claim for deduction under Section 80IB (10) of the Act had been accepted by the Department both in the preceding and succeeding years, dismissed the appeal on the ground that the claim with respect to deduction under Section 80IB (10) of the Act did not form part of the original return filed by the assessee company. In other words, the view taken was that once a return is filed, which does not advert to a claim, the assessee company cannot press for, it being allowed.

3.4.The assessee company, being dissatisfied with the view taken by the CIT (A), preferred an appeal to the Tribunal. The Tribunal reversed the order of the CIT (A), after discussing the facts and case law on the subject in great detail. In sum, the Tribunal, having regard to the law cited on the subject, ruled that both the CIT (A) and itself (being the appellate authorities) had the power to consider the revised claim by the assessee company, if, it was otherwise entitled to, even though no claim qua the same had been lodged by it in the return as originally filed. Having, thus, come to the said conclusion, in the given facts and

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circumstances, the Tribunal remitted the matter to the Assessing Officer for fresh consideration, based on the documents already filed by the assessee company at the time of assessment. Consequently, the assessee company's appeal was partly allowed, albeit, for statistical purpose.3.5.As is indicated above, the Revenue, being aggrieved, have preferred the present appeal before us qua the judgment and order passed by the Tribunal.

Submissions of counsels:

4.In support of the appeal, arguments have been advanced by Mr.T.Ravikumar, Advocate, while the assessee company's case was argued by Mr.R.Sivaraman, Advocate.

5.Mr.Ravi, learned counsel for the Revenue, broadly made the following submissions:

> i. Since, the assessee company had not made a claim for deduction under Section 80IB (10) of the Act either in the return as originally filed or, by filing a revised return, it could not be permitted in law to claim the said deduction;
>
> ii. The Tribunal had erred in law in directing the Assessing Officer to consider the claim afresh preferred by the assessee company under Section 80IB (10) of the Act, given the circumstance that no such claim had been made by the assessee company either in the return as originally filed or, via a revised return or, even by preferring a petition under Section 264 of the Act;

5.1.In support of the aforesaid submissions, Mr.Ravi relied upon the following judgments:

> **a) GOETZE (India) Ltd. vs. CIT, (2006) 284 ITR 323**
>
> b) A Division Bench judgment of this Court, dated **06.2011,** passed in **T.C.(A) No.344 of 2005,** titled **CIT vs. M/s.Shriram Investments**
>
> **c) CIT vs. Stepwell Industries Ltd., (1997) 228 ITR 171d) ACIT vs. Gurjargravures P. Ltd., (1978) 111 ITR 1**
>
> e) **CIT vs. G.S.Rice Mills, (1982) 136 ITR 761.**

6.On the other hand, Mr.Sivaraman, learned counsel for the assessee company relied upon the findings of facts returned by the Tribunal. Learned counsel made it a point to highlight the fact, that even though the claim qua deduction under Section 80IB (10) of the Act had, inadvertently, not been made in the return as originally filed, the claim was made during the course of the assessment proceedings. Learned counsel, thus, submitted that this aspect stands noted by the Tribunal in paragraph 3 of the impugned judgment and order passed by it.

6.1.It was, therefore, the submission of the learned counsel for the assessee company that given the fact that the claim had been made before the conclusion of the assessment proceedings, and that, the requisite material was also filed, the Assessing Officer ought to have allowed the claim.

6.2.Learned counsel further submitted that in any event, even if, it is accepted that the Assessing Officer could not have allowed the deduction, the appellate authorities, which included the CIT (A) and the Tribunal, were not denuded of their power to allow the claim,

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based on the material already on record. It was further contended by the learned counsel for the assessee company that in this case, all that the Tribunal has said is that the Assessing Officer should reconsider the claim made by the assessee company for deduction under Section 80IB (10) of the Act, based on the material already placed on record at the stage, when, the assessment proceedings were on.

6.3.In support of his submissions, the learned counsel for the assessee company relied upon the following judgments:

a) National Thermal Power Co. Ltd. vs. CIT, (1998) 229 ITR 383 (SC)

b) A judgment of the Division Bench of this Court dated 11.2014, rendered in **T.C. (A) No.878 of 2014,** titled **CIT vs. Malind Laboratories P. Ltd.**

c) CIT vs. Sam Global Securities Ltd., (2013) 38 com129 (Delhi)

d) Ramco Cements vs. DCIT, (2015) 55 taxmann.com79 (Madras).

7.In the rejoinder, Mr.Ravikumar reiterated his submissions and further added that while it may be possible for the assessee company to raise an additional ground based on material already on record, it cannot be allowed to make a claim which does not form part of the original return or a revised return.

Reasons:

8.We have heard the learned counsel for the parties and perused the record.

9.According to us, what clearly emerges upon perusal of the record and, in particular, the impugned judgment and order of the Tribunal, is as follows:

i. That, in the original return as filed by the assessee company, no claim for deduction under Section 80 IB (10) of the Act had been made.

ii. That the assessee company, as observed in paragraph 3 of the impugned judgment and order of the Tribunal, had made a claim for deduction under Section 80 IB (10) of the Act at the stage, when, the assessment proceedings were on. At that point in time, details with regard to the project, qua which, claim was made, were filed along with requisite information, in the prescribed format, i.e., Form 10CCB.

iii. The CIT (A), even while recognizing the fact that the claim made by the assessee company for deduction under Section 80 IB (10) of the Act had been allowed both in the preceding and succeeding years, rejected the same, solely, on the ground that it did not form part of the original return.

10.Having regard to the aforesaid facts, what is required to be considered is : whether the conclusion reached by the Tribunal that the appellate authorities, (which included the CIT (A) and itself), had the necessary power to consider the claim for deduction, if, the assessee company was otherwise entitled to in law, given the fact that the relevant material was already available on record.

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11.Mr.Ravikumar, in support of the appeal, contended to the contrary and in this behalf, placed great emphasis on the judgment of the Supreme Court in **GOETZE**'s case. A perusal of the said judgment would show that the issue which arose for consideration before the Supreme Court, was, as to whether a claim for deduction could be made by way of a letter before the Assessing Officer, if, it did not form part of the original return. The Supreme Court ruled and, while doing so, to our minds, carefully noted that, though the Assessing Officer did not have the power to entertain the claim for deduction made after the return was filed, otherwise than by filing a revised return, it did not exclude the power of the Tribunal to consider the claim in exercise of its appellate power under Section 254 of the Act. This aspect of the matter is quite clearly brought to light in the operative paragraph of the judgment, i.e., paragraph 4.

11.1.For the sake of convenience, the said observations are extracted hereafter:

> *"4.The decision in question is that the power of the Tribunal under S.254 of the IT 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 AO 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 Tribunal under s.254 of the IT Act, 1961. There shall be no order as to costs."*
>
> (Emphasis is ours)

12.To be noted, the Supreme Court, while rendering its judgment in the case of Goetze, had noticed its own judgment in **National Thermal Co. Ltd. vs. CIT, (1998) 229 ITR 383 (SC).** In the said case, the Supreme Court was called upon to adjudicate as to whether a claim made by way of a letter before the Tribunal for the first time could have been entertained by the Tribunal. Briefly, the facts which obtained in the said case are as follows:

12.1.The assessee, in that case, had available with it surplus funds, which it chose to deposit with banks on a short term basis. Qua the said short term deposits, the assessee earned interest during the relevant previous year amounting to Rs.22,84,994/-. The said interest was offered for levy tax by the assessee, based on which, assessment proceedings were completed. The assessee, however, challenged the assessment order before the CIT (A) qua grounds other than the inclusion of the interest earned on short term deposits in the total income. Consequently, this aspect of the matter was not considered by the CIT (A). The assessee, however, carried the matter in appeal to the Tribunal. The appeal, as originally filed with the Tribunal, did not object to the inclusion of interest in the sum of Rs.22,84,994/-. The assessee, however, as indicated above, for the first time, by way of a letter dated 16.07.1983, raised additional grounds, whereby, a challenge was laid to the inclusion of interest in the total income. The basis of the challenge was that, since, the sum of Rs.22,84,994/- had been deducted from the expenditure incurred during construction period, it could not have been included in the total income.

12.2.The Supreme Court, after examining the matter threadbare, made the following observations:

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''Under Section 254 of the Income-tax Act, the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of that item. We do not see any reason to restrict the power of the Tribunal under section 254 only to decide the grounds which arise from the order of the Commissioner of Income-tax (Appeals). Both the assessee as well as the Department have aright to file an appeal/cross-objections before the Tribunal. We fail to see why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier.

In the case of Jute Corporation of India Ltd. v. CIT (1991) 187 ITR 688, this court, while dealing with the powers of the Appellate Assistant Commissioner observed that an appellate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions orlimitations, if any, prescribed by the statutory provisions. In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. There is no good reason to justify curtailment of the power of the Appellate Assistant Commissioner in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the Income-tax Officer. This court further observed that there may be several factors justifying the raising of a new plea in an appeal and each case has to be considered on its own facts. The Appellate Assistant Commissioner must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons. The Appellate Assistant Commissioner should exercise his discretion in permitting or not permitting the assessee to raise an additional ground in accordance with law and reason. The same observations would apply to appeals before the Tribunal also.

The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner of Income-tax (Appeals) takes too narrow a view of the powers of the Appellate Tribunal (vide, e.g., CIT v. Anand Prasad (1981) 128 ITR 388 (Delhi), CIT v. Karamchand Premchand P. Ltd. (1969) 74 ITR 254 (Guj) and CIT v. Cellulose Products of India Ltd. (1985) 151 ITR 499 (Guj) (FB). Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.''

(Emphasis is ours)

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12.3.In the said judgment, the Supreme Court also noticed its own judgment in the case of **Jute Corporation of India Ltd. v. CIT (1991) 181 ITR 688.** This view has been adopted by two Division Benches of this Court in the matter of **Ramco Cements Ltd. vs. DCIT (2015) 55 taxmann.com 79 (Madras)** and, in the judgment rendered in: **T.C. (A) No.878 of 2014 dated 18.11.2014, titled CIT vs. Malind Laboratories P. Ltd.** As a matter of fact, the Delhi High Court has also, in two separate judgments, come to the same conclusion. These judgments are rendered in: **CIT vs. Sam Global Securities Ltd., (2013) 38 taxmann.com 129 (Delhi)** and **CIT vs. Jai Parabolic Springs Ltd., (2008) 306 ITR 42 (Delhi).**

12.4.Furthermore, a Division Bench of the Bombay High Court has also taken the same view in the judgment rendered in **CIT vs. Pruthvi Brokers & Shareholders P. Ltd., (2012) 349 ITR 336 (Bom.).** The issue, with which, the Bombay High Court was grappling, was, that a claim for deduction under Section 43B of the Act had not been made qua the relevant assessment year in the original return, but was made via a letter. The Division Bench of the Bombay High Court held even while assuming and, in that sense, accepting the argument of the Revenue, that though, an amendment to the original return could not be made by filing a letter - it would be open to the appellate authorities to consider the claim and adjudicate upon the same. In this behalf, the Bombay High Court made the following observations:

> *"14. A long line of authorities establish clearly that an assessee is entitled to raise additional grounds not merely in terms of legal submissions, but also additional claims to wit claims not made in the return filed by it. It is necessary for us to refer to some of these decisions only to deal with two submissions on behalf of the department. The first is with respect to an observation of the Supreme Court in Jute Corporation of India Limited v. Commissioner of Income Tax, 1991 Supp (2) SCC 744 = (1991) 187 ITR 688. The second submission is based on a judgment of the Supreme Court in Goetze (India) Limited v. Commissioner of Income Tax, (2006) 157 Taxman 1.*
>
> *(A). In Jute Corporation of India Limited v. CIT, for the assessment year 1974-75 the appellant did not claim any deduction of its liability towards purchase tax under the provisions of the Bengal Raw Jute Taxation Act, 1941, as it entertained a belief that it was not liable to pay purchase tax under that Act. Subsequently, the appellant was assessed to purchase tax and the order of assessment was received by it on 23rd November, 1973. The appellant challenged the same and obtained a stay order. The appellant also filed an appeal from the assessment order under the Income Tax Act. It was only during the hearing of the appeal that the assessee claimed an additional deduction in respect of its liability to purchase tax. The Appellate Assistant Commissioner (AAC) permitted it to raise the claim and allowed the deduction. The Tribunal held that the AAC had no jurisdiction to entertain the additional ground or to grant relief on a ground which had not been raised before the Income Tax Officer. The Tribunal also refused the appellant's application for making a reference to the High Court. The High Court upheld the decision of the Tribunal and refused to call for a statement of case. It is in these circumstances that the appellant filed the appeal before the Supreme Court.*
>
> *15.The Supreme Court held as under (page 693) :-*

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"In CIT v. Kanpur Coal Syndicate, a three Judge bench of this Court discussed the scope of Section 31(3)(a) of the Income Tax Act, 1922 which is almost identical to Section 251(1)(a). The court held as under: (ITR p. 229)

"If an appeal lies, Section 31 of the Act describes the powers of the Appellate Assistant Commissioner in such an appeal. Under Section 31(3)(a) in disposing of such an appeal the Appellate Assistant Commissioner may, in the case of an order of assessment, confirm, reduce, enhance or annul the assessment; under clause (b) thereof he may set aside the assessment and direct the Income Tax Officer to make a fresh assessment. The Appellate Assistant Commissioner has, therefore, plenary powers in disposing of an appeal. The scope of his power is co-terminus with that of the Income-tax Officer. He can do what the Income-tax Officer can do and also direct him to do what he has failed to do." (emphasis supplied)

The above observations are squarely applicable to the interpretation of Section 251(1)(a) of the Act. The declaration of law is clear that the power of the Appellate Assistant Commissioner is coterminus with that of the Income Tax Officer, if that be so, there appears to be no reason as to why the appellate authority cannot modify the assessment order on an additional ground even if not raised before the Income Tax Officer. No exception could be taken to this view as the Act does not place any restriction or limitation on the exercise of appellate power. Even otherwise an Appellate Authority while hearing appeal against the order of a subordinate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations if any prescribed by the statutory provisions. In the absence of any statutory provision the Appellate Authority is vested with all the plenary powers which the subordinate authority may have in the matter. There appears to be no good reason and none was placed before us to justify curtailment of the power of the Appellate Assistant Commissioner in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the Income Tax Officer." [emphasis supplied]"

(B) It is clear, therefore, that an assessee is entitled to raise not merely additional legal submissions before the appellate authorities, but is also entitled to raise additional claims before them. The appellate authorities have the discretion whether or not to permit such additional claims to be raised. It cannot, however, be said that they have no jurisdiction to consider the same. They have the jurisdiction to entertain the new claim. That they may choose not to exercise their jurisdiction in a given case is another matter. The exercise of discretion is entirely different from the existence of jurisdiction.

16. At page 694, after referring to certain observations of the Supreme Court in Additional Commissioner of Income-tax v. Gurjargravures P. Ltd., (1978) 111 ITR 1, the Supreme Court observed at Page 694 as under :-

"The above observations do not rule out a case for raising an additional ground before the Appellate Assistant Commissioner if the ground so raised could not have been raised at that particular stage when the return was filed or when the assessment order was made, or that the ground became available on account of change of circumstances or law. There may be several factors justifying raising of such new

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plea in appeal, and each case has to be considered on its own facts. If the Appellate Assistant Commissioner is satisfied he would be acting within his jurisdiction in considering the question so raised in all its aspects. Of course, while permitting the assessee to raise an additional ground, the Appellate Assistant Commissioner should exercise his discretion in accordance with law and reason. He must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons. The satisfaction of the Appellate Assistant Commissioner depends upon the facts and circumstances of each case and no rigid principles or any hard and fast rule can be laid down for this purpose."

[emphasis supplied]

17. The underlined observations in the above passage do not curtail the ambit of the jurisdiction of the appellate authorities stipulated earlier. They do not restrict the new/additional grounds that may be taken by the assessee before the the appellate authorities to those that were not available when the return was filed or even when the assessment order was made. The sentence read as a whole entitles an assessee to raise new grounds/make additional claims :-

> *"if the ground so raised could not have been raised at that particular stage when the return was filed or when the assessment order was made...." "or"* if *"the ground became available on account of change of circumstances or law"*

18.The appellate authorities, therefore, have jurisdiction to deal not merely with additional grounds, which became available on account of change of circumstances or law, but with additional grounds which were available when the return was filed. The first part viz. "if the ground so raised could not have been raised at that particular stage when the return was filed or when the assessment order was made..." clearly relate to cases where the ground was available when the return was filed and the assessment order was made but "could not have been raised" at that stage. The words are "could not have been raised" and not "were not in existence". Grounds which were not in existence when the return was filed or when the assessment order was made fall within the second category viz. where "the ground became available on account of change of circumstances or law."

(Emphasis is ours)

12.5. A reading of the aforesaid observations would clearly establish that the arguments advanced by Mr.Ravi that the assessee company could only raise an additional ground and not make a new claim or additional claim is not sustainable. As indicated by us hereinabove, this power of entertaining the claim vests with the appellate authorities based on the facts and circumstances of the case. The power of the appellate authorities to consider claims made based on material already on record is co-terminus with the power of the Assessing Officer. The failure to advert to the claim in the original return or the revised return cannot denude the appellate authorities of their power to consider the claim, if, the relevant material is available on record and is otherwise tenable in law. Any other view, in our opinion, will set at naught the plenary powers of appellate authorities.

13.The judgment of the Division Bench of this Court rendered in **T.C. (A) No.344 of 2005, dated 16.06.2011, titled CIT vs. M/s.Shriram Investments,** which is relied upon by the learned counsel for the Revenue, is clearly distinguishable, as in that case, the assessee had

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sought assessment of tax by disclosing a lower taxable income, albeit, by filing a second revised return. It is in that context that the Division Bench came to the conclusion that the second revised return, which was filed beyond the period of limitation, being *non est* in law, would not be considered for the purposes of ascertaining the taxable income.

14.In so far as the judgment of the Supreme Court in the matter of **Stepwell** is concerned, according to us, it has no applicability to the issue raised in the instant appeal. In that case, the Tribunal appears to have allowed the claim of the assessee for deduction under Section 35 B of the Act without examining the facts of the case. The assessee, evidently, had neither made a claim before the ITO nor the AAC nor, had he, furnished particulars of the expenditure incurred by it. It is in this context that the Supreme Court observed that the onus of proving facts and obtaining the benefit of a deduction lay on the assessee. It was further observed that since the assessee failed to prove its claim before the ITO or the AAC, the Tribunal could not have allowed the claim on assumption of facts.

15. As indicated above, the ratio on the said judgment is entirely different and therefore, has no applicability to the facts of the instant case.

16.Similarly, the judgment of the Allahabad High Court in the matter of **G.S. Rice Mills** is distinguishable, inasmuch as the assessee had neither made a claim before the ITO nor was any material placed on record in support of the claim. The High Court, in this context, held that the Tribunal was not justified in entertaining the claim made under Section 80G of the Act and thereupon, issuing a consequent direction to the ITO to examine the same on merits.

16.1.As would be evident from the narration of facts set out above, in the present case, the Tribunal has noted that relevant material was placed by the assessee company before the Assessing Officer during the course of the assessment proceedings. Therefore, in our view, the said judgment is also distinguishable.

17. A similar situation arose in the case of ACIT vs. Gurjargravures P. Ltd. In this case as well, it was noticed that neither was any claim made before the ITO nor was any supporting material placed on record. It is in this background that no relief was granted. The Supreme Court, in this case, disagreed with the High Court, inasmuch as it sustained the direction of the Tribunal issued to the ITO to grant appropriate relief qua claim made under Section 84 of the Act.

18.In sum, what emerges from a perusal of the ratio of the judgments cited above, in particular, the judgments rendered by the Supreme Court in GOETZE's case and National Thermal Power Co. Ltd.'s case, and those, rendered by the Division Bench of this Court in Ramco Cements Ltd. and CIT vs Malind Laboratories P. Ltd., as also the judgments of the Delhi High Court in **Sam Global Securities Ltd.'s case** and **Jai Parabolic Springs Ltd.'s case,** that, even if, the claim made by the assessee company does not form part of the original return or even the revised return, it could still be considered, if, the relevant material was available on record, either by the appellate authorities, (which includes both the CIT (A) and the Tribunal) by themselves, or on remand, by the Assessing Officer. In the instant case, the Tribunal, on perusal of the record, found that the relevant material qua the claim made by the assessee company under Section 80 IB (10) of the Act was placed on record by the assessee company during the assessment proceedings and therefore, it deemed it fit to direct its reexamination by the Assessing Officer.

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18.1.In our opinion, the view taken by the Tribunal is unexceptionable and therefore, does not merit any interference.

19.Consequently, the Tax Case Appeal is dismissed, leaving the parties to bear their own costs.

(R.S.A., J.) (R.S.K., J.)

06.06.2017

Index : Yes/No

Website : Yes/No

sra/sl

To

1.The Asst. Registrar,

Income Tax Appellate Tribunal,

Chennai 'C' Bench, Chennai.

2.The Commissioner of Income Tax (Appeals)-I,

Tiruchirapalli.

3.The Asst. Commissioner of Income-tax,

Company Circle II, Trichy.

Rajiv Shakdher, J.

and

R.Suresh Kumar, J.

sra/sl

Pre-Delivery Judgment in

T.C. (A) No.811 of 2016

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