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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **ITA 593/2018**

% **Reserved on: 05th September, 2018**
Pronounced on: 17th January, 2019

PRINCIPAL COMMISSIONER OF INCOME TAX-7... Appellant
Through: Mr.Zoheb Hossian, Sr. Standing Counsel and Mr.Deepak Anand, Jr. Standing Counsel and Mr.Piyush Goyal, Advocates

Versus

M/S.ORACLE (OFSS) BPO SERVICES LTD ..... Respondent
Through: Mr.Kamal Sawhney and Mr.Prashant Meharchandani, Advocates

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J.

This appeal filed by the Revenue under Section 260A of the Income-Tax Act, 1961 in the case of M/s.Oracle (OFSS) BPO Services Ltd. ('respondent-assessee', for short) relates to the assessment year 2009-10 and arises out of the order of the Income-Tax Appellate Tribunal ('Tribunal' for short) dated 31st October, 2017.

2. Present appeal was admitted vide order dated 21st May, 2018.

3. Substantial question of law as re-framed vide order dated 05th September, 2018, reads as under:

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"Did the Income Tax Appellate Tribunal (ITAT) fall into error in holding that the revised computation of deduction under Section 10A of the Income Tax Act, 1961 ('the Act') for short) was permissible having regard to Section 10A (5) and Section 80A(5) of the Act?"

4. The respondent assessee engaged in the business of providing 'Processing Outsourcing Services', during the assessment year in question had no other business activity apart from business activities covered under Section 10A of the Act. Accordingly, in return of income filed on 29th September, 2009 it had claimed deduction of Rs.17.87 crores under Section 10A of the Act with NIL taxable income under the head of 'income from business and profession'. In order to claim deduction under Section 10A of the Act the respondent-assessee had filed Form 56F along with its return. In addition, respondent – assessee, had earned income of Rs.19.66 lakhs on fixed deposit receipts from banks, which it declared as income under the head 'Other Sources'. Accordingly, the net taxable income was Rs.19.68 lakhs.

5. During the course of the assessment proceedings, the respondent-assessee had filed a revised computation of income making *suo motu* disallowance of Rs.2,14,50,610/- and allowance of Rs.33,25,522/- from business income as declared which it claimed was inadvertently missed out, as per the details given below:

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Suo Motu Disallowances made by assessee in revised computation	**Amount (in INR)**
Unpaid Bonus inadmissible u/s.43B	87,98,002
Provision for Doubtful Debts	1,24,67,570
Payment of employee's contribution to PF after due date u/s.36(1) (va)	1,85,038
Total	**2,14,50,610**
Suo Motu Allowances made by assessee in revised	

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computation	
Provision for bonus claimed under the provisions of the Section 43B of the Act, on payment basis	1,01,701
Expenditure allowed u/s.40(a) (i) of the Act (disallowance in previous year)	25,83,809
Profit on sale of fixed assets.	21,607
Foreign exchange gain on capital expenditure	5,358
Provision for leave encashment claimed on payment basis	6,13,047
Total	**33,25,522**

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6. Exemption under Section 10A of the Act was accordingly revised with corresponding disallowance and allowance of Rs.2,14,50,610/- and Rs.33,25,522/- respectively. Revised Form 56F was filed.

7. The Assessing Officer reduced the amount of Rs.6,13,047/- i.e. the provision for leave encashment claimed on payment basis from the disallowance of Rs.2,14,50,610/- and treated the balance amount of Rs.2,08,37,563/- as income under the head income from 'Other Sources'.

8. Assessing Officer did not allow allowance of Rs.1,01,701/- on account of provision of bonus under Section 43B of the Act, Rs.25,83,809/- as expenditure allowable under Section 40(a) (i) of the Act, as it was disallowed in the previous year; and Rs.21,607/- as profit on sale of fixed assets and Rs.5,358/- on account of foreign exchange gain on capital expenditure.

9. The Commissioner of Income Tax (Appeals) observed and held that the findings of the Assessing Officer were contradictory for he had partly accepted the revised computation by allowing expenditure of Rs.6,13,047/- towards leave encashment, but had disallowed other allowances claimed by the respondent assessee in the revised computation. Contradiction was there as the Assessing Officer had considered the revised computation only to the extent it was beneficial to the Revenue, but no deduction of allowances

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claimed in revised computation was made. He also made adverse comments on self-disallowance of Rs.2,14,50,610/- with adjustment/ deduction of Rs.6,13,047/- i.e. Rs.2,08,37,563/- being treated as income from other sources and not disallowance under the head business income. He allowed the appeal filed by the respondent-assessee, by accepting the revised computation of income furnished by it during the course of the assessment proceedings.

10. Revenue preferred an appeal which has been dismissed by the impugned order, as it was held that the respondent assessee was indisputably eligible for deduction under Section 10A and the revised computation was filed when the assessment proceedings were in progress. Further, the respondent assessee had duly explained the reasons for revising the computation, which was otherwise genuine and not disputed.

11. The contention of the revenue is that the revised computation should not have been accepted, for which reliance is placed on the judgment of the Supreme Court in ***Goetze (India) Ltd. Vs. Commissioner of Income Tax*** (2006) 284 ITR 323 (SC). It was also submitted that the first Appellate Authority and the Tribunal have failed to take notice of the amendment to Section 80A (5) vide Finance Act, 2009 w.e.f. 1st April, 2003. In support, reference was made to the judgment of this court in ***Nath Brothers Exim International Ltd. Vs. Union of India & Ors.,*** (2017) 394 ITR 577 (Del.).

12. Counsel for the respondent-assessee, however, has relied upon two decisions of this court in ***Influence Vs. Commissioner of Income Tax*** (2015) 55 Taxman.com 192 (Delhi) and ***Principal Commissioner of Income-tax Vs. E-Funds International India Pvt. Ltd.*** (2015) 379 ITR 292 (Delhi). On the second contention it is submitted that this objection was not raised before the Tribunal by the revenue. Even otherwise, the contention does not have any

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merit. Reliance was placed on the memorandum issued by the Income Tax Department explaining the amendments in Chapter VIA vide Clause 29 and 36 of the Finance Act, 2009.

13. At the outset, we must record and state that the revenue does not dispute the correctness of the revised computation made by the respondent assessee. Revenue also does not dispute and has not challenged that the disallowance made by the assessee in the revised computation of Rs.2,14,50,610/- cannot be adjusted and treated as income taxable under the head 'Income from Other Sources'. This disallowance has to be under the head 'profit and gains from business', which was entitled to deduction /exemption under Section 10A of the Act. The disallowance made would result in enhancement of the business income which was exempted under Section 10A of the Act. It would not be taxable. This would be the position even if the respondent assessee had not filed the revised computation and an enhancement or disallowance had been made by the Assessing Officer in the course of the assessment proceedings. Thus, the disallowance made was revenue neutral.

14. We fail to understand how and for what reason the Assessing Officer had set off Rs.6,13,047/-, i.e. *suo motu* allowance made by the respondent-assessee for leave encashment claimed on payment basis in the revised computation from Rs.2,14,50,610/- and had treated the figure of Rs.2,08,37,563/-, as income disallowed under the head as income from other sources. The said position just cannot be accepted and justified.

15. Decision in ***Goetze (India) Ltd. (Supra)***, barring an assessee from making a claim for deduction by filing revised computation has to be examined in two judgments of this court in ***Influence*** and ***E-Funds***

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International (Supra). In ***Influence*** after referring to the earlier case law, it was held as under:

> "7. A similar controversy had arisen before the Delhi High Court in the case of *Commissioner of Income Tax Vs. Sam Global Securities Ltd.* [2014] 360 ITR 682 (Delhi), wherein judgment in the case of *CIT Vs. Jai Parabolic Springs Ltd.* [2008] 306 ITR 42 (Delhi) was quoted. In *Jai Parabolic Springs Ltd. (supra),* decision in Goetze (India) Ltd. (supra) was distinguished in the following words:-
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>> "In *Goetze (India) Ltd. Vs. CIT* [2006] 284 ITR 323 (SC) wherein deduction claimed by way of a letter before the Assessing Officer, was disallowed on the ground that there was no provision under the A ITA 261/2002 Page 4 of 6 the return without filing a revised return. Appeal to the Supreme Court, as the decision was upheld by the Tribunal and the High Court, was dismissed making clear that the decision was limited to the power of the assessing authority to entertain claim for deduction otherwise than by a revised return, and did not impinge on the power of the Tribunal."
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> 8. In *Sam Global (supra)* reference was also made to the decision of the Supreme Court in *National Thermal Power Co. Ltd. Vs. CIT* [1998] 229 ITR 383 (SC). Reliance was placed on an earlier decision of the Supreme Court in Jute Corporation of India Ltd. Vs. CIT, [1991] 187 ITR 688 (SC), in which it has been observed:-
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>> "An appellate 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 is no good reason to justify curtailment of the power of the Appellate Assistant Commissioner in entertaining an additional ground

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> raised by the assessed 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 assessed to raise an additional ground in accordance with law and reason. ITA 261/2002 Page 5 of 6 The same observations would apply to appeals before the Tribunal also."
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> 9. This High Court in *CIT Vs. Natraj Stationery Products (P) Ltd.*, (2009) 312 ITR 222, had observed that Goetze (India) Ltd. (supra) would not apply if the assessee had not made a „new claim" but had asked for re-computation of deduction. Reference can also be made to the decision in *Commissioner of Income Tax Vs. Rose Services Apartment India P. Ltd.*, [2010] 326 ITR 100 (Delhi), wherein a Division Bench of this Court rejected the contention of the Revenue that the Tribunal could not have entertained the plea, holding that the tribunal was empowered to deal with the issue and was entitled to determine the claim raised."

16. Thus a distinction was drawn between a new claim, which is barred and not permissible and a request or prayer made by the assessee for re-computation of the deduction already claimed. Latter was permissible and not barred in terms of the decision in the case of ***Goetze (India) Ltd. (Supra)***.

17. This decision was followed in ***E-Funds International India (Supra)***, observing as under:

> "17. In all the aforementioned decisions cited by learned counsel for the Assessee, the High Court has considered the effect of the decision

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of the Supreme Court in Goetze (India) Ltd. (supra). The common thread running through the ratio in all the decisions of the High Courts is that while an AO may not be entitled to grant a deduction or an exemption on the basis of a revised computation of income, there was no such fetter on the appellate authorities. This was recently reiterated by this Court in a decision dated 25th August 2015 in ITA No. 644/2015 *(Pr. Commissioner of Income Tax-09 v. Western India Shipyard Limited).* In Sam Global Securities Ltd. (supra), this Court pointed out that the power of the Tribunal in dealing with appeals was expressed in the widest possible terms and the purpose of assessment proceedings was to assess the correct tax liability. The Court noted that "Courts have taken a pragmatic view and not a technical view as what is required to be determined is the taxable income of the Assessee in accordance with law." In *Influence v. Commissioner of Income Tax (supra)* a similar approach was adopted when the AO in that case refused to accept the revised computation submitted beyond the time limit for filing the revised return under Section 139(5) of the Act. This Court noted that the decision in *Goetze (India) Ltd. (supra)* "would not apply if the Assessee had not made a new claim but had asked for re-computation of the deduction."

18. Turning to the facts of the present case, as rightly noted by the ITAT itself, this is not a case where any new claim for deduction under Section 10A of the Act has been made by the Assessee. This claim had been made in the original return itself. It is only the figure of profit that was changed in ITA Nos. 607 & 608 of 2015 Page 8 of 9 the revised computation as a result of wrongly showing a receipt in USDs without converting it into rupees. The ITAT has, in fact, remitted the matter back to the file of the AO to compute the deduction in accordance with law.

19. The Court does not see any prejudice being caused to the Revenue as a result of the above directions. It is consistent with the law explained by this Court in the above decisions after considering the effect of the decision of the Supreme Court in *Goetze (India) Ltd.*

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(supra). Consequently, as regards the issue of the deduction under Section 10A of the Act, the Court declines to frame a question."

18. Section 80A(5) of the Act as amended, reads as under:

"Where the assessee fails to make a claim in his return of income for any deduction under Section 10A or Section 10AA or Section 10B or section 10BA or under any provision of this Chapter under the heading *'C.- Deductions in respect of certain incomes"*, no deduction shall be allowed to him thereunder."

19. The amendment made in the said section was explained in the Memorandum as under:

"**Amendment in Chapter VIA to prevent abuse of tax incentives**

The profit linked deductions in Chapter VIA are prone to considerable misuse. Further, since the scope of the deductions under various provisions of Chapter VIA overlap, the taxpayers, at times, claim multiple deductions for the same profits.

With a view to prevent such misuse, it is proposed to amend the provisions of section 80A of the Income-tax Act to provide the following, namely:-

(i) deduction in respect of profits and gains shall not be allowed under any provisions of section 10A or section 10AA or section 10B or section 10BA or under any provisions of Chapter VIA under the heading "C.-Deductions in respect of certain incomes" in any assessment year, if a deduction in respect of same amount under any of the aforesaid has been allowed in the same assessment year;

(ii) the aggregate of the deductions under the various provisions referred to in (*i*) above, shall not exceed the profits and gains of the undertaking or unit or enterprise or eligible business, as the case may be;

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(*iii*) no deductions under the various provisions referred to in (*i*) above, shall be allowed if the deduction has not been claimed in the return of income;

20. In the facts of the present case, we do not think Sub-section 5 to Section 80A would be attracted and should be applied. Revised computation made by the assessee, in fact, as noticed above had resulted in disallowance of more than Rs.2.14 crores, which could have been made by the Assessing Officer while computing the claim for deduction under Section 10A of the Act. Nevertheless, the enhanced income would not have been taxable. The assessing officer had also accepted that Rs.6,13,047/- i.e. the provision for leave encashment claimed on payment basis should be allowed. He however, did not allow the other *suo motu* allowances made by the respondent-assessee. Disallowances and allowances in the revised computation were made in relation to bonus with reference to provision of Section 43B of the Act. Further, allowance of Rs.25,83,809/- was on account of disallowance made in the previous year which had to be allowed as expenditure in the present year in view of Section 40 (a) (i) of the Act.

21. Sub-section 5 to Section 80A states that if assessee has failed to make its claim on return under 10AA or 10B or any other provisions of Chapter VIA, no deduction shall be allowed to him thereunder. This bars and prohibits the assessee from claiming the deduction under Sections 10A and 10B and Chapter VIA if no such claim was made in the return of income. It is also mandatory that the return of income for claiming such deduction should be filed within the time stipulated under Section 139 (1) of the Act, as was held in the case of ***Nath Brothers Exim International (Supra).*** In the said case the assessee in the return for the assessment year 2007-08 had not claimed any exemption under Section 10B of the Act. This deduction was

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claimed for the first time in the revised return. On being denied this claim, constitutional vires of Sub-section 5 to Section 80A, as inserted by Finance Act, 2009 and 4th proviso of Section 10B (1) of the Act, were challenged. The challenge was rejected by the Division Bench of this Court holding that the amendment made cannot be faulted and quashed on the ground that it was discriminatory, arbitrary, unreasonable and violative of Article 14, observing that it was within the legislative domain to prescribe the limitation period and also stipulate that the assessee to claim deduction must file returns during the limitation period, so as to enable the Department to take up these cases for scrutiny assessment. Plea of arbitrariness was rejected. The decision and ratio is distinguishable as the respondent-assessee had claimed deduction under Section 10A of the Act in the return of income filed within the limitation period. It was, therefore, not a new claim. Question of revision of deduction was not the issue and question raised and answered in ***Nath Brothers Exim International*** *(supra)*.

22. Our attention was, however, drawn to the observations of the Division Bench that the objective behind the amendment was to defeat multiple claims of deduction and ensure better compliance. Certainly, the amended provisions ensure better compliance of the statutory provisions. Reference to the expression 'multiple claims of deduction' would be with reference to the stipulation that deduction should be claimed under a particular provision and it cannot be shifted and treated as deduction claimed under the other provision. Language of Sub-section 5 to Section 80 A does not state that the deduction once claimed under a particular section cannot be corrected and modified before the Assessing Officer. Indeed, the Assessing Officer can examine the claim for deduction and can make adjustment/ disallowance. We would not read in the amended provision, a stipulation barring and

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restricting the assessee from revising the computation/ claim for deduction made in accordance with Section 80A (5) of the Act.

23. In view of the aforesaid discussion, we answer the substantial question of law against the appellant-revenue and in favour of the respondent-assessee. In the facts of the case, there would be no order as to costs.

(SANJIV KHANNA)
JUDGE

(CHANDER SHEKHAR)
JUDGE

JANUARY 17th , 2019
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