

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. Nos. 118 to 121/Asr/2022  
Assessment Years: 2015-16 to 2018-19**

Ajay Sharma S/o Sh. Bansi Dhar Sharma, R/o Guru Sangam, Punjabi Bagh, Kapurthala. [PAN:AOOPS3250C] <b>(Appellant)</b>	<b>Vs.</b>	JCIT (OSD), Central Circle-1, Jalandhar.  <b>(Respondent)</b>
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<b>Appellant by</b>	<b>Sh.Tarun Bansal, Adv.</b>
<b>Respondent by</b>	<b>Sh.Rohit Sharma, CIT. DR.</b>

<b>Date of Hearing</b>	<b>19.09.2022</b>
<b>Date of Pronouncement</b>	<b>21.09.2022</b>

**ORDER**

**Per Bench.:**

The batch of instant appeals of the assessee was filed against the order of the Id. Commissioner of Income Tax (Appeals)-5, Ludhiana, [in brevity the CIT(A)] bearing Appeal No. 10179/CIT (A)-5/Ldh/2017-18 date of order 17.03.2022 order passed u/s 250 (6) of the Income Tax Act, 1961( in brevity the Act) for A.Ys.

2015-16 to 2018-19. The impugned orders were originated from the order of the Id. Joint Commissioner of Income Tax (OSD), Central Circle-1, Jalandhar, (in brevity the AO) the order passed u/s 153C read with section 144 of the Act, date of order 12.02.2021. As these are assessee's own appeals involving common issues, they are being disposed of by this composite order. Facts, for convenience, are being taken ITA No.121/Asr/2022, for A.Y. 2018-19 as lead case.

2. The following grounds have been raised therein:

*“1) That the Ld. CIT(A) has wrongly allowed only 50% of claim of interest on housing loan = Rs.1 17,327 x 50% =58,664 u/s 24(b), instead of 100% by holding that appellant's wife is joint-holder in loan but further ignored that the property is on the name of appellant and appellant is only eligible u/s 24.*

*2) That the Ld. CIT(A) wrongly disallowed deduction u/s 80C for tuition fee and repayment of housing loan amounting to Rs. 19,440/- and Rs. 2996 /-respectively on the ground that no claim was made in the return but wrongly ignored his powers as appellate authority to allow the same and also took second ground that the source of payment not explained, but on other hand accepted the returned income, as well as not made any addition u/s 69 or 69A or 69B or otherwise as unexplained investment etc. and blown hot & cold.*

*3) That the Ld. CIT(A) wrongly directed the appellant to place the document of Rs. 17,770/- of life insurance premium paid on assessment record of A.O, as well as, wrongly directed the A.O to allow the claim u/s 80C after obtaining the relevant document and further wrongly ignored that he had the power himself only u/s 251(l)(a) and explanation to section 251 respectively, to determine the issue after examining the document(s) on record.”*

2. The brief fact of the case is that the assessee filed return. The deduction was claimed u/s 80C amount of Rs.1,50,000/-. But the assessee was unable to claim the deduction of principal of loan and tuition fee of the assessee's children u/s 80C. Also, the deduction of interest under house building loan (in brevity HBL) u/s 24 was also not claimed during the filing of return. During the assessment proceedings the assessment was completed u/s 144. The assessee challenged the orders of the ld. AO before the ld. CIT(A). The assessee applied under rule 46A of the Income Tax Rule, 1962 for admission of additional evidence during the appeal hearing. The for claim u/s 24 and for deduction section 80C which was not taken in the return which was prayed to consider during the appeal hearing. Only the deduction

for HBL interest u/s 24 was allowed @50% of in the hands of the assessee. The other issues are remained untouched & upheld order of the Id. AO partly.

3. Aggrieved assessee filed appeal before us for judicious consideration.

4. During hearing before the ITAT, two basic points are agitated by the Id Counsel, before the ITAT. The assessee claimed u/s 80C amount of Rs.1,50,000/- as Life Insurance Premium but the other deduction like principal of HBL and the tuition fee was not claimed during the filing of return. Both the revenue authorities disallowed the assessee's claim after a valid prayer. Another issue was agitated by the Id. Counsel of the assessee is that the assessee is himself owner of house property. The loan was taken in both the names of the assessee and his wife. The assessee's wife is co-borrower of the loan. The certificate from bank related to payment of interest is enclosed in **APB page no. 15**. The Id. Counsel filed the sale deed related to proof of ownership of the property which is enclosed in **APB pages 16 to 17**. The assessee is a sole owner of the property according to section 22 of the Act, the assessee himself is eligible for deduction of HBL interest u/s 24 @100%. So, the division of interest of HBL in both the hands is uncalled for.

4.1 During the hearing Id. Counsel Mr. Tarun Bansal, vehemently argued and submitted that the assessee applied under rule 46A of Income Tax Rule 1962, for

claim of deduction U/s 80C & 24. Also, the receipt of Life Insurance Premium amount of Rs.17,770/- is enclosed in **APB page 19** which was not mentioned in return of income.

5. The Id. CIT DR vehemently argued and mention that the assessee was not eligible for any of the deduction as it was not claimed during the filing of return. The claim before the Id. AO can not be sustained without filing the revised return. He respectfully relied on **Goetze (India) Ltd. v. CIT [2006] 284 ITR 3231 (SC)**.

6. The Id. Counsel for the assessee Mr. Tarun Bansal, argued and submitted that the deductions are claimed during the appeal hearing and Id. CIT(A). For, clear understanding the submission of the assessee before the Id CIT(A) is reproduced as below. The said appeal order page no. 2 para 3 is extracted as below:-

*“3. During the course of appellate proceedings, the AR of the appellant submitted arguments as under:*

*“Sub: Written submission in the case of Sh. Ajay Sharma, Guru Sangam, Punjabi Bagh, Kapurthala -144601, Punjab. A.Y. 2018-19, PAN AOOPS3250C*

*Your Honour it is respectfully submitted as under:*

1. That assessment in the case was framed on 12.02.2021 at income of Rs. 5,15,600 whereas the assessee as per computation of income showed it as follows:

Gross Receipts N. P.	6,88,500
N.P.	5,15,600
Less u/s 24(1)	75,400
Less u/s 80-C	1,50,000
Bl. N.P.	2,90,200

Thus exemption u/s 80c was disallowed for want of evidence.

2. Your Honour, due to inadvertence the appellant could not made legal claim u/s 24 (i) in original return which is allowable as per law. He took house loan of Rs. 13,00,000/- from PNB on 13.02.2013 A/c No. 00003769 for construction of his residential house at Guru Sangam Punjabi Bagh, Kapurthala, Bank Certificates are attached showing amount of loan and interest - separately. Also attached is house property purchase deed, Translated in English duly attested.

Re-computation of Income is as follows

Income from house property

Less interest on borrowings -1,17,327

Loan taken on 13.02.2013

Construction completed on 7.8.2014

N. P. (already shown) Gross Receipts 6,88,500

N. P. 5,15,600

Balance 3,98,273

Income from other Sources

S/V Interest: -

Yes Bank A/c No. 0002971 2,894  
4,01,167  
Less U/s 80-C  
LIP 17,770 (attached receipts)  
Tuition Fees 19,440 (attached receipts)  
Housing Loan repayment 2996  
40,206  
u/s 80TTA 2894 43,100  
Balance 3,58,067

3. That copy of ITR and computation of income is also attached.
4. Your Honour, the appellant has also e- filed a reply on 08.07.2021 vide Acknowledgement No. 1380862210808721 which may please be considered, copy of the same is attached.”

6.1 As per the Id. Counsel, the assessee is eligible for the claim of deduction during the time of appeal proceeding. The Id. Counsel respectfully relied on the judgment of High Court of Delhi, in the case of **Commissioner of Income-tax, Delhi-IIv.Jai Parabolic Springs Ltd[2008] 172 TAXMAN 258/ 306 ITR 42 (DELHI)**;

“16. In the case of *Jute Corporation of India Ltd. v. CIT [1991] 187 ITR 6882* while dealing with the powers of the Appellate Assistant Commissioner, the Supreme Court 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 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 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." (p. 386)*

*17. In Goetze (India) Ltd. v. CIT [2006] 284 ITR 3231 (SC), wherein deduction claimed by way of a letter before Assessing Officer, was disallowed on the ground that there was no provision under the Act to make amendment in 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 assessing authority to entertain claim for deduction otherwise than by revised return, and did not impinge on the power of Tribunal."*

6.2. Mr. Bansal further relied respectfully in the case of **Taylor Instrument Co. (India) Ltd.v.Commissioner of Income-tax, [1992] 64 Taxman 129 (Delhi);**



*“23. The Supreme Court in Jute Corporation of India's case (supra), specifically approved the decision of the Calcutta High Court in Rai Kumar Srimal v. CIT [1976] 102 ITR 525, wherein it had been held that the AAC was entitled to admit new ground or evidence either suo motu or at the invitation of the parties.”*

6.3. The Id. Counsel respectfully relied on **High Court of Bombay** in the case of **Sesa Goa Ltd.v.Additional Commissioner of Income-tax, Panaji, Goa, [2020] 117 taxmann.com 548 (Bombay)**;

*“15. The circumstance that we have observed that the Appellate Authorities have the power to consider the claim for deduction in terms of section 10B of the IT Act, is not to be construed as some observations in the context of the provisions of section 80A(5) of the IT Act. All that we have said is that generally, the Appellate Authorities may not be justified in refusing to even consider the assessee's claim for deduction on the ground that such claim was not made in the original returns or the revised returns filed before the Assessing Officer. If any contention based upon the provisions of section 80A(5) of the IT Act is raised by the Revenue, then, obviously, such contention will have to be considered by the Appellate Authority in accordance with law. Further the appellant-assessee will have the liberty to meet such contentions, including by way of urging the very grounds raised in the present Appeal on the aspect of prospectively etc. We, therefore, clarify that we leave all such issues open for the decision of the Commissioner of Income-tax (Appeals) and thereafter, if the need be, the ITAT.”*

7. We heard the rival submission and perused the documents available on the record. The Life Insurance Premium Rs.17,770/- was not claimed during the filing of return and same for tuition fee and repayment of HBL amount of Rs.19,440/- and Rs.2996/- respectively. The copy of the receipts as proof of payments are enclosed in **APB 15, 19, and 21**. In case interest on HBL the deduction u/s 24B is fully allowed for the assessee, read with section 22 of the Act. The wife of the assessee is not an owner but a co-borrower. She is not eligible for claim of interest as per the Act. We direct the revenue to allow the balance deduction U/s 24, interest on HBL to assessee.

7.1. We respectfully consider the order of Goetz India Ltd, supra. The catena of judgments is produced by the Id. Council before the Bench. The orders of the Hon'ble Delhi High Court & Hon'ble High Court of Bombay respectfully observed the order of Hon'ble Apex Court. Here, two issues are formulated, weather the unclaimed deduction can be claim before the assessing authority without filing the revised return and weather the power of the appellate authority can allow the claim of duction which was not claimed in the return of income. We adjudicate the second issue. In our opinion the appellate authority has coterminous power to accept the deduction which was not claimed in ITR. So, the entire claim under

section 80C is eligible claim of deduction. During the hearing the assessee had submitted all relevant documents which are also considered by the appellate authority. We accept the claim of assessee related to deduction U/s 80C. We set aside the order of the Id CIT(A) with a direction to allow the deduction, claimed by the assessee.

8. Considering the fact of the case, the said appeals are mutatis mutandis similar with ITA No.121/Asr/2022 are allowed.

9. In the result appeal of the assessee ITA Nos- 118 to 121/Asr/2022 are allowed.

**Order pronounced in the open court on 21.09.2022**

**Sd/-**

**(Dr. M. L. Meena)**  
**Accountant Member**

**Sd/-**

**(ANIKESH BANERJEE)**  
**Judicial Member**

**AKV**

Copy of the order forwarded to:

- (1)The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy  
By Order