

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'SMC', KOLKATA

[Before Dr. Manish Borad, Accountant Member &
Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 125/Kol/2023
Assessment Year : 2014-15

Shri Sandip Chattopadhyay	Vs.	ITO, Ward-37(2), Kolkata
PAN: AACFD 2119 F		
Appellant		Respondent

Date of Hearing	16.05.2023
Date of Pronouncement	28.07.2023
For the Assessee	Shri Abhisek Bansal, AR
For the Revenue	Smt. Ranu Biswas, Addl. CIT, DR

ORDER

Per Sonjoy Sarma, JM:

The present appeal has been preferred by the assessee against the order dated 31.01.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). The assessee has raised the following grounds of appeal:

"1. For that the order u/s 154/143(1) as passed by the Ld. AO and confirmed by the CIT (A), NFAC is bad in law.

2. For that the Ld. AO erred in not allowing the deduction u/s s 24(b), 80C and 80D merely for the reason of clerical error in the return of income in spite of the fact that the necessary evidences were submitted before the Ld. AO.

3. For that the Ld. AO/CIT(A) erred in not following the direction of Hon'ble CBDT in its instruction No. Circular No. 14(XL-35) of 1955, dated 11.4.1955 and the law that no tax can be imposed without the authority of law.

4 Under the facts and circumstances of the case order passed by Ld. CIT (A) is not maintainable.

5 For that the appellant craves leave to add, alter or withdraw any ground/s of appeal on or before hearing of the appeal."

2. Brief facts of the case are that the assessee filed its return of income for the A.Y. 2014-15 and while filing the return of income assessee has failed to claim the deduction of Rs. 1,50,000/- for interest on housing loan u/s 24(b) of the Act and Rs. 1,00,000/- u/s 80C further amount of Rs. 29,136/- u/s 80D of the Act for the assessment year in question. Consequent to that assessee after realizing its mistake has filed an appropriate rectification petition u/s 154 of the Act for rectifying the defects before CPC, Bengaluru. However, petition of the assessee was completely ignored by the AO even though necessary evidence in support of his claim made before the AO while filing the rectification petition. However, the claim of the assessee was rejected by the AO only on the ground that such a claim has to be made by filing revised return only and the petition filed by the assessee was rejected.

3. Dissatisfied with the order passed by the AO u/s 154/143(1) of the Act vide order dated 24.04.2019, assessee preferred an appeal before the Id. CIT(A) where the appeal of the assessee was dismissed by sustaining the order passed by the AO.

4. Aggrieved by the above order, assessee is in appeal before the Tribunal for judicious consideration. At the time of hearing, Id. AR submitted that assessee has filed all the supported evidence before the Id. AO along with petition filed u/s 154 by producing the following evidences:

"1. Form No. 16 showing deductions u/s 24(b), 80C and 80D.

2. Certificate from Axis Bank in support of payment of interest on housing loan Rs. 1,69,965/- (deduction restricted to Rs. 1,50,000/-) and principal payment of housing loan Rs. 24,441/- as per certificate from bank in support of deduction u/s 24(b).

3. The 80C was claimed in respect of the following payments/deductions from salary.

<i>Sl. No.</i>	<i>Particulars</i>	<i>Amount (Rs)</i>	<i>Evidence</i>
1	<i>Employee's contribution of provident fund</i>	56172	<i>As per Form No. 16</i>
2	<i>Repayment of principal amount of housing loan</i>	24441	<i>As per certificate from Axis Bank</i>
3	<i>Payment of life insurance premium</i>	36326	<i>As per bank statement</i>
		116939	

However, the ld. AO completely ignored the evidence adduced by assessee and rejected the rectification petition filed by the assessee."

5. Similarly, assessee has submitted such supported document before the ld. CIT(A) but the claim of the assessee was not considered by the authorities below. The ld. AR further contended that merely because the claim has not been made in the return of income, the same cannot be rejected by the AO. The revenue cannot take advantage of mistake/ignorance of the assessee by placing reference to the Circular No. 14 of 1955 dated 11.04.1955 issued by the CBDT in which stated that the officers of the department must not take advantage of the ignorance of the assessee about his rights and it is their duty to assist the tax payer in every reasonable way particularly in the matter of claiming and securing relief. The circular is reproduced herewith for ready reference:

"Administrative instructions for guidance of income tax officers on matters pertaining to assessment

1. The Board have issued instructions from time to time in regard to the attitude which the Officers of the Department should adopt in dealing with assesseees in matters affecting their interest and

convenience. It appears that these instructions are not being uniformly followed.

2. Complaints are still being received that while ITO's are prompt in making assessments likely to result into demands and in effecting their recovery, they are lethargic and indifferent in granting refunds and giving reliefs due to assessees under the Act. Dilatoriness or indifference in dealing with refund claims (either under s. 48 or due to appellate, revisional, etc., orders) must be completely avoided so that the public may feel that the Government are actually prompt and careful in the matter of collecting taxes and granting refunds and giving reliefs.

3. Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the Department for it would inspire confidence in him that he may be sure of getting a square deal from the Department. Although, therefore, the responsibility for claiming refunds and reliefs rests with assessees on whom it is imposed by law, officers should-

(a) draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other;

(b) freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs.

4. Public Relations Officers have been appointed at important centres, but by the very nature of their duties, their field of activity is bound to be limited. The following examples (which are by no means exhaustive) indicate the attitude which officers should adopt

(a) Sec 17(1): While dealing with the assessment of a non-resident assessee the officer should bring to his notice that he may exercise the option to pay tax on his Indian income with reference to his total world income if it is to his advantage.

(b) Sec. 18(3), (3A), (3B) and (3D): The officer should in every appropriate case bring to the assessee's notice the possibility of obtaining a certificate authorizing deduction of income-tax at a rate

less than the maximum or deduction of super tax at a rate lower than the flat rate, as the case may be.

(c) Secs. 25(3) and 25(4): The mandatory relief about exemption from tax must be granted whether claimed or not; the other relief about substitution, if not time barred must be brought to the notice of a taxpayer.

(d) Sec. 26A: The benefit to be obtained by registration should be explained in appropriate cases. Where an application for registration presented by a firm is found defective, the officer should point out the defect to it and give it an opportunity to present proper application.

(e) Sec. 33A: Cases in which the ITO or the Asstt. Commissioner thinks that an assessment should be revised, must be brought to the notice of the CIT.

(f) Sec. 35: Mistakes should be rectified as soon as they are discovered without waiting for an assessee to point them out.

(g) Sec. 60(2): Cases where relief can properly be given under this sub-section should be reported to the Board.

5. While officers should, when requested, freely advise assessee the way in which entries should be made in various forms, they should not themselves make any in them on their behalf. Where such advice is given, it should be clearly explained to them that they are responsible for the entries made in any form and that they cannot be allowed to plead that they were made under official instructions. This equally applies to the Public Relation Officers.

6. The intention of this circular is not that tax due should not be charged or that any favour should be shown to anybody in the matter of assessment, or that where investigations are called for, they should not be made. Whatever the legitimate tax it must be assessed and must be collected. The purpose of this circular is merely to emphasize that we should not take advantage of an assessee's ignorance to collect more tax out of him than is legitimately due from him."

6. Therefore, he prayed before the bench by stating that the claim of the assessee may be allowed by this Tribunal and appropriate direction may be given to the authorities below to consider the claim of assessee.

7. On the other hand, ld. DR vehemently argued and mentioned that assessee is not eligible for any of the deduction as it was not claimed during the filing of the return. Therefore, the claim before the ld. AO cannot be sustained without filing the revised return. He respectfully relied on the decision rendered by the Hon'ble Supreme Court in the case of Goetz (India) Ltd. vs CIT (2006) 284 ITR 3231 (SC).

8. Further, the ld. 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.”

8.2. Ld. Counsel 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.”

8.3. The ld. 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.”

10. We heard the rival submission and perused the material available on record. Since the assessee has failed to claim sum of Rs. 1,50,000/- for interest of housing loan u/s 24(b), Rs. 1,00,000/- u/s 80C and Rs. 29,136/- u/s 80D respectively and the assessee in order to substantiate its claim placed before the ld. CIT(A) as well as before the Tribunal. The copy of Form No. 16 showing of deduction u/s 24(b), 80C and 80D respectively, certificate from Axiz Bank in support of payment of interest of housing loan of Rs. 1,69,965/- (deduction restricted upto Rs. 1,50,000/- and principal payment of housing loan of Rs. 24,441/- as per certificate from the bank in support of deduction u/s 24(b) of the Act. We, therefore, direct the revenue to allow the claim of assessee as stated above.

11. We respectfully consider the order of Goetz India Ltd, supra. The catena of judgments is produced by the ld. 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 24(b), 80C & 80D of the Act. Accordingly, we set aside the order of the ld CIT(A) with a direction to allow the deduction, claimed by the assessee.

12. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 28.07.2023.

Sd/-

Sd/-

(Manish Borad)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 28.07.2023

Biswajit

Copy of the order forwarded to:

1. Appellant- Shri Sandip Chattopadhyay, C/o. Rajesh Mohan & Associates, Unit No. 18, 5th Floor, Bagati House, 34, Ganesh Chandra Avenue, Kolkata-700013.
2. Respondent – ITO, Ward-37(2), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata