R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL (IT) NO. 437 OF 2016

The Principal Commissioner of Income Tax – 8 .. Appellant

Versus

M/s. Tata Consulting Engineers Ltd .. Respondent

....

- Mr. N.C. Mohanty for the Appellant
- Mr. Madhur Agrawal a/w Mr. Atul Jasani for the Respondent

....

CORAM : AKIL KURESHI &
M.S. SANKLECHA, JJ.

DATE : NOVEMBER 19, 2018.

P.C.:

1. We have heard learned counsel for the parties for final disposal of the Income Tax Appeal on admission stage itself.

2. The Revenue has filed this appeal challenging an order of the Income Tax Appellate Tribunal, Mumbai (“**the Tribunal**” for short) dated 4.3.2015. Following questions are presented for our consideration:

> “ A. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in restoring the matter back to the file of the AO without appreciating the fact that the assessee has neither claimed the foreseeable loss of Rs. 34,83,000/- in the return

of income nor filed any revised return claiming the said loss?

B. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in upholding the CIT(A)'s order regarding deletion of addition in respect of retention money without appreciating the fact that the assessee has neither claimed retention money of Rs. 77.21 lakhs in the return of income nor filed any revised return.

C. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in restoring the matter back to the file of the First Appellate Authority (FAA) in respect of claim of additional depreciation pertains to earlier years of Rs. 1.42 crores without appreciating the fact that the assessee has neither claimed the said depreciation in the return of income nor filed any revised return?"

3. Learned counsel for the Revenue candidly stated that the Question B is covered against the Revenue by virtue of the judgment of this Court in the case of **Commissioner of Income Tax Vs. Associated Cables Pvt Ltd** reported in **[2006] 286 ITR 596 (Bom)**. This question is not required to be considered any further.

4. Question A pertains to the Revenue's objection to the Tribunal's order remanding the question of assessee's claim of foreseeable loss of Rs. 67.53 lacs. The Assessing Officer having rejected the entire claim, the assessee carried the matter in appeal. The Commissioner of Income Tax (Appeals) granted partial relief and allowed the loss of Rs. 34.83 lacs. The Tribunal in further appeals of both the sides placed the issue back before the Assessing Officer for fresh consideration.

5. The main objection of the learned counsel for the Revenue is that the assessee had raised such a claim without the same being part of the return filed and without the assessee having filed a revised return. The Tribunal in this context, refereed to and relied upon the judgment of this Court in the case of **Commissioner of Income Tax Vs. Pruthvi Brokers & Shareholders P Ltd** reported in **[2012] 349 ITR 336 (Bom).** In the said case, the Division Bench of this Court had taken a view that the Appellate Authorities have power to consider the claim even though not made in the return. This question, therefore, is not required to be entertained.

6. The sole surviving question pertains to the assessee's claim of additional depreciation of Rs. 1.42 crores. The

Assessing Officer rejected the claim on the ground that the same was not made in the return and no revised return was filed. The CIT (Appeals), however, held that the claim did not pertain to the year under consideration. In further appeal, the Tribunal remanded the issue back to the CIT (Appeals) for fresh consideration.

7. Upon perusal of the order of the Tribunal, we notice that there is some dichotomy in the observations made by the Tribunal with respect to this issue. At one stage, the Tribunal noted the findings of the CIT (Appeals) that the claim pertains to the Assessment Years 2004-05 and 2005-06 and not the current year whereas at a later stage, the Tribunal referred to the issue being not entertained by the CIT (Appeals) since the assessee had not made the claim in the return filed.

8. It appears that the CIT (Appeals) had rejected the assessee's claim on the ground that the same did not pertain to the year under consideration. If that be so, the Tribunal should have given its opinion whether the CIT (Appeals) was correct in coming to such a conclusion. Mere remand to CIT (Appeals) for fresh consideration would be futile. In so far as this question is concerned, we are, therefore, of the opinion that the Tribunal may be requested to decide the ground of the assessee in his appeal.

9. The appeal filed by the Revenue is therefore, allowed in part. The remand by the Tribunal of the issue under consideration is reversed. The appeal of the assessee is placed back before the Tribunal for fresh consideration on this limited issue. We have expressed no opinion on merits. The Tribunal may decide the question independently. The Income Tax Appeal is disposed of.

[M.S. SANKLECHA, J.] **[AKIL KURESHI, J]**