IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

T.C.A.NO.413 OF 2014

Commissioner of Income Tax,
Chennai. .. Appellant/Respondent

-vs-

M/s. Perlo Telecommunication and
Electronic Components India P Ltd.,
Special Electronic Zone,
SIPCOT Indl. Park,
Phase III, Sriperumbudur,
Chennai - 602 105. .. Respondent/Appellant

Appeal filed under Section 260-A of the Income Tax Act, 1961, as against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, dated 18.11.2013 in I.T.A. No. 1037/Mds/2013 for the assessment year 2008-2009, against the order of the Commissioner of Income Tax (appeals)-V, Chennai dated 28.02.2013 in I.T.A. No. 327/2011-2012 pertaining to assessment year 2008-2009 against the order of the Assistant Commissioner of Income Tax, Company circle V(1) Chennai-34 dated 23.12.2011 in Pan No/GIR No.AADCP9246K.

For Appellant : Mr. T. Ravikumar
Senior Standing Counsel

JUDGMENT
(Delivered by T.S.Sivagnanam, J.)

This appeal filed by the Revenue under Section 260-A of the Income Tax Act, 1961 is directed against the order dated 18.11.2013 passed by the Income Tax Appellate Tribunal, Madras 'A' Bench (the Tribunal) in ITA. No.1037/Mds/2013 for the assessment year 2008-09.

2. We have heard Mr. T.Ravi Kumar, Learned Senior Standing Counsel appearing for the appellant-Revenue. Though the Assessee has been served and their name has also been printed in the

cause list, none appeared on behalf of the assessee.

3. This appeal had been filed by the Revenue raising the following substantial questions of law :-

1. Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that assessing officer should have considered rectified computation of income submitted the assessee during the course of assessment proceedings and allowed the claim for deduction expenditure made through such revised computation and not through a revised return of income?
2. Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee did not claim additional deduction or exemption or made a fresh claim for deduction, by filing a revised computation and claiming deduction under section 37(1)?

4. The short issue, which travelled up to the Tribunal, was whether the claim of loss made by the assessee, as against the original loss claimed in the original return could have been entertained by the Assessing Officer. Admittedly, no revised return of income was filed by the assessee, but, when the case was discussed, while taking up the scrutiny assessment, the assessee filed a revised computation of income and claimed further loss. This was denied by the Assessing Officer by placing reliance on the decision of the Hon'ble Supreme Court in Goetze India Limited Vs. CIT reported in [284 ITR 323 (SC)]. The assessee carried the matter in appeal to the Commissioner of Income Tax(Appeals)-V(CIT), Chennai, who by order dated 28.02.2013 dismissed the appeal. Aggrieved by the same, the assessee has approached the Tribunal, which allowed assessee's appeal.

5. Mr. T.Ravi Kumar, Learned Senior Standing Counsel is right in sofar as the effect of the decision of the Hon'ble Supreme Court in Goetze India Limited Vs. CIT reported in [284 ITR 323 (SC)]. In no uncertain terms, it has been that the claim for the deduction not made in the original return cannot be entertained by the Assessing Officer otherwise than by filing a revised return of income.

6. We note that the paragraph 4 of the judgment of the Hon'ble Supreme Court made it clear that the issue in the said case (Goetze India Limited Vs. CIT) is limited to the power of the Assessing Officer and does not impinge on the power of the Income-Tax Appellate Tribunal under Section 254 of the Act.

7. For the same proposition, the Learned Senior Standing Counsel appearing for the Revenue placed reliance on the decision in Commissioner of Income Tax(CIT) -vs- Jai Parabolic Springs Ltd reported in [2008] 306 ITR 42 (Delhi) and Nagaraj and Co. (P.) Ltd. -vs- Assistant Commissioner of Income Tax, Circle-IV(4), Chennai, reported in [2020] 425 ITR 421 (Madras).

8. In fact, the Tribunal took note of these decisions and had placed reliance on the decision in Commissioner of Income Tax Vs. Pruthvi Brokers & Shareholders Pvt. Ltd., reported in [2012] 349 ITR 336 (Bombay) and noted that even if a claim is not made before the Assessing Officer, it can be made before the appellate authorities and the jurisdiction of the appellate authorities to entertain such a claim has not been negated by the Hon''ble Supreme Court in Goetze India Limited Vs. CIT and in fact, the Supreme Court made it clear that the issue in the said case was limited to the power of the assessing authority and that the judgment does not impinge on the power of the Tribunal under Section 254 of the Act.

9. Thus, the power of the Tribunal cannot be curtailed, based upon the dictum of the Hon'ble Supreme Court in Goetze India Limited Vs. CIT. After noting this legal position, the examination is as to whether the Tribunal has recorded a factual finding that claim made by the assessee, when the case was discussed by the Assessing Officer during the scrutiny assessment by filing a computation, which is not a fresh claim. Further, the Tribunal held that the assessee is only claiming expenditure, which was left out at the time of filing of original income tax return and in any event, the Assessing Officer has power to make upward or downward adjustments in the income returned filed by the assessee and when the assessee had not claimed certain expenditures clearly evident from the records and it comes to the knowledge of the Assessing Officer at the time of assessment proceedings, the Assessing Officer should grant relief to the assessee.

10. The Tribunal took note of the Circular issued by CBDT dated 11.04.1955, wherein the Board ordered that the officers of the Income Tax should not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist the taxpayers in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard, the officer 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.

11. Further, the Circular states that department should freely advise the assessee, when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs. It may be true that the Circular

is of the year 1955. Nevertheless, as per the recent notification issued by the Income Tax Department as to how the department has to approach the assessee, the Board has been consistent to state that the department should adopt an assessee friendly approach. In any event, on facts, the Tribunal was convinced that the claim made by the assessee towards expenditure was not a fresh claim. Therefore, the Tribunal had exercised its powers conferred under Section 254 of the Act, which cannot be found fault with.

12. We find from the penaltimate paragraph of the order passed by the Tribunal dated 18.11.2013 that the assessee's appeal has been allowed and but no consequential direction was issued to the Assessing Officer, which was required to be done. This is because the Assessing Officer non suited the assessee on a technical ground that such a claim for expenditure cannot be entertained, without filing a revised return.

13. The Tribunal having held that the claim is not a fresh claim and the computation given by the assessee can be considered, necessarily the matter has to go back to the Assessing Officer to consider the claim on merits. Since the Tribunal has not issued consequential direction, we are inclined to do so.

14. In the result, the Tax Case Appeal is dismissed and the substantial questions of law are answered as against the Revenue and the matter is remanded to the Assessing Officer to consider the assessee's claim of expenditure on merits and in accordance with law, after affording opportunity of personal hearing to the assessee, because the assessment is of the year 2008-09. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Sp/Maya

To

1. The Income Tax Appellate Tribunal,
   Madras 'A' Bench
   Chennai.

2. The Commissioner of Income Tax,(Appeals V)
Chennai.

3. The Assistant Commissioner of Income Tax,
Company circle V (1)
Chennai-34.

+1cc to Mr. T. Ravikumar, Advocate, S.R.No.48284

T.C.A.No.413 of 2014

SRA(CO)
PM/01/11/2021