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

% ***Decision delivered on: 07.04.2021***

\+ **ITA 35/2019**

INTERNATIONAL TRACTORS LTD .....Appellant

Through : Mr. Satyen Sethi, Adv.

versus

DY. COMMISSIONER OF INCOME TAX (LTU) & ANR.

.....Respondents

Through : Mr. Ajit Sharma, Sr. Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J. (ORAL):

1. With the consent of the learned counsel for the parties, the appeal is taken up for the final hearing.

2. Admit.

3. The following substantial questions of law are framed for consideration by this Court:

(i) Whether in the facts and circumstances of the case and law, the Income Tax Appellate Tribunal [in short 'Tribunal'] misdirected itself in setting aside the order of the Commissioner of Income Tax (Appeals) [in short "CIT(A)"] granting deduction, under Section 80JJAA of the Act and *qua* prior period expenses?

(ii) Whether the Tribunal erred in law in remanding the assessee's claims to the Assessing Officer (in short "AO") for verification and satisfaction although that exercise had been carried out by CIT(A) as mandated under

the Act?

Preface:

4. This is an appeal directed against the order of the Tribunal dated 23.07.2018 passed in ITA No.5756/Del/2013 concerning the assessment year [in short 'AY'] 2007-2008.

5. Pithily put, the assessee is aggrieved by the impugned order passed by the Tribunal, for the reason, that the Tribunal has remanded the matter to the AO to verify the details of the claims placed by the assessee before the CIT(A) and allow the same, subject to satisfaction. The direction of remand issued by the Tribunal is accompanied with a further direction that, before the AO reaches any conclusion, he shall give the assessee an opportunity hearing and only thereafter, decide the issue, as per the facts obtaining in the case and, in accordance with the law.

Backdrop:

6. Before we proceed further, what is required to be noticed is the following broad facts:

6.1 The assessee claims that he is engaged in the business of manufacturing and assembling tractors and tractor components.

6.2 On 30.10.2007, the assessee filed the return *qua* AY 2007-2008 wherein it declared its taxable income as Rs.147,83,25,740/-. Concededly, the assessee while filing its return of income had failed to claim the deduction both under Section 80JJAA of the Act and *qua* prior period expenses. Insofar as the deduction under Section 80JJAA of the Act was concerned, the amount was pegged at Rs.1,07,33,164/- whereas insofar as deduction *qua* prior period expenses was involved, the amount was quantified at Rs.51,21,024. These deductions were claimed by the assessee

before the AO by way of a statement/communication dated 14.12.2009 filed with him. This statement, admittedly, was accompanied by a Chartered Accountant's report in the prescribed form [i.e., Form 10DA]. Furthermore, the details concerning prior period expenses were also provided by the assessee.

6.3 The AO, however, declined to entertain the two deductions claimed by the assessee, i.e., under Section 80JJA of the Act and *vis-à-vis* prior period expenses. The AO, thus, assessed the assessee's taxable income at Rs.148,24,34,100/- vide assessment order dated 29.12.2009. The assessee, being aggrieved, lodged an appeal with the CIT(A) on 27.01.2010.

6.4. The CIT(A) *vide* order dated 30.08.2013 allowed the appeal of the assessee. This time revenue was aggrieved and thus, went up in appeal to the Tribunal against the order of the CIT(A). The Tribunal *vide* the impugned order, as noted above, remanded the matter to the AO. Pertinently, the Tribunal, while remaining the matter, has observed in paragraph 17 of the impugned order that the CIT(A) was right in law in entertaining the fresh claims made by the assessee, in respect of the aforesaid deductions, i.e., claim under Section 80JJAA of the Act and the claim concerning prior period expenses.

Submissions of Counsel:

7. Mr. Satyen Sethi, who appears on behalf of the assessee, has, broadly, advanced the following submissions:

7.1. That the CIT(A) has, in effect, exercised powers under Section 250(4) of the Act. In other words, according to Mr. Sethi, the CIT (A) was well within his powers to make further inquiry into the matter, and since, such inquiry had been made and the two claims in issue had been allowed, there

was no necessity of remanding the matter to the AO for carrying out a fresh inquiry.

7.2. The observation of the Tribunal that the AO had not been given an opportunity, to respond to the evidence considered by the CIT(A), was unnecessary in the facts of the case, as it was the CIT(A) who had called for the information concerning the fresh claims made by the assessee, and therefore, the question of giving an opportunity to the AO did not arise

7.3. In other words, the contention was that Rule 46A of the Income Tax Rules, 1962 [in short 'the Rules'] had no applicability in the instant case. In sum, the argument was that it was not the assessee who had produced the additional evidence in support of its claim but it was the CIT(A) who had directed the production of material, and therefore, the procedure prescribed under Rule 46A of the Rules was not required to be adhered to. This apart, Mr. Sethi also relied upon sub-rule 4 of Rule 46A to contend that the said sub-rule is an exception to the procedure prescribed under sub-rules 1 to 3 of the said rule and that the said sub-rule empowered the CIT(A), to direct production of evidence, i.e., documents and witnesses, etc., for disposal of the appeal.

7.4. In support of his submission that the provision of Section 250(4) of the Act is distinct from the provisions contained in sub-rules 1 to 3 of Rule 46A of the Rules, Mr. Sethi placed reliance on the judgment of the Bombay High Court rendered in ***Smt. Prabhavati S. Shah v. CIT, [1998] 231 ITR 1 (Bombay)*** as also the judgment of the Orissa High Court rendered in ***B.L. Choudhury v. CIT, [1976] 105 ITR 371 (Orissa)***.

8. On the other hand, Mr. Ajit Sharma, who appears on behalf of the revenue, relied upon the order of the Tribunal as well as that of the AO. Mr.

Sharma contended that sub-section 2 of Section 80JJAA of the Act, as it stood before its amendment *via* Finance Act, 2016 w.e.f. 01.04.2017 (clause b of sub-section 2 of section 80JJAA), mandated that no deduction could be claimed in respect of employment of new employees unless the assessee furnished, along with the return of income, the report of the accountant. Therefore, the contention advanced was that, since the return had been filed without the report of the accountant, the Tribunal had, rightly, remanded the matter to the AO for carrying out the necessary inquiry as to whether or not the claim under Section 80JJAA was viable. Likewise, in respect of the claim of deduction *qua* prior period expenses, Mr. Sharma said all that the Tribunal had done was, to direct the verification of the claim, in line with the evidence produced by the assessee before the CIT(A).

Reasons and Analysis:

9. We have heard the learned counsel for the parties and perused the record. As indicated in the opening, what is not in dispute are the following facts:

(i) The assessee had not made the claims, under Section 80JJA of the Act and *qua* prior period expenses, in the original return.

(ii). The assessee did not move the AO with a revised return for claim*ing* deductions under Section 80JJAA of the Act and for prior period expenses.

(iii) The assessee for the first time made these claims before the AO by way of a statement/communication dated 14.12.2009. The said communication was, concededly, accompanied by the auditor's report prepared in the prescribed form and also contained details of the prior period expenses.

(iv) The AO while framing the assessment declined to entertain these

claims on the ground that they did not either form part of the original return or the revised return. In support of his approach, the AO has placed reliance on the judgment of the Supreme Court rendered in ***Goetze (India) Ltd v. CIT, (2006) 284 ITR 323 (SC).***

(v) However, the CIT(A) ruled that the fresh claims made by the assessee could be entertained, and in this context, relied upon the judgments of various Courts and Tribunals.

(vi) The CIT(A) thereafter, examined the evidence placed on record by the assessee concerning both the claims, i.e., deductions claimed under Section 80JJAA of the Act and for prior period expenses. The discussion concerning these two claims are set out in paragraphs 6.7.2 and 6.7.3 of the CIT(A)'s order.

(vi) The Tribunal *via* the impugned order, while sustaining the view taken by the CIT(A) that a fresh claim could be entertained by it, has remanded the matter to the AO, as indicated above, for a fresh verification in respect of both the claims.

10. Given the foregoing, what is required to be noticed is that under Section 80JJAA of the Act, the assessee claimed a deduction amounting to Rs.1,07,33,164/- while in respect of the prior period claim, the assessee claimed a deduction amounting to Rs.51,21,024/-. The CIT(A), however, allowed the deduction *qua* prior period expenses, only to the extent of Rs.25,40,305/-. The remaining amount was disallowed largely on the ground that expenses had been incurred to the extent of Rs.24,78,391/- without deduction of withholding tax. There were also certain expenses of a cumulative value of Rs.1,02,328/- which were disallowed, for the reason that they did not concern the period in issue, i.e., AY 2007-2008.

11. Therefore, it would be relevant, for the moment, to extract hereafter, what is it, that was put before the AO along with the statement/communication dated 14.12.2009:

> *"1. Claim of deduction under section 80JJAA of Rs.l,07,33,l64/- - this deduction is claimed on account of employment given to new workmen. The claim is duly supported with the report issued in Form 10DA read with Rule 19AB and duly certified by the chartered accountant. A copy of the report issued under section 80JJAA is also enclosed herewith for your ready reference and perusal.*
>
> *2. Claim of expenditure of Rs.5l,21,024/- - These expenditures are accounted for in the books of account of the subsequent FY 2008-09 (AY 2007-08). A list of all these expenditures, called as prior period expenses, is enclosed herewith. However all these expenditure relate to FY 2006-07 i.e. AY 2007-08.*
>
> *3. Disallowance of expenditure uls 40(a)(ia) of Rs.24,78,391/- Out of the total prior period expenses of Rs.5121024/- as stated above, expenditures aggregating to Rs.2478391/- were eligible for deduction of tax at source. But no tax was deducted at source in AY 2007-08. As such these expenditure of Rs.24,78,391/- were disallowed under section 40(a)(ia) on account of non deduction of tax at source."*

11.1. The AO, while framing the assessment, simply, declined to look at the material placed before him and in this context made the following observations:

> *"8. <u>Rejection of claim of Rs.1,07,33,164/- under section 80JJAA & Prior Period Exp. of Rs.51,21,024/-.</u>*
>
> *8.0 During the course of hearing proceedings on 14.12,2009, the assessee through its AR has submitted a statement of revised taxable income. Herein, the assessee has claimed deduction under section 80JJAA of Rs,1,07,33,164/- and prior period exp of*

Rs.51,21,024/-.

8.1 The claim of the assessee is not acceptable. Section 139(5) of the Act, provides that if any person, having furnished a return under sub-section (1), or in pursuance of a notice is issued under sub-section (1) of section 142, discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

8.2 In this case, the assessee had the option to submit revise return incorporating it's claimed by 31.3.2009. Therefore, its claim submitted vide letter dated 14.12.2009 is not tenable. Moreover, in view of the decision of Supreme Court in the case of Goetze (India) Ltd. 284 ITR 323, no claim can be entertained by the Assessing Officer without having revised return filed by the assessee.

8.3 Moreover, the assessee has also not substantiated with documentary evidence that it is eligible for deduction under section 80JJAA and liability of Rs.51,21,024/- was incurred in this assessment year. Thus, on merit also the claim of the assessee fails.

8.4 In view of the above discussion, claim made by the assessee for deduction under section 80JJAA and prior period expenses is rejected. The assessee has also not been able to substantiate the claim of prior period expenditure. Therefore, claim of prior period expenditure is also fails on merit."

11.2. On the other hand, the CIT(A), as noticed above, after entertaining the two new claims, examined the same in great detail as is evident from the findings of fact returned in paragraphs 6.7.2 and 6.7.3. of the order of CIT(A). For the sake of convenience, the same are extracted hereafter:

"6.7.2 Regarding the claim under section 80JJAA, the

appellant filed before me, a copy of the audit report in prescribed form no. 1ODA, which was duly certified by Chartered Accountant. According to the same, the appellant had employed new regular workmen numbering 543 over and above the existing employees numbering 1262. The additional wages paid to the regular workmen by the appellant amounted to Rs.3,54,57,213/-. The appellant had claimed 30% of the same in the current year as per section 80JJAA amounting to Rs. l,07,33,164/-. Before me, the Ld. Counsel also furnished details of each such new regular workmen along with their respective dates of joining service, period of service during the current year, respective bank accounts in which remuneration was paid and had thereby given breakup of the allowable additional wages paid during the year. On examination of the same, I hold that the claim by the appellant under section 8JJAA was correct, accordingly, the same is being allowed.

6.7.3 Regarding the other claim made before me relating to certain expenses classified on the 'prior period expenses' amounting to Rs.51,21,024/-, I was informed that these expenses were not claimed in the current year as till finalization of return, their details were not available. These were later claimed in [the] subsequent year but added back in that year being 'prior period expenses' for that year. However, in terms of accounting norms, these pertained to the current year. I observe that out of the same, an amount of Rs.24,78,391/- was not allowable, as no TDS was deducted thereon and hence the claim for same was already withdrawn by the appellant under section 40(a)(ia). Regarding the balance amount of Rs.26,42,633/-, the appellant was asked to furnish the details in respect of each item embedded in it and to justify as to why liability in respect of the same may be held to have crystallized during the current year. On examination of [the] appellant's contention, I find that the above expenses were booked in the next financial year as part of an amount of Rs.75,45,049/- under the head 'prior period expenses, which were added back to the taxable income in that year. A copy of the statement of income for assessment year 2008-09 was furnished before me in this regard, which shows

that the contention of the appellant is correct. Out of the aforesaid amount of Rs.75,45,049/-, the appellant had made [the] impugned claim of Rs.51 ,21,024/- in the current year by holding that the same pertained to the current year. On careful examination of the details furnished by the appellant, I find that majority of the expenses embedded in the amount of Rs.26,42,633/- were in the nature of travel expenses, etc which were based on the claim in respect of current year made by the employees in subsequent years. Since the appellant was not in receipt of the vouchers raised by the employees at the time of filling of return of income, while the same pertained to the current year, the claim of Rs.4,92,825/- in respect of the same, is accordingly allowed. However, certain bills such as bill for car MP3Player dated 30.06.2007 of Rs.3,600/-, cost of mobile phone purchased on 16.08.2007 of Rs.l2,000/- and an amount of Rs.75,274/- in respect of cost consumption claimed by various clients of the appellant by raising invoices on 31.08.2007 amounting to Rs.75,274/- cannot be considered to be related to the current year. Further, Membership Fee and Subscription (advance) aggregating to Rs.ll,454/- on different dates on 04.07.2007, 14.11.2007 and 19.03.2008 also does not pertain to the current year, being advance in nature. Subject to the above, the appellant's claim in respect of expenses, which were not claimed during the current year while filing the return of income (but were shown as "prior period expense" in the computation of income of [the] assessment year 2008-09) amounting to Rs.25,40,305/- (Rs.26,42,633 1,02,328) is held as allowable in the current year."

[Emphasis is ours]

12. A perusal of the aforementioned extract would show that the CIT(A) insofar as the deduction claimed under Section 80JJAA was concerned, not only had before him the chartered accountant's report in the prescribed form, i.e., Form 10DA but also examined the details concerning the new regular workmen, numbering 543, produced before him. In this context, the CIT(A) examined the details concerning the dates when the said workmen had

joined the services, the period, during which they had worked, relatable to the AY in issue, as also the details concerning the bank accounts in which remuneration was remitted.

13. Based on the aforesaid material, the CIT(A) concluded that the deduction under Section 80JJAA was correctly claimed by the assessee.

13.1. Likewise, insofar as prior period expenses were concerned, as noticed above, out of a total amount of Rs.51,21,024/- claimed by the assessee, a sum of Rs.24,78,391/- was not allowed, for the reason, that withholding tax had not been deducted by the assessee.

13.2. It is pertinent to note that the assessee had disclos*ed* the same in its statement/communication dated 14.12.2009 placed before the AO. The other amounts, which did not concern the period in issue, amounting to a cumulative value of Rs.1,02,328/- was also disallowed.

14. Therefore, to our minds, once the Tribunal accepted the view taken by the CIT(A) that it could entertain fresh claims; a view which the CIT(A) has expressed in paragraph 6.6.2 of its order, all that the Tribunal was required to examine was: as to whether the CIT(A) had, scrupulously, verified the material placed before it before allowing deductions claimed by the assessee. The Tribunal, however, instead of examining this aspect of the matter, observed, and in our view, incorrectly, that because an opportunity was not given to the AO to examine the material, therefore, the matter needed to be remanded to the AO for a fresh verification.

15. In our view, unless the Tribunal would have reached to a conclusion and expressed its clear view, in that respect, as to what was wrong or missing in the examination made by the CIT(A), a remand was not called for. We agree with Mr. Seth's contention that the CIT(A) in the exercise of

its powers under Section 250(4) of the Act was entitled to seek production of documents and/or material to satisfy himself as to whether or not the deductions claimed were sustainable/viable in law. This was, however, a case where the details were placed before the AO, who declined to entertain the claims only on the ground that they did not form part of assessee's original return and that the assessee had not made a course correction by filing a revised return.

15.1. This view was based, as noticed above, on the judgment of the Supreme Court rendered in ***Goetze (India) Ltd. (Supra).*** The CIT(A), squarely, dealt with this and concluded, that a fresh claim could be entertained. Therefore, the Tribunal, as noticed above, has accepted this view of the CIT(A) and the revenue has not come up in appeal before us assailing this conclusion of the Tribunal.

16. In any event, we are of the view that, if a claim is otherwise sustainable in law, then the appellate authorities are empowered to entertain the same. This view finds reflection in a judgment of the coordinate bench of this Court dated 28.11.2011, passed in ITA No.1233/2011, titled ***CIT vs. Aspentech India Pvt. Ltd***. The relevant observations made by the coordinate bench of this court, which are apposite, are extracted hereafter:

> *"5. The ITAT has agreed the reasoning given by the CIT(Appeals) and has relied upon the decision of this Court in CIT Vs. Jai Parabolic Springs Ltd. (2008) 306 ITR 42 (Del.). In the said case Delhi High Court has referred to the powers of the appellate forum and the decisions of the Supreme Court in National Thermal Power Co. Ltd. Vs. Commissioner of Income Tax (1998) 229 ITR 383 (SC), Gedore Tools Pvt. Ltd. Vs. Commissioner of Income Tax (1999) 238 ITR 268, Jute Corporation of India Ltd. Vs. Commissioner of Income Tax (1991) 187 ITR 688 (SC) and held that the appellate forum could have entertained and decided*

the said aspect. The decision in the case of Goetze (India) Ltd. (supra) is distinguishable. In the said case the assessee had filed the return of income for the Assessment Year 1995-96 on 30.11.1995. Thereafter, on 12.01.1998, the assessee wrote a letter to the Assessing Officer and made a new claim for a deduction, which was rejected by the Assessing Officer as there is no provision to amend the return. The Supreme Court further clarified that the issue raised in Goetze (India) Ltd. (supra) was limited to the power of assessing authority and did not impinge on the power of the tribunal as was in the case of National Thermal Power Ltd. (supra). In the present case also the appellate forum had entertained the claim made by the respondent-assessee and allowed the same. There is no dispute that the claim/deduction towards the expense is otherwise correct and allowable."

Conclusion:

17. Therefore, in our view, the judgment of the Tribunal deserves to be set aside. The fresh claims made by the assessee, as allowed by the CIT(A), will have to be sustained. It is ordered accordingly.

18. The questions of law are answered in the favour of the assessee and against the revenue.

19. The appeal is disposed of in the aforesaid terms. The pending application shall stand closed too.

RAJIV SHAKDHER, J

TALWANT SINGH, J

APRIL 7, 2021/aj

Click here to check corrigendum, if any