2024 INSC 760

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6274 OF 2013

M/s. Shriram Investments ... Appellant

versus

The Commissioner of Income Tax III
Chennai ... Respondent

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. The appellant-assessee filed a return of income on 19th November 1989 under the Income Tax Act, 1961 (for short, 'IT Act') for the assessment year 1989-90. On 31st October 1990, the appellant filed a revised return. As per intimation issued under Section 143(1)(a) of the IT Act on 27th August 1991, the appellant paid the necessary tax amount. On 29th October 1991, the appellant filed another revised return. The assessing officer did not take cognizance of the said revised return. Therefore, the appellant preferred an appeal before the Commissioner of Income Tax (Appeals) (for short, 'CIT (Appeals)'). By the order dated 21st July 1993, the CIT (Appeals) dismissed the appeal on the ground that in view of Section 139(5) of the IT Act, the revised return filed on 29th October 1991 was barred by limitation.

2. Being aggrieved, the appellant-assessee preferred an appeal before the Income Tax Appellate Tribunal (for short, 'the Tribunal). The Tribunal partly allowed the appeal by remanding the case back to the file of the assessing officer. The assessing officer was directed to consider the assessee's claim regarding the deduction of deferred revenue expenditure. The respondent Department preferred an appeal before the High Court of Judicature at Madras. By the impugned judgment, the High Court proceeded to set aside the order of the Tribunal on the ground that after the revised return was barred by time, there was no provision to consider the claim made by the appellant.

SUBMISSIONS

3. The learned counsel appearing for the appellant has taken us through the orders of the Tribunal and the High Court. He relies upon a decision of this Court in the case of ***Wipro Finance Ltd. v. Commissioner of Income Tax***[1]. The learned counsel pointed out that the Tribunal did not direct consideration of the revised return but the Tribunal was rightly of the view that the assessing officer can consider claim made by the appellant regarding deduction of deferred revenue expenditure in accordance with law. He submitted that the appellant was entitled to make a claim during the course of the assessment proceedings which otherwise was omitted to be specifically claimed in the return.

[1] 2022 (137) taxmann.com 230 (SC)

4. Learned ASG relied upon decisions of this Court in the case of ***Goetzge (India) Ltd. v. Commissioner of Income Tax***[2] and ***Principal Commissioner of Income Tax & Anr. v. Wipro Limited***[3]**.** He submitted that after the revised return was barred by limitation, there was no question of considering the claim for deduction made by the appellant in the revised return. He submitted that the High Court was absolutely correct in coming to the conclusion that after the revised return was barred by limitation, the assessing officer had no jurisdiction to consider the case of the appellant.

CONSIDERATION OF SUBMISSIONS

5. We have carefully considered the submissions made across the bar. We have carefully perused the judgment of this Court in the case of ***Wipro Finance Ltd***[1]. The issue which arose before this Court was not regarding the power of the assessing officer to consider the claim after the revised return was barred by time. This Court considered the appellate power of the Appellate Tribunal under Section 254 of the IT Act. Paragraphs 10 and 11 of the said decision in the case of ***Wipro Finance Ltd***[1] read thus:-

> **"10.** The learned ASG appearing for the department had faintly argued that since the appellant in its return had taken a conscious explicit plea with regard to the part of the claim being ascribable to capital expenditure and partly to revenue expenditure, it was not open for the appellant to plead for the first time before the ITAT that the entire claim must be

[2] (2006) 157 Taxman 1 (SC)
[3] (2022) 446 ITR 1

treated as revenue expenditure. Further, it was not open to the ITAT to entertain such fresh claim for the first time. This submission needs to be stated to be rejected. In the first place, the ITAT was conscious about the fact that this claim was set up by the appellant for the first time before it, and was clearly inconsistent and contrary to the stand taken in the return filed by the appellant for the concerned assessment year including the notings made by the officials of the appellant. **Yet, the ITAT entertained the claim as permissible, even though for the first time before the ITAT, in appeal under Section 254 of the 1961 Act, by relying on the dictum of this Court in National Thermal Power Co. Ltd. Further, the ITAT has also expressly recorded the no objection given by the representative of the department, allowing the appellant to set up the fresh claim to treat the amount declared as capital expenditure in the returns (as originally filed), as revenue expenditure. As a result, the objection now taken by the department cannot be countenanced.**

11. Learned ASG had placed reliance on the decision of this Court in Goetze (India) Ltd. vs. Commissioner of Income Tax in support of the objection pressed before us that it is not open to entertain fresh claim before the ITAT. According to him, the decision in National Thermal Power Co. Ltd. merely permits raising of a new ground concerning the claim already mentioned in the returns and not an inconsistent or contrary plea or a new claim. We are not impressed by this argument. For, the observations in the decision in Goetze (India) Ltd. itself make it amply clear that such limitation would apply to the "assessing authority", but not impinge upon the plenary powers of the ITAT bestowed under Section 254 of the Act.

> **In other words, this decision is of no avail to the department."**
>
> (emphasis added)

In this case, the Court did not consider the question of the power of the assessing officer to consider a claim made after a revised return was barred by time. This Court considered the appellate powers of the Tribunal under Section 254 of the IT Act. Moreover, this was a case where the department gave no objection for enabling the assessee to set up a fresh claim.

6. In the case of ***Goetzge (India) Ltd***[2], this Court held that the assessing officer cannot entertain any claim made by the assessee otherwise than by following the provisions of the IT Act. In this case, there is no dispute that when a revised return dated 29th October 1991 was filed, it was barred by limitation in terms of section 139(5) of the IT Act.

7. Section 139(5) of the IT Act, at the relevant time, read thus:

> "(5) If any person, having furnished a return under sub-section (1), or in pursuance of a notice 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:**
>
> Provided that where the return relates to the previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, the reference to one year aforesaid shall be construed as a

> reference to two years from the end of the relevant assessment year.**"**
>
> (emphasis added)

In the case of ***Wipro Limited*[3]*,*** in paragraph no.9, this Court held thus:

> **"9.** In such a situation, filing a revised return under section 139(5) of the Income-tax Act claiming carrying forward of losses subsequently would not help the assessee. In the present case, the assessee filed its original return under section 139(1) and not under section 139(3). Therefore, the Revenue is right in submitting that the revised return filed by the assessee under section 139(5) can only substitute its original return under section 139(1) and cannot transform it into a return under section 139(3), in order to avail of the benefit of carrying forward or set-off of any loss under section 80 of the Income-tax Act. The assessee can file a revised return in a case where there is an omission or a wrong statement. But a revised return of income, under section 139(5) cannot be filed, to withdraw the claim and subsequently claiming the carried forward or setoff of any loss. Filing a revised return under section 139(5) of the Income-tax Act and taking a contrary stand and/or claiming the exemption, which was specifically not claimed earlier while filing the original return of income is not permissible. By filing the revised return of income, the assessee cannot be permitted to substitute the original return of income filed under section 139(1) of the Income-tax Act. Therefore, claiming benefit under section 10B(8) and furnishing the declaration as required under section 10B(8) in the revised return of income which was much after the due date of filing the original return of income under section 139(1) of the Income-tax

> Act, cannot mean that the assessee has complied with the condition of furnishing the declaration before the due date of filing the original return of income under section 139(1) of the Act. As observed hereinabove, for claiming the benefit under section 10B(8), both the conditions of furnishing the declaration and to file the same before the due date of filing the original return of income are mandatory in nature.**"**

8. Coming to the decision of the Tribunal, we find that the Tribunal has not exercised its power under Section 254 of the IT Act to consider the claim. Instead, the Tribunal directed the assessing officer to consider the appellant's claim. The assessing officer had no jurisdiction to consider the claim made by the assessee in the revised return filed after the time prescribed by Section 139(5) for filing a revised return had already expired.

9. Therefore, we find no reason to interfere with the impugned judgment of the High Court. The appeal is, accordingly, dismissed.

.....J.
(Abhay S Oka)

.....J.
(Augustine George Masih)

New Delhi;
October 4, 2024.