IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H' : NEW DELHI

BEFORE SHRI G.D.AGRAWAL, VICE PRESIDENT AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.1580/Del/2010
Assessment Year : 2004-05

M/s Xerox India Limited, 5th and 6th Floor, Vatika Business Park, Block-I, Sector-49, Sohna Road, Gurgaon – 122 018, Haryana. PAN : AAACM8634R.	Vs.	Deputy Commissioner of Income Tax, Central Circle-20, New Delhi.
(Appellant)		(Respondent)

Appellant by : Shri Ajay Wadhwa, CA.
Respondent by : Shri Sameer Sharma, Sr.DR.

ORDER

PER G.D.AGRAWAL, VP :

This appeal by the assessee is directed against the order of learned CIT(A)-I, New Delhi dated 12th February, 2010 for the AY 2004-05.

The assessee has raised the following grounds:-

"1. The order dated 12.02.2010 passed by the ld.CIT(A)-1, New Delhi is bad in law and on facts.

2. (i). That the ld.CIT(A) has erred in law and on facts in denying additional claims on the ground that claims were not made by way of filing the revised return under Section 139(5) of the Income-tax Act, 1961. The assessee did neither claim those additional claims in the Original/Revised return nor claimed before Assessing

Officer but were claimed first time before the ld.CIT(A). Those claims were –

a) Inadvertent disallowance taken in the return of income under the mistaken belief that freight expenses of Rs.1,62,25,506/- were debited to the Profit & Loss A/c, whereas said freight expenses were not at all debited to the Profit & Loss A/c of that year; and

b) another freight expenses of Rs.35,83,542/- which was debited to the 'Prior Period Expenses A/c(PPE)' (which is shown below-the-line in P&L A/c), whereas while reversing the said expenses credit was given to the 'Freight Paid A/c' (which is shown above-the-line in the P&L A/c) instead of 'Prior Period Expenses A/c'. Such booking of expense 'below-the-line' and reversal thereof 'above-the-line' resulted in offering higher income for taxation to the extent of Rs.35,83,542/-.

(ii). That the learned CIT(A) has erred in law and on facts in denying the aforesaid additional claims regarding freight expenses and prior period expenses in spite of the fact that on merits, in remand proceedings, the allowability of the said claims had been gone into in detail and the learned Assessing Officer was of the view that the claims made by the appellant were otherwise factually correct.

3. i. That the ld.CIT(A) has erred in law and on facts in rejecting the claim of deduction u/s 43B of the Income-tax Act, 1961 amounting to Rs.2,96,52,486/- made by filing, with the Assessing Officer during the course of assessment proceedings, a letter dated 21.12.2006 on the ground that the letter was filed beyond the period of filing the revised return u/s 139(5) of the Act.

ii. That the learned CIT(A) has erred in law and on facts in rejecting the additional claim of deduction under section 43B of the Act in spite of the fact that on merits the allowability of the said claim had been gone into in detail and ample evidences were produced before the learned Assessing Officer to substantiate the allowance.

4. That the ld.CIT(A) has erred in law and facts in rejecting the above claims in respect of freight expenses, prior period expenses and deduction under Section 43B by summarily ignoring the judgements of Apex Court, High

Courts and Tribunals and Board's Circulars dated 11.04.1955 wherein it has been clearly held that only legitimate tax due from the assessee should be collected and the assessee should not be penalized because of errors/omissions or ignorance of law.

5. The appellant craves leave to add, modify or amend any of the grounds of appeal either before or at the time of hearing."

At the time of hearing before us, it is stated by the learned counsel that during the course of assessment proceedings, the assessee requested for allowability of additional claims of expenditure amounting to ₹2,96,52,486/-. The same was not entertained by the Assessing Officer on the ground that the assessee has not filed the revised return claiming such additional expenditure within the time limit permitted under Section 139(5). That on appeal, learned CIT(A) called for the remand report of the Assessing Officer and, after considering the same, he, relying upon the decision of Hon'ble Apex Court in the case of Goetze (India) Ltd. Vs. CIT – [2006] 284 ITR 323 (SC), held that the Assessing Officer was justified in rejecting the appellant's claim regarding allowability of expenditure claimed during the assessment proceedings without filing the revised return. He submitted that now this issue is covered in favour of the assessee by a catena of decisions of Hon'ble Jurisdictional High Court. In this regard, he relied upon the following decisions:-

(i) CIT Vs. Jai Parabolic Springs Ltd. – [2008] 306 ITR 42 (Delhi).

(ii) CIT Vs. Natraj Stationery Products P. Ltd. – [2009] 312 ITR 22 (Delhi).

(iii) CIT Vs. Rose Services Apartment India P.Ltd. – [2010] 326 ITR 100 (Delhi).

(iv) CIT Vs. Jindal Saw Pipes Ltd. – [2010] 328 ITR 338 (Delhi).

(v) CIT Vs. Sam Global Securities Ltd. – [2013] 38 taxmann.com 129 (Delhi).

The learned counsel stated that now the matter is before the ITAT and it is settled law that the jurisdiction of the ITAT is very wide and the ITAT can permit the assessee to raise any ground factual or legal provided the facts relating to that ground are on the record of the lower authorities. He submitted that there is no dispute that all the facts relating to additional claim of expenditure made by the assessee are already on record. He also pointed out that part of the claim is with regard to allowability of Section 43B which was disallowed in the earlier year when the payment was not made. That as per the express provisions of Section 43B, the deduction is allowable in the year in which payment is made. That the assessee made the payment during the accounting year relevant to assessment year under consideration and, therefore, it was incumbent upon the Assessing Officer to allow the deduction irrespective of the claim being made by the assessee. He, therefore, submitted that the entire additional claim for expenditure made before the Assessing Officer should be directed to be allowed.

Learned DR, on the other hand, relied upon the decision of Hon'ble Apex Court in the case of Goetze (India) Ltd. (supra). However, he alternatively submitted that if at all the ITAT deems it proper to entertain the assessee's claim, the matter should be set aside to the file of the Assessing Officer to examine the assessee's claim on merits because neither the Assessing Officer nor the CIT(A) has examined the allowability of assessee's claim on merits.

We have heard the submissions of both the sides and perused the material placed before us. After considering the arguments of both

the sides and the facts of the case, we are of the opinion that the issue is now squarely covered in favour of the assessee by the decisions of Hon'ble Jurisdictional High Court. That in the case of Sam Global Securities Ltd. (supra), the facts were that in the return of income, the assessee had not claimed exemption under Section 10(35) on the dividend income from the mutual funds and the loss on sale of units as business loss. During assessment proceedings, the assessee filed the revised computation of income claiming exemption as well as business loss. However, the Assessing Officer as well as CIT(A) rejected the assessee's claim on the ground that the assessee had not claimed it by filing of revised return under Section 139(5) within the time limit. The Assessing Officer as well as CIT(A) both relied upon the decision of Hon'ble Apex Court in the case of Goetze (India) Ltd. Vs. CIT – [2006] 284 ITR 323. On further appeal, the ITAT accepted the assessee's claim and remanded the matter to the Assessing Officer to consider the assessee's claim on merits. The ITAT also held that an officer must not taken advantage of ignorance of the assessee. That the Revenue, aggrieved with the order of the ITAT, was in appeal before the Hon'ble Jurisdictional High Court. That the Hon'ble Jurisdictional High Court upheld the order of the ITAT and the appeal of the Revenue was dismissed following its own earlier orders. That the relevant portion of judgment of Hon'ble Jurisdictional High Court is reproduced below for ready reference:-

> "8. Decision in the case of Goetze (India) Ltd. (supra) was distinguished in Jai Parabolic Springs Ltd. (supra) in the following words:-
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> "In Goetze (India) Ltd. v. CIT [2006] 284 ITR 323 (SC) wherein deduction claimed by way of a letter before the 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 the assessing authority to entertain claim for deduction otherwise than by a revised return, and did not impinge on the power of the Tribunal."

9. In CIT v. Natraj Stationery Products (P) Ltd. [2009] 312 ITR 22/177 Taxman 168 (Delhi) reliance placed on Goetze (India) Ltd. (supra) by the Revenue was rejected, as the assessee had not made any 'new claim' but had asked for re-computation of deduction under Section 80-IB. The said decision may not be squarely applicable but the Courts have taken a pragmatic view and not the technical view as what is required to be determined is the taxable income of the assessee in accordance with the law. In this sense, assessment proceedings are not adversarial in nature.

10. In CIT v. Rose Services Apartment India (P) Ltd. [2010] 326 ITR 100 (Delhi) relying upon the decision of the Supreme Court in National Thermal Power Co. Ltd. (supra), a Division Bench of this Court rejected the plea of the Revenue that the tribunal could not have entertained the plea, holding that the tribunal was empowered to deal with the issue and was entitled to determine the claim of loss, if at all, under one section/provision or the other.

11. Decision in Goetze (India) Ltd. (supra) was again relied upon by the Revenue in CIT v. Jindal Saw Pipes Ltd. [2010] 328 ITR 338 (Delhi) but the contention was not accepted, observing that the tribunal's jurisdiction is comprehensive and assimilates issues in the appeal from the order of the CIT (Appeals) and the tribunal has the discretion to allow a new ground to be raised.

12. In view of the aforesaid discussion, we are not inclined to interfere with order passed by the tribunal. The appeal is dismissed."

That the facts of the assessee's case are identical. Therefore, the ratio of the above decision of Hon'ble Jurisdictional High Court would be squarely applicable. Respectfully following the same, we set aside the orders of authorities below on this point and restore the

matter to the file of the Assessing Officer. We direct him to examine the assessee's claim on merits with regard to additional claim of expenditure amounting to ₹2,96,52,486/- and thereafter readjudicate the same in accordance with law. Needless to mention that the Assessing Officer will allow adequate opportunity of being heard to the assessee while giving effect to this order.

In the result, the appeal of the assessee is deemed to be allowed for statistical purposes.

Decision pronounced in the open Court on 8th November, 2013.

Sd/-	Sd/-
(CHANDRA MOHAN GARG)	**(G.D.AGRAWAL)**
JUDICIAL MEMBER	**VICE PRESIDENT**

Dated : 08.11.2013
VK.

Copy forwarded to: -

1. Appellant : **M/s Xerox India Limited,**
   5th and 6th Floor, Vatika Business Park,
   Block-I, Sector-49, Sohna Road,
   Gurgaon – 122 018, Haryana.
2. Respondent : **Deputy Commissioner of Income Tax,**
   Central Circle-20, New Delhi.
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar