$~R-101

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

Date of decision: 18th September, 2014

\+ **ITA 261/2002**

M/S INFLUENCE ..... Appellant
Through Mr. P.N. Monga, Advocate with Mr. Manu Monga, Advocate.

versus

COMMISSIONER OF INCOME TAX .... Respondent
Through Mr. N.P. Sahni, Sr. Standing Counsel with Mr. Nitin Gulati, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE V. KAMESWAR RAO

SANJIV KHANNA, J. (ORAL)

This appeal by the assessee, which relates to assessment year 1993-94, was admitted for hearing vide order dated 7th October, 2002, on the following substantial question of law:-

> "Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in rejecting the claim of the assessee for higher deduction under Section 80-HHC of the Income Tax Act, 1961, made during the course of assessment proceedings for the relevant assessment year?"

2. The facts are in narrow compass and in view of the limited issue,

which arises for consideration, we need not refer to the facts in gre detail.

3. The appellant-assessee, a firm, during the relevant period was engaged in the business of manufacture and export of goods and merchandise such as leather jackets, shoes, sweaters, jeans, bed sheet etc. In the return of income for the assessment year 1993-94 filed on 31st October, 1993, taxable income of Rs.64,92,460/- was declared. In the computation of taxable income, the appellant-assessee had claimed deduction under Section 80HHC of the Income Tax Act, 1961 ('Act', for short) of Rs.3,57,90,698/-. The return was duly accompanied by the audit report duly prepared by a Chartered Accountant as required under Section 44AB and Section 80HHC of the Act.

4. The return was taken up for scrutiny and notice under Section 143(2) was issued. During the course of the assessment proceedings, but before the assessment order could be passed, the assessee vide letter dated 25th April, 1995, revised the claim under Section 80HHC from Rs.3,57,90,698/- to Rs.3,64,68,255/-. The reason given was that due to oversight, sales of manufactured goods amounting to Rs.1,55,02,539/- was wrongly taken as traded goods. Thus, the deduction under Section 80HHC required recomputation. In respect of manufacturing goods and trading goods, different formulas have to be applied for computing deduction under Section 80HHC of the Act.

Along with the said letter, the appellant-assessee had filed revis report of the Chartered Accountant under Sections 80HHC(4) and 80HCC(4A) of the Act.

5. The Assessing Officer did not examine the merits of the claim and held that the revised computation submitted with the letter cannot be taken into consideration as time for filing of a revised return under Section 139(5) had lapsed on 31st March, 1995. As noted above, the letter written by the appellant-assessee revising the claim under Section 80HHC was dated 25th April, 1995.

6. The aforesaid view has found favour with the Commissioner of Income Tax (Appeals) as well as the Income Tax Appellate Tribunal. They have relied upon decision of the Supreme Court in ***Goetze (India) Ltd. Vs. Commissioner of Income Tax*** [2006] 284 ITR 323 (SC).

7. A similar controversy had arisen before the Delhi High Court in the case of ***Commissioner of Income Tax Vs. Sam Global Securities Ltd.*** [2014] 360 ITR 682 (Delhi), wherein judgment in the case of ***CIT Vs. Jai Parabolic Springs Ltd.*** [2008] 306 ITR 42 (Delhi) was quoted. In ***Jai Parabolic Springs Ltd.*** (supra), decision in ***Goetze (India) Ltd.*** (supra) was distinguished in the following words:-

> "In Goetze (India) Ltd. Vs. 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."

8. In ***Sam Global*** (supra) reference was also made to the decision of the Supreme Court in ***National Thermal Power Co. Ltd. Vs. CIT*** [1998] 229 ITR 383 (SC). Reliance was placed on an earlier decision of the Supreme Court in ***Jute Corporation of India Ltd. Vs. CIT***, [1991] 187 ITR 688 (SC), in which it has been observed:-

> "An appellate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the statutory provisions. In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. There is no good reason to justify curtailment of the power of the Appellate Assistant Commissioner in entertaining an additional ground raised by the assessed in seeking modification of the order of assessment passed by the Income Tax Officer. This Court further observed that there may be several factors justifying the raising of a new plea in an appeal and each case has to be considered on its own facts. The Appellate Assistant Commissioner must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons. The Appellate Assistant Commissioner should exercise his discretion in permitting or not permitting the assessed to raise an additional ground in accordance with law and reason.

> The same observations would apply to appeals before the Tribunal also."

9. This High Court in ***CIT Vs. Natraj Stationery Products (P) Ltd.***, (2009) 312 ITR 222, had observed that ***Goetze (India) Ltd.*** (supra) would not apply if the assessee had not made a 'new claim' but had asked for re-computation of deduction. Reference can also be made to the decision in ***Commissioner of Income Tax Vs. Rose Services Apartment India P. Ltd.***, [2010] 326 ITR 100 (Delhi), wherein a Division Bench of this Court rejected the contention 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 raised.

10. In view of the aforesaid, the question of law is answered in favour of the appellant-assessee and against the respondent-Revenue, but with an order of remand as the claim under Section 80HHC will have to be examined by the Assessing Officer as is requested by the counsel for the Revenue. The entire claim including the question whether the assessee was a manufacturer and was entitled to claim deduction at a higher rate under Section 80HHC can be examined by the Assessing Officer. We note that the matter relates to assessment year 1993-94 but notwithstanding the time gap, the assessee will have to produce and prove their claim along with necessary documents.

The appeal is disposed of without any order as to costs.

SANJIV KHANNA, J.

V. KAMESWAR RAO, J.

SEPTEMBER 18, 2014
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