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Appellate authorities can consider additional claim

The Bombay High Court rendered its decision that appellate authorities can consider additional claim even if the same was not made in the original or revised return filed by the taxpayer

Facts of the case:

- Sesa Goa Ltd (taxpayer)¹ is in the business of mining and export of iron ore and manufacture and sale of metallurgical coke.
- The taxpayer while filing the original and revised return for the Financial Year (FY) 2004-05, corresponding to Assessment Year (AY) 2005-06, inadvertently omitted to claim deduction under section 10B of the Income-tax Act, 1961 (ITA) in respect of two 100% Export Oriented Undertakings (EOU).
- The taxpayer during the course of audit proceedings before the Assessing Officer (AO), filed letters requesting the AO to grant deduction under section 10B of the IT Act. However, the AO refused to consider the taxpayer's claim, since it was not raised by filing a revised return.
- On appeal before the Commissioner of Income-tax (Appeals) [CIT(A)], the CIT(A) denied the deduction under section 10B of the ITA relying on the decision of the Supreme Court² wherein it was held that, if a taxpayer had claimed deduction after the return was filed, the assessing authority had no powers to entertain such a claim made otherwise than by a way of a revised return.
- On further appeal before the Mumbai Bench of the Income-tax Appellate Tribunal (ITAT), the ITAT upheld the CIT(A)'s order.
- Aggrieved by the ITAT's order, the taxpayer filed an appeal before the Bombay High Court (HC).

Decision of the HC:

- The HC held the following:
 - Both the CIT(A) as well as the ITAT had erred in relying on the Supreme Court case² and in holding that even appellate authorities could not have entertained taxpayer's claim for deduction, *inter alia*, under section 10B of the ITA.
 - The approach of the appellate authorities was contrary to the law laid down by HC in its earlier decisions³ wherein it was held that, though the AO had no power in view of the decision of the

¹ Sesa Goa Ltd. v. ACIT [2020] 117 taxmann.com 548 (Bombay HC)

² Goetze (India) Ltd. v. CIT [2006] 157 Taxman 1 (SC)

³ CIT v. Pruthvi Brokers & Shareholders [2012] 23 taxmann.com 23 (Bom HC); Sesa Goa Ltd. v. Jt. CIT [2020] 117 taxmann.com 96 (Bom HC)

Supreme Court², however the appellate authorities had sufficient powers to permit a deduction. The appellate authorities may confirm, reduce, enhance or annul the assessment or remand the case to the AO, because the basic purpose of a tax appeal was to ascertain the correct tax liability in accordance with the law.

- The taxpayer's claim for deduction under section 10B of the ITA, were to be decided by the CIT(A), who had power to consider the claim as per the findings of the HC in an earlier case⁴.

In view of the above, the HC held that the appellate authorities were not justified in refusing to consider the taxpayer's claim for deduction on the grounds that such claim was not made in the original return or the revised return filed before the AO. Accordingly, the HC restored the matter to the CIT(A) for fresh adjudication on the issues relating to deduction under section 10B of the ITA, in accordance with law and merits.

Comments:

- Whether appellate authorities can accept additional claim during the proceedings has been a subject matter of litigation. The ruling affirms the principle that the appellate authorities can consider additional claim even if the same is not raised by the taxpayer in the original or revised return.

⁴ CIT v. Pruthvi Brokers & Shareholders [2012] 23 taxmann.com 23 (Bom HC)



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