**Fresh Claim during assessment or during appeal stage under income tax**

Tax payers sometimes fail to claim / short claim certain deductions/exemptions in the Income tax returns filed. Assessee also realise that additional claim for deductions/exemptions could have been made for a particular deduction/exemption on account of / Retrospective amendments  / Judicial pronouncements delivered and other reasons after the filing of return of income.

In such situations, if the time limit for filing revised returns has already expired or cases where Returns cannot be revised, then Assessees tend to make additional  / Revised claims for deductions / exemptions by filing a letter with the Authorities at various levels requesting them to grant the benefit of deductions/exemptions.

The Important question that arises for consideration in such cases is whether the authorities can deny any additional claim for deductions /exemptions, which are not claimed in the return of income by the Assessee?

Admissibility of a claim (which is not made by filing of revised return) before assessing officer/appellate authority, have always been a vexed issue. There are various judicial pronouncements that support the contention that an additional claim can be raised before the appellate authorities, even if it has not been raised before the Assessing Officer nor claimed in the return of income.

However, recently the Chennai Tribunal in the case of Chiranjeevi Wind Energy, has held that such claim cannot be entertained.

In this Article, the learned Authors have done a detailed analysis of this decision in view of various judicial pronouncements.

An assessee is required to file his return of income, u/s. 139(1), before the due date specified in Explanation 2 to that section. In case he discovers any omission or any wrong statement in such return of income, he can file a revised return before the expiry of one year from the end of the relevant assessment year, or before the completion of assessment, whichever is earlier, in accordance with the provisions of section 139(5).

Very often, the assessee discovers a mistake or omission in the return of income after the expiry of the time prescribed for revision of his return of income u/s. 139(5). This generally happens during the course of assessment proceedings u/s. 143(2), which normally take place only towards the end of the time limit for completion of assessment, which is two years from the end of the relevant assessment year. The issue arises whether in such cases the assessee can make a claim for a deduction, before the assessing officer or before the appellate authorities, which has not been claimed in the return of income, when he is not in a position to revise his return of income. The Income-tax Department is of the view that such a claim can be made only through a revised return of income filed in time. Relying on the decision of the Supreme Court in the case of Goetze (India) Ltd vs. CIT 284 ITR 323, the department contends that no such claim can be made outside the revised return of income.

The case of the assessees has been that any rightful claim whenever made, should be allowed, if not by the assessing officer, at least by the Commissioner(Appeals) or the Income Tax Appellate Tribunal, a stand that is objected to by the Income-tax department on the ground that any claim not considered by the assessing officer cannot be considered by the Commissioner (Appeals) or the Income Tax Appellate Tribunal.

The law developed, post Goetze (india)’s case, has made it abundantly clear that:

a)    an assessee is entitled to make a fresh claim for deduction or relief before the appellate authorities, during the course of the appellate proceedings, irrespective of the claim not being made by revising the return of income or before the assessing officer during the course of the assessment proceedings. The decision in Goetze (India)’s case has not prohibited such a claim before the appellate authorities.b)    an assessing officer when confronted with the valid claim, though not made in the return of income or the revised return of income, is required to consider the same on merits and not reject simply on the ground that the claim was made outside the return of income.

In CIT vs. Jai Parabolic Springs Ltd. 306 ITR 42 (Del), the  delhi high Court held that the tribunal had power to allow deduction for expenditure to assessee to which it was otherwise entitled to even though no claim was made by the assessee in the return of income. in this case, the decision of Supreme Court in Goetze (India) Ltd. was considered.

Again, the Cochin tribunal in the case of Thomas Kurian 303 ITR (AT) 110 (Coch), held that the Cit(a) had the power to entertain a claim not made in the return of income. In   Lupin Agrochemicals Ltd. ITA No. 3178 (Mum), the case of Goetze (I) Ltd. was considered and it was held that said decision did not prevent an assessee to make legal claim in assessment proceedings and that such claim could be made even in appellant proceedings. In Abbey Chemicals 94 TTJ (Ahd) 275, it was held that the Cit(a) having allowed assessee’s claim for exemption u/s. 10B after considering the facts of the case as well as the case law, could not recall his order by taking recourse to section 154, as the error of judgement, if any, committed by the CIT (A), tcould not be qualified as a “mistake” within the meaning of section 154.

The position in respect of the eligibility of the assessee to place a fresh claim, before the assessing officer, is equally good. in Chicago Pneumatic Ind. Ltd. 15 SOT 252 (Mum), the mumbai tribunal  held  that  the  a.o.  was obliged to give relief to the assessee even where the same was not claimed by the assessee by way of    a revised return. In the above case, it was observed   that the government was entitled to collect only the tax legitimately due to it and therefore one had to look into the duties of the a.o. rather than his powers to avoid undue  hardship  to  the  assessees.  the  hon.  Tribunal also referred to the CBDT Circular No. 14 (XL-35) dt. 11.04.1955, which directed the officers as back in 1955 to draw attention of the assessees to refunds and reliefs to which they were entitled but had failed to claim for some reason  or  the  other.

The  case  also  referred  to  another Circular No. F-81/27/65-IT (B) dt. 18.05.1965 and stated that the above circulars were binding on the departmental authorities.  the  above  decision  was  considered  and followed  by  the  hon.  mumbai  tribunal  in  the  case  of Emerson Network Power Ind. 27 SOT 593 (Mum) wherein the Mumbai tribunal held that the assessing officer was obliged to consider the legitimate claim of the assessee made before him but not made in the return of income or by a revised return. In  Rajasthan Commercial House v/s. DCIT,  26 SOT 51 (Uro) (Jodh),  the jodhpur tribunal held that relief claimed by the assessee could be allowed by the a.o. when such claim was made by the assessee vide a rectification application u/s. 154. Also see Dodsal Pvt. Ltd. ITA No. 680/M/04 (Mum). Lastly, the Bombay high court in the case of Balmukund Acharya ITA No. 217 of 2001 (Bom) dated 19-12-2008 again confirmed the power and the duty of the assessing officer when it inter alia held that the authorities under the act were under  an obligation to act in accordance with law and that tax could be collected only as provided under the act and that if any assessee, under a mistake, misconception or on not being properly instructed was over assessed, the authorities under the act were required to assist him and ensure that only legitimate taxes due were collected.

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.

Though the assessing officer has not been conferred with any power to entertain any deduction or benefit which has not been claimed by the assessee in its income tax return but if these deduction or benefit arising out of the facts on records are claimed at appellate level these claim can be entertained.