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CERTIFICATE COURSE ON FILING OF RETURNS

Today's Content – New Claims after ITR

1. Introduction:

Sometimes, while preparing and filing the returns of income under Income Tax Act, errors of omission or commission would creep in. Also, because of frequent changes in law and several judicial decisions which might not have been noticed quickly enough, the returns are not prepared perfectly. Such omissions may come to light after the expiry of time limit for filing revised return u/s.139(5)

The law in this regard is well settled vide two decisions of the Honourable Apex Court in *Goetze (India) Ltd*. v. *CIT* [2006] 157 Taxman 1/284 ITR 323 (SC) and *Shriram Investments* v. *CIT* [2024] 167 taxmann.com 139/301 Taxman 393 (SC), that the AO would be justified in declining any additional claim or fresh claim made in assessment proceedings otherwise than through a validly filed revised return u/s.139(5) .

It is also well settled that the Appellate authorities have the power to adjudicate such claims vide *Jute Corpn. of India Ltd*. v. *CIT* [1990] 53 Taxman 85/[1991] 187 ITR 688 (SC) and *National Thermal Power Company Ltd*. v. *CIT* [1998] 97 Taxman 358/229 ITR 383 (SC). The object of this write up is to discuss the options available to the assessees for the redressal of such issues.

2. *Decisions in Goetze India* (*supra*) and *Shriram Investments* (*supra*)

In *Goetze (India) Ltd.'s* case (*supra*) the assessee made a new claim for deduction through a letter during the assessment proceedings . The Assessing Officer (referred to as AO hereinafter) declined to grant the claim on the ground that there was no provision in law for making a new claim otherwise than through a revised return . The issue went up to the Honourable Apex Court which upheld the decision of the AO. The decision in NTPC Ltd's case (*supra*) was distinguished on the ground that it dealt with the powers of the ITAT u/s 254 whereas the case of *Goetze (India) Ltd*. (*supra*) dealt with the powers of the AO and the decision does not impinge on the powers of the ITAT to entertain new claims

In *Shriram Investments* (*supra*), the assessee filed its return u/s 139 (1) and also filed a revised return u.s 139(5) . It filed the second revised return beyond time limit stipulated in s. 139(5) claiming deduction of deferred revenue expenditure . The AO, without taking cognizance of the second revised return, completed the assessment. The issue was taken to the ITAT which directed the AO to take cognizance of the second return . The High Court set aside the ITAT's order for the reasons that (A) there was no provision to consider the claim made by the assessee through the second revised return which was invalid as filed beyond the time limit specified in s.139(5) and (B) the ITAT, in stead of exercising its power u/s.254 to consider the claim as additional claim, simply directed the AO to consider the assessee's claim made through the invalid revised return which the AO could not do. The Honourable Apex Court upheld the High Court's decision finding no reason to interfere with the same.

3. Decisions in *Jute Corporation of India* (*supra*) and *NTPC Ltd* . (*supra*)

In *Jute Corpn. of India Ltd.'s* case (*supra*), during the appeal proceedings before the first appellate authority (hereinafter referred to as FAA or CIT(A)), the assessee raised an additional ground for some deduction. The FAA allowed the claim after hearing the AO. The Hon'ble Apex Court upheld the FAA's decision following the ratio laid down in *CIT* v. *Kanpur Coal Syndicate* [1964] 53 ITR 225 (SC) to the effect that the appellate authority has plenary powers in disposing of an appeal and the scope of his power is coterminous with that of the AO and that he can do what the AO can do and also direct him to do what the AO has failed to do.

In *NTPC Ltd's* case (*supra*), the assessee offered to tax interest on deposits with banks earned during the construction period in its return of income and the assessment was made on that basis. Neither before the FAA nor in the original grounds of appeal before the ITAT the issue was raised by the assessee. For the first time the relevant claim for exemption of such interest from tax was raised through additional grounds of appeal filed before the ITAT. The ITAT declined to entertain the additional grounds of appeal. On a direct reference, the Hon'ble Apex Court held that the ITAT has the jurisdiction to examine the claim made by the assessee observing that the power of the ITAT in dealing with appeals is expressed in the statute in the widest possible terms.

4. Article 265 of the Constitution

Article 265 of the Constitution of India reads that "No tax shall be levied or collected except by the authority of law." In terms of the cited Article, tax can be levied only if it is authorized by law and the taxing authority cannot collect or retain tax that is not authorized. Any retention of tax collected, which is not otherwise payable, would be illegal and unconstitutional [*CIT* v. *Shelly Products* [2003] 129 Taxman 271/261 ITR 367 (SC)]

There cannot be any estoppel against the statute. In view of Article 265 of India,' acquiescence' cannot deprive a party of rightful relief when taxes are levied or collected without legal authority (*Nirmala L. Mehta* v. *A. Bala subramaniam, CIT* [2004] 139 Taxman 394 (Bom).

5. Power of Rectification u/s.154 to consider new claims

Where an assessee is entitled to a particular statutory relief / deduction and there is clear data on record sufficient to enable the AO to consider that claim, the assessee is entitled to make the relevant claim even u/s 154 of the I.T. Act,1961 . The following cases illustrate this legal position

In *BSCPL Infrastructure Ltd*. v. *Union of India* [2024] 163 taxmann.com 470 (Telangana), the assessee mistakenly included retention money in its gross receipts for AY 2015-16 and paid tax on it . Despite its recovery by the contractee from bills paid to the assessee in the succeeding years, the assessee paid tax on income with out considering such recovery. The assessee very much later discovered the error and filed an application u/s.154 for rectification for AY 2015-16, but the AO rejected it. In writ proceedings challenging the order of rejection u/s 254, the High Court ruled the issue in favor of the assessee for the following reasons.

(*i*)	The tax was paid in AY 2015-16 by mistake and a refund should have been granted u/s.154.
(*ii*)	Double taxation or taxation without legal authority is prohibited and delays or technicalities cannot block rightful refunds.
(*iii*)	S.154 allows rectification for both factual and legal mistakes that are apparent from the record.
(*iv*)	Errors of fact or law can be corrected u/s.154 if they are clear and require no elaborate or complex arguments. Clear and accurate evidence of excess tax payment falls under the scope of rectifiable errors.
(*v*)	Despite the AO acknowledging that retention money was taxed in AY 2015-16, the application u/s.154 was improperly rejected, causing double taxation.
(*vi*)	Article 265 of the Constitution prohibits unauthorized tax collection.
(*vii*)	Technicalities should not hinder justice and that clear or apparent errors must be rectified to prevent injustice or violations of tax law.

In *Kapil Dev Nikhanj* v. *ACIT* [2025] 173 taxmann.com 100 (Delhi Trib), the assessee included a one-time benefit from BCCI in his taxable income for AY 2013-14. The assessment was completed u/s.143(3) and the assessee did not file appeal against the same. Very much later, he learned that this benefit was exempt u/s. 56(2)(vii) as per subsequent ITAT decisions. The assessee filed appeal to the CIT(A) with a detailed explanation for the 1993-day delay in filing the appeal, but it was dismissed on the

grounds of limitation. Upon further appeal to the ITAT, the DR argued that the assessee consciously offered the receipt to tax and failed to file a revised return and that the assessment u/s.143(3) was accepted by the assessee and placed reliance on *Goetze (India) Ltd. (supra)*. However, the ITAT ruled the issue in favor of the assessee for the following reasons.

(*i*)	The restriction in *Goetze (India) Ltd.'s* case (*supra*) applies only to assessing authorities but not to appellate authorities.
(*ii*)	The exemption u/s.56(2)(vii) was discovered due to later ITAT decisions.
(*iii*)	Tax must be collected correctly in accordance with law as guaranteed by Article 265 of the Constitution.
(*iv*)	Income cannot be taxed merely because of an error in the return but must be determined as per the provisions of the Act.

The ITAT emphasized that the Revenue cannot exploit the ignorance of the assessee but must uphold the principle of lawful taxation. The ITAT also stated that under ordinary circumstances it would have restored the matter to the CIT(A) after condoning the delay but in view of the facts of the case it granted complete relief to the assessee.

7. Powers of the Appellate Authorities:

As stated supra the appellate authorities can entertain claims for additional reliefs or deductions which were not raised before the AOs vide *Jute Corporation of India* (*supra*) and *NTPC Ltd.* (*supra*) if these claims could not have been made earlier for valid reasons provided all necessary evidence and facts are on record. Such omissions may occur due to counsel's mistakes, oversight, or, more frequently, changes in the interpretation or development of the law . These decisions are binding precedents being the law of the land.

An illustrative case on this issue is *Balmukund Acharya* v. *Dy. CIT* [2009] 176 Taxman 316/310 ITR 310 (Bom.). In this case the assessee filed return after mistakenly including in his income a certain sum which was actually not liable to tax. Against the Intimation received he filed appeal contesting the levy of tax and also the levy of interest u/s.234C .The CIT (A) rejected the first ground of appeal observing that that the assessee had on his own offered to tax the amount under contest and directed the AO to calculate interest u/s.234C correctly. The ITAT confirmed the CIT (A)'s order. The assessee approached the High Court which set aside the ITAT's order and restored the matter to CIT (A) holding as under.

(*i*)	*If any assessee, under a mistake, misconception or on not being properly instructed, is over-assessed, the authorities under the Act are required to assist him and ensure that only due legitimate taxes are collected.*
(*ii*)	*If a particular levy is not permitted under the Act, tax cannot be levied by applying the doctrine of estoppel.*

(*iii*)	*Acquiescence cannot take away from a party the relief that he is entitled to where the tax is levied or collected without authority of law.*

There are several cases where the assessees have successfully invoked such pleas based on Article 265 and Circular No. 14/XL-35, dated 11-4-1955 . See, for instance, *Madanlal Mohanlal Sakhala* v. *Addl.CIT* [2023] 154 taxmann.com 178/202 ITD 751 (Mum. - Trib.)

8. Powers of revision u/s.264 by Pr.CIT to consider new claims

The power vested in CIT u/s 264 to revise assessment order is very wide and the same can be used not only to rectify the errors committed by the AO in his order but also to set right errors committed by the assessee while filing returns . In other words, it is not necessary that the errors pointed out in the application u/s.264 must have emanated from the order passed by the AO and the CIT has power u/s 264 to entertain new claims also not raised by the assessee earlier because of one reason or other and such omissions or errors are subsequently discovered. For this purpose it is not imperative that the assessee should have filed a revised return u/s.139(5). S.264 exists to correct bona fide mistakes or inadvertent errors, preventing injustice or breaches of law. The law should accommodate genuine human errors to uphold fairness in taxation .S.264 prevents injustice and ensures lawful taxation. Also ,the power includes addressing omissions or commissions in returns to maintain fairness under Article 265 of the Constitution, which prohibits taxation without legal authority. There are several decisions on this issue in favour of tax payers. See, for instance, *Parekh Bros.* v. *CIT* [1983] 15 Taxman 539/[1984] 150 ITR 505 (Ker), *Kewal Krishan Jain* v. *CIT* [2014] 42 taxmann.com 84 (Punj. & Har.), *Transformers & Electricals Kerala Ltd*. v. *Dy. CIT* [2016] 75 taxmann.com 298 (Ker.), *Sri. Selvamuthu Kumar* v. *CIT* [2017] 79 taxmann.com 113/246 Taxman 185/394 ITR 247 (Mad.), *Bali Trading (P.) Ltd*. v. *Pr. CIT* [2017] 86 taxmann.com 163/251 Taxman 228/[2018] 402 ITR 271 (Mad.), *Sharp Tools* v. *Pr. CIT* [2020] 113 taxmann.com 63/421 ITR 90 (Mad.), *Nirmala L. Mehta* (*supra*) and *Ena Chaudhuri* v. *Asstt. CIT* [2023] 148 taxmann.com 100/455 ITR 284 (Cal.). Powers u/s.264, though vested in the administrative CIT, must be exercised judicially to ensure justice [*Aparna Ashram* v. *DIT* [2002] 124 Taxman 436/258 ITR 401 (Delhi)] .

Some more decisions are discussed below illustrating the above stated legal position

In *Smt. Sneh Lata Jain* v. *CIT* [2004] 140 Taxman 156 (J&K), the assessee failed to claim exemption u/s.54F in her IT return. After receiving the Intimation u/s.143(1), she realized the error and filed an application u/s.264. The CIT rejected the application, stating that S. 264 could not be invoked since the return had been accepted u/s.143(1). However, the High Court set aside CIT's order for the following reasons.

(*i*)	While the AO was justified in acting on the facts disclosed in the return u/s.143(1), the CIT should have considered the assessee's eligibility for the exemption based on the records.

(*ii*)	The benefit conferred by substantive law cannot be denied on mere technical grounds. Article 265 of the Constitution prohibits levying or recovering taxes without legal authority. Since the petitioner had no tax liability, the CIT should have granted relief.
(*iii*)	Though the High Court does not act as a Court of Appeal in writ jurisdiction, it can intervene when an adjudicatory authority fails to exercise jurisdiction, subjecting a citizen to unjust taxation.

Another illustrative case on this point is *Vijay Gupta* v. *CIT* (*supra*). In this case, the assessee mistakenly reported long-term capital gains as short-term gains in his return. Noticing this error after receiving the Intimation, the assessee filed an application u/s.154, which the AO rejected. The assessee then approached the CIT u/s.264 against both the Intimation and the rejection order u/s 154 . However, the CIT denied the assessee's application, reasoning that the Intimation was based solely on the assessee's return. The assessee filed a writ petition and the High Court set aside the CIT's order, for the following reasons

(*i*)	An assessee is liable for tax only on income assessable under the I.T.Act. S. 264 allows relief for mistakes leading to over-assessment post-completion of assessment and the CIT has the authority u/s.264(1) to rectify such errors.
(*ii*)	When substantive law provides a benefit to the assessee, it cannot be denied on technical grounds.
(*iii*)	The CIT should have reviewed the material in the light of Circular No. 14(XL-35) of 1955 and Article 265. By focusing only on technicalities, the CIT failed to exercise jurisdiction appropriately.

In *Sharp Tools* (*supra*), after filing its I.T. return on 30.9.2013, the assessee found that because of data entry mistake incorrect amount of expenditure was entered in the I.T. return and, so, filed on 09.01.2016 a rectification return which was not processed as filed beyond time as per s.139(5). Application u/s.154 for rectification of the Intimation on 09.01.2016 was then filed before the Jurisdictional AO who rejected the same through order dt.24.10.2017. The application u/s.264 filed before the Pr.CIT on 22.01.2018 i.e. within one year from the date of order of rejection u/s.154 . The Pr.CIT, though finding that an error had been committed inadvertently, rejected the application stating that revised return had not been filed by the assessee u/s.139(5) . The rejection order was challenged before the High Court which set aside the order u/s.264 holding as follows

(*i*)	Both the levy and collection of tax must be done with the authority of law, and if any levy and collection, later are found to be wrong and without authority of law, certainly, such levy and collection cannot withstand the scrutiny in the light of Article 265

(*ii*)	A mere typographical error committed by the Assessee cannot cost him payment of excess tax as collected by the Revenue. Certainly, the denial for repayment of such excess collection would amount to great injustice to the Assessee.
(*iii*)	For granting the eligible relief to an assessee no time restriction is provided u/s 264 where such revisional jurisdiction is invoked by the Assessee. The time limit of one year is applicable only when the CIT invokes s.264 suo- moto . In other words, there is no such restriction if the assessee invokes the same u/s.264 even after one year if the delay beyond one year is on account of a reasonable cause.

The power u/s.264 has been successfully invoked in *Interglobe Enterprises Pvt. Ltd.* v. *Pr. CIT* [2023] 148 taxmann.com 121 (Delhi) and *Bahar Infocons Pvt. Ltd.* v. *Pr.CIT* [2024] 167 taxmann.com 179/301 Taxman 349 (Bom.) where, because of assessee's oversight, an item was taxed twice

9. Application u/s.119(2)(b)

Where the return of income filed by the assessee, admitting taxable income on the higher side because of some error of either fact or of law, is only processed u/s 143(1) and by the time the relevant error is found out the time for filing the revised return u./s 139(5) has lapsed, the assessee can approach the CBDT for the relaxation of the time limit u/s 119(2)(b) for filing the revised return subject to the conditions that (i) no assessment u/s.143(3) or u/s.147 has taken place in the intervening period and (ii) there is a sufficient cause for seeking such relaxation within the time limit specified in s.139(5) . Delays in such cases must be considered in accordance with the principles laid by the Hon'ble Apex Court in several cases dealing with condonation of delay in filing appeals /writ petitions.

10. Some of the hassles are totally avoidable

Although equity is often excluded from fiscal law interpretation, fairness and justice should guide procedural aspects where the language permits. Hon'ble Apex Court rulings emphasize that the Government must act ethically, ensuring justice for citizens, regardless of technicalities.

The Hon'ble Supreme Court, in *Shelly Products* case (*supra*) vide Para 31, observed that if an assessee, due to error, inadvertence, or because of lack of awareness, includes an amount in his income which is exempt from income tax or is not considered as income under the law, he may inform the Assessing Officer accordingly . If satisfied, the Assessing officer may provide necessary relief and refund any excess tax paid to the assessee -

Despite all said and done, nobody denies the absolute and fundamental principle that the computation of income must take place as per the provisions of the Income Tax Act within the contours laid down in Article 265.Tax law aims to assess the true income u/s.4, ensuring collection of legitimate amount of tax -no more, no less. Mistakes of omissions or mistaken reporting do not justify rejection of claims for exemptions and deductions during assessment proceedings. The AO has a duty to grant rightful exemptions and

deductions based on evidence, fostering fair treatment without exploitation in view of Article 265 of the Constitution and the Board Circular dt.11.04.1955.

It is true that where the return filed by the assessee is accepted u/s.143(1) and scrutiny proceedings are not undertaken u/s.143(3), the assessee can seek remedy by invoking either s.154 or s.264 or s. 119(2)(b) depending on the facts of the case . But, where the scrutiny proceedings are going on it will be very much avoidable procedure if the assessee is required to approach higher authorities despite the evidence placed on record before the AO clearly showing the entitlement of the assessee to the deduction / relief requested otherwise than through the return or through the revised return . A suitable provision may be made in the Income Tax Bill, 2025 would be welcome from the view point of the tax payers and also will result in savings to the Department in terms and time and resources of Department machinery and its senior officers.