

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.118 OF 2003

Alok Textile Industries Ltd. .. Appellant.
v/s.
Deputy Commissioner of Income-Tax,
Special Range-1, Mumbai .. Respondent.

Mr. Dharan Y. Gandhi, for the Appellant
Mr. Suresh Kumar, for the Respondent.

**CORAM: M.S.SANKLECHA &
SANDEEP K. SHINDE,JJ.**
DATE : 10th July, 2018.

P.C:-

This Appeal is under Section 260-A of the Income Tax Act, 1961 (the Act) from the order dated 13.8.2002 of the Income Tax Appellate Tribunal (the Tribunal).

2 This was admitted on 22.9.2004 on the following substantial question of law:

“(a) Whether on the facts and in the circumstance of the case and in law, the Tribunal was justified in law in holding that as the Appellant had not excluded or reduced lease rentals from the depreciation offered to tax while filing the return of undisclosed income for the block period it was not entitled to do so later on in view of second proviso to section 158BC of the Act ?”

3 Assessment Year involved is block period from Assessment Year 1985-86 to 1995-96.

4 The impugned order dated 13.8.2002 of the Tribunal did not entertain Appellant's additional claim made before it. This on the ground that the second proviso to Section 158BC(a) of the Act prohibited assessee who is subjected to search or whose books of accounts are required under Section 132A of the Act for filing revised return of income.

5 Mr. Gandhi the learned counsel appearing in support of the Appeal states that this issue no longer res-integra as the issue stands concluded infavour of the Appellant by the decision of this Court in **CIT v. Sheth Developers (P) Ltd. 254 CTR 0127** rendered on 27.7.2012. In the above case, the Revenue has accepted the position that even in respect of assessments for block period, fresh claim could be urged by the searched person before the Appellate Authorities even in absence of claim being made before the Assessing Officer. This is by relying upon the decision of this Court in **CIT v. Pruthvi Brokers and Shareholders P. Ltd.349 ITR 336.**

6 Mr. Suresh Kumar the learned counsel appearing for the Revenue submits that the aforesaid decision in **Sheth Developers (P) Ltd. (Supra)** proceeded on a concession made by the Revenue. However, he is unable able to show how and why the concession made by them in **Sheth Developers (P) Ltd. (Supra)** was incorrect. We note that the order of this Court was passed in **Sheth Developers (P) Ltd. (Supra)** as far back on 27.7.2012 and nothing has been shown which would indicate that the concession made therein was incorrect and not in accordance with law.

7 We note that the prohibition in Second Proviso to Section 158BC(a) of the Act of filing a revised return of income before the

Assessing Officer would not prohibit a Assessee from raising the additional claim before Appellate Authorities as held by this Court in **Pruthvi Brokers and Shareholders P. Ltd. (Supra)**. This on consideration of the decision of the Supreme Court in **National Thermal Power Co. Ltd. v. CIT 229 ITR 384 and Goetze (India) Ltd. v. CIT 284 ITR 323**. In fact, in **Goetze (India) Ltd.**, the Apex Court after holding that Assessing Officer has no power to entertain claim for deduction otherwise than by filing revised return of income by Assessee, clarified that the same would not fetter the appellate authority from entertaining a claim not made before the Assessing Officer.

8 In the above view, the substantial question of law is answered in favour of the Appellant-Assessee and against the Respondent-Revenue. However, the merits of the claim made by the Appellant in respect of the additional grounds urged before the Tribunal would be required for consideration by the Tribunal.

9 In the above view, the Appeal of the Appellant on the issue of additional claim made before the Tribunal is restored to the Tribunal for fresh disposal on merits in accordance with law. However, we make it clear that we have not examined merits of the Appellant's claim on merits. Therefore the Tribunal is to decide the same in accordance with law.

10 Appeal allowed in the above terms. No order as to costs.

(SANDEEP K. SHINDE,J.)

(M.S.SANKLECHA,J.)