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

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\+ **ITA 607/2015**

PR. COMMISSIONER OFINCOME TAX ..... Appellant
Through: Mr. Kamal Sawhney, Senior Standing counsel with Mr. Raghvendra Singh and Mr.Shikhar Garg, Advocates.

versus

E-FUNDS INTERNATIONAL INDIA PVT. LTD. ..... Respondent
Through: Mr. Piyush Kaushik, Advocate.

AND

13.

\+ **ITA 608/2015**

PR. COMMISSIONER OFINCOME TAX ..... Appellant
Through: Mr. Kamal Sawhney, Senior Standing counsel with Mr. Raghvendra Singh and Mr.Shikhar Garg, Advocates.

versus

E-FUNDS INTERNATIONAL INDIA PVT. LTD. ..... Respondent
Through: Mr. Piyush Kaushik, Advocate.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 06.10.2015

Dr. S. Muralidhar, J.

CM No. 15688/2015 (for condonation of delay in re-filing the appeal) in ITA No. 607/2015

CM No. 15689/2015 (for condonation of delay in re-filing the appeal) in ITA No. 608/2015

1. For the reasons stated in the applications, the delay in re-filing the respective appeals is condoned.

2. The applications are disposed of.

ITA No. 607/2015 & 608/2015

3. These two appeals by the Revenue are under Section 260A of the Income Tax Act, 1961 ('Act').

4. At the outset, Mr. Kamal Sawhney, learned Senior Standing counsel for the Revenue states that page 6 of the memorandum of appeal in both appeals shows the wrong cause title. The cause title in each of these appeals should read as '*Pr. Commissioner of Income Tax versus E-Funds International India Private Limited*.'

5. ITA No. 607/2015 is directed against the order dated 20th October 2014 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 2004/Del/2006 for the Assessment Year ('AY') 2002-03.

6. ITA No. 608/2015 is directed against the order dated 20th October 2014 passed by the ITAT in ITA No.902/Del/2004 for the AY 2000-01.

7. The Assessee is engaged in the business of software related services such

as software design and development. The business is conducted at the Software Development Centre ('SDC') at Chennai for which the Assessee claimed exemption under Section 10A of the Act. Apart from this, the Assessee has established a Shared Service Centre ('SSC') at Gurgaon for rendering information technology related services and business process management services for which it claimed deduction under Section 80 HHE of the Act.

8. The Assessee filed its return of income for AY 2000-01 on 30th November 2000 declaring an income of Rs.5,28,590. The case was processed under Section 143(1) of the Act and a notice was issued to it under Section 143(2) of the Act on 27th November 2001.

9. The Assessing Officer ('AO'), in the order dated 30th December 2002 for AY 2000-01, noted that the business activities at the SDC unit at Chennai had resulted in a loss of Rs.23,49,473 and, therefore, the Assessee was not eligible for exemption under Section 10A of the Act.

10. As regards the activities at the SSC unit at Gurgaon, the Assessee had earned an income of Rs.4,25,60,064. However, after adjustment of business losses the gross total income was 'nil'. Accordingly, the Assessee did not claim any deduction under Section 80HHE in the computation of the income. However, for computation of minimum alternate tax ('MAT'), the Assessee claimed a deduction of Rs.4,20,31,476 under Section 80HHE of the Act. After making other adjustments in terms of Section 115 JA of the Act, the book profit was declared as 'nil' and no MAT was paid. The AO,

however, noticed that no Auditor's report as required by Section 80HHE(4) of the Act, was filed with return of income.

11. When a response was sought from the Assessee asking it to submit the Auditor's report certifying the claim under Section 80HHE of the Act, the Assessee by a letter dated 16th September 2002, claimed that it was not required to furnish the Auditor's report but if the AO so required, it would arrange for the same. Subsequently on 8th November 2002, the Assessee wrote to the AO stating that there were certain administrative errors in the calculation of the revenues between the two units. As a result "Revenues amounting to Rs.2.8 crores pertaining to the 10A unit were inadvertently classified as the revenues of the non-10A unit. However, the total revenues in the financial statement for the year ending 31st March 2000 had been correctly reported as Rs.437,207,796." Attached as an annexure to the letter was the revised split of the Profit & Loss Account indicating the basis of arriving at the revised net profits as per the books of accounts for the Section 10A unit and the non-10A units. Thereafter the Auditor's certificate was filed whereby the claim under Section 80HHE was made in the sum of Rs.1,67,72,977.

12. The AO rejected the stand of the Assessee and noted that it had only filed a revised computation and not a revised return. It was held that although the net taxable income as per the original return and the revised computation remained the same, the significant changes in the profits of the Section 10A and non-10A units imparted an entirely new dimension to various facets of the case, leading to complete revision in various claims i.e.

the claims under Section 10A and Section 80HHE in the revised computation *vis-a-vis* the original return. With the time limit for filing of a revised return having elapsed, the AO refused to take cognizance of the revised computation.

13. In the appeal filed by the Assessee against the aforementioned assessment order, the Commissioner of Income Tax (Appeals) ['CIT (A)'] noted that it was quite possible and natural that while submitting a return "some *bona fide* omission, wrong statements may occur." There was a distinction drawn between a revised return and a correction in the originally filed return. Since the Assessee had failed to file the revised return within the time period stipulated under Section 139(5) of the Act i.e. by 31st March 2002, the CIT (A) held that the AO was justified in rejecting the claim made by the Assessee under the revised computation.

14. By the impugned order dated 20th October 2014 in ITA No. 902/Del/2014, the ITAT allowed the Assessee's plea. The ITAT noted that in the revised computation the loss shown for the Section 10A unit in the sum of Rs.23,49,473 was revised at an income of Rs.2,29,61,884 for the reason that a receipt by the Section 10A unit of a sum of 6,78,042 US Dollars ('USD') was not converted into rupees while preparing the computation of income. The receipt of the aforementioned 6,78,042 USD when converted into rupees worked out to Rs. 2,95,76,197. Once the correct figure was adopted, the loss from the Section 10A unit got converted into a profit in the manner computed shown in the revised computation of income. The ITAT was of the view that this was not a case where the Assessee had

not made a claim under Section 10A in the original return of income and, therefore, the above correction did not result in the Assessee making any fresh claim. It was merely a case where a loss determined on account of an incorrect adoption of a receipt was corrected and as a result, the Assessee became entitled to the deduction. It was held that the judgment of the Supreme Court in ***Goetze (India) Ltd. v. Commissioner of Income-Tax [2006] 284 ITR 323 (SC)*** did not debar the claim made by the Assessee.

15. As far as the above issue is concerned, it was submitted by Mr. Kamal Sawhney, learned Senior Standing counsel for the Revenue, that there was no option for the Assessee but to file a revised return within the time stipulated under Section 139(5) of the Act. He submitted that in ***Goetze (India) Ltd.*** (*supra*), the Supreme Court clarified that an Assessee could not amend a return for claiming a deduction. A revised return had to necessarily be filed. He also pointed out that there was a distinction between a correction in the original return and filing a revised return and that the former was not permissible in law.

16. Mr. Piyush Kaushik, learned counsel for the Assessee, on the other hand, referred to the recent decisions of this Court in ***Commissioner of Income Tax v. Sam Global Securities Ltd. (2014) 360 ITR 682 (Del); M/s. Influence v. Commissioner of Income Tax 2014-TIOL-1741-HC-DEL-IT*** and ***Commissioner of Income Tax v. Jai Parabolic Springs Ltd. (2008) 306 ITR 42*** and the decision of Bombay High Court in ***Commissioner of Income Tax v. Pruthvi Brokers & Shareholders (P) Ltd. (2012) 349 ITR 336 (Bom)***.

17. In all the aforementioned decisions cited by learned counsel for the Assessee, the High Court has considered the effect of the decision of the Supreme Court in ***Goetze (India) Ltd.*** (*supra*). The common thread running through the ratio in all the decisions of the High Courts is that while an AO may not be entitled to grant a deduction or an exemption on the basis of a revised computation of income, there was no such fetter on the appellate authorities. This was recently reiterated by this Court in a decision dated 25th August 2015 in ITA No. 644/2015 (***Pr. Commissioner of Income Tax-09 v. Western India Shipyard Limited)***. In ***Sam Global Securities Ltd.*** (supra), this Court pointed out that the power of the Tribunal in dealing with appeals was expressed in the widest possible terms and the purpose of assessment proceedings was to assess the correct tax liability. The Court noted that "Courts have taken a pragmatic view and not a technical view as what is required to be determined is the taxable income of the Assessee in accordance with law." In ***Influence v. Commissioner of Income Tax*** (*supra*) a similar approach was adopted when the AO in that case refused to accept the revised computation submitted beyond the time limit for filing the revised return under Section 139(5) of the Act. This Court noted that the decision in ***Goetze (India) Ltd.*** (*supra*) "would not apply if the Assessee had not made a new claim but had asked for re-computation of the deduction."

18. Turning to the facts of the present case, as rightly noted by the ITAT itself, this is not a case where any new claim for deduction under Section 10A of the Act has been made by the Assessee. This claim had been made in the original return itself. It is only the figure of profit that was changed in

the revised computation as a result of wrongly showing a receipt in USDs without converting it into rupees. The ITAT has, in fact, remitted the matter back to the file of the AO to compute the deduction in accordance with law.

19. The Court does not see any prejudice being caused to the Revenue as a result of the above directions. It is consistent with the law explained by this Court in the above decisions after considering the effect of the decision of the Supreme Court in ***Goetze (India) Ltd.*** (*supra*). Consequently, as regards the issue of the deduction under Section 10A of the Act, the Court declines to frame a question.

20. The second issued that arises from the impugned order dated 20th October 2014 of the ITAT in ITA No. 2004/Del/2006 for AY 2002-03 is the entitlement of the Assessee to the deduction under Section 80HHE of the Act. The AO was of the view that the Assessee had claimed a deduction under Section 80HHE in respect of the SSC unit at Gurgaon for AY 2000-01 but started claiming the deduction under Section 10A in respect of the same unit with effect from AY 2001-02. According to the AO, no deduction under Section 10A would be allowed to the Assessee either for the same or any subsequent assessment year since it had claimed deduction under Section 80HHE of the Act in AY 2000-01. Accordingly, it was held that no deduction under Section 10A would be allowed to the Assessee either in AY 2001-02 or in any of the subsequent years.

21. The CIT (A) reversed the order of the AO by order dated 31st March 2006 and restored the matter to the file of the AO with the direction to allow

the exemption under Section 10A of the Act subject to satisfying the requisites contained therein. The ITAT has, in the impugned order dated 20th October 2014, upheld the order of the CIT (A).

22. The decisions of this Court in ***Commissioner of Income Tax v. Interra Software India (P) Ltd. (2011) 238 CTR (Del) 23, Commissioner of Income-tax v. Damco Solutions (P) Ltd. [2011] 11 taxmann.com 365 (Del)*** and ***Commissioner of Income Tax v. EDS Electronics Data Systems (India) (P) Ltd. (2013)89 DTR (Del) 182*** answer the question in favour of the Assessee and against the Revenue. These decisions explain that the making of a claim under Section 80HHE of the Act in one assessment year will not preclude an Assessee from claiming the benefit under Section 10A of the Act in respect of the same unit in a succeeding assessment year. It was explained that the purpose of the Section 80HHE(5) of the Act was to avoid double benefit but that would not mean that if for a particular assessment year the Assessee wants to claim a benefit only under Section 10A of the Act and not Section 80HHE, that would be denied to the Assessee.

23. Consequently, on this issue also the Court declines to frame a question.

24. The appeals are dismissed.

S. MURALIDHAR, J

VIBHU BAKHRU, J

OCTOBER 06, 2015/dn