आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

(Through Virtual Court at Pune)

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI JAMLAPPA D BATTULL, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 347/RPR/2014

निर्धारण वर्ष / Assessment Year : 2007-08

The Income Tax Officer
Dist. Bastar (C.G)

.....अपीलार्थी / Appellant

बनाम / V/s.

Shri Raja Vikram
P/o. M/s. Vikas Associate (Engineers),
Jeypore Road, Kumharpara,
Jagdalpur, Dist. Bastar (C.G)
PAN : ACOPR6013N

.....प्रत्यर्थी / Respondent

प्रत्याक्षेप सं./CO.No.83/RPR/2015

निर्धारण वर्ष/Assessment Year: 2007-08
(Arising out of ITA No.347/RPR/2014)

Shri Raja Vikram
P/o. M/s. Vikas Associate (Engineers),
Jeypore Road, Kumharpara,
Jagdalpur, Dist. Bastar (C.G)
PAN : ACOPR6013N

..... प्रत्याक्षेपक/ Cross objector

बनाम / V/s.

The Income Tax Officer
Dist. Bastar (C.G)

.....प्रत्यर्थी / Respondent

Revenue by : Shri G.N Singh, DR
Assessee by : Shri S.R. Rao, Advocate

सुनवाई की तारीख / Date of Hearing : 01.02.2022
घोषणा की तारीख / Date of Pronouncement : 02.02.2022

आदेश / ORDER

PER RAVISH SOOD, JM:

The present appeal filed by the revenue is directed against the order passed by the CIT(Appeals), Raipur, dated 25.08.2014, which in turn arises from the order passed by the A.O under Sec. 148/143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 28.01.2013 for assessment year 2007-08. Also, the assessee is before us as a cross-objector. Before us the revenue has assailed the impugned order on the following solitary effective ground of appeal:

> *"1. Whether in law and on facts and circumstances of the case, the leaned CIT(A) has erred in allowing the deduction u/s.54B which was not claimed by the assessee while filing the return?"*

2. Succinctly stated, the assessee who is engaged in the business of trading and manufacturing of electric poles had filed his return of income for the assessment year 2007-08 on 31.03.2008, declaring an income of Rs.1,83,410/- a/w agricultural income of Rs.1,14,710/-. The return of income filed by the assessee was initially processed as such u/s. 143(1) of the Act.

3. Observing that though the assessee had sold his ½ share in urban land situated at Village: Dharampura for a consideration of Rs.10 lac but had failed to offer for tax the capital gain arising there from, the A.O reopened his

case u/s.147 of the Act. Qua the Notice u/s 148, dated 12.03.2012 the assessee requested that his Original return of income filed u/s 139(1) of the Act be treated as a return filed in compliance thereto.

4. During the course of assessment proceedings, it was observed by the A.O that the assessee had both in his Original return of income filed u/s 139(1) of the Act; as well as that filed in compliance to Notice u/s 148 (i.e by requesting that his original return be treated as a return of income filed in compliance to Notice u/s 148) claimed that the income arising from the transfer of his ½ share in agricultural land at Village: Dharampura was not exigible to tax under the Act. However, the A.O did not find favor with the aforesaid claim of the assessee. The A.O holding a conviction that the agricultural land in question did not fall within the meaning of "agricultural land" as contemplated in Sec. 2(14)(iii) of the Act, thus, rejected the aforesaid claim of exemption so raised by the assessee. On finding his claim of exemption scuttled, the assessee who prior to the sale of the agricultural land in question had purchased certain new agricultural lands i.e on 06.10.2006 for Rs. 1,44,050/- and on 20.11.2006 for Rs. 2,87,531/-, thus, in the course of the assessment proceedings raised a claim for deduction as regards such investments aggregating to Rs. 4,31,581/- u/s 54B of the Act. However, the A.O was not persuaded to subscribe to the aforesaid claim of deduction so raised by the assessee before him. Observing that the assessee had not raised the aforesaid claim for deduction u/s. 54B either in his Original return of income filed u/s. 139(1) of the Act; or by filing a revised return of income u/s 139(4) of the Act; or by moving a rectification application u/s 154 of the Act; or in the return of income filed in compliance to Notice u/s 148 of the Act, the Assessing Officer was of the view that the same could not be raised on the basis of a simpliciter claim in the course of the assessment proceedings.

Backed by his aforesaid conviction the Assessing Officer refused to entertain the assessee's claim for deduction u/s. 54B and vide his order passed u/s. 148/143(3) of the Act, dated 28.01.2013 assessed his income at Rs. 9,40,853/-.

5. Aggrieved, the assessee carried the matter before the CIT(Appeals). Observing, that the assessee at the time of filing of his return of income had remained under a bonafide belief that the gain arising from the transfer of the agricultural land in question was not exigible to tax, the CIT(Appeals) concurred with the assessee that under such circumstances there was no occasion for him to have raised a claim for deduction u/s. 54B of the Act in his return of income. In fact, the CIT(A) was of the view that once the A.O had concluded that the agricultural land in question was situated within the municipal limits and hence a capital asset, then, it was incumbent upon him to have suo motto allowed the deduction u/s 54B w.r.t the investment that was made by the assessee towards purchase of new agricultural lands. Backed by his aforesaid observation, the CIT(Appeals) was of the view that there was no justification on the part of the Assessing Officer to have declined the assessee's claim for deduction u/s. 54B of the Act. Accordingly, the CIT(Appeals) directed the A.O to allow the assessee's claim for deduction u/s 54B of Rs. 4,31,581/- i.e as regards the purchase of new agricultural lands by him.

6. Being aggrieved, the revenue has carried the matter in appeal before us. Controversy involved in the present appeal lies in a narrow compass, i.e., as to whether or not the CIT(Appeals) is right in law and the facts of the case in allowing the assessee's claim for deduction u/s. 54B of the Act, despite the fact that the same was never raised by him in his return of income?

7. We have heard the Ld. Authorized Representatives for both the parties, perused the orders of the lower authorities and the material available on record. Admittedly, as per the settled position of law it is not permissible for an assessee to raise a fresh claim for deduction otherwise than by filing a revised return of income. Our aforesaid view is fortified by the judgment of the Hon'ble Supreme Court of India in the case of **Goetze (India) Ltd. v. CIT [2006] 284 ITR 323 (SC).** At the same time, we cannot also remain oblivious of the fact, that as observed by the Hon'ble Apex Court in its aforesaid order in the case of Goetze (India) Ltd. (supra), the limitation in entertaining a claim for deduction otherwise than by filing a revised return of income is limited to the power of the assessing authority and does not impinge on the powers of the Income-tax Appellate Tribunal. At this stage, we may herein observe, that the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Pruthvi Brokers & Shareholders (P) Ltd. (2012) 349 ITR 336 (Bom)** had after taking cognizance of the judgment of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. (supra) observed, that an assessee in the course of proceedings before the appellate authorities is entitled to raise additional grounds not merely in terms of legal submissions, but also additional claims to wit claims not made in the return filed by it. The Hon'ble High Court while concluding as hereinabove had observed as under:

> "10. A long line of authorities establish clearly that an assessee is entitled to raise additional grounds not merely in terms of legal submissions, but also additional claims to wit claims not made in the return filed by it. It is necessary for us to refer to some of these decisions only to deal with two submissions on behalf of the department. The first is with respect to an observation of the Supreme Court in Jute Corporation of India Limited v. Commissioner of Income Tax, 1991 Supp (2) SCC 744 = (1991) 187 ITR 688. The second submission is based on a judgment of the Supreme Court in Goetze (India) Limited v. Commissioner of Income Tax.
>
> 11(A). In Jute Corporation of India Limited v. CIT, for the assessment year 1974-75 the appellant did not claim any deduction of its liability towards purchase tax under the provisions of the Bengal Raw Jute Taxation Act, 1941, as it entertained a belief that it was not liable to pay purchase tax under that Act. Subsequently, the appellant was assessed to purchase tax and the order of assessment was received by it on 23rd

November, 1973. The appellant challenged the same and obtained a stay order. The appellant also filed an appeal from the assessment order under the Income Tax Act. It was only during the hearing of the appeal that the assessee claimed an additional deduction in respect of its liability to purchase tax. The Appellate Assistant Commissioner (AAC) permitted it to raise the claim and allowed the deduction. The Tribunal held that the AAC had no jurisdiction to entertain the additional ground or to grant relief on a ground which had not been raised before the Income Tax Officer. The Tribunal also refused the appellant's application for making a reference to the High Court. The High Court upheld the decision of the Tribunal and refused to call for a statement of case. It is in these circumstances that the appellant filed the appeal before the Supreme Court.

The Supreme Court held as under :-

"5. In CIT v. Kanpur Coal Syndicate, a three Judge bench of this Court discussed the scope of Section 31(3)(a) of the Income Tax Act, 1922 which is almost identical to Section 251(1)(a). The court held as under: (ITR p. 229)

> "If an appeal lies, Section 31 of the Act describes the powers of the Appellate Assistant Commissioner in such an appeal. Under Section 31(3)(a) in disposing of such an appeal the Appellate Assistant Commissioner may, in the case of an order of assessment, confirm, reduce, enhance or annul the assessment; under clause (b) thereof he may set aside the assessment and direct the Income Tax Officer to make a fresh assessment. The Appellate Assistant Commissioner has, therefore, plenary powers in disposing of an appeal. The scope of his power is co-terminus with that of the Income-tax Officer. He can do what the Income-tax Officer can do and also direct him to do what he has failed to do." (emphasis supplied)

6. The above observations are squarely applicable to the interpretation of Section 251(1)(a) of the Act. The declaration of law is clear that the power of the Appellate Assistant Commissioner is co-terminus with that of the Income Tax Officer, if that be so, there appears to be no reason as to why the appellate authority cannot modify the assessment order on an additional ground even if not raised before the Income Tax Officer. No exception could be taken to this view as the Act does not place any restriction or limitation on the exercise of appellate power. Even otherwise an Appellate Authority while hearing appeal against the order of a subordinate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations if any prescribed by the statutory provisions. In the absence of any statutory provision the Appellate Authority is vested with all the plenary powers which the subordinate authority may have in the matter. There appears to be no good reason and none was placed before us to justify curtailment of the power of the Appellate Assistant Commissioner in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the Income Tax Officer." [emphasis supplied]

(B) It is clear, therefore, that an assessee is entitled to raise not merely additional legal submissions before the appellate authorities, but is also entitled to raise additional claims before them. The appellate authorities have the discretion whether or not to permit such additional claims to be raised. It cannot, however, be said that they have no jurisdiction to consider the same. They have the jurisdiction to entertain the new claim. That they may choose not to exercise their jurisdiction in a given case is another matter. The exercise of discretion is entirely different from the existence of jurisdiction.

12. At page 694, after referring to certain observations of the Supreme Court in Additional Commissioner of Income-tax v. Gurjargravures P. Ltd., (1978) 111 ITR 1, the Supreme Court observed at Page 694 as under :-

"The above observations do not rule out a case for raising an additional ground before the Appellate Assistant Commissioner if the ground so raised could not

have been raised at that particular stage when the return was filed or when the assessment order was made, or that the ground became available on account of change of circumstances or law. There may be several factors justifying raising of such new plea in appeal, and each case has to be considered on its own facts. If the Appellate Assistant Commissioner is satisfied he would be acting within his jurisdiction in considering the question so raised in all its aspects. Of course, while permitting the assessee to raise an additional ground, the Appellate Assistant Commissioner should exercise his discretion in accordance with law and reason. He must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons. The satisfaction of the Appellate Assistant Commissioner depends upon the facts and circumstances of each case and no rigid principles or any hard and fast rule can be laid down for this purpose." [emphasis supplied]

13. The underlined observations in the above passage do not curtail the ambit of the jurisdiction of the appellate authorities stipulated earlier. They do not restrict the new/additional grounds that may be taken by the assessee before the appellate authorities to those that were not available when the return was filed or even when the assessment order was made. The sentence read as a whole entitles an assessee to raise new grounds/make additional claims :-

"if the ground so raised could not have been raised at that particular stage when the return was filed or when the assessment order was made..."

"or"

if "the ground became available on account of change of circumstances or law"

The appellate authorities, therefore, have jurisdiction to deal not merely with additional grounds, which became available on account of change of circumstances or law, but with additional grounds which were available when the return was filed. The first part viz. "if the ground so raised could not have been raised at that particular stage when the return was filed or when the assessment order was made... "clearly relate to cases where the ground was available when the return was filed and the assessment order was made but "could not have been raised" at that stage. The words are "could not have been raised" and not "were not in existence". Grounds which were not in existence when the return was filed or when the assessment order was made fall within the second category viz. where "the ground became available on account of change of circumstances or law."

14. The facts in Jute Corporation of India Ltd., various judgments referred to therein as well as in subsequent cases, which we will refer to, establishes this beyond doubt. In many of the cases, the grounds were, in fact, available when the return was filed and/or the assessment order was made. In Jute Corporation of India Ltd., the ground was available when the return was filed. The assessee did not claim any deduction of its liability to pay purchase tax as "it entertained a belief that it was not liable to pay purchase tax under the Bengal Raw Jute Taxation Act, 1941". Thus, the ground existed when the return was filed. The assessment order was even made and received by the assessee. It is only after the appeal was filed that the assessee claimed a deduction in respect of the amount paid towards the purchase tax under the said Act. It is also significant to note that the assessee's entitlement to claim deduction had been held to be valid in view of an earlier judgment of the Supreme Court in Kedarnath Jute Manufacturing Company Limited v. Commissioner of Income-tax, (1971) 82 ITR 363. This was, therefore, a case of error in perception/judgment. Despite the same, the Supreme Court upheld the decision of the Appellate Assistant Commissioner in allowing the deduction. The words "could not have been raised" must, therefore, be construed liberally and not strictly.

15. It is indeed a question of exercise of discretion whether or not to allow an assessee to raise a claim which was not raised when the return was filed or the assessment order was made. As held by the Supreme Court there may be several

factors justifying the raising of a new plea in appeal and each case must be considered on its own facts.

However, such cases include those, where the ground though available when the return was filed or the assessment order was made, was not taken or raised for reasons which the appellate authorities may consider valid. In other words, the jurisdiction of the appellate authorities to consider a fresh or new ground or claim is not restricted to cases where such a ground did not exist when the return was filed and the assessment order was made.

16(A). A Full Bench of this Court in Ahmedabad Electricity Limited v. Commissioner of Income-tax, (1993) 199 ITR 351 considered a similar situation. In that case, the appellant/assessee did not claim a deduction in respect of the amounts it was required to transfer to contingencies reserve and dividend and tariff reserve either before the Income Tax Officer or before the Appellate Assistant Commissioner in appeal. Subsequently, this Court had, in Amalgamated Electricity Company Limited v. Commissioner of Income-tax, (1974) 97 ITR 334, held that such amounts represented allowable deductions on revenue account. The appellant, therefore, raised a new claim and additional grounds before the Tribunal in that connection. The Tribunal rejected the same. The second question which was raised in the reference before the Division Bench was as under :-

> "(2) Whether, on the facts and in the circumstances of the case, the Tribunal erred in not allowing the assessee leave to raise in its own appeals additional grounds and in the departmental appeals cross objections regarding the deductibility of the sums transferred to contingency reserve and tariff and dividend control reserve?"

(B) The Division Bench which heard the reference, finding that there was a conflict of decisions, placed the papers before the Hon'ble Chief Justice for constituting a larger bench to resolve the controversy.

The Full Bench answered the reference in the affirmative and in favour of the assessee. The Full Bench held :-

"Thus, the Appellate Assistant Commissioner has very wide powers while considering an appeal which may be filed by the assessee. He may confirm, reduce, enhance or annul the assessment or remand the case to the Assessing Officer. This is because, unlike an ordinary appeal, the basic purpose of a tax appeal is to ascertain the correct tax liability of an assessee in accordance with law. Hence an Appellate Assistant Commissioner also has the power to enhance the tax liability of the assessee although the Department does not have a right of appeal before the Appellate Assistant Commissioner. The Explanation to subsection (2), however, makes it clear that for the purpose of enhancement, the Appellate Assistant Commissioner cannot travel beyond the proceedings which were originally before the Income-tax Officer or refer to new sources of income which were not before the Income-tax Officer at all. For this purpose, there are other separate remedies provided under the Income-tax Act."

(C) It is unnecessary to refer to all the judgments that the Full Bench referred to while answering the reference. The Full Bench referred to the observations of the Supreme Court in Jute Corporation of India Limited v. Commissioner of Income-tax (supra) set out above. It is important to note that even in this case, therefore, the ground existed when the return was filed. The mere fact that a decision of a court is rendered subsequently does not indicate that the ground did not exist when the law was enacted. Judgments are only a declaration of the law. The assessee could have raised the ground in its return itself. It did not have to await a decision of a court in that regard. Indeed, even if a judgment is against an assessee, it is always open to the assessee to claim the deduction and carry the matter higher. The words "could not have been raised", therefore, cannot be read strictly. Neither the Supreme Court nor the Full Bench of this Court meant them to be read strictly. They include cases where the assessee did not raise the claim for a reason found to

be reasonable or valid by the appellate authorities in the facts and circumstances of a case.

17. The next judgment to which our attention was invited by Mr. Mistri is the judgment of a Bench of three learned Judges of the Supreme Court in National Thermal Power Company Limited v. Commissioner of Income-tax, (1997) 7 SCC 489 = (1998) 229 ITR 383. In that case, the assessee had deposited its funds not immediately required by it on short term deposits with banks. The interest received on such deposits was offered by the assessee itself for tax and the assessment was completed on that basis. Even before the Commissioner of Income-tax (Appeals), the inclusion of this amount was neither challenged by the assessee nor considered by the Commissioner of Income-tax (Appeals). The assessee filed an appeal before the Tribunal. The inclusion of the amount was not objected to even in the grounds of appeal as originally filed before the Tribunal.

Subsequently, the assessee by a letter, raised additional grounds to the effect that the said sum could not be included in the total income. The assessee contended that on a erroneous admission, no income can be included in the total income. It was further contended that the ITO and the Commissioner of Income-tax (Appeals) had erred and failed in their duty in adjudicating the matter correctly and by mechanically including the amount in the total income. It is pertinent to note that the assessee contended that it was entitled to the deduction in view of two orders of the Special Benches of the Tribunal and the assessee further stated that it had raised these additional grounds on learning about the legal position subsequently.

The Tribunal declined to entertain these additional grounds.

The Supreme Court did not answer the question on merits, but framed the following question and held as under :-

> "4. The Tribunal has framed as many as five questions while making a reference to us. Since the Tribunal has not examined the additional grounds raised by the assessee on merit, we do not propose to answer the questions relating to the merit of those contentions. We reframe the question which arises for our consideration in order to bring out the point which requires determination more clearly. It is as follows:
>
> "Where on the facts found by the authorities below a question of law arises (though not raised before the authorities) which bears on the tax liability of the assessee, whether the Tribunal has jurisdiction to examine the same."

Under Section 254 of the Income Tax Act the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with the appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of that item. We do not see any reason to restrict the power of the Tribunal under Section 254 only to decide the grounds which arise from the order of the Commissioner of Income Tax (Appeals). Both the assessee as well as the Department have a right to file an appea1/cross- objections before the Tribunal. We fail to see why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier."

18. In the case before us, the CIT(A) and the Tribunal have held the omission to claim the deduction of Rs.40,00,000/- to be inadvertent. Both the appellate authorities held, after considering all the facts, that the assessee had inadvertently claimed a deduction of Rs.20,00,000/- paid after the end of the year in question.

We see no reason to interfere with this finding. We see less reason to interfere with the exercise of discretion by the appellate authorities in permitting the respondent to raise this claim. That the respondent is entitled to the deduction in law is admitted and, in any event, clearly established. In the circumstances, the respondent ought not be prejudiced.

19. The orders of the CIT(A) and the Tribunal clearly indicate that both the appellate authorities had exercised their jurisdiction to consider the additional claim as they were entitled to in view of the various judgments on the issue, including the judgment of the Supreme Court in National Thermal Power Corporation Limited. This is clear from the fact that these judgments have been expressly referred to in detail by the CIT(A) and by the Tribunal.

20. We wish to clarify that both the appellate authorities have themselves considered the additional claim and allowed it. They have not remanded the matter to the Assessing Officer to consider the same. Both the orders expressly direct the Assessing Officer to allow the deduction of Rs.40,00,000/- under section 43B of the Act. The Assessing Officer is, therefore, now only to compute the respondent's tax liability which he must do in accordance with the orders allowing the respondent a deduction of Rs.40,00,000/- under section 43B of the Act.

21. The conclusion that the error in not claiming the deduction in the return of income was inadvertent cannot be faulted for more than one reason. It is a finding of fact which cannot be termed perverse. There is nothing on record that militates against the finding. The appellant has not suggested, much less established that the omission was deliberate, mala-fide or even otherwise. The inference that the omission was inadvertent is, therefore, irresistible.

22. It was then submitted by Mr. Gupta that the Supreme Court had taken a different view in Goetze (India) Limited v. Commissioner of Income-tax. We are unable to agree. The decision was rendered by a Bench of two learned Judges and expressly refers to the judgment of the Bench of three learned Judges in National Thermal Power Company Limited vs. Commissioner of Income-tax (supra). The question before the Court was whether the appellant-assessee could make a claim for deduction, other than by filing a revised return. After the return was filed, the appellant sought to claim a deduction by way of a letter before the Assessing Officer.

The claim, therefore, was not before the appellate authorities. The deduction was disallowed by the Assessing Officer on the ground that there was no provision under the Act to make an amendment in the return of income by modifying an application at the assessment stage without revising the return. The Commissioner of Income-tax (Appeals) allowed the assessee's appeal. The Tribunal, however, allowed the department's appeal. In the Supreme Court, the assessee relied upon the judgment in National Thermal Power Company Limited contending that it was open to the assessee to raise the points of law even before the Tribunal. The Supreme Court held :-

> "4. The decision in question is that the power of the Tribunal under section 254 of the Income-tax Act, 1961, is to entertain for the first time a point of law provided the fact on the basis of which the issue of law can be raised before the Tribunal. The decision does not in any way relate to the power of the Assessing Officer to entertain a claim for deduction otherwise than by filing a revised return. In the circumstances of the case, we dismiss the civil appeal. However, we make it clear that the issue in this case is limited to the power of the assessing authority and does not impinge on the power of the Income-tax Appellate Tribunal under section 254 of the Income- tax Act, 1961. There shall be no order as to costs." [emphasis supplied]”

23. It is clear to us that the Supreme Court did not hold anything contrary to what was held in the previous judgments to the effect that even if a claim is not made before the assessing officer, it can be made before the appellate authorities. The

> jurisdiction of the appellate authorities to entertain such a claim has not been negated by the Supreme Court in this judgment. In fact, the Supreme Court made it clear that the issue in the case was limited to the power of the assessing authority and that the judgment does not impinge on the power of the Tribunal under section 254.
>
> 24. A Division Bench of the Delhi High Court dealt with a similar submission in Commissioner of Income-tax v. Jai Parabolic Springs Limited, (2008) 306 ITR 42. The Division Bench, in paragraph 17 of the judgment held that the Supreme Court dismissed the appeal making it clear that the decision was limited to the power of the assessing authority to entertain a claim for deduction otherwise than by a revised return and did not impinge on the powers of the Tribunal. In paragraph 19, the Division Bench held that there was no prohibition on the powers of the Tribunal to entertain an additional ground which, according to the Tribunal, arises in the matter and for the just decision of the case.
>
> (emphasis supplied by us)

Now, in the case before us, we find that the assessee at the time of filing of his returns of income u/s. 139(1) and u/s 148 of the Act had remained under a bonfaide belief that as the agricultural land in question i.e at Village Dharampura was situated beyond the municipal limits, and thus not a 'capital asset', therefore, the gain on transfer of the same was not exigible to tax under the Act. Accordingly, backed by his aforesaid conviction, the assessee in our considered view had no occasion to have raised in his aforesaid returns of income filed u/s 139(1) and u/s 148 of the Act a claim for deduction u/s 54B w.r.t the investment that was made by him towards purchase of new agricultural lands. In fact, it was only after the aforesaid claim of the assessee for exemption of the gain on transfer of the agricultural land in question was scuttled by the A.O for the reason that the agricultural land in question was situated within the municipal limits, and thus, was a capital asset, that the assessee on account of such changed circumstances had raised the aforesaid claim for deduction u/s 54B of the Act. Insofar the declining of the assessee's claim for deduction u/s 54B by the A.O is concerned, we are of the considered view, that as the same was raised by the assessee on the basis of a simpliciter claim in the course of the assessment proceedings and not by filing of a revised return of income, therefore, in the

backdrop of the judgment of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. (supra) no fault can be attributed to the A.O for refusing to entertain the said claim of deduction of the assessee. But then, the assessee remaining well within his rights had rightly raised the aforesaid claim for deduction u/s 54B before the CIT(Appeals), who in our considered view, remaining well within the realm of his jurisdiction had rightly entertained the assessee's claim for deduction u/s 54B of the Act, and finding the same in order had directed the A.O to allow the same. Before parting, we may herein observe, that as our indulgence has been sought by the department only for adjudicating as to whether or not the CIT(A) was well within his jurisdiction to allow the assessee's claim for deduction u/s 54B of the Act, despite the same not having been raised in the return of income, therefore, we are confining our adjudication to the said extent only. Accordingly, finding no infirmity in the order of the CIT(Appeals), who in our considered view remaining well within the realm of his jurisdiction had entertained the assessee's claim for deduction u/s. 54B of the Act and directed the A.O to allow the same, we uphold his order. We, thus, finding no merit in the claim of the revenue that the CIT(A) had erred in allowing the assessee's claim for deduction u/s 54B of the Act, dismiss the appeal.

8. Resultantly, the appeal filed by the Revenue is dismissed.

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AY.2007-08

9. As stated by the ld. A.R the cross-objection filed by the assessee is merely supportive of the order of the CIT(Appeals). As we have upheld the order of the CIT(Appeals) and had dismissed the appeal of the revenue, therefore, the cross-objection filed by the assessee having been rendered as infructuous is accordingly dismissed.

10. In the combined result, both the appeal filed by the Revenue and cross-objection filed by the assessee are dismissed.

Order pronounced on 02nd day of February, 2022.

Sd/-	Sd/-
JAMLAPPA D BATTULL	**RAVISH SOOD**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

रायपुर/ RAIPUR ; दिनांक / Dated : 02nd February, 2022
*SB

<u>आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :</u>

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Raipur (C.G)
4. The CIT, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	01.02.2022	Sr.PS/PS
2	Draft placed before author	01.02.2022	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		