

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 382 of 2016
With
TAX APPEAL NO. 383 of 2016
TO
TAX APPEAL NO. 384 of 2016

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PRINCIPAL COMMISSIONER OF INCOME TAX-1....Appellant(s)
Versus
UTI BANK LIMITED....Opponent(s)

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Appearance:

MRS MAUNA M BHATT, ADVOCATE for the Appellant(s) No. 1
MR RK PATEL, ADVOCATE with MR BD KARIA, ADVOCATE with MR
DARSHAN R PATEL - CAVEATOR for the Opponent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI
and
HONOURABLE MR.JUSTICE A.J. SHASTRI

Date : 13/06/2016

COMMON ORAL ORDER
(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. Facts being identical, we may record those arising in Tax Appeal No.382 of 2016.

2. Revenue is in appeal against the judgment of Income-tax Appellate Tribunal ('the Tribunal' for short) raising following questions for our consideration.

“[A] Whether the Appellate Tribunal has substantially erred in deleting the disallowance of Rs.36.68 crores made u/s 14A of the I.T. Act ?

[B] “Whether the Appellate Tribunal has substantially erred in directing the Assessing

Officer to delete the suo moto disallowance of Rs.6.23 crores made by the assessee company in the return of income?

[C] "Whether the Appellate Tribunal has erred in not appreciating the fact that the assessee can only make a new claim which was not made in the original return, by way of filing a revised u/s 139(5) of the Act only, as held by Hon. Supreme Court in the case of Goetze India Ltd vs CIT (2006) 284 ITR 323 (Supreme Court)?"

3. Though three questions are framed, issue is common viz. disallowance of a global sum of Rs.38.68 crores made by the Assessing Officer under section 14A of the Income Tax Act, 1961 ('the Act' for short). From the record, it emerges that for the assessment year 2002-03, the respondent assessee itself in the return filed, had made suo-motu disallowance of the sum of Rs.6.33 crores under the said head. The Assessing Officer however, made a total disallowance of Rs.38.66 crores. When the matter reached the Tribunal, the assessee raised an additional ground resiling from suo-motu disallowance of Rs.6.23 crores. In essence therefore the assessee questioned the entire disallowance made by the Assessing Officer.

4. After one round of remand, the Tribunal by the impugned order dated 28.10.2015, considered the issue on merit. The Tribunal came to the conclusion that the assessee had sufficient interest free funds in excess of interest free investments. The Tribunal recorded that the surplus percentage of interest free funds were at the rate of 373%. Referring to the decision of this Court in case of the assessee pertaining to the later assessment years, the Tribunal ruled in favour of the assessee and deleted the entire disallowance made by the Assessing Officer. The Tribunal rejected the Revenue's contention that the assessee itself having made suo-motu disallowance in the return of the income, could not have changed its position and argued against such disallowance also. In this context, the Tribunal referred to and relied upon the decision of Supreme Court in case of **National Thermal Power Co. Ltd. vs Commissioner Of Income-tax**, reported in 229 ITR 383. The Tribunal also referred to a decision of Division Bench of this Court in case of **CIT v. Mitesh Impex** reported in **270 CTR 66 (Guj)**.

5. Having heard learned counsel for the parties and having perused documents on record, we do not see any error in the view of the Tribunal. The question of disallowance under section 14A of the Act has been examined on the basis of materials on record. The Tribunal found that the assessee's interest free funds far exceeded its interest free investments. The Tribunal relied on the decisions of this court in case of this very assessee concerning similar issues in the later assessment years, against which we are informed that the Special Leave Petition has been dismissed.

6. Regarding a claim contrary to the disclosures in the return, the Tribunal relied on the decision of Supreme Court in the case of the **National Thermal Power** (supra) to observe that the purpose of assessment is to tax real income. This court taking note of the decisions of Supreme Court in case of **Goetze India Limited v. CIT**, reported in **284 ITR 323** and **National Thermal Power** (supra) a in case of **Mitesh Impex** had observed as under:

*"38. It thus becomes clear that the decision of the Supreme Court in the case of **Goetze (India) Ltd. vs. Commissioner of Income-tax** (supra) is confined to the powers of the assessing officer and accepting a claim*

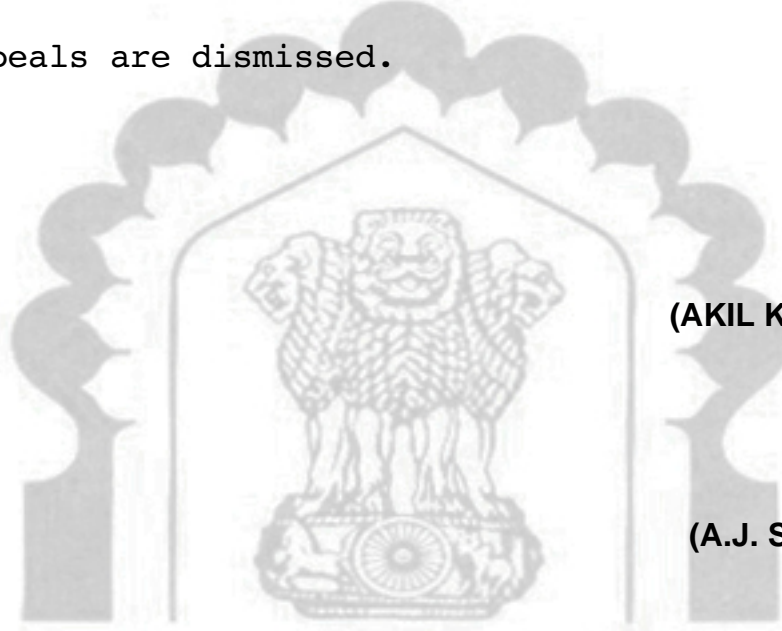
without revised return. This is what Supreme Court observed in the said judgment while distinguishing the judgment in the case of **National Thermal Power Co. Ltd. vs. Commissioner of Income-tax** (supra) and that is how various High Courts have viewed the dictum of the decision in the case of **Goetze (India) Ltd. vs. Commissioner of Income-tax** (supra). When it comes to the power of Appellate Commissioner or the Tribunal, the Courts have recognized their jurisdiction to entertain a new ground or a legal contention. A ground would have a reference to an argument touching a question of fact or a question of law or mixed question of law or facts. A legal contention would ordinarily be a pure question of law without raising any dispute about the facts. Not only such additional ground or contention, the Courts have also, as noted above, recognized the powers of the Appellate Commissioner and the Tribunal to entertain a new claim for the first time though not made before the assessing officer. Income Tax proceedings are not strictly speaking adversarial in nature and the intention of the Revenue would be to tax real income.

39. This is primarily on the premise that if a claim though available in law is not made either inadvertently or on account of erroneous belief of complex legal position, such claim cannot be shut out for all times to come, merely because it is raised for the first time before the appellate authority without resorting to revising the return before the assessing officer.

40. Therefore, any ground, legal contention or even a claim would be permissible to be raised for the first time before the appellate authority or the Tribunal when facts necessary to examine such ground, contention or claim are already on record. In such a case the situation would be akin to allowing a pure question of law to be raised at any stage of the proceedings. This

is precisely what has happened in the present case. The Appellate Commissioner and the Tribunal did not need to nor did they travel beyond the materials already on record, in order to examine the claims of the assessee for deductions under section 80IB and 80HHC of the Act."

7. In the result, no question of law arises. All tax appeals are dismissed.



(AKIL KURESHI, J.)

(A.J. SHASTRI, J.)

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THE HIGH COURT
OF GUJARAT

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