

Fresh Claim Outside The Return of Income

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A legitimate expenditure or relief not claimed in the return of income can be claimed ONLY by revising the return of income under section 139(5) of the Income Tax Act, 1961

Do you agree?

Section 139(5)

If any person, having furnished a return.....

..... discovers any omission or any wrong statement therein, he may furnish a **revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.**

Goetze (India) Ltd. Vs. CIT, 284 ITR 323 (SC)

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1. The case of Goetze (India) Ltd. relates to the assessment year 1995 – 96.
2. The assessee had filed its Return of Income but omitted to claim a deduction that was legitimately available to it.
3. The mistake was discovered by the assessee during the assessment proceedings belatedly.
4. Since the time for filing the revised return of income under section 139(5) had elapsed, the assessee made a claim by filing a letter before the Assessing Officer during the assessment proceedings.

Goetze (India) Ltd. Vs. CIT, 284 ITR 323 (SC)

5. The AO rejected the claim on the ground that no such provision existed in the I T Act, 1961 for entertaining a claim made otherwise than by way of revising the return.
6. The assessee company went into appeal before the CIT(A). CIT(A) decided the matter in favour of the assessee and allowed the claim of the assessee.
7. The department went into appeal before the Tribunal. The tribunal reversed the decision of CIT(A).
8. The assessee went into appeal before the High Court, which upheld the decision of the Tribunal.
9. The Apex Court also confirmed the order of the High Court.

Goetze (India) Ltd. Vs. CIT, 284 ITR 323 (SC)

10. Before the Apex Court, the assessee company contended that it was open to the assessee to raise points of law even before the Appellate Tribunal, if the same arises from the facts, which have a bearing on the tax liability of the assessee.

It relied on the Apex Court's decision in **National Thermal Power Co. Ltd. vs. CIT (229 ITR 383)**

11. The Apex Court answered the question **with respect to** the powers of the Tribunal as follows: ***“It clarified that the issue in this case is limited to the power of the Assessing Authority and does not impinge on the power of the ITAT u/s 254 of the Act.”***

Section 143(3)(ii)

Effective from October 1, 1998

*On the day specified in the notice –
issued under clause (ii) of sub – section (2), or as soon
as afterwards as may be, after hearing such evidence as
the assessee may produce and such other evidence as
the Assessing Officer may require on specified points,
and after taking into account all relevant material which
he has gathered, the Assessing Officer shall, by an order
in writing, make an assessment of the total income or
loss of the assessee, and **determine the sum payable
by him or refund of any amount due to him on the
basis of such assessment***

Section 143(3)(ii)

Operative from AY 1989 – 90 up to September 30, 1998

On the day specified in the notice –

*issued under clause (ii) of sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of total income or loss of the assessee, and **determine the sum payable by him on the basis of such assessment***

Section 143(3)(ii)

Operative up to AY 1988 – 89

On the day specified in the notice –
*issued under clause (ii) of sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of total income or loss of the assessee, and **determine the sum payable by him or refund of any amount due to him on the basis of such assessment***

Constitution of India

In India Cements Ltd. vs. State of Tamil Nadu 188 ITR 690, 699 (SC), a seven member bench observed:

“Constitution is the mechanism under which the laws are made and not merely an Act which declares what law is to be.”

Article 265 of the Constitution of India:

“No tax shall be levied or collected except by authority of law”.

Circular 14 (XL – 35) Dated 11th April, 1955

***“Officers of the department must not take advantage of ignorance of an assessee as to his rights.*”**

It is one of their duties to assist a taxpayer in every reasonable way particularly in the matter of claiming and securing reliefs and in this regard the officers should take the initiative in guiding a taxpayer where proceedings or other particulars before him indicate that some refund or relief is due to him.

Circular 14 (XL – 35) Dated 11th April, 1955

Although the responsibility of claiming refunds and reliefs rests with the assessee on whom it is imposed by law, officers should:

- draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or the other.***
- Freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming the refunds and reliefs.***

Legal Validity of Circular 14 of 1955

The Apex Court examined the circular in **CIT Vs. Mahendra Mills (243 ITR 56)**. While deciding the said **case**,

it observed that the Board imposes a duty on the officer of the department to assist the taxpayers in every reasonable way, particularly in the matter of claiming and securing relief. The officer is not required to do more than to advice the assessee. It does not place any mandatory duty on the officer to allow relief (depreciation, in the case of Mahendra Mills) if the assessee does not want to claim that.

In **CIT – II, Lucknow Vs. Lucknow Public Education Society (2009) 183 Taxman 62 (Allahabad)**, the Hon'ble High Court has followed the above views.

Legal Validity of Circulars Issued by CBDT

1. The circulars issued by CBDT are mandatory in nature on the tax authorities and the assessing authorities are duty-bound to follow them.
2. Section 119(1) of the IT Act, 1961 provides that every officer and person shall follow orders, instructions and directions issued by CBDT.
3. Even if the directions given by CBDT are at variance with the provisions of law, they are still binding on the assessing authorities. Thus, in effect *circulars are as good as law*.

Supreme Court on Circulars

Ellerman Lines Ltd. Vs. CIT; 82 ITR 913 (SC).

Even if the directions given by the Board (CBDT) deviate from the provisions of the Act, they are binding on the ITO.

K.P. Varghese Vs. ITO; 131 ITR 597 (SC).

Circulars issued by the CBDT are legally binding on the revenue and this binding character attaches to the circular even if they are found not in accordance with the correct interpretation of statutory provision and they depart or deviate from the construction of law.

The Apex Court held similarly in **UCO Bank Vs. CIT (237 ITR 889)**, **CIT Vs. Anjum M. H. Ghaswala (252 ITR 1)** and **CIT Vs. Azaadi Bachoa Andolan (263 ITR 706) (SC)**

Are Circulars of CBDT binding on Assessee?

The circulars are not binding on the assessee.

Assessee may challenge the circular that are detrimental to the interest of the assessee.

The Apex Court has held in **Vegetable Products Ltd. vs. CIT; 88 ITR 192** that where two views are possible, view favouring the assessee must be adopted.

Court Decisions on Allow-ability of Fresh Claim

- **CIT Vs. Bharat Aluminium Ltd. 303 ITR 256 (Delhi)**
- **CIT Vs. Ramco Industries 221 CTR 491 (P & H)**
- **CIT Vs. Jai Parabolic Springs Ltd. (2008) 172 Taxman 258 (Delhi)**
- **Balmukand Acharya vs. Dy. CIT (ITA No. 217 of 2001) (Bombay) (Reported on www.itatonline.org)**
- **CIT Vs. Sam Global Securities Ltd. (2014) 105 DTR 41 (Delhi)**

Court Decisions on Allow-ability of Fresh Claim

- **Chicago Pneumatics India Ltd. Vs. DCIT (15 SOT 252) (Mumbai)**
- **Thomas Kurian Vs. ACIT; (2007) 108 TTJ 439 or 106 ITD 158 (Cochin)**
- **ACIT Vs. Bharat Starch Industries Ltd. (ITA No. 2102/Kol/2004) (Unreported)**
- **Xerox India Ltd. Vs. DCIT, Central Circle – 20, New Delhi (ITA No. 1580/Del/2010) (Unreported)**

Court Decision – Not in Favour

Chiranjivi Wind Energy Ltd. Vs. ACIT 29 (Trib.) 534

In this case, AO made disallowances by virtue of which assessee should have been allowed higher deduction u/s 80-IB, which was not allowed by AO.

Assessee also did not claim higher deduction before the AO.

CIT(A) also did not allow the claim of the assessee.

ITAT also rejected the claim of the assessee.

First Time Claim before the CIT(A)

The answer is Yes. The powers of CIT (A) are co-terminus with that of the assessing officer.

Section 251 of the Act prescribes the powers of the CIT(A). The section empowers the CIT(A) to confirm, reduce, enhance or annul the assessment. As regards penalty he has the power to confirm, cancel, enhance or reduce it.

The views are supported by the following decisions:

JCIT Vs. Hero Honda Finlease Ltd.; (2008) 115 TTJ (Del) (TM) 752.

CIT vs. Rajasthan Fastners (P) Ltd. 100 DTR (Raj) 152

Ramco Cements Ltd. vs. Dy. CIT 112 DTR (Mad) 393

Chicago Pneumatics India Ltd. Vs. DCIT 15 SOT 252

ACIT Vs. Bharat Starch Industries Ltd.

*If the legitimate relief or deduction is **omitted to be claimed** in the return of income, it can at most be termed as a technical default and **cannot be considered as reason enough for denying such claims to the assessee.***

In **S. R. Koshti Vs. CIT 146 Taxman 335 (Guj)** the court observed that:

The authorities under the Act are under an obligation to act in accordance with law. Tax can be collected only as provided under the Act. If an assessee, under a mistake, misconception or not being properly instructed, is over-assessed, the authorities under the Act are required to assist him and ensure that only legitimate taxes due are collected.

In Ramlal Vs. Rewa Coalfields Ltd. AIR 1962 SC 361,

State of West Bengal Vs. Administrator, Howrah Municipality AIR 1972 SC 749 and

Babutmal Raichand Oswal Vs. Laxmibai R. Tarte AIR 1975 SC 1297, the court held that

“State authorities should not raise technical pleas if the citizens have a lawful right and the lawful right is being denied to them merely on technical grounds. The State authorities cannot adopt the attitude which private litigants might adopt.”

Conclusion

- 1. Relevant facts and data with respect to the claim should be before the assessing authorities.***
- 2. If the legitimate relief or deduction is omitted to be claimed in the return of income, it can at most be termed as a technical default and cannot be reason for denying such claims to the assessee.***
- 3. According to Article 265 of the Constitution, Government can collect only those taxes which are provided in the law.**
- 4. Circular 14 (XL – 35) of 11th April, 1955 requires AO to bring to the notice of the assessee the deductions and reliefs available but not claimed.**

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- 5. AO is bound by Circular 14 of 11th April, 1955 to allow deduction and reliefs available on being claimed.**
 - 6. The AO by virtue of section 143(3)(ii) AO can grant refund post assessment.**
 - 7. If the AO does not allow deductions and reliefs available, prefer an appeal before CIT(A).**
 - 8. If CIT(A) does not grant relief, prefer a second appeal before Tribunal.**

A legitimate expenditure or relief not claimed in the return of income can be claimed ONLY by revising the return of income under section 139(5) of the Income Tax Act, 1961

Do you agree?

THANK YOU



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