

## Failure to raise genuine claim in ITR doesn't allow AO to deny it during assessment

**Summary – The High Court of Madras in a recent case of Abhinitha Foundation (P.) Ltd., (the Assessee) held that Even if a claim made by assessee-company does not form part of original return or even revised return, it can still be considered by Assessing Officer as well as appellate authorities in case relevant material is available on record**

### Facts

- The assessee-company filed its return declaring certain taxable income. The assessment was completed under section 143(3) whereby income as returned by assessee was accepted.
- The assessee-company had not made a claim in the return as originally filed for deduction under section 80-IB(10). However, during the course of the assessment, the assessee-company filed the details of the project executed by it, based on which, it claimed deduction under section 80-IB(10). The assessee-company, while making the said claim, also filed the details in the prescribed format, *i.e.*, Form No. 10CCB.
- The Assessing Officer, however, bypassed the claim made by the assessee-company *qua* deduction under section 80-IB(10), while passing the assessment order.
- The Commissioner (Appeals), while noting the fact that the assessee-company's claim for deduction under section 80-IB(10) had been accepted by the department both in the preceding and succeeding years, dismissed the appeal on the ground that the claim with respect to deduction under section 80-IB(10) did not form part of the original return filed by the assessee-company.
- The Tribunal ruled that both the Commissioner (Appeals) and itself (being the appellate authorities) had the power to consider the revised claim by the assessee-company, if, it was otherwise entitled to, even though no claim *qua* the same had been lodged by it in the return as originally filed. Having come to the said conclusion, the Tribunal remitted the matter to the Assessing Officer for fresh consideration, based on the documents already filed by the assessee-company at the time of assessment.
- On revenue's appeal:

### Held

- The power of entertaining the claim vests with the Appellate Authorities based on the facts and circumstances of the case. The power of the Appellate Authorities to consider claims made based on material already on record is co-terminus with the power of the Assessing Officer. The failure to advert to the claim in the original return or the revised return cannot denude the appellate authorities of their power to consider the claim, if, the relevant material is available on record and is otherwise tenable in law. Any other view will set at naught the plenary powers of appellate authorities.

- It is well settled that even if a claim made by the assessee-company does not form part of the original return or even the revised return, it can still be considered, if, the relevant material is available on record, either by the Appellate Authorities, which includes both the Commissioner (Appeals) and the Tribunal by themselves, or on remand, by the Assessing Officer. In the instant case, the Tribunal, on perusal of the record, found that the relevant material *qua* the claim made by the assessee-company under section 80-IB(10) was placed on record by the assessee-company during the assessment proceedings and therefore, it deemed it fit to direct its re-examination by the Assessing Officer.
- The view taken by the Tribunal is unexceptionable and therefore, does not merit any interference.
- Consequently, the revenue's appeal is dismissed.