TREATMENT OF A FRESH CLAIM OF AN ASSESSEE BEFORE THE COMPLETION OF ASSESSMENT

[Whether an assessing officer is required to entertain and consider a fresh claim or a modification in a claim made at any time before the completion of assessment u/s 143(3) of the income-tax act.]

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Recently I came across a case, where a Company furnished a letter to the Assessing Officer (A.O.) with a request that certain item of income, which had been inadvertently offered for taxation, should be reduced from its income disclosed in the return of income. The aforesaid claim was made during the course of assessment proceedings U/S 143(3) of the Income Tax Act, 1961 (the Act), before the finalization of assessment. The A.O. refused to entertain the aforesaid claim of the Company, as according to him, the Company had not made the aforesaid claim either in the original return of income or in the revised return of income and the time for filing revised return of income had already expired. In other words, as per the A.O., any fresh claim or modification in a claim in respect of an item of income or deduction, could be entertained only if the same is made by filing a revised return of income, within the time prescribed U/S 139(5) of the Act.

The aforesaid view of the A.O is definitely not in accordance with the provisions of the Act. This is so because the very purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. Besides, a legal claim can be made at any stage of the assessment or appellate proceedings. It is also to be noted in this context that merely because an assessee wrongly includes an item of income in his return, it does not make him liable to tax thereon. It is also important to note that Art. 265 of the Constitution lays down that no tax shall be levied except when authorised by law.

In this context, it would be relevant to examine the provisions of S.139 (5) of the Act. As per S.139 (5), if any person discovers any **omission** or **wrong statement**, in the return of income already filed, then he may furnish a revised return of income. It is quite evident from the language of S.139 (5) that a revised return of income is required to be filed in case of an **omission** or a **wrong statement** in the return already filed. The words “omission” and “wrong statement” would clearly refer to an omission of a fact or a wrong statement of fact. Thus a revised return of income may serve the purpose of correcting a wrong statement or disclosing a fact omitted in the original return of income. Besides, as per the decision of Gauhati High Court, in the case of **Sunandaram Deka Vs. C.I.T., 210 ITR p.988,** it has been held that the omission or wrong statement, in the original return of income must be due to bonafide inadvertence or mistake on the part of the assessee.

It may also be understood in this context that before the amendment of S.139(5) with effect from 1.4.1989, an assessee could revise his return of income at any time before the assessment was made. The purpose

of the amendment of S.139 (5) has to be looked into in the light of the amendment of S.143 (1) with effect from 1.4.1989. After the aforesaid amendment of S.139 (1) with effect from 1.4.1989, an **intimation** was to be sent to the assessee specifying the sum payable and such intimation was to be deemed to be a notice of demand U/S 156 and all the provisions of the Act were to apply accordingly. It was with a view to regulating the returns of income covered by the aforesaid intimation U/S 143(1) of the Act that a time limit for furnishing a revised return was required to be prescribed. As regards the return of income, which are subjected to scrutiny U/S 143(3) of the Act, the condition that a revised return should be filed before the completion of the assessment, would be quite sufficient.

It is also pertinent to note in this context that the furnishing of a revised return of income may be relevant only as far as the relevant facts of the case are concerned. As regards a legal claim on the basis of the facts already brought on record, the same can be raised at any time during the assessment proceedings before the completion of assessment or at any stage of appellate proceedings.

The aforesaid issue is discussed in all its aspects in the following paragraphs:

1. An assessee is entitled to make a fresh claim or modify a claim before the A.O. at any time before the completion of the assessment U/S 143(3) in view of the various provisions of the Act.

At the outset, it may be stated that it is the settled position of law that in case of an assessment U/S 143(3) of the Act, an assessee is entitled to make a fresh claim or modify a claim at any time before the completion of assessment. The various provisions of the I.T. Act support the aforesaid proposition of law. The same as follows:

(I). It is not necessary to file a revised return of income in order to make a claim regarding certain amount of income or deduction, as the purpose of revision of return of income is quite different.

As per S.139 (5) of the Act, if any person discovers any **omission** or **any wrong statement** in the return of income, he may furnish a revised return. A legal claim in respect of an item of income or deduction does not envisage either any omission or a wrong statement, as all the relevant facts stand correctly disclosed in the return of income.

Actually before the amendment of S.139(5) with effect from 1.4.1989, a revised return could be filed at any time before the assessment was made. It is on account of amendment of S.143(1) with effect from 1.4.1989, that the aforesaid change in S.139(5) was necessitated. If a return of income is accepted U/S 143(1) by issue of an intimation, then a time limit had to be prescribed for revision of

such a return of income, if it was not subjected to scrutiny U/S 143(3) of the Act. No such time limit is required to be prescribed in respect of an assessment U/S 143(3) of the Act.

Besides, the furnishing of a revised return of income is relevant in respect of a penalty for concealment U/S 271(1)(c) or prosecution. A revised return may not save penalty or prosecution in relation to the originally filed return of income. In other words, cases of concealment and false statements are not covered U/S 139(5). S.139(5)will apply only in cases of **"omission or wrong statement"** and not to cases of "concealment or false statements" **– C.I.T. Vs. J.K.A. Subramania Chettiar, 110 ITR p.602 (Mad.); Addl. C.I.T. Vs. Radhey Shyam, 123 ITR, p.125 (All.)**

(II) Provisions of S.139(9) also imply that in case of scrutiny assessment no such time limit regarding a claim by the assessee could be prescribed.

Under S.139(9), the A.O. may allow time for rectification of defects in the return of income before the assessment is made. When the A.O. has power to grant time for rectification of defects in a return of income U/S 139(9), then how could an assessee be debarred from correcting his mistakes, of course, before the assessment is made? In this context, it may be stated that both the provisions viz. Ss.139(5) and 139(9) are enabling provisions inserted to facilitate reflection of correct income in the return and assessment thereof. These provisions can be simultaneously applied. For example, take a case where the assessee submits a valid return but without proof of TDS. The TDS proof is later given to the A.O. and is placed on records. It would be absurd to contend that credit for TDS could be given if the proof was asked for by the A.O. in terms of S.139(9) but not in case where the assessee had placed the proof on record without filing a revised return U/S 139(5). Thus documents placed on record with or without a covering letter with the intention to remove any omission or wrong statement in the return or record, cannot be ignored simply because a revised return was not furnished unless it is shown that the purpose of the Act is not satisfied – **C.I.T. Vs. R.B.B.M.H. Trust, 195 ITR, p.825 (Cal.)**.

(III) Other relevant provisions of the Act also indicate that an assessee is entitled to make any claim in respect of an item of income or deduction before the completion of assessment U/S 143(3).

There are a number of provisions in the Act which clearly indicate that an assessee is entitled to make any claim in respect of an item of income or deduction before the completion of assessment U/S 143(3), e.g.:

(i) As per S.142, the A.O. may call for any particular document or other information for the purpose of assessment U/S 143(3). Thus when the A.O. has a power to disallow or modify a claim of the assessee on the basis of enquiry U/S 142 before assessment, the assessee will also have a right to make a fresh claim or to modify a claim before the completion of assessment.

(ii) Similarly, U/S 143(3), the A.O. may require the assessee to produce further evidence. Besides, the A.O. may utilise the material, which he has gathered for the purpose of assessment. Thus when the A.O. is entitled to call for any fresh evidence or utilise any material gathered by him for the purpose of assessment and on that basis disallow or modify the claim of an assessee, then it would be highly inequitable to contend that an assessee is not entitled to make a fresh claim or modify a claim before the completion of assessment.

(iii) Besides, Ss.142 & 143 are machinery sections and the very purpose of assessment proceedings before the taxing authorities is to assess correctly the liability of an assessee in accordance with law. Under such a premise, it would be quite absurd to argue that an assessee is not entitled to make a fresh claim or modify a claim before the completion of assessment.

In a nutshell, everything is open for the A.O. as well as the assessee regarding the various claims for the assessment of income before the completion of assessment.

(iv) As per Citizens' Charter issued by the I.T. Department, it is the duty of the A.O. to inform the tax-payers of their rights, duties, entitlements and obligations under the law. In the light of the aforesaid duty of the A.O., when could an occasion arise for the A.O .to inform the tax-payer about his rights and entitlements? Most likely, such occasion may arise only during the assessment proceedings. In cases where the tax-payer has not availed of the benefits granted to him under the Act, the A.O. is expected to inform him about the same and also allow him to avail of such benefits. A tax-payer can be allowed to avail of such benefits only by making a fresh claim or by modifying a claim before the completion of assessment. Obviously the non-observance of the formality of filing a revised return cannot deprive the assessee of the aforesaid benefits.

In the light of the aforesaid reasons, it is quite evident that a tax-payer is entitled to make a fresh claim or modify a claim during the course of assessment proceedings U/S 143(3), before the completion of assessment.

2. <u>The judicial pronouncements also support the aforesaid proposition.</u>

There are a number of judgements of the Apex Court and the High Courts, which clearly support the proposition that a tax-payer may make a fresh claim or modify a claim at any time before the completion of assessment U/S 143(3) of the Act. Some such judgements are as follows:

(i) National Thermal Power Co.Ltd. Vs. C.I.T., 229 ITR, p.383 (SC)

In this case, the Apex Court was dealing with the powers of the Tribunal regarding a question raised for the first time before it. The relevant part of the judgement on p.386 of the Report is as follows:

"**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". (Emphasis supplied)

Thus, the purpose of the assessment proceeding is to correctly assess the tax liability of an assessee in accordance with law and if even at the appellate stage before the Tribunal it is found that a non-taxable item is taxed, the assessee cannot be prevented from raising that question before the Tribunal. When such a question is allowed to be raised at the appellate stage before the I.T.A.T., how can it be contended that the assessee is not entitled to make such a claim before the A.O. before the completion of assessment?

(ii) C.I.T. Vs. Prabhu Steel Industries Pvt. Ltd., 171 ITR, p530, (Bom.)

It was held in this case that the A.O. was obliged to entertain and consider on merit a claim made in the course of assessment proceedings. The relevant part of the judgement on p.531 of the Report is reproduced as follows:

"There is no doubt whatsoever that the Tribunal and the Appellate Assistant Commissioner were right in the view they took. **The claim having been made in the course of the assessment proceedings, the Income-tax Officer was obliged to entertain it and consider it on merits**. The first question is, accordingly, answered in the affirmative and in favour of the assessee". (Emphasis supplied)

(iii) Steel Ingots (P.) Ltd. Vs. C.I.T., 86 Taxman, p.440 (MP)

In this case it was held that eventual destination of every litigation is justice and technicality should not be permitted to act as a speed-breaker in the course of dispensation of justice. The relevant part of the judgement on p.442 of the Report is reproduced as follows:

"**The eventual destination of every litigation is justice, and as such, technicality should not be permitted to prevail as speed-breaker in the course of dispensation of justice**. True it is that the question was not raised before the first appellate authority but it is equally true that the aforesaid question was one of law and had material bearing on the order of assessment". (Emphasis supplied)

(iv) C.I.T. Vs. Bhopal Sugar Industries Ltd., 233 ITR, p.429 (MP)

In this case, the issue before the Hon'ble High Court was in respect of additional ground of appeal raised before the Tribunal. The relevant part of the judgement on p.432 of the Report is reproduced as follows:

"There is no prohibition on the powers of the Appellate Tribunal to entertain an additional ground which, according to the Tribunal, arises in the matter and for just decision of the case".

(v) C.I.T. Vs. Motor Industries Co. Ltd., 229 ITR, p.137 (Karn.)

The relevant part of the judgement on p.145 of the Report is reproduced as follows:

"Though the assessee had not claimed such weighted deduction before the Income-tax Officer, the Commissioner of Income-tax (Appeals) entertained the claim as the material and details were available in the records. When the necessary material was available and the weighted deduction is permissible under section 35B, the claim cannot be rejected merely on the ground that it was not made before the Income-tax Officer. **It is now well settled that when the assessment is not under section 143(1), the appellate authority may permit the assessee to claim a deduction or exemption in appeal, which he had not claimed before the Income-tax Officer, particularly when the relevant material is on record** – See the decision of the Supreme Court in Jute Corporation of India Ltd. v. CIT (1991) 187 ITR 688; Union Coal Co.Ltd. v. CIT (1968) 70 ITR 45 (Cal.) and CIT V. Sayaji Mills Ltd. (1974) 94 ITR 26 (Guj.). We, therefore, answer question No.(5) in the affirmative and against the Revenue". (Emphasis supplied)

When an assessee can claim a deduction or exemption in appeal, which was not claimed before the A.O., how can it be contended that an assessee is not entitled to make a fresh claim or modify its claim during the course of assessment proceedings before the completion of assessment?

In the light of the aforesaid judicial pronouncements, it is evident that the very purpose of assessment proceedings is to correctly assess the income and corresponding tax liability of an assessee in accordance with law and no technicality should be permitted to act as a speed breaker in the course of determination of correct income of the assessee. The Bombay High Court, in 171 ITR, p.530, has made the position very clear in this respect, when it laid down that if a claim is made in the course of the assessment proceedings, the I.T.O. is obliged to entertain it and consider it on merits. From the aforesaid judgements it is also evident that even if a claim is not made before the A.O., the same can be made at any stage of appellate proceedings, so long as the relevant facts are on record in respect of such a claim.

In view of the aforesaid reasons, it is quite clear that an assessee may make a fresh claim or modify a claim in the course of assessment proceedings and the A.O. is obliged to entertain and consider it on merits.

3. If an assessee has wrongly offered an item of income or omitted to claim a deduction in the return of income, he is entitled to correct such mistakes by making a request to the A.O., to that effect.

There may be cases where an assessee may commit a mistake by treating a certain receipt as taxable or by omitting to claim a deduction allowable under the Act, in its return of income. Such a mistake will not fasten a tax liability to the assessee; as such a mistake in the return of income is not decisive for taxability under the Act.

It is incumbent on the A.O. to find out whether a particular income is assessable in the particular year or not. Merely because the assessee wrongly includes the income in his return for the particular year, it cannot confer jurisdiction on the Department to tax that income in that year. Similarly, it is the duty of the A.O. to determine whether a particular receipt is taxable as income or not. The mere circumstance that the assessee has shown the receipt as income in his return does not make him liable to tax thereon. The aforesaid proposition is supported by a number of judgements, some of which are as follows:

(i) **C.I.T. Vs. Bharat General Reinsurance Co. Ltd., 81 ITR, p.303 (Delhi)**

In this case the assessee itself had included dividend income in its return for the year in question. However, the assessee itself challenged the validity of taxing the dividend during the year of assessment in question. The Hon'ble High Court held that merely because the assessee wrongly includes the income in his return for the particular year, it cannot confer jurisdiction on the A.O. to tax that income in that year, even though legally such income did not pertain to that year. The relevant part of the judgement on pp.307 & 308 of the Report, is reproduced as follows:

"It is true that the assessee itself had included that dividend income in its return for the year in question but there is no estoppel in the Income-tax Act and the assessee having itself challenged the validity of taxing the dividend during the year of assessment in question, it must be taken that it had resiled from the position which it had wrongly taken while filing the return. Quite apart from it, it is incumbent on the income-tax department to find out whether a particular income was assessable in the particular year or not. **Merely because the assessee wrongly included the income in its return for a particular year, it cannot confer jurisdiction on the department to tax that income in that year even though legally such income did not pertain to that year**". (Emphasis supplied)

(ii) **Pt. Sheo Nath Prasad Sharma Vs. C.I.T., 66 ITR, p.647 (All.)**

It was held in this case that it is the duty of the A.O. to determine whether a particular receipt is taxable as income or not. Just because the assessee has shown the receipt as income in his return, it does not make him liable to tax thereon. The relevant part of the judgement on pp.651 & 652 of the Report is reproduced as follows:

"It seems to me, however, that the order of the Commissioner rejecting the previous applications, on the mere ground that the petitioner had shown the income in his return, is erroneous. The Commissioner was bound to apply his mind to the question whether the petitioner was taxable on that income. The Income-tax Officer is entitled under section 23 (1) to make an assessment on the basis of the return if he is satisfied, without requiring the presence of the assessee or the production of evidence in support of the return, that the return is correct and complete. **But it may be that the assessee may have committed a mistake in treating a certain receipt as taxable. The mere circumstance that he has shown that receipt, as income in his return does not make him liable to tax thereon**. An assessee is liable to tax only upon such receipt as can be included in his total income and is assessable under the Income-tax Act. The law empowers the Income-tax Officer to assess the income of an assessee and determine the tax payable thereon. In doing so, he may proceed on the basis that, where an assessee discloses that a certain sum of money has been received by him, the fact of that receipt may be accepted without any thing more as constituting an admission on the part of the assessee. That would be an admission as to a state of fact. **But whether the receipt can be considered as taxable income is quite another matter, and consideration of that question leads into the realm of law. If the Income-tax Officer assesses an assessee upon a receipt, which is not taxable in law, it is always open to the assessee to take the case in appeal or in revision thereafter**. It is then for Appellate Assistant Commissioner or the Commissioner of Income-tax, as the case may be, to examine the matter and determine whether, although the money has been received by the assessee, it is taxable in law. The assessee is then within his rights in requiring the appellate or the revisional authority to examine the validity of the assessment to tax a receipt which, though admitted by him, is not taxable in law". (Emphasis supplied)

(iii)**D.I.T Vs. Pooran Mall & Sons, 96 ITR, p.390 (SC)**

On p.396 of the Report it has been observed by the Apex Court that a person cannot be taxed on the principle of estoppel, does not admit of much argument. **It has been further observed that Art.265 of the Constitution lays down that no tax shall be levied except when authorized by law**.

In the light of aforesaid decisions, it is quite evident that an A.O. would be totally unjustified in bringing to tax an item of income which is not liable to tax or in refusing to allow a claim of deduction which is allowable under the provisions of the Act; while framing an assessment U/S 143(3) of the Act.

For the aforesaid purpose, the furnishing of a revised return of income or the time limit in respect thereof, is not relevant, as long as the relevant claim is made by the assessee before the completion of assessment. As already pointed out, the provisions of S.139(5) will apply only to cases of omission or wrong statement. A fresh claim or modification of a claim will not fall within the term "omission or wrong statement", as contemplated U/S 139(5) of the Act. Further the furnishing of a revised return may be relevant only in respect of cases of concealment or false statements and may not save an assessee from penalty or prosecution in relation to the originally filed return of income.

4. **The aforesaid proposition is also supported by the various judicial pronouncements, which lay down that the very purpose of assessment proceedings is to correctly assess the tax liability of an assessee in accordance with law.**

As already pointed out in a number of judgements cited in earlier para (1), the very purpose of assessment proceedings before the taxing authority is to correctly assess the tax liability of an assessee in accordance with law. It has also been laid down that the eventual destination of every litigation is justice and as such technicality should not be permitted to act as a speed-breaker in the dispensation of justice. Besides, it has also been laid down that the I.T.A.T. is empowered to entertain additional ground of appeal in the interest of just decision in the case. These decisions are as follows:

(i) National Thermal Power Co. Ltd. Vs. C.I.T., 229 ITR, p.383 (SC)

(ii) Steel Ingots (P.) Ltd. Vs. C.I.T., 86 Taxman, p.440 (MP)

(iii) C.I.T. Vs. Bhopal Sugar Industries Ltd., 233 ITR, p.429 (MP)

In the light of the aforesaid decisions, it is quite evident that the very purpose of the assessment proceedings U/S 143(3) of the Act is to correctly assess the income and tax liability of an assessee in accordance with law. It would, therefore, be highly improper and against all cannons of law on the part of the A.O. to fasten a tax-liability to an assessee in respect of an income, which is obviously, not taxable.

5. Conclusion

In the light of the aforesaid provisions of the I.T. Act and the various judicial pronouncements, it is abundantly clear that in case of assessment U/S 143(3) of the Act, an assessee is entitled to make a fresh claim or modify a claim already made in the return of income, during the course of assessment proceedings, with the restriction that such a fresh claim or modification of a claim must be presented to the A.O. before the completion of assessment.

The provision of furnishing a revised return of income is not relevant for making the aforesaid claim. The purpose of S.139(5) is quite different inasmuch as it governs the cases of concealment and false statement

in the original return of income. In other words, a revised return may not save an assessee from penalty or prosecution in relation to the originally filed return of income.

Thus, if a claim has been made in the course of assessment proceedings, the A.O. is obliged to entertain and consider it on merits.

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