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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 219 of 2024

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COMMISSIONER OF INCOME TAX INTERNATIONAL TAXATION AND TRANSFER PRICING

Versus

BRIDGESTONE CORPORATION

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Appearance:
MR.VARUN K.PATEL(3802) for the Appellant(s) No. 1
MR B S SOPARKAR(6851) for the Opponent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 23/06/2025

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned Senior Standing Counsel Mr. Varun K. Patel for the appellant and learned advocate Mr. B.S. Soparkar for the respondent.

2. By this appeal under section 260A of the Income Tax Act, 1961 (For short “the Act”), Revenue has proposed the following

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questions of law arising out of judgment and order dated 22.02.2023 passed by Income Tax Appellate Tribunal, Ahmedabad "D" Bench (For short "the Tribunal") in ITA No.163/Ahd/2021 for Assessment Year 2014-2015:

> "(a) Whether on the facts and in the circumstances of the case and in law, the ld. ITAT is correct in allowing the claim of assessee u/s.112(1)(c)(iii) with regard to taxing the Long term capital gain on sale of shares @10% though in Return of Income it was offered for tax @ 20% u/s.112(1)(c)(ii) and thereby contravening the provisions of section 139(5) of the Act and Section 119 as per if a person having furnished a return under sub section (1) of Section 139 or sub section (4) of Section 139 discovers any omission or any wrong statement herein he may file revised return within specified time only or on condonation of delay u/s 119 by the CBDT?
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> (b) Whether on the facts and in the circumstances of the case and in law the Id. ITAT is correct in allowing the claim of assessee u/s. 112(1)(c)(iii) with regard to

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> taxing the Long-Term Capital Gain on sale of shares @10% though in Return of Income it was offered for tax @ 20% u/s.112(1)(c)(ii) without considering the decision of the Hon'ble Supreme Court in the case of Goetze India Ltd Vs CIT (2006) 204 CTR (SC) 182 wherein it was held that the assessee can make a claim for deduction, which has not been claimed in the return, only by filing a revised return within the time allowed?"

3. Brief facts of the case are that the respondent assessee is a foreign company incorporated in Japan and engaged in the business of manufacture of tyres.

4. In the return of income for Assessment Year 2014-2015, the respondent assessee company offered long term capital gains of Rs.6,78,23,37,511/- on sale of shares of its associated company Bridgestone India Private Limited at the rate of 20%.

5. A note in the return of income was also submitted to the effect that capital gains on sale of shares of its Indian subsidiary are taxable in India in view of paragraph 3 of Article 13 of the India-Japan Tax Treaty read with section 45 of the Act.

6. During the course of assessment proceedings, the respondent assessee also filed a letter before the Assessing Officer that in view of the retrospective amendment to section 112(1)(c)(iii) of the Act, the long term capital gain claimed by the assessee should be taxed at the rate of 10% instead of 20% as offered in the return of income.

7. The Assessing Officer however, rejected the contention of the assessee on

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the ground that there was uncertainty as to whether the unlisted securities as mentioned in section 112(1)(c)(iii) of the Act would include shares of a private limited company or not and accordingly, out of abundant caution, the assessee paid taxes at the rate of 21.63% on the sale of unlisted shares of private limited company. It appears that thereafter by Finance Act, 2016, section 112(1)(c)(iii) of the Act was amended to provide that long term capital gains arising from the transfer of a capital asset being shares of the company not being company in which the public are substantially interested, shall be chargeable to tax at the rate of 10%. However, the said amendment was made applicable from Assessment Year 2017-2018. Thereafter, Finance Act, 2017 clarified

that such amendment will be applicable retrospectively from Assessment Year 2013-2014 and subsequent years. At the relevant point of time, when the amendment as per the Finance Act, 2017 was made applicable from Assessment Year 2013-2014, the assessment proceedings were in progress before the Assessing Officer and accordingly, the assessee brought to the notice of the Assessing Officer about the amendment made by the Finance Act, 2017 requesting him to tax long term capital gain at the rate of 10%.

8. However, the Assessing Officer rejected the contention of the assessee. The assessee therefore, filed an appeal before the CIT(Appeals) who also rejected the claim of the assessee on the ground

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that such change of claim could have been possible only by filing the revised return of income and such effect cannot be granted to the assessee in absence of CBDT issuing any instruction under section 119 of the Act.

9. Being aggrieved, the assessee preferred an appeal before the Tribunal challenging the order of CIT(Appeals) contending that during the course of the assessment proceedings as well as before the CIT(Appeals) in the appellate proceedings, the assessee has raised the contention that the assessee was eligible to be taxed at the rate of 10% on capital gains made on sale of shares of its Indian associated Enterprise Bridgestone India Private Limited being unlisted shares.

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10. The Tribunal by the impugned judgment and order came to the conclusion that the respondent assessee was eligible of being taxed at a lower rate of 10% even in absence of the assessee filing the claim by way of revised return of income and in absence of any specific instruction by CBDT to that effect. The Tribunal referred to the Circular No. 14(XL-35) of 1955 dated 11.04.1955 to the effect that the department has taken a view that the officers of the department must not take advantage of ignorance of the assessee about his rights and it is their duty to assist the tax payer in every reasonable way, particularly, in the matter of claiming and securing reliefs. Relying on the decision of Bombay High Court in case of **B.G. Shirke Construction Technology (P)**

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Ltd reported in (2017) 79 taxmann.com 306, decision of Karnataka High Court in case of **Karnataka State Co-Operative Federation Ltd. r**eported in (2021) 128 taxmann.com 1 (Karnataka), decision of Madras High Court in case of **Abhinitha Foundation (P) Ltd.** reported in (2017) 83 taxmann.com 100 (Madras) and decision of Bombay High Court in case of **Sesa Goa Ltd.** reported in (2020) 117 taxmann.com 548 (Bombay), the Tribunal has considered the facts of each case and held that the High Courts in above decisions have held that the Appellate Authority can entertain the claim even though the same is not claimed in the original return of income by the assessed by not filing the revised return of income. The Tribunal therefore, allowed the appeal filed by the assessee.

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11. Being aggrieved, the appellant Revenue has preferred this appeal.

12. Learned Senior Standing Counsel Mr. Varun K. Patel for the appellant submitted that once the assessee has not filed the revised return, the Tribunal could not have considered such claim while deciding the appeal by giving effect to the retrospective amendment as per the Finance Act, 2017 though assessee is eligible for such reduced rate of tax at the rate of 10% instead of 20%. In support of his submission, reliance was placed on decision of Hon'ble Supreme Court in case of **Goetze (India) Ltd. v. Commissioner of Income Tax** reported in (2006) 284 ITR 323 (SC) wherein it is held as under:

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"1. Leave granted.

2. The question raised in this appeal relates to whether the appellant assessee could make a claim for deduction other than by filing a revised return. The assessment year in question was 1995-96. The return was filed on 30-11-1995, by the appellant for the assessment year in question. On 12-1-1998, the appellant sought to claim a deduction by way of a letter before the assessing officer. The deduction was disallowed by the assessing officer on the ground that there was no provision under the Income Tax Act to make amendment in the return of income by modifying an application at the assessment stage without revising the return.

3. This appellant's appeal before the Commissioner (Appeals) was allowed. However, the order of the further appeal of the department before the Income Tax Appellate Tribunal was allowed. The appellant has approached this court and has submitted that the Tribunal was wrong in upholding the assessing officer's order. He has relied upon the decision of this court in National Thermal Power Company Ltd. v. CIT (1998) 229 ITR 383, to contend that it was open to the assessee to raise the points of law even before the Appellate Tribunal.

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> 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."

13. Referring to the above decision, it was submitted that the appeal is required to be allowed by answering the questions of law proposed in favour of the Revenue.

14. On the other hand, learned advocate Mr. B.S. Soparkar appearing on caveat for

the respondent assessee submitted that the issue is no more res integra in view of the decision of this Court in case of **Commissioner of Income-tax v. Mitesh Implex** reported in (2014) 367 ITR 85 (Guj) as well as decision of various other High Courts relied upon by the Tribunal. Learned advocate Mr. Soparkar also referred to and relied upon the decision of Hon'ble Apex Court in case of **National Thermal Power Co. Ltd. v. CIT** reported in (1998) 229 ITR 383 (SC).

15. This Court in case of **Mitesh Implex** (supra) after considering the decision of Hon'ble Apex Court in case of **National Thermal Power Co. Ltd.**(supra) as well as decision of Hon'ble Apex Court in case of **Goetze (India) Ltd. v. Commissioner of Income Tax** (supra) held as under:

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"30. In what manner and to what extent, a ground, a legal contention or a fresh claim can be made at an appellate stage are vexed questions and have occupied the minds of the Courts in numerous occasions.

31. In the case of Jute Corporation of India Ltd.vs. Commissioner of Income-tax and another reported in 187 ITR 688 the Supreme Court noted with approval observation of the Court in the case of CIT vs.Kanpur Coal Syndicate reported in [1964] 53 ITR 225(SC) to the effect that " The Appellate Assistant Commissioner, therefore, has plenary powers indisposing of 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." It was observed that there was no reason why the appellate authority cannot modify the assessment order on an additional ground even if not raised before the Income Tax Officer. The Act does not place any restriction or limitation on the exercise of appellate power. It was observed that:-

> "The above observations are squarely applicable to the interpretation of s. 25 1(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,

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if that he 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 betaken 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."

32. In case of National Thermal Power Co. Ltd. vs. Commissioner of Income-tax reported in [1998] 229 ITR383(S.C.) when the question of law was raised for the first time

before the Tribunal though facts were already on record, the Supreme Court observed that there is no reason why the assessee should be prevented from raising such a question before the Tribunal for the first time so long as the relevant facts are on record in respect of the item concerned. There is no reason to restrict the power of the Tribunal in such appeal only to decide the grounds which arise from the order of Commissioner (Appeals).The Tribunal should not be prevented from considering the questions of law arising in assessment proceedings although not raised earlier.

33. In case of Goetze (India) Ltd. vs. Commissioner of Income-tax(supra) the Supreme Court distinguished the judgment in the case of National Thermal Power Co. Ltd. vs. Commissioner of Income-tax (supra) on the ground that the same pertained to the power of the Tribunal under section 254 of the Act to entertain a point of law for the first time and commented that such decision does not relate to the power of the assessing officer to entertain a claim for deduction otherwise than by filing a revised return. In the process the Supreme Court recognized that a new claim could not be entertained by the assessing officer without the assessee revising the return. While doing so it was clarified that:-

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> "4...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."

34. In the case of Commissioner of Income-tax vs.Jai Parabolic Springs Ltd. reported in [2008] 306 ITR42 (Delhi), the Delhi High Court held that there is no prohibition on the powers of the Tribunal to entertain an additional ground which according to the Tribunal arose in the matter and for just decision of the case.

35. In case of Commissioner of Income-tax vs.Pruthvi Brokers and Shareholders P.Ltd. reported in[2012] 349 ITR 336(Bom) the Bombay High Court considered the issue at considerable length and held that Commissioner (Appeals) as well as the Tribunal have the jurisdiction to consider the additional claim and not merely additional legal submissions. The appellate authorities have discretion to permit such additional claims. Such claims need not be those which became available on account of change of circumstances of law but which were even available when the return was filed.

36. The Delhi High Court once again in recent judgment in the case of

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Commissioner of Income-tax vs. Sam Global Securities Ltd. reported in [2014] 360ITR 682 (Delhi) observed that the Courts have taken a pragmatic view and not a technical one as to what is required to be determined in taxable income. In that sense assessment proceedings are not adversarial in nature. With these observations Court confirmed the view of the Tribunal reversing the decision of the assessing officer rejecting the claim of the assessee on the ground that no revised return was filed.

37. In case of Commissioner of Income-tax, Gujarat-I vs. Cellulose Products of India Ltd. reported in[1985]151 ITR 499, full Bench of this Court held that merely because a ground has not been raised though it could have been raised in support of the relief sought in the appeal, it cannot be said that such ground cannot be raised before the Tribunal. Such ground can be raised provided it falls within the contours of the subject matter of the appeal.

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

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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 assessees for deductions under section 80IB and 80HHC of the Act.

41. In the decisions that we have noted above, the Courts have considered such questions when a legal contention or a claim was based on material already on record but raised at an appellate stage. On such premise we wholeheartedly agree that the appellate authority and the Tribunal would have the power to entertain any such new ground, legal contention or claim. However, it is only the Bombay High Court in the case of Commissioner of Income-tax vs. Pruthvi Brokers and Shareholders P.Ltd.(supra), which has traveled a little beyond this preposition and come to the conclusion that even if facts necessary to examine such a

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> claim are not placed before the assessing officer and, therefore, not on record, there would beno impediment in the Commissioner (Appeals)entertaining such a claim. Such an issue does notarise in these appeals. We would, therefore, reserve our opinion on this limited aspect of the matter if and when in future the question presents before us in such form. For the present, we answer Questions (3)and (4) against the Revenue and in favour of the assessees in manner described above."

16. In facts of the case before us also, the respondent assessee was eligible to pay tax at the rate of 10% in view of the retrospective amendment as per the Finance Act, 2017 which was made by the assessee before the Assessing Officer.

17. This Court in case of **Mitesh Implex** (supra), relying upon various decisions of Hon'ble Apex Court and more particularly, in case of **National Thermal Power Co. Ltd.** (supra), wherein the Hon'ble Apex Court

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held that when the question of law was raised for the first time before the Tribunal though the facts were already on record, it was observed that there is no reason why the assessee should be prevented from raising such a question before the Tribunal for the first time so long as the relevant facts are on record in respect of the item concerned and there is no reason to restrict the power of the Tribunal in such appeal. Even in case of **Goetze (India) Ltd.**(supra) the Hon'ble Apex Court after distinguishing the judgment in case of **National Thermal Power Co. Ltd.**(supra), in facts of the said case, while deciding the powers of the Assessing Officer has made it clear that the issue in the case was limited to the power of the assessing authority and does

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not impinge on the power of the Income Tax Appellate Tribunal under section 254 of the Income Tax Act, 1961.

18. We are therefore of the opinion that in view of above dictum of law, no interference is called for in the impugned judgment and order of the Tribunal as no question of law much-less any substantial question of law arises in the appeal. The appeal therefore, being devoid of any merits is accordingly dismissed.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI,J)

RAGHUNATH R NAIR