

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).7830/2005

(From the judgement and order dated 17/12/2004 in ITA No. 770/2004 of The
HIGH COURT OF DELHI AT N. DELHI)

M/S. GOETZE (INDIA) LTD.

Petitioner(s)

VERSUS

COMMNR. OF INCOME TAX,DELHI

Respondent(s)

(With office report)

Date: 24/03/2006 This Petition was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE RUMA PAL

HON'BLE MR. JUSTICE DALVEER BHANDARI

For Petitioner(s) Mr.S. Ganesh, Sr.Adv.

Ms. Geetanjali Mohan,Adv.

For Respondent(s) Mr.K.P. Pathak, ASG

Mr. Arijit Prasad, Adv.

Mr. B.V. Balaram Das,Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeal is dismissed with no order as to cost

s.

(Usha Bhardwaj)

(Madhu Saxena)

Court Master

Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO..... OF 2006

(Arising out of S.L.P. (Civil) No.7830 of 2005)

M/S GOETZE (INDIA) LTD.

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APPELLANT

VERSUS

THE COMMISSIONER OF INCOME TAX, DELHI..

RESPONDENT

O R D E R

Leave granted.

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 30.11.95 by the appellant for the Assessment Year in question.

On 12.1.1998 the appellant sought to claim a deduction by way of a lett

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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 the income by modifying an application at the assessment stage without revising the return.

This appellant's appeal before the Commissioner of Income Tax (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

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National Thermal Power Company Ltd. vs. Commissioner of Central Excise

229 ITR 383, to contend that it was open to the assessee to raise the points of law even before the Appellate Tribunal.

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 impinged 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.

.....J.

{ RUMA PAL }

.....J.

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{ DALVEER BHANDARI }

New Delhi,

March 24, 2006.