[2026] 10 S.C.R. 393 : 2026 INSC 1116

Orissa Rural Housing Development Corporation Ltd.
v.
The Asst. Commissioner of Income Tax & Ors.

(Civil Appeal No(s). 7249-7250 of 2015)

08 October 2026

[Prashant Kumar Mishra and Shree Chandrashekhar, JJ.]

Issue for Consideration

Whether a fresh claim can be raised before the Revisional Authority without filing a revised return.

Headnotes†

Income Tax Act, 1961 – s.264 – The appellant submitted its return for assessment year 2006-07 within time, disclosing total loss at Rs.1,94,48,311/- – The appellant filed a petition before the Assistant Commissioner of Income Tax, Circle-1, Bhubaneswar for revising the return, however, the same was not taken account of when the Assessing Officer passed the assessment order on 23.12.2008 raising demand of Rs.10,08,58,492/- – As against this order, appellant preferred a revision before the Commissioner of Income Tax, which was rejected – Appellant filed revision before the Commissioner of Income Tax and the same was also dismissed on the ground that the assessee after filing original return cannot make a fresh claim other than by way of filing a revised return – The appellant thereafter, preferred first appeal before the Commissioner of Income Tax which was dismissed on the ground that the appeal is not maintainable, as the appellant has already availed the right of filing a revision u/s.264 of the IT Act – Under the impugned order, High Court has dismissed the writ petition preferred by the appellant – Correctness:

Held: It is settled in *M/s Om Siddhakala Associates*, that when the revised return was not submitted within time, and the assessee having not claimed the deductions by filing a revised return, the same cannot be availed by invoking revisional jurisdiction – In considered view of this Court, the power of the Revisional Authority is for entertaining for the first time a new question of law or point of law, and not anything which is beyond the facts which were available with the Assessing Authority. [Paras 8, 13]

Case Law Cited

Wipro Finance Ltd. v. Commissioner of Income Tax **[2022] 2 SCR 1146 : (2022) 443 ITR 250 : 2022 SCC Online SC 675;** *Dwarka Nath v. Income Tax Officer* **[1965] 3 SCR 536 : (1965) 57 ITR 349 : 1965 SCC Online SC 61;** *Sirpur Paper Mills Ltd. v. Commissioner of Wealth Tax, Hyderabad* **[1971] 1 SCR 304 : (1970) 1 SCC 795 – distinguished.**

Deputy Commissioner of Income Tax v. M/s Om Siddhakala Associates, **Civil Appeal No. 10175 of 2026 dated 05.08.2026 (Decided by Supreme Court);** *Goetze (India) Ltd. v. Commissioner of Income-Tax* **(2006) 284 ITR 323 : 2006 SCC Online SC 1446 – relied on.**

Shriram Investments v. Commissioner of Income-Tax **(2024) 468 ITR 372 : 2024 SCC Online SC 2699 – referred to.**

List of Acts

Income Tax Act, 1961.

List of Keywords

Section 264 of the Income Tax Act, 1961; Assessment; Return; Revisional Authority; Fresh claim; Revised return; New questions of law; Refund of tax.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No(s). 7249-7250 of 2015

From the Judgment and Order dated 15.12.2011 and 17.10.2012 of the High Court of Orissa at Cuttack WP No. 4554 of 2011 and Rev. Pet No. 8 of 2012 respectively

Appearances for Parties

Advs. for the Appellant(s):
Siddhartha Chowdhury, S K Bagaria, Sr. Adv., Snehasish Mukherjee, Shaffi Mather, Tamal Sanyal.

Advs. for the Respondent(s):
N Venkataraman, A.S.G., Sudarshan Lamba, V Chandrashekhara Bharathi, Gaurav Arya, Sushant Singh, Alok Kumar, Nakul Madhan.

**Orissa Rural Housing Development Corporation Ltd. v.
The Asst. Commissioner of Income Tax & Ors.**

Judgment / Order of the Supreme Court

Order

1. Under the impugned order, High Court has dismissed the writ petition preferred by the appellant, which in turn laid challenge to the order of assessment dated 23.12.2008; the order issued by the Commissioner of Income Tax, Bhubaneswar dated 11.03.2010 under Section 264 of the Income Tax Act, 1961 (for short 'IT ACT'), and the order dated 15.09.2010 passed by the Commissioner of Income Tax (Appeals)-I, Bhubaneswar, with further prayer for refund of tax collected on the ground that such collection is without authority of law.

2. The appellant submitted its return for assessment year 2006-07 within time, disclosing total loss at Rs.1,94,48,311/-. Initially, the Assessing Officer issued notice to the appellant on 10.10.2007 under Section 143(2) of the IT Act and subsequently, a notice under Section 142(1) dated 03.10.2008 was issued to the appellant to produce accounts and documents mentioned in the notice.

3. The appellant filed a petition before the Assistant Commissioner of Income Tax, Circle-1, Bhubaneswar for revising the return, however, the same was not taken account of when the Assessing Officer passed the assessment order on 23.12.2008 and raised a demand of Rs.7,58,33,470/- (towards tax, surcharge and education cess) and also charged interest under Section 234B of the IT Act for Rs.2,50,25,022/- totaling at Rs.10,08,58,492/-.

4. As against this order, appellant preferred a revision before the Commissioner of Income Tax along with a prayer for stay, which was rejected on 05.05.2009, against which appellant approached the Commissioner of Income Tax on 27.07.2009, however, the revision petition was dismissed refusing to interfere with the assessment, on the ground that the assessee after filing original return cannot make a fresh claim other than by way of filing a revised return.

5. The appellant thereafter, preferred first appeal before the Commissioner of Income Tax which was dismissed on the ground that the appeal is not maintainable, as the appellant has already availed the right of filing a revision under Section 264 of the IT Act.

6. Learned counsel for the appellant would refer to the law laid down by this Court in *Wipro Finance Ltd. v. Commissioner of Income*

Tax[1], *Dwarka Nath v. Income Tax Officer*[2], and *Sirpur Paper Mills Ltd. v. Commissioner of Wealth Tax*[3] to argue that fresh claim can be raised before the Revisional Authority.

7. *Per contra*, learned counsel for the revenue would submit that in view of law laid down by this Court in *Deputy Commissioner of Income Tax v. M/s. Om Siddhakala Associates*, Civil Appeal No. 10175 of 2026 dated 05.08.2026, it is now well settled that in the absence of a revised return being filed in accordance with law, the appellant cannot raise a fresh claim before the Revisional Authority.

8. Having heard learned counsel for the parties, we are of the considered view that the issue as to whether a fresh claim can be raised before the Revisional Authority without filing a revised return is no longer *res integra*, inasmuch as in *M/s. Om Siddhakala Associates* (supra), this court has categorically held that when the revised return was not submitted within time, and the assessee having not claimed the deductions by filing a revised return, the same cannot be availed by invoking revisional jurisdiction. The following has been held by this Court in paragraphs 4 and 5 which are reproduced hereunder:

> "4. We are not convinced that the remand, in the facts and circumstances of the case, was permissible. Admittedly, on self-assessment, a return was filed by the assessee which was processed by the Centralised Processing Centre, Income Tax Department, Bengaluru and a notice was issued under Section 143(1) and a subsequent notice under Section 156, demanding the outstanding tax as coming out from the returns filed on self-assessment. The respondent filed a revision invoking Section 264 of the Act before the Principal Commissioner of Income Tax, who rejected the same on the ground that there was unexplained delay, the tolerance limits as coming out from Section 43CA were only prospective and that by side-wind the attempt is to revise the return, after the period had expired, by invoking Section 264.

1 (2022) 443 ITR 250 : 2022 SCC Online SC 675

2 (1965) 57 ITR 349 : 1965 SCC Online SC 61

3 (1970) 1 SCC 795

> 5. The issue of tolerance limit was not raised in the self-assessment nor was the assessment revised within the time provided. The High Court, hence, fell in error, insofar as the remand made. The assessee having not claimed the same in the returns filed could have revised the return within the time provided under the Act. When that was not done, there is no question of revision under Section 264, which would be an attempt to revise the return under the garb of a revision."

9. The reliance placed by learned counsel on *Wipro Finance Ltd.* (supra)*, Dwarka Nath* (supra) and *Sirpur Paper Mills Ltd.* (supra), is clearly distinguishable on facts, as in none of the matters the issue concerning effect of non-filing of revised return within time and in accordance with law was not an issue. The scope of revisional jurisdiction as has been explained in *Dwarka Nath* (supra) would not enlarge an assessee's right to raise fresh claim without filing revised return which has been clearly settled by this Court in *M/s. Om Siddhakala Associates* (supra).

10. The law as settled in *M/s. Om Siddhakala Associates* (supra), has earlier been considered by this Court in *Goetze (India) Ltd. v. Commissioner of Income-Tax*[4], wherein the ratio has been laid down that the power of the Tribunal under Section 254 of the IT Act 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 was before the Tribunal. Further, the decision relied by the appellant does not in any way relate to the power of the assessing officer to entertain a claim or deduction otherwise than by filing a revised return.

11. We reiterate the view taken by this Court in *Goetze (India) Ltd.* (supra) and *M/s. Om Siddhakala Associates* (supra), more for the reason that if the power of the Revisional Authority is read in the manner sought to be agitated before this Court, then there would be no end to raising any fresh claim basing a new fact which was not before the Assessing Officer. Allowing this, would make the assessment procedure and the assessment order endless, and any party can raise fresh claim before the Revisional Authority even though there are no foundational facts available before the Assessing Authority to consider such claim.

4 (2006) 284 ITR 323 : 2006 SCC Online SC 1446

12. As a matter of fact, this Court in *Shriram Investments v. Commissioner of Income-Tax*[5], has explained and distinguished the earlier judgment in the matter of *Wipro Finance Ltd.* (supra) relied by the appellant herein. By holding thus in paragraphs 5, 6 and 8, which are reproduced hereunder:

> "5. We have carefully considered the submissions made across the bar. We have carefully perused the judgment of this court in the case of *Wipro Finance Ltd.*v. *CIT* [(2022) 443 ITR 250 (SC); 2022 SCC OnLine SC 675; (2022) 137 taxmann.com 230 (SC).] The issue which arose before this court was not regarding the power of the Assessing Officer to consider the claim after the revised return was barred by time. This court considered the appellate power of the Appellate Tribunal under section 254 of the Income-tax Act. Paragraphs 10 and 11 of the said decision in the case of *Wipro Finance Ltd.* v. *CIT* [(2022) 443 ITR 250 (SC); 2022 SCC OnLine SC 675; (2022) 137 taxmann.com 230 (SC).] read thus (page 258 of 443 ITR):
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> > "10. The learned Additional Solicitor General appearing for the Department had faintly argued that since the appellant in its return had taken a conscious explicit plea with regard to the part of the claim being ascribable to capital expenditure and partly to revenue expenditure, it was not open for the appellant to plead for the first time before the Income-tax Appellate Tribunal that the entire claim must be treated as revenue expenditure. Further, it was not open to the Income-tax Appellate Tribunal to entertain such fresh claim for the first time. This submission needs to be stated to be rejected. In the first place, the Income-tax Appellate Tribunal was conscious about the fact that this claim was set up by the appellant for the first time before it, and was clearly inconsistent and contrary to the stand taken in the return filed by the appellant

5 (2024) 468 ITR 372 : 2024 SCC Online SC 2699

for the concerned assessment year including the notings made by the officials of the appellant. Yet, the Income-tax Appellate Tribunal entertained the claim as permissible, even though for the first time before the Income-tax Appellate Tribunal, in appeal under section 254 of the 1961 Act, by relying on the dictum of this court in *National Thermal Power Co. Ltd.* v. *CIT* [(1998) 229 ITR 383 (SC); (1997) 7 SCC 489.] Further, the Income-tax Appellate Tribunal has also expressly recorded the no objection given by the representative of the Department, allowing the appellant to set up the fresh claim to treat the amount declared as capital expenditure in the returns (as originally filed), as revenue expenditure. As a result, the objection now taken by the Department cannot be countenanced.

11. Learned Additional Solicitor General had placed reliance on the decision of this court in *Goetze (India) Ltd.* v. *CIT* [(2006) 284 ITR 323 (SC); 2006 SCC OnLine SC 1446; (2006) 157 Taxman 1 (SC).] in support of the objection pressed before us that it is not open to entertain fresh claim before the Income-tax Appellate Tribunal. According to him, the decision in *National Thermal Power Co. Ltd.* v. *CIT* [(1998) 229 ITR 383 (SC); (1997) 7 SCC 489.] merely permits raising of a new ground concerning the claim already mentioned in the returns and not an inconsistent or contrary plea or a new claim. We are not impressed by this argument. For, the observations in the decision in *Goetze (India) Ltd.* v. *CIT* [(2006) 284 ITR 323 (SC); 2006 SCC OnLine SC 1446; (2006) 157 Taxman 1 (SC).] itself make it amply clear that such limitation would apply to the 'assessing authority', but not impinge upon the plenary powers of the Income-tax Appellate Tribunal bestowed under section 254 of the Act. In other words, this decision is of no avail to the Department."

(emphasis added)

In this case, the court did not consider the question of the power of the Assessing Officer to consider a claim made after a revised return was barred by time. This court considered the appellate powers of the Tribunal under section 254 of the Income-tax Act. Moreover, this was a case where the Department gave no objection for enabling the assessee to set up a fresh claim.

6. In the case of *Goetze (India) Ltd.* v. *CIT* [(2006) 284 ITR 323 (SC); 2006 SCC OnLine SC 1446; (2006) 157 Taxman 1 (SC).], this court held that the Assessing Officer cannot entertain any claim made by the assessee otherwise than by following the provisions of the Income-tax Act. In this case, there is no dispute that when a revised return dated October 29, 1991 was filed, it was barred by limitation in terms of section 139(5) of the Income-tax Act.

8. Coming to the decision of the Tribunal, we find that the Tribunal has not exercised its power under section 254 of the Income-tax Act to consider the claim. Instead, the Tribunal directed the Assessing Officer to consider the appellant's claim. The Assessing Officer had no jurisdiction to consider the claim made by the assessee in the revised return filed after the time prescribed by section 139(5) for filing a revised return had already expired."

13. In our considered view, the power of the Revisional Authority is for entertaining for the first time a new question of law or point of law, and not anything which is beyond the facts which were available with the Assessing Authority.

14. In view of the above, we do not find any substance in these appeals, which fails and are hereby dismissed.

15. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeals dismissed.

†*Headnotes prepared by:* Ankit Gyan