IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "B", MUMBAI

BEFORE SHRI SANJAY ARORA, ACCOUNTANT MEMBER AND
DR. S.T.M. PAVALAN, JUDICIAL MEMBER

ITA No. 7816/Mum/2011
Assessment Year: 2008-09

ACIT-16(3) Matru Mandir, Tardeo Road Mumbai-400 007	Vs.	M/s. New Look Brassier Co. 204, J.S.S. Road, Girgaum Mumbai-400 004 **PAN:AAAFN 1454 B**
(Appellant)		(Respondent)

Assessee by : Shri Nishit Gandhi
Revenue by : Shri S.S. Rana

Date of hearing : 22.10.2013
Date of Pronouncement : 30.10.2013

O R D E R

PER DR. S.T.M. PAVALAN, JM:

This appeal filed by the Revenue is directed against the order of the Ld.CIT(A) -27, Mumbai dated 23.08.2011 for the Assessment Year 2008-09.

2. Briefly stated that the assessee, a partnership firm engaged in the business of manufacturing undergarments, during the A.Y. 2004-05 had claimed expenses of Rs. 64,66,583/- towards compensation incurred on introducing voluntary retirement scheme for its employees. In the assessment completed u/s 143(3) for the aforementioned Assessment Year was revised u/s.154 of the Act on the ground that u/s 35DDA of the Act, the assessee was entitled to claim only 1/5th of such amount. Accordingly, the expenditure was restricted to Rs.12,93,316/- and the balance amount was disallowed observing that the same was allowable @ 1/5th every year for a further period of four years. Now for the year under consideration i.e. A.Y. 2008-09, the assessee had not claimed the entitled amount of Rs.12,93,316/- being 1/5th of the above amount in its return of income filed electronically. However, the same was claimed in the statement of computation filed before the AO at the time of assessment proceedings by furnishing necessary facts. The AO did not allow the said claim on the ground that it was not made in the return of income by relying on the decision of Goetze India Ltd. Vs. CIT (2006) 284 ITR 323 (SC).

On appeal, the Ld.CIT(A) held that the decision of Goetze India Pvt. Ltd. does not apply to the powers of the appellate authorities to admit a claim which arises from the facts borne on record. Further by relying upon the decision of the ITAT, Mumbai in the case of Chicago Neumatic India Pvt. Ltd. Vs. DCIT (15 SOT 252), the Ld.CIT(A) directed the AO to allow the claim of the assessee. Aggrieved by the impugned order, the Revenue is in appeal before us.

3. Having heard both the sides and perused the material on record, it is pertinent to note that the assessee is entitled for relief vide the order u/s 154 for the A.Y. 2004-05 wherein it has been held that 1/5th of the total expenses will be allowed for a period of five years is not disputed. Hence, the limited issue before us is to decide whether the Ld.CIT(A) is justified in allowing the claim of the assessee at the appellate stage which the assessee has not claimed in the return of income but claimed the same during the assessment proceedings. In this regard, we agree with the findings of the Ld.CIT(A) that the decision of Goetze India Pvt. Ltd. does not apply to the powers of the appellate authorities to admit a claim which arises from the facts borne on record. Also, the Ld.CIT(A) has correctly relied on the decision of the ITAT, Mumbai in the case of Chicago Neumatic India Pvt. Ltd. Vs. DCIT (supra) wherein it has been held that the AO is bound to compute the legitimate income based on the facts of the case. Accordingly, we find that the Ld.CIT(A) is justified in allowing the claim of the assessee at the appellate stage which the assessee has not claimed in the return of income but claimed the same during the assessment proceedings. In view of that matter, we do not find any infirmity in the decision of the Ld.CIT(A) directing the AO to allow the said claim and the same is upheld.

5. In the result, the appeal filed by the Revenue is **dismissed**.

Order pronounced in the open court on this 30th day of October, 2013.

Sd/-	**Sd/-**
(SANJAY ARORA)	**(Dr. S.T.M. PAVALAN)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dated: 30.10.2013.
*Srivastava

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR "B" Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.