

*Goetze (India) Ltd\**

v.

*Commissioner of Income-tax*

**MRS. RUMA PAL AND DALVEER BHANDARI, JJ.**

CIVIL APPEAL NO. 1761 OF 2006

MARCH 24, 2006

**Section 139, read with section 139(5), of the Income-tax Act, 1961 - Return of income - General - Assessment year 1995-96 - Whether an assessee can amend a return filed by him for making a claim for deduction other than by filing a revised return - Held, no**

**CASE REFERRED TO**

*National Thermal Power Co. Ltd. v. CIT [1998] 229 ITR 383 (SC) [Para 3].*

**S. Ganesh and Ms. Gitanjali Mohan for the Appellant. K.P. Pathak, Arijit Prasad and B.V. Balram Das for the Respondent.**

**ORDER**

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 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 *National Thermal Power Co. 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.

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.