

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पॉल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA No.627/JP/2017
निर्धारण वर्ष / Assessment Year : 2011-12

Dy. Commissioner of Income-tax, Central Circle-4, Jaipur	बनाम Vs.	Smt Sheena Mathur A-8, Shyam Nagar Ajmer Road, Jaipur
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AEZPM2577H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Smt Rolee Agarwal (CIT)
निर्धारिती की ओर से / Assessee by : Shri S.L.Poddar
& Isha Kanungo (Adv.)

सुनवाई की तारीख / Date of Hearing : 10/10/2017
उदघोषणा की तारीख / Date of Pronouncement: 10/11/2017

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the Revenue against the order of Ld. CIT(A), Jaipur dated 26.05.2017 for Assessment Year 2011-12 wherein the Revenue has taken following sole ground of appeal:-

"1. Whether on the facts and in the circumstances of the case, the CIT(A) was right in allowing the revised return of Rs. 30,64,640/- instead of original return of Rs. 86,23,850/-"

2. Briefly stated facts of the case are that the assessee had filed her original return of income u/s 139(1) of the Act on 30.07.2011 for AY 2011-12 declaring total income of Rs. 30,64,640/-. Subsequently, a search and seizure operations u/s 132 of the Act was carried out on 30.10.2014 at the business and residence premises of the SDC Group, Jaipur to which assessee belongs. Thereafter,

notice u/s 153A for the impugned assessment year 2011-12 was issued on 17.12.2014 requiring the assessee to file her return of income within 20 days from the service of the notice and in compliance to the said notice, the assessee filed her return of income on 10.04.2015 declaring total income of Rs. 86,23,850/-.

3. During the course of assessment proceedings, it was observed by the AO that the assessee has declared her income u/s 153A at Rs. 86,23,850/- whereas in her original return of income, she had declared total income of Rs. 30,64,640/-. The assessee was accordingly asked to furnish the details of the income declared u/s 153A.

4. In response, the assessee submitted that while filing the return of income u/s 153A, income was by mistake declared at Rs. 86,23,850/- as against the income of Rs. 30,64,640/- which was also declared in her original return of income and the return so filed u/s 153A has been revised on 14.12.2016 declaring income of Rs. 30,64,640/-. The submission of the assessee filed before AO is reproduced as under:-

"That the assessee had filed her return of income u/s 139(1) on 30.07.2011 for Rs. 30,64,640/- for the year under consideration, when search was conducted on the residential and business premises of the assessee on 28.10.2014. The assessee has neither declared any income for the year under consideration nor were any incrimination documents found relating to the assessee. The assessee has not declared any income during the course of search in any of the years, but due an inadvertent mistake the assessee at the time of filing of return u/s 153A, wrongly filed the return of income for Rs. 86,23,850/- instead of Rs. 30,64,640/-, the assessee does not have any intention for increasing the return and the same has happened due to some clerical error at the time of filing of return, we are filing the revised return for

the year under consideration for the correct amount showing the income earned by the assessee for year under consideration, you are requested to condone the mistake of the assessee and replace the return with the revised return. The same is enclosed along with the computation for your kind perusal."

5. The reply filed by the assessee was considered though not found acceptable by the AO for the reasons stated in the assessment order which are reproduced as under:-

"The assessee has revised the return filed u/s 153A as stated above. It is not understood as to under which section the assessee has revised the return filed u/s 153A, as there is no such relaxation in the Act to revise the return filed u/s 153A. Hence, the revised return enclosed with the submission is not accepted and accordingly rejected being beyond the mandatory provisions of the Income Tax Act, 1961. Further the assessee has submitted that the income declared in her return of income filed in compliance of notice u/s 153A of the Act has been by clerical error declared at Rs. 86,23,850/- instead of Rs. 30,64,640/- declared in original return. The contention of the assessee that it happens by clerical mistake is not accepted. On perusal of the return filed u/s 153A it is observed that every entry in the columns of the return filed 153A tally with the computation of income declared by the assessee where possibility of clerical mistake is far fetched. No where in both the returns filed u/s 153A and the original return figure resembles with each other which may cause mistake. Hence, it appears to be the after thought of the assessee to conceal true particulars of income. In view of these facts, income declared u/s 153A at Rs. 86,23,850/- is treated as total income of the assessee for the year under consideration."

6. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) who has given the relief of Rs. 55,59,210 and accepted the revised return filed pursuant to issuance of notice u/s 153A. Now the revenue is in

appeal against the finding of the Id. CIT(A) in accepting the revised return filed by the assessee on 14.12.2016 instead of return filed in response to notice u/s 153A of the Act on 10.04.2015.

7. On perusal of the order passed by the Id CIT(A), we find that the Id CIT(A) noted the rival contentions of both the parties and which have been reiterated and advanced before us as well. While the AO contends that income tax return filed u/s 153A cannot be revised as there is no provisions in the Act for filing a revised return filed pursuant to notice u/s 153A. Per contra, the Id. Counsel for the assessee contended that such return can be revised in view of the affirmative statement in section 153A(1)(A) that all the provisions of the Act would apply to the return as if such return were a return filed under section 139 and such provisions includes section 139(5) of the Act which provides for the revision of the return of income and the time limit as specified in section 139(5) will apply in the instant case.

8. The Id. CIT(A) further held that there should be relevancy of information as given in the return filed for the year and AO is required to act on that. Apart from this, if AO is in possession of other incredible information for the year, he/she may use the same for determination of income of the assessee for that particular year. Here in this case, assessee has filed original return on 30.07.2011 declaring total income at Rs. 30,64,640/- and pursuant to notice issued u/s 153A of the Act, assessee filed return at a total income of Rs. 86,91,160/- on 10.04.2015. Subsequent, as stated by the assessee, she realized that figures for AY 2014-15 were inadvertently copied and pasted in the return for AY 2011-12, accordingly, assessee on 14.12.2016 filed return where total income was taken at Rs. 30,64,640/-. It is also submitted that as the ITD System did not allow assessee to revise its return filed pursuant to the notice issued u/s 153A of the Act, assessee simply filed the fresh return for the AY 2011-12 on 14.12.2016 by rectifying the mistake apparent from the record.

9. The Id. CIT(A) further held that inadvertently assessee has put figures of AY 2014-15 in the return of AY 2011-12. AO has also not carried out any investigation or enquiry with regard to relevancy of information contained in the said return. AO has simply observed that return filed pursuant to notice issued u/s 153A cannot be rectified, hence he simply added the differential figures while completing the assessment. It is pertinent to mention here again that Income-tax Return is the form in which an assessee files information about his income for the year and tax paid thereon to Govt's a/c. It is a statement of assessee's earnings from various sources of income, tax liability thereon, details of tax paid and refund if any, that is required to be given by the government. Therefore, if the figure of income and payment of taxes does not match to figures duly recorded in assessee's books of a/c for the year, but matches with those of AY 2014-15, then in absence of any incriminating document and subsequent enquiry conducted by the AO, the details as mentioned in the return filed on 10.04.2015 is not relevant for the AY 2011-12.

10. The Id. CIT(A) further held that to further substantiate her claim, assessee has also filed an affidavit stating the fact that correct income for the year should be taken at Rs. 30,64,640/-. Apart from this, it is also pertinent to note that assessee during the search operation carried out had not made any disclosure of income nor any incriminating material suggesting additional undisclosed income of Rs. 55,59,210/- (Rs. 86,23,850 – Rs. 30,64,640) was found from her possession.

11. The Id. CIT(A) finally held that "in view of facts and circumstances of the case and most respectfully following the decision of Hon'ble ITAT Mumbai (Supra), the return filed pursuant to notice issued u/s 153A of the Act can be revised, provided mistakes are apparent from the record, accordingly, in this case, it is seen that information/details given in the return filed on 10.04.2015 is irrelevant & no use to the AO for the AY 2011-12. Hence, AO is hereby directed to take the figures of return filed on 14.12.2016 at a total income of

Rs. 30,64,640/-. Assessee's appeal stands allowed in Gr No. 1. Assessee gets a relief of Rs. 55,59,210/-."

12. In light of above background, in order to appreciate the rival contentions of both the parties as we have noted in para 7 above, it would be relevant to refer to the provisions of section 153A of the Act which reads as under:-

"153A(1) Notwithstanding anything contained in section 139, Section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall-

- (a) issue notice to such person requiring him to furnish within such period, as may specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;*
- (b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made."*

13. On reading of the above provisions, it provides for issuance of notice to such person requiring him to furnish the return of income within the prescribed time limit as may be specified in the notice. Further, it provides that the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139 of the Act.

14. The expression "so far as may be" used in section 153A(1)(a) came up for consideration before the Co-ordinate Bench in case of R.S. Investment vs. ITO reported in 15 Taxman.com 270 wherein in the context of whether provisions in respect of penalty for violation of provisions of section 139 shall

be applicable where there is a violation of section 153C, read with section 153A in respect of filing return of income, it was held as under:

*"7. We have heard both the sides on this issue. The provisions of section 153C under which the assessment has been made provide in respect of the assessment of income of any other person in addition to the assessment in the case of search or requisition u/s 153A of Income-tax Act. The provisions itself provide that the assessments under this section shall be made by the AO of such person by issuing the notice and on that basis, the AO will assess or reassess the total income of such person or such assessment years in the manner provided in section 153A. Thus, the assessment and reassessment has to be made in the manner provided in section 153A. Section 153A provides that the AO shall issue the notice requiring to furnish return of income within a period as specified in the notice. The assessee was under the obligation to file the return of income in respect of each assessment year falling within six assessment years in a prescribed form and verified in a prescribed manner along with other particulars as may be prescribed and the provisions of Income-tax Act shall, as far as may be, apply, accordingly as if such return was a return required to be furnished u/s 139. In view of these, we are not in agreement with the pleadings of the learned AR that the provisions of section 271F cannot be applied where the return is required to be furnished u/s 153C read with section 153A of the Income-tax Act. Although there is no minimum time required to be give in the notice to be issued u/s 153A for filing the return and also no separate form has been prescribed, however, assessee was under legal obligation to file the return of income. The phrase has been used 'so far as may be' in section 153A. **In our considered view, these words 'so far as may be' have been used to restrict the applicability of those provisions which are inconsistent with the provisions of section 153A. Meaning thereby that by using word 'so far as may be' in section 153A, the provisions and requirement of section 139 which are not***

inconsistent with provisions of section 153A shall be applicable and compliance thereof shall be as mandatory. The provisions in respect of the penalty for the violation of the provisions of section 139 shall be very much applicable whenever there is a violation of section 153C read with section 153A in respect of the filing the return of income. Since we are holding that the provisions of section 271F are applicable when there is a violation of non-filing the return when notices u/s 153 read with section 153A are issued, therefore, the case laws relied upon by the learned AR with regard to proposition that penalty provisions should be construed strictly has no relevance on the issue. Further, the learned AR's pleadings that the penalty for not filing the original return of income can also be not levied due to beyond the reasonable time. In this regard, we are of the view that revenue had not established beyond doubt that returns wherever assessee was required to be filed had not been filed by the assessee. As we have seen that assessee was not having taxable income at least in four assessment years. Further, the assessee has also filed the affidavit stating that original return of income were filed. Revenue had not disproved/dislodged the contents of affidavit. Therefore, after considering the totality of the facts of the case and various pleadings made before us, we are of the considered view that the assessee does not deserve to be visited penalty u/s 271F of the Income-tax Act. In view of these facts, we set aside the orders of the authorities below."

15. Here, it would also be relevant to refer to erstwhile provisions of section 158BC contained in Chapter XIV-B which contains similar provisions for filing of return of income pursuant to issuance of notice by the AO where the search has been conducted. By way of a proviso to section 158BC(a), it was specifically provided that a person who has furnished a return under this clause shall not be entitled to file a revised return of income. The said provisions have since been superseded by the provisions of section 153A of the Act. Unlike the erstwhile provisions of section 158BC which provides a clear embargo on filing

the revised return, current provisions in section 153A do not contain any specific restriction. Rather, it is seen that current provisions have been drafted in a way so as to align with the provisions contained in section 139 provided there are not inconsistent with the provisions of section 153A of the Act. Therefore, in absence of a specific restriction under section 153A, it would be wrong to hold that the assessee would be barred from filing a revised return assuming she satisfies the conditions for filing such revised return.

16. In light of above discussions, we are of the view that there is no restriction for filing a revised return pursuant to filing of return in response to notice under section 153A of the Act and the provisions of section 139(5) are equally applicable in case of return filed pursuant to notice under section 153A of the Act.

17. Next issue that arises for consideration is whether the conditions for filing the revised return as provided under section 139(5) have been complied with in the instant case or not. The provisions of section 139(5) read as under:

"(5) If any person, having furnished a return under sub-section (1), or in pursuance of a notice issued under sub-section (1) of [section 142](#), discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier :

Provided that where the return relates to the previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, the reference to one year aforesaid shall be construed as a reference to two years from the end of the relevant assessment year."

18. On reading of above provisions, it is clear that where the return of income has been filed under section 139(1) of the Act, it can be revised. In other words, where the return of income has been filed within the time

prescribed for filing the return of income under section 139(1) of the Act, the same can be revised under section 139(5) of the Act. In the instant case, where the return is filed under section 153A, there is no statutory time limit for filing the return of income, however the powers have been statutorily delegated to the AO to prescribe the time limit for filing the return of income while issuing the notice under section 153A of the Act. As a necessary corollary, where the return of income has been filed within the prescribed time limit for filing such return as per notice issued under section 153A, the assessee shall be eligible for filing a revised return. In the instant case, the notice u/s 153A was issued by the ACIT, Central Circle-3, Jaipur for AY 2011-12 on 17.12.2014 stating as under:

"A search u/s 132 of the Income Tax Act, 1961 was conducted on 30.10.2014 in your case. In pursuance of the provision of the Section 153A of the Income-Tax Act, 1961, you are requested to furnish your true and correct return of income in respect of which you are assessable for the assessment year mentioned above.

2. The return of income should be furnished in the appropriate form as prescribed in Rule-12 of the Income-Tax Rules 1962. It should be duly verified and signed in accordance with the provisions of section 140 of the said Act and delivered at my office at Room No. N.A. 102 New Central Revenue Building, Statue Circle, Jaipur within twenty Days (20 days) from service of this notice."

In the assessment order, the AO at para 5 has stated clearly that the notice under section 153A was issued on 17.12.2014 and duly served on the assessee. The issuance and service of notice is thus not in dispute. Subsequently, the assessee has filed her return of income pursuant to such notice u/s 153A on 10.04.2015. The question is whether such return has been filed within the stipulated timeframe as prescribed in notice u/s 153A of the Act. Apparently, the AO seems satisfied and has not disputed this fact and has also not initiated any penal action under section 271F for delay in filing of the return of income.

19. The second condition required to be satisfied for filing a revised return is that the assessee discovers any omission or wrong statement in the return originally so filed by him, in that scenario, he can revise the return originally filed. In the instant case, the Id CIT(A) has returned a finding after examination of the return of income that the assessee has inadvertently put figures of AY 2014-15 in the return of AY 2011-12. The Id CIT (A) has further held that if the figure of income and payment of taxes does not match to figures duly recorded in assessee's books of a/c for the year, but matches with those of AY 2014-15, then in absence of any incriminating document and subsequent enquiry conducted by the AO, the details as mentioned in the return filed on 10.04.2015 is not relevant for the AY 2011-12. It was further held by him that assessee has also filed an affidavit stating the fact that correct income for the year should be taken at Rs. 30,64,640/- and assessee during the search operation carried out had not made any disclosure of income nor any incriminating material suggesting additional undisclosed income of Rs. 55,59,210/-. The Id CIT(A) has therefore rightly analysed the return of income, the underlying financial statements and has basically come to a conclusion that it is the real income which is reflective of the assessee's business activities which can be brought to tax and a return of income so filed is to disclose such income to the AO and the AO has to act on that. However, where there are apparent mistakes in the return so filed, the said mistakes which are apparent on the face of the records should not be ignored to the disadvantage of the assessee. The said findings of the Id CIT(A) remain uncontroverted before us and we see no reason but to accept the same. It is thus clearly a case of inadvertent human error and mistake on part of the assessee calling for filing of revised return.

20. The third condition which is required to be fulfilled is that the revised return should be filed before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier. In the instant case, the

relevant assessment year is AY 2011-12, the revised return of income was filed on 14.12.2016 and the assessment was completed by passing of order u/s 153A r/w section 143(3) on 29.12.2016. In the instant case, the notice requiring the filing of return of income under section 153A was itself issued on 17.12.2014, therefore applying the principle of impossibility of performance, filing of revised return of income on or before 31.03.12 cannot be said to be applicable or enforced upon the assessee in the peculiar facts of the case. Given that the revised return was filed on 14.12.2016 well before the completion of assessment on 29.12.2016, the time limit for filing the revised return is satisfied in the instant case.

21. In light of above discussions and in the entirety of facts and circumstances of the case, we do not see any infirmity in the order of the Id CIT(A) and the same is hereby confirmed. In the result, revenue's ground of appeal is dismissed.

In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 10/11/2017.

Sd/-
(विजय पॉल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

Jaipur

Dated:- 10/11/2017

*Ganesh Kr

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- DCIT, Central Circle-4, Jaipur
2. प्रत्यर्थी / The Respondent- Smt. Sheena Mathur, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur

6. गार्ड फाईल / Guard File (ITA No. 627/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar.