

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC-A" BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No. 962/Bang/2017
Assessment Year : 2012-13

Smt. Saraswathi Manoharan, 4 th Floor, TTMC, BMTc Building, Yeshwanthpur, Bangalore – 560 022. PAN: AAVPM 9024F	Vs.	The Income Tax Officer, Ward – 5 (2) (4), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Ravi Shankar, Advocate
Revenue by	:	Dr. Sandeep Goel, Addl. CIT (DR)

Date of hearing	:	21.12.2017
Date of Pronouncement	:	22.12.2017

ORDER

Per Shri A.K. Garodia, Accountant Member;

This appeal is filed by the assessee which is directed against the order of Id. CIT(A) – 5, Bangalore dated 30.01.2017 for Assessment Year 2012-13.

2. The grounds raised by the assessee are as under.

“1. The order of the learned Commissioner of Income-tax(Appeals) passed under Section 250 of the Act in so far as it is against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.

2. The appellant denies to be assessed to an income over and above the revised income of Rs. 30,91,710/- on the facts and circumstances of the case.

3. The learned CIT(A) failed to appreciate that the notice under section 143(2) was issued on the revised return of income filed by the appellant and consequently the learned Assessing officer ought to have considered the income referred in the revised return on income while passing the assessment order, on the facts and circumstances of the case.

4. *The learned CIT(A) failed to adjudicate the grounds of appeal that the deduction of interest on borrowed capital U/s 24(b) of the Act claimed by the appellant of a sum of Rs.37,30,206/-under the head income from house property in the revised return ought to have been granted on the facts and circumstances of the case.*

5. *Without prejudice, the learned CIT(A) failed to appreciate that the appellant can make a new claim before the learned CIT(A) even though the revised return is not valid in law in respect of correct claim made by the appellant in the revised return on income on the facts and circumstances of the case.*

6. *The learned CIT(A) failed to appreciate that the appellant had declared income in the return and consequently the provisions of section 80 of the Act is not applicable on the facts and circumstances of the case.*

7. *The learned CIT(A) ought to have appreciated that the claim of deduction of interest paid on housing loan does not fall within either of the heads of Business or Profession nor capital gains and hence the provisions of section 139(3) of the Act, are not applicable in so far as the claim of set off of interest on rent received from house property on the facts and circumstances of the case.*

8. *The learned CIT(A) was not justified in ignoring the fact that though the claim of interest was inadvertently not made in the original return and AO was duty bound to re-compute the correct income while passing the impugned order relying on the computation made in the revised return of income on the facts and circumstances of the case.*

9. *The learned CIT(A) was not justified in not allowing the interest expenditure in computing the income from House Property which was offered to tax on the facts and circumstances of the case.*

10. *Without prejudice, the interest paid ought to have been necessarily set off in computing the income from House property while passing the order under section 143(3) of the Act, on the facts and circumstances of the case.*

11. *The learned CIT(A) failed to appreciate that it is settled position of law that no tax can be levied or recovered without authority of law and Article 265 of the constitution of India imposes an embargo on imposition and collection of tax if the same is without authority of law on the facts and circumstances of the case.*

12. *The learned CIT(A) ought to have held that the AO was bound to follow the Board Circular No. 14. (XL-35), dated 11-4-1955, directing the AO not to take advantage of assessee's ignorance or mistake and*

the AO ought to have allowed the appellant the benefits available under the scheme of the Act, on the facts and circumstances of the case.

13. The learned CIT(A) was not justified in law in not granting the carry forward of short term capital loss of Rs.27,56,991/- as claimed by the appellant in the revised return on income on the facts and circumstances of the case.

14. The learned CIT(A) was not justified in confirming the addition of Rs.84,457/- under the head of other sources on the facts and circumstances of the case.

15. The learned CIT (A) failed to appreciate that the interest calculation u/s. 234B and 234C is not in accordance with the provisions of law on the facts and circumstances of the case. Further, the period, rate, quantum and method of calculation adopted on which interest is levied are all not discernable and are wrong on the facts of the case.

16. The Appellant craves leave to add, alter, substitute and delete any or all of the grounds of appeal urged above.

17. For the above and other grounds to be urged during the hearing of the appeal the Appellant prays that the appeal be allowed in the interest of equity and justice.”

3. It was submitted by Id. AR of assessee that ground nos. 1 and 2 are general. Regarding ground no. 3, he submitted that the same issue was raised before CIT(A) by way of ground no. 3 but this ground was not decided by CIT(A) as per the impugned order. He submitted that since the notice u/s. 143(2) of the IT Act was issued by the AO after filing of revised return of income, the income declared by the assessee in the revised Return of income should have been considered by the AO for completing the assessment but he has not done so. The Id. DR of revenue supported the orders of authorities below.
4. I have considered the rival submission. I find that it is noted by the AO in assessment order that assessee had filed original return of income electronically on 09.01.2013 declaring total income of Rs. 68,21,920/- and revised return of income was filed by her on 31.03.2014 declaring total income of Rs. 30,91,710/-. As per the last page of the assessment order, the AO has proceeded to complete the assessment order as per the amount of income declared in the original return of income at Rs. 68,21,920/-. This issue raised

before the Tribunal by way of ground no. 3 has been raised by assessee before CIT (A) also by way of ground no. 3 and the relevant ground is also reproduced by CIT (A) on page no. 2 of his order. In para no. 6 of his order, the Id. CIT(A) has noted that original return was filed belatedly and therefore, revised return cannot be filed. But even if that is so, it has to be seen as to whether the notice issued by AO u/s. 143(2) is valid or not because as per the proviso to section 143 (2), no notice can be issued after expiry of six months from the end of Financial Year in which return is furnished. When the revised return is not valid, the notice u/s. 143(2) should have been issued up to 30.09.2013 because the original return was filed by the assessee on 09.01.2013. As per the submission of the assessee before the CIT(A) reproduced on page no. 3 of his order, the notice u/s. 143(2) was issued by the AO on 04.09.2014. Hence this aspect has to be looked into as to whether the notice issued by the AO u/s. 143(2) is within time as per law or not because for the purpose of computation of income, if this regard revised return filed by the assessee on 31.03.2014 is not valid then for the purpose of computing the time available to the AO for issuing notice u/s. 143(2) also, the revised return has to be disregarded. Since no finding is recorded by CIT(A) on this aspect and copy of the notice u/s. 143(2) is not available before me and its date is noted in the assessment order and in the order of CIT(A) because the date of issue of notice u/s. 143(2) is as per the submission of the assessee reproduced by CIT(A) on page no. 3 of his order, but since neither the copy of notice is available before the Tribunal nor there is any finding of CIT(A) or AO regarding the date of issue of notice u/s. 143(2) of the IT Act, I feel it proper to restore the entire matter back to the file of CIT(A) to decide this issue as to whether the notice issued by the AO is time barred or not in the facts of the present case and if it is found that the said notice is time barred then the assessment order has to be quashed and if it is found that the notice issued by the AO is not time barred then he should decide the issue on merit afresh because issue on merit should be decided after final decision on technical aspect. In view of this decision, no adjudication is called for in respect of other grounds raised by the assessee.

5. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 22nd December, 2017.
/MS/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.