

IN THE INCOME TAX APPELLATE TRIBUNAL

“C” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 2738/Bang/2017
Assessment Year : 2009-10

M/s. Karle International Pvt. Ltd., No. 151, Industrial Suburb, Yeshwanthpur, Bangalore – 560 022. <b>PAN: AADCK4886C</b>	vs.	The Deputy Commissioner of Income Tax, Circle – 11 (5), Bangalore.
APPELLANT		RESPONDENT
Appellant by	:	Shri H.N. Khincha, CA
Respondent by	:	Shri M. Vijay Kumar, Addl. CIT (DR)
Date of hearing	:	02.01.2019
Date of Pronouncement	:	11.01.2019

**ORDER**

*Per Shri A.K. Garodia, Accountant Member*

This appeal is filed by the assessee and the same is directed against the order of Id. CIT(A)-4, Bangalore dated 14.09.2017 for Assessment Year 2009-10.

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

*“1. The learned Assessing Officer had erred in passing the order in the manner passed by him and the learned Commissioner of Income tax (Appeals) has erred in partially confirming the same. The order passed to the extent, it is confirmed by the Commissioner of Income tax Appeals) is liable to be quashed.*

*2. In any case, the learned assessing officer has erred in not considering the revised return filed while concluding the assessment and the learned CIT(A) has erred in confirming the same. On proper appreciation of law and facts of the case, the revised return filed having substituted the original return for all purposes, should have been considered while passing the order. The order passed without considering the revised return makes the order bad in law and liable to be quashed.*

*3. The learned Assessing Officer had erred in holding that revised return is not acceptable as there is redrafting of Profit and Loss account and the CIT(A) has erred in confirming the Same. On*

*proper appreciation of law and facts the ground taken by the Authorities below for rejection of revised return is not correct in the eyes of law. The revised return being valid, is to be accepted as such and the assessed income computed relying upon original return is to be disregarded.*

*4.1 The Authorities below have erred in not considering the claim of deduction made by the appellant u/s 10B of the Act on the grounds that*

*i) such claim was made in the revised return and not in the original return filed*

*ii) There was an inordinate delay in filing the revised return.*

*iii) Such inordinate delay was not explained by the appellant.*

*iv) that the appellant has not explained the variation of income in revised return vis-à-vis original return*

*The above reasonings / findings are not only contrary to facts but also law applicable are to be rejected in entirety.*

*4.2 The appellant having rightly claimed the deduction u/s 10B of the Act in accordance with the provisions of law is to be accepted and the action of authorities below in rejecting the claim of deduction u/s 10B of the Act is to be disregarded.*

*5.1 In any case and without prejudice to the above, the Assessing Officer had erred in stating that alternatively if at the appellate stage revised return is considered then 10B deduction shall be computed post set off of losses of non STPI unit with the profit of STPI Unit. The learned CIT(A) instead of accepting the revised return has erred in rejecting the same and also erred in holding that there is no requirement for a separate adjudication with respect to this ground of appeal. The deduction u/s 10B of the Act being undertaking specific is to be computed as is, only on the profits of STPI Unit and not post set off of losses of non STPI Unit. The conclusion/action of authorities below being not in accordance with the provisions of law are to be rejected in toto and the deduction as claimed by the appellant is to be accepted.*

*5.2 The Assessing Officer had also erred in stating that deduction u/s 10B of the Act, if at all computed shall be arrived after reducing the freight and insurance charges from export turnover only and not from the total turnover what is reduced from export turnover is also to be reduced from total turnover. The learned CIT(A) has erred in not adjudicating this ground of appeal. The action of the authorities below being contrary to law applicable is to be rejected.*

*6. The appellant also denies its liability to pay interest u/s. 234B & 234C. The interest being levied erroneously is to be deleted.*

*7. In view of the above and on other grounds to be adduced at the time*

*of hearing it is requested that the Revised return filed by the appellant be accepted, the claim of deduction u/s 10B of the Act as made by the appellant be accepted, the deduction u/s 10B of the Act be allowed before setting off brought forward losses, the freight and insurance charges be reduced from both export Turnover and the Total Turnover while calculating 10B deduction and interest levied be also deleted.”*

3. It was submitted by Id. AR of assessee that on page no. 1 of the assessment order, the AO has noted that return of income was originally filed by the assessee on 30.09.2009 declaring an income of Rs. 64,44,560/- and subsequently, the assessee filed the revised return of income on 19.03.2011 declaring Nil income. Thereafter, he submitted that in the last Para on page no. 2 of the assessment order, it is noted by the AO that as per the original return of income filed on 30.09.2009, income declared was of Rs. 64,44,560/- and as per the revised return of income filed on 19.03.2011, the assessee has declared a loss of Rs. 1,83,62,408/-. He further submitted that the AO asked the assessee to produce details of such loss in the revised return of income and to substantiate the same. In reply, it was submitted by Id. AR of assessee that original return of income was filed without considering the deduction allowable u/s. 10B of IT Act and this mistake was noticed later on and therefore, the revised return of income was filed. After noting these facts, the Id. AO has noted the figures of various income and expenditure etc. as per original return and revised return on page no. 3 of the assessment order and thereafter on page no. 4 of the assessment order, the AO has stated that there are lot of differences in the computation of both the returns and although the assessee has submitted that revised return was filed only for claiming deduction u/s. 10B. The AO held that as per the comparison of the various figures as per original return and revised return, it is seen that net profit itself is taken as starting point in computation is different showing that there is redrafting of the whole profit and loss account. The AO came to the conclusion that in such a scenario, the assessee's contention that the revised return was filed only to claim deduction u/s. 10B is not acceptable as there seems to be redrafting of the profit and loss account and therefore, on this basis he disallowed the claim for deduction u/s. 10B and he computed the income in the assessment order as per the original return filed by the assessee. Since

the original return was filed within time and revised return was also filed within the permitted time u/s. 139(5), the AO should have accepted the revised return as valid return and on the basis of the same, he should have computed the taxable income of the assessee. He submitted that since this was not done by the AO, this matter should be restored back to the file of AO / CIT(A). The Id. DR of revenue supported the orders of authorities below.

4. We have considered the rival submissions and gone through the orders of authorities below. We find that as per ground no. 2.1 raised by the assessee before CIT (A), this was the claim of the assessee that the AO has erred in not considering the revised return filed while concluding the assessment. We find that Id. CIT(A) has reproduced the submission of the assessee before him in Para 5.2 of his order and in Para 5.3 of his order, he has reproduced the relevant portion of remand report. In Para 5.4 of his order, Id. CIT (A) has decided the issue regarding the acceptability of revised return of income. For ready reference, we reproduce Para 5.4 from the order of CIT (A).

*“5.4 The AO's observations, the contents of the Remand Report and the assessee's submissions on the issue have been duly perused. I do not find myself in agreement with the appellant's stand for the reasons summarised as under:-*

- *There is no dispute in the fact that, the assessee's original return of income was filed on 30.09.2009, declaring an income of Rs. 64.44,560/-. It was only after a lapse of more than one and half year, that, a revised return was filed at a loss of Rs. 1,83,62,408/-along with a fresh claim of deduction u/s. 10B of the I.T.Act, on 19.03.2011. The assessee made no claim for deduction u/s. 10B in its original return, which was however sought after such a long-gap of time, without a satisfactory explanation for the inordinate delay. Although, there is no legal bar on filing of a revised return of income within the stipulated time-limit, it remains crucial for the AO to ascertain the genuineness of the reasons, which ought to be duly justified by the assessee, in the normal course. The assessee has quite-apparently failed to place on record, substantial material-facts, to explain the reasons for initial omission, and subsequent belated claim of deduction u/s. 10B.*
- *The AO has elaborately brought forth in the impugned*

*order the numerous deviations made by the appellant. in the key-figures of the P&L account, reflected in the original viz-a-viz the Revised Return of Income. The net-profit declared in the original return has been drastically reduced to the loss of (-) Rs. 5,74,814/- as against the positive figure of Rs. 29,61,709/- declared in the original return. The income declared in the original return of income at Rs. 64.44,560/- has therefore been greatly reduced to a loss of Rs. 1,83,62,408/- in the revised return. The AO has explained in detail the major differences, in the income computation of the respective returns of income (Original v/s. Revised), under different heads. It is seen that, these variations are not exclusively pertaining to the claim of deduction u/s. 10B, which should have happened in the normal course, if the revision was only on account of the claim u/s. 10B. These deviations have rather extended to numerous heads of computation u/s. 43B; 40(a)(ia), 36(1)(v), etc. These differences have not been adequately addressed / explained by the assessee, either before the AO or during the current appeal-proceedings. The acceptance of the validity of the Revised Return of Income therefore becomes prima-facie questionable.*

- *The AO in his Remand Report (extracted at Para 5.3 above) has objected to the validity of the assessee's Revised Return of Income and belated claim of deduction u/s. 10B. The assessee, in spite of opportunities offered in this regard, has not brought on record any tangible or specific rebuttal, to the said Remand Report. The AO in the Remand Report, has highlighted the in-ordinate delay between the Original return of income and Revised return of income in terms of the stipulations contained in the section 139(1) r.w.s. 139(5). The AO has also stated that, it was not ascertainable whether the statutory Audit report (for claim of deduction u/s. 10B) in Form 56G was provided and filed in requisite time, along with the relevant return of income. The stark differences in various account-heads between the original and revised returns have also been cited in the Remand report, thereby questioning the validity of the Revised Return of Income.*

*In background of the above detailed discussion and facts & circumstances of the instant case, and especially in absence of valid evidentiary justification made by the assessee, the Revised return of income and the belated- claim of deduction u/s. 10B, is not found to be acceptable. The grounds of appeal of the assessee in this regard are therefore disallowed.”*

5. After going through this Para of the order of CIT (A), we find that there is no dispute on this factual aspect that original return was filed by assessee

within the prescribed time u/s. 139(1) and the revised return of income was also filed by the assessee within the time prescribed u/s. 139(5) of IT Act. For ready reference, we reproduce sub section (5) of section 139 which is relevant in the present case.

*“139 (5) If any person, having furnished a return under sub-section (1) or sub-section (4), 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.”*

6. As per the provisions of sub section (5) of section 139, If any person, having furnished a return under sub-section (1) or sub-section (4), 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. In the present case, the relevant Assessment Year ended on 31.03.2010 and therefore, the assessee could have filed revised return up to 31.03.2011. In fact, the assessee has filed revised return of income on 19.03.2011 and therefore, the same should have been accepted as a valid return filed u/s. 139(5) of IT Act because this is not the case of the AO that original return was not filed within time prescribed u/s 139 (1). Once revised return of income was filed by assessee, the same cannot be ignored for the reasons stated by the AO and CIT(A). In this regard, reliance has been placed by Id. AR of assessee on a judgment of Hon'ble Karnataka High Court rendered in the case of CIT Vs. Mangalore Chemicals & Fertilizers Ltd. as reported in [1991] 59 Taxman 508 (Kar) wherein it was held that once a valid revised return of income is filed by assessee, it completely effaces and obliterates original return and, therefore, it is only revised return that has to be taken into account for the purpose of making assessment. Para no. 8 of this judgement is very much relevant and the same is reproduced hereinbelow.

*“8. Regarding question No. 1, much discussion is not necessary because once the original return is withdrawn or is substituted by filing a valid revised return, the natural consequences is that the earlier return would be effaced or obliterated for all purposes under the Act. The answer to the first question, therefore, necessarily will be in the affirmative and against the Revenue.*

*Similarly, the answer to the second question will be in the affirmative and against the Revenue.”*

7. Respectfully following this judgment of Hon'ble Karnataka High Court, we hold that in the present case also, the income of the assessee should be computed after considering the revised return of income filed by the assessee on 19.03.2011. In respect of various differences in various figures as noted by the AO on page no. 3 of the assessment order, explanations can be asked from the assessee and if the assessee is not able to explain satisfactorily about these differences, then necessary disallowances/additions as per law can be made. But for these differences, revised return cannot be ignored once the same is validly filed. Hence, we set aside the order of CIT(A) and restore back the matter to his file for fresh decision and if required, he may obtain remand report from AO in this regard and decide the entire issue afresh as per law in respect of allowability of deduction claimed by the assessee u/s. 10B and in respect of various differences in figures of profit and expenses as noted by the AO on page no. 3 of the assessment order in the light of above discussion after providing reasonable opportunity of being heard to both sides. In view of this decision, no separate adjudication is called for in respect of various grounds raised by the assessee.
8. 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/-  
(PAVAN KUMAR GADALE)  
Judicial Member

Sd/-  
(ARUN KUMAR GARODIA)  
Accountant Member

Bangalore,  
Dated, the 11<sup>th</sup> January, 2019.  
/MS/

Copy to:

1. Appellant
2. Respondent
3. CIT

4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Bangalore.