

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'SMC', NEW DELHI)**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
ITA No:-5502/Del/2018
(Assessment Year: 2010-11)**

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| Mohit Gupta H. No.634, Sector – 28, Faridabad | Vs. | DCIT Circle -1 Faridabad |
| APPELLANT | | RESPONDENT |

Assessee by : Ms. Rano Jain, Advocate
Sh. Pranshu Singhal, CA
Ms. Mansi Jain, CA

Revenue by : Sh. S. L. Anuragi, Sr. DR

Date of Hearing : 20.05.2019
Date of Pronouncement : 21.05.2019

ORDER

PER: N. K. BILLAIYA, AM

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals], Faridabad, dated 26.06.2018 for Assessment Year 2010-11.

2. The grievance of the assessee reads as under :-

1. *On the facts and circumstances of the case, the order passed under section 143(3)/263 of the Act by the Learned CIT(A) is bad both in the eye of law and on facts.*

2. *On the facts and circumstances of the case, Ld CIT(A) has erred both on facts and in law in confirming the income assessed at Rs.27,07,267/- as against revised returned income of Rs. 14,98,384/-.*

3. *On the facts and circumstances of the case, Ld CIT(A) has erred both on facts and in law in confirming the action of the AO by not giving effect to the revised return filed by the assessee declaring income of Rs. 14,98,384/- despite the fact that the revised return was in time and permissible under section 139(5) of the Act.*

4(i)*On the facts and circumstances of the case, Ld CIT(A) has erred both on facts and in law in confirming the addition of Rs. 5,12,059/- on account of difference in the income declared in the original return and income declared by the assessee in the revised return.*

(ii) *That the said addition has been confirmed despite the fact the assessee has already taxed the income of Rs. 5,12,059/- in the revised return of Income.*

On the facts and circumstances of the case, Ld CIT(A) has erred both on facts and in law in confirming the addition by not allowing the loss of Rs. 5,26,852/- being loss under the head of House Property as per revised return filed by the assessee, without any reason.

6. *On the facts and circumstances of the case, Ld CIT(A) has erred both on facts and in law in confirming addition of Rs. 8,42,028/- on account of additions confirmed by the CIT(A).*

3. The facts show that original return of income was filed on 28.07.2010 declaring income of Rs.1,33,53,180/-. The return was selected for scrutiny assessment and accordingly statutory notices were issued and served upon the assessee on 29.08.2011 fixing the case for 12.09.2011. The assessee filed his revised return of income on 09.09.2011 declaring income of Rs.14,88,380/- and also added Rs.10,000/- as agricultural income.

4. The assessment was framed u/s. 143(3) of the Act vide order dated 04.03.2013 at an income of Rs.1,67,53,489/-.

5. The assessment was challenged before the CIT(A) who gave partial relief to the assessee but the following additions were confirmed :-

1. Addition on account of cash deposit : Rs.99,000/-
2. Addition on account of loan to Smt. Dimple Gupta : Rs.7,27,528/-
3. Addition on account of cash in hand : Rs.15,500/-

6. In the mean time the CIT, Faridabad took up the case for revision u/s. 263 of the Act. The Order u/s. 263 was passed on 31.03.2015 by making the following observations :-

6. In view of all the above mentioned facts and legal position, it is held, that the impugned assessment order passed by the Assessing Officer is erroneous as well as prejudicial to the interest of revenue. There has been non-application of mind on part of the AO. The ITO has taken a view which is unsustainable by accepting the revised return, which was not acceptable u/s 139(5) as the same was filed after detection of concealment by the Department. The assessment order passed u/s 143(3) vide order dated 04.03.2013 for the assessment year 2010-11 is hereby cancelled/set aside u/s 263(1) of the Income Tax Act, 1961 and is restored to the file of AO for making a fresh assessment without giving the benefit of revised return filed by the assessee. The AO is directed to make a judicious and speaking order as per law after providing due opportunity of being heard to the assessee. Any adverse inference made would require re-computation of income and tax thereon."

7. The present assessment is framed pursuant to the directions of the CIT given in his order framed u/s. 263 of the Act. While completing the assessment and following the directions of the CIT the Assessing Officer

denied the claim of set off of loss of Rs.512059/- and completed the assessment.

8. Assessee carried the matter before the CIT(A) but without any success.

9. Before me the counsel for the assessee vehemently stated that once the CIT directed to ignore the revised return of income then the Assessing Officer should not have accepted the income shown in the revised return of income. It is the say of the counsel that if the income shown in the revised return of income has to be accepted then the losses claimed should also be allowed to be set off.

10. Per contra the DR strongly supported the findings of the lower authorities.

11. I have given a thoughtful consideration to the orders of the authorities below. The factual matrix has already been explained here in above. The directions of the CIT mentioned elsewhere clearly show that he has directed the Assessing Officer to make a fresh assessment without giving the benefit of revised return filed by the assessee. This means that the revised return filed on 09.09.2011 becomes non est. In my considered view once the revised return becomes non est, the entire assessment has to be framed on the basis of the original return of income filed on

28.07.2010. I find that an assessment order dated 04.03.2013 has already been framed u/s. 143 (3) of the Act which has been subject matter of appeals before the CIT(A) and also before the Tribunal.

12. I am of the opinion that the additions made in the present assessment order should fail. I accordingly direct the Assessing Officer to delete the addition of Rs.512059/-.

13. In the result, the appeal filed by the assessee is accordingly allowed.

Order pronounced in the open court on 21.05.2019.

Sd/-
(N.K.BILLAIYA)
ACCOUNTANT MEMBER

Dated: 21.05.2019

Neha

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

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| Date of dictation | 20.05.2019 |
| Date on which the typed draft is placed before the dictating Member | 20.05.2019 |
| Date on which the typed draft is placed before the Other Member | |
| Date on which the approved draft comes to the Sr. PS/PS | |
| Date on which the fair order is placed before the Dictating Member for pronouncement | |
| Date on which the fair order comes back to the Sr. PS/PS | |
| Date on which the final order is uploaded on the website of ITAT | |
| Date on which the file goes to the Bench Clerk | |
| Date on which the file goes to the Head Clerk | |
| The date on which the file goes to the Assistant Registrar for signature on the order | |
| Date of dispatch of the Order | |