

आयकर अपील[ीय अधिकरण] पुणे न्यायपीठ “एक सदस्य” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE

BEFORE SHRI ANIL CHATURVEDI,
ACCOUNTANT MEMBER

आयकर अपील सं / ITA No.402/PUN/2019

निर्धारण वर्ष / Assessment Year : 2015-16

M/s. Shubham,
S.No.121/122, Shop No.5,
Bhosale Complex, Rambaug Colony,
Paud Road, Kothrud,
Pune – 411 038.

..... अपीलार्थी /
Appellant

PAN : ABDFS4661H.

बनाम v/s

The Income Tax Officer,
Ward 3(4), Pune.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri Sanket Joshi.

Revenue by : Shri Sanjeev Ghei.

सुनवाई की तारीख / Date of Hearing : 19.09.2019	घोषणा की तारीख / Date of Pronouncement: 25.10.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by assessee is emanating out of the order of Commissioner of Income Tax (Appeals) – 3, Pune dated 14.01.2019 for A.Y. 2015-16.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is a partnership firm stated to be engaged in dealing in readymade garments and hosiery. Assessee electronically filed its

return of income on 30.10.2015 declaring total income of Rs.19,03,485/-. Subsequently assessee on 13.02.2016 revised its return of income declaring total income of Rs.5,50,420/-. The revised return was processed u/s 143(1) of the Act. Thereafter, the case was selected for scrutiny and consequently assessment was framed u/s 143(3) of the Act vide order dated 28.12.2017 and the total income was determined at Rs.19,03,490/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dated 14.01.2019 (in appeal No.PN/CIT(A)-3/Wd 3(4), Pn/308/2017-18) dismissed the appeal of the assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal and has raised the following grounds :

- “1. The learned CIT(A) erred in confirming the action of the A.O. in rejecting the total income of Rs.5,50,420/- declared by the assessee as per the revised return filed u/s 139(5) and assessing the total income at Rs.19,03,485/- as per the original return filed u/s 139(1) without appreciating that the said action was not justified on facts and in law*
- 2. The learned CIT(A) erred in holding that the assessee had failed to substantiate the mistake committed by it while filing the original return which resulted into excess-declaration of total income and thereby holding that the revised return duly filed u/s 139(5) subsequently declaring lower income was only an afterthought and hence, the A.O. was justified in assessing the total income as per the original return by completely ignoring the revised return filed u/s 139(5) of the Act.*
- 3. The learned CIT(A) failed to appreciate that the total income was wrongly declared at a higher figure in the original return and subsequently, the revised return was filed declaring correct income within the time limit prescribed u/s 139(5) and on verification of records in the course of asst. proceedings, even the A.O. could not find a single defect in the books of accounts produced by the assessee in support of the revised income and therefore, the addition made solely on the basis of the total income declared in the original return filed u/s 139(1) was not warranted on facts and in law.*
- 4. The learned CIT(A) ought to have appreciated that in the absence of any independent evidence brought on record by the A.O. to demonstrate as to how the total income declared by the assessee as per the revised return was not correct, the A.O. could not have rejected the revised income solely on the basis of the earlier original return filed by the assessee u/s 139(1) which was subsequently revised by the assessee u/s 139(5) and thus, the action of the A.O. was not justified in law.”*

3. All the grounds being inter-connected are considered together.
4. During the course of assessment proceedings AO noticed that assessee had revised the original return of income by revising the total income declaring therein. The reason for revising the return of income was stated to be considering the wrong figure of sales for computing of business profit. The assessee was asked to substantiate the revised sales figure, to which the assessee submitted the details and also produced sales bills of one month for random checking. Assessee also filed the revised service tax return filed by it with the appropriate authorities. The submissions of the assessee were not found acceptable to the AO. AO was of the view that assessee could not justify the revised return by adopting revised sales. He therefore rejected the sales figure disclosed by the assessee in the revised return of income and considering the return of income originally filed, determined the total taxable income at Rs.19,03,490/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who upheld the order of AO.

Aggrieved by the order of Ld.CIT(A), assessee is now in appeal.

5. Before me, Ld.A.R. reiterated the submissions made before AO and Ld.CIT(A) and further submitted that in the original return of income the quantum of sales was inadvertently considered at overstated figure. Subsequently, it came to notice of the assessee the mistake of overstated sales and assessee thereafter on the basis of correct quantum of sales, filed revised return of income u/s 139(5) of the Act on 13.02.2016 wherein the total income was revised at

Rs.5,50,420/-. He submitted that the revised return was also processed u/s 143(1) of the Act and the same is mentioned in the assessment order. He submitted that before the lower authorities assessee had explained about the necessity for revising the return of income. He further submitted that to substantiate the actual quantum of sales, assessee had produced the entire record along with sales bills before the AO. The AO after having satisfied herself on the basis of verification made on test check basis, did not ask the assessee to substantiate sales declared by the assessee in the revised return of income u/s 139(5) of the Act. He submitted that there is no material before the Department to demonstrate that the sales declared by the assessee in the revised return u/s 139(5) of the Act is not correct. He submitted that once a valid return u/s 139(5) of the Act is filed by the assessee then the original return u/s 139(1) of the Act is substituted by the revised return and the original return filed u/s 139(1) of the Act gets obliterated for all the purposes under the Act. In such a situation, the AO cannot consider the original return of income during the course of assessment proceedings for determining the total income of the assessee. In support of his contention that when valid return is filed u/s 139(5) of the Act, the original return u/s 139(1) of the Act cannot be taken into account for making the assessment, he relied on the following decisions :

- a) CIT Vs. Mangalore Chemicals & Fertilizers Ltd. [191 ITR 156 (Kar)]
- b) CCIT Vs. Machine Tool Corporation of India Ltd. [201 ITR 101 (Kar)].
- c) Beco Engineering Co. Ltd Vs. CIT [148 ITR 478 (P&H)]
- d) CIT Vs. Arun Textile [192 ITR 700 (Guj)].

He therefore submitted that the assessment of total income by the AO by rejecting the revised return u/s 139(5) of the Act was contrary to law. He therefore prayed that the total income of Rs.5,50,520/- declared by the assessee in the revised return of income be considered. Ld. D.R. on the other hand supported the order of AO and Ld.CIT(A).

6. I have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to rejecting the revised return filed by the assessee and the act of AO in proceeding to frame the assessment on the basis of the original return of income. It is an undisputed fact that assessee had filed original return of income u/s 139(1) of the Act for A.Y. 2015-16 on 30.10.2015 by declaring total income at Rs.19,03,485/-. Subsequently, assessee filed revised return of income u/s 139(5) of the Act on 13.02.2016 wherein the total income was revised at Rs.5,50,420/-. The last date to file the revised return u/s 139(5) of the Act for A.Y. 2015-16 was 31.03.2016. It is also a fact that the revised return of income filed by the assessee was within the prescribed time limit prescribed under the Act. It is also a fact that the revised return was duly processed u/s 143(1) of the Act. I find that Hon'ble Karnataka High Court in the case of CIT Vs. Mangalore Chemicals and Fertilizers reported in [191 ITR 156 (Kar)] has held that once the original return is withdrawn or is substituted by filing a valid return, the only consequence is that the earlier return is effaced or obliterated for all purposes under the Act. I further find that Hon'ble Gujarat High Court in the case of CIT Vs. Arun Textile [192 ITR 700 (Guj)] has held that once the revised return is filed u/s 139(5) of the Act, the original return is substituted by the

revised return and it is not open to the AO to advert to the original return of income or the statement filed along with it. I further find that Hon'ble Punjab and Haryana High Court in the case of Beco Engineering Co., Ltd., Vs. CIT reported in [148 ITR 478] has held that in a case assessee files the revised return then it is to be taken into consideration for the purpose of making an assessment and the original return cannot be adverted. Before me, Revenue has not pointed to any contrary binding decision in its support nor pointed as to why the ratio of decisions relied upon by assessee and referred to hereinabove are not applicable to the case of assessee. I therefore following the aforesaid decisions of various High Courts cited hereinabove hold that once the revised return has been filed by the assessee u/s 139(5) of the Act and the same has been accepted, then it is not open to the authorities to take into consideration the original return of income for determining the total income in the assessment proceedings. I therefore set aside the order of AO and direct the AO to consider the total income declared by the assessee u/s 139(5) of the Act for determining the total income. **Thus, the grounds of the assessee are allowed.**

7. In the result, the appeal of the assessee is allowed.

Order pronounced on 25th day of October, 2019.

Sd/-

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 25th October, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-3, Pune.
4. Pr. CIT-2, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य" /
DR, ITAT, "SMC" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.