

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C”BENCH: BANGALORE**

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL  
MEMBER AND  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.1991/Bang/2018
AssessmentYear:2012-13

Sri P.C. Mohan No.64, Mission Road Bangalore-560 027  <b>PAN NO : AATPM1150C</b>	<b>Vs.</b>	ACIT Circle-2(2)(1) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Pranav Krishna, A.R.
<b>Respondent by</b>	:	Smt. R. Premi, D.R.

Date of Hearing	:	08.12.2020
Date of Pronouncement	:	08.12.2020

**ORDER**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

The assessee has filed this appeal challenging the order dated 26.3.2018 passed by Ld. CIT(A)-10, Bengaluru and it relates to assessment year 2012-13. The assessee is challenging the disallowance made by the A.O. u/s 14A of the Income-tax Act,1961 [‘the Act’ for short] read with Rule 8D(2)(ii) of the I.T. Rules out of interest expenditure. Besides the above, the assessee has also raised a legal ground contesting that the A.O. should have issued notice u/s 143(2) of the Act in respect to the revised return filed by the assessee.

Page 2 of 7

2. We heard the parties and perused the record. The assessee is deriving salary income and business income. He filed his return of income for the year under consideration on 13.9.2012. Thereafter, he revised his return of income by filing a revised return on 18.10.2012. The A.O. issued notice u/s 143(2) of the Act on 6.8.2013 and completed the assessment by adopting the total income returned by the assessee in the original return of income filed by the assessee.

3. The only addition made by the AO in the assessment order is the disallowance of Rs.10,92,765/- made u/s 14A of the Act. The facts relating to the same are discussed in brief. The A.O. noticed that the assessee is a partner in a partnership firm named M/s P.C. Properties. During the year under consideration, the assessee has derived share income from the partnership firm and claimed the same as exempt u/s 10 of the Act. However, the assessee did not make any disallowance u/s 14A of the Act. Hence, the A.O. made disallowance u/s 14A of the Act read with Rule 8D of the I.T. Rules to the extent of Rs.10,92,765/- which consisted of interest disallowance of Rs.10,71,782/- under Rule 8D(2)(ii) and expenditure disallowance of Rs.20,983/- under Rule 8D(2)(iii) of the I.T. Rules. The above said disallowance was confirmed by Ld. CIT(A) and hence, the assessee has filed this appeal before us.

4. As noticed earlier, the assessee has raised a legal issue before the Tribunal. The Ld A.R submitted that the assessee has filed revised return of income. However, the A.O. did not issue any notice u/s 143(2) of the Act in response to the revised return filed by the assessee. He submitted that the notice u/s 143(2) of the Act issued by the A.O. was related to the original return of income filed by the assessee. He submitted that the original return of income shall become non-est subsequent to the filing of revised return of

Page 3 of 7

income. Hence, issuing of notice u/s 143(2) of the Act is mandatory and hence the AO should have issued the same against revised return of income.

5. We heard Ld. D.R. and perused the record. For adjudicating this legal issue, it is necessary to discuss the relevant facts. We notice that the original return of income was filed by the assessee on 30.9.2012 and the revised return of income was filed on 18.10.2012, i.e., within 18 days from the date of filing of original return of income. We also notice that the A.O. has issued notice u/s 143(2) of the Act on 6.8.2013, i.e., the notice u/s 143(2) itself was issued after filing of revised return of income.

6. Under the scheme of the Act, the assessing officer is entitled to assume jurisdiction to scrutinize the return of income filed by assessee only after the issue of notice u/s 143(2) of the Act within the prescribed time limit. If the A.O. has validly assumed jurisdiction over the original return of income filed by the assessee by issuing notice u/s 143(2) of the Act and if the assessee files any revised return of income after so assuming the jurisdiction, in our view, there is no requirement of issuing another notice u/s 143(2) of the Act in response to the revised return of income, since there is no requirement of assuming jurisdiction again.

7. It is well established proposition of law that the revised return of income filed within the prescribed time limit replaces the original return of income.

8. On the basis of above discussed legal propositions, we shall now examine the facts of the present case. We have noticed earlier, the assessing officer has issued notice u/s 143(2) of the Act only after filing of revised return of income. As noticed earlier, the

Page 4 of 7

revised return of replaces the original return of income and hence, in the facts of the present case, the notice issued by the AO has to be treated as having been issued against the revised return of income only, since the revised return of income was only surviving return of income when the AO issued the notice u/s 143(2) of the Act.

9. We notice that the AO has completed the assessment by considering the total income declared by the assessee in the original return of income. However, in the appeal filed by the assessee before Ld CIT(A), the first appellate authority has directed the A.O. to adopt the total income declared by the assessee in the revised return of income and accordingly compute the total income.

10. Hence, we do not find any merit in the contentions of the assessee that the A.O. should have issued another notice u/s 143(2) of the Act against the revised return of income. In any case, the coordinate bench of the Tribunal in the cse of ACIT Vs. Shilpa Medicare Ltd. (ITA No.1373 & 1374/Bang/2015 dated 6.2.2020) has held that there is no requirement of issuing notice u/s 143(2) of the Act in response to the revised return of income filed by the assessee, when the A.O. had already issued notice u/s 143(2) of the Act against the original return of income. The relevant observations made by the coordinate bench are extracted below:

*“5. We have considered the submission of ld. counsel for the assessee and we find that in the present case, the AO assumed jurisdiction on the basis of original return of income filed by the assessee by issuing a notice u/s. 143(2) of the Act dated 26.8.2011 which was served on assessee on 3.9.2011. This notice having been issued and served within the period contemplated by the provisions of [section 143\(2\)](#) of the Act, the AO has assumed valid jurisdiction. The fact that the assessee subsequently on 28.2.2012 filed a revised return is not of any significance. The AO was already seized of the assessment proceedings. In this case, revised return was taken cognizance by the AO, whereas the decision of the Bangalore*

Page 5 of 7

*Bench of Tribunal in IDEB Buildcon P. Ltd. (supra), the revised return was not taken cognizance and therefore the decision cited by the ld. counsel for the assessee is clearly distinguishable. In our opinion, the AO has assumed valid jurisdiction in this case by issue of proper notice u/s. 143(2) of the Act within the time contemplated by law. The original return u/s. 139(1) of the Act has not been treated as non est and the revised return is only for the purpose of certain errors and mistakes in the original return. In such circumstances, there is no requirement of law to issue a notice u/s. 143(2) of the Act with reference to revised return. We derive support for the aforesaid conclusions from the decision of the Hon'ble Delhi High Court in the case of [Vinod Kumar Khatri v. DCIT](#) [2016] 129 DTR 377 (Del). We are therefore of the view that there is no merit in grounds No.1 & 2 raised by the assessee and accordingly the said grounds are dismissed.”*

Accordingly, we do not find any merit in the legal issue urged by the assessee. Accordingly, we reject the same.

11. The next issue urged on merits relate to disallowance made u/s 14A of the Act. The Ld. A.R. submitted that the Hon'ble Karnataka High Court in the case of Micro Labs Limited (ITA No.471/2015 dated 11.3.2016) has held that no disallowance u/s 14A of the Act out of interest expenditure is called for, when interest free funds/own funds available with the assessee is more than the value of investments. In the above said case, the Hon'ble Karnataka High Court has concurred with the view expressed by Hon'ble Bombay High Court in the case of CIT Vs. HDFC Bank Ltd. (ITA No.330/2012 dated 23.7.2014). The Ld. A.R. submitted that the interest free funds available with the assessee were more than the amount of investments made in partnership firms. Accordingly, he submitted that no disallowance out of interest expenditure is called for u/s 14A of the Act read with rule 8D(2)(ii).

12. The Ld. D.R. on the contrary, submitted that the contentions of the assessee have to be examined with reference to the financial statements of the assessee.

Page 6 of 7

13. We heard the parties on this issue and perused the record. It is the contention of the assessee that the interest free funds/own funds available with the assessee is more than the value of investment made in the partnership firm. Hence, as per decision rendered by Hon'ble Karnataka High Court in the case of Micro Labs Limited (supra) no disallowance out of interest expenditure is called for. However, as rightly pointed by Ld. D.R., the above said contention of the assessee requires to be examined on the basis of financial statements of the assessee. Hence, we are of the view that this issue may be restored to the file of the A.O. for examining the same afresh by duly considering the decision rendered by Hon'ble Karnataka High Court in the case of Micro Labs Ltd. (supra). Accordingly, we set aside the order passed by Ld. CIT(A) on the issue of disallowance made out of interest expenditure under rule 8D(2)(ii) and restore the same to the file of the A.O. for examining it afresh in accordance with decision rendered in the case of Micro Labs Ltd. (supra).

14. In the result, the appeal filed by the assessee is treated as partly allowed for statistical purposes.

Order pronounced in the open court on 8<sup>th</sup> Dec, 2020

**Sd/-**  
**(George George K.)**  
**Judicial Member**

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

Bangalore,  
Dated 8<sup>th</sup> Dec, 2020.  
VG/SPS

**Copy to:**

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

By order

Asst. Registrar, ITAT, Bangalore.