

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ B ‘ Bench, Hyderabad
(Through Video Conferencing)
Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri A. Mohan Alankamony, Accountant Member

Appeal in ITA No	Appellant	Respondent	A.Y
277/Hyd/2018	Ravi Kumar Uppala, Hyderabad PAN:AAEPU1435H	Dy. CIT, Central Circle 3 (1) Hyderabad	2013-14
278/Hyd/2018	Pradeep Kumar Uppala, Hyderabad PAN:AAEPU1436E	-do-	2013-14
433/Hyd/2019	Dy. CIT, Central Circle 3(1), Hyderabad	Ravi Kumar Uppala, Hyderabad PAN:AAEPU1435H	2013-14
434/Hyd/2019	Dy. CIT, Central Circle 3(1), Hyderabad	Pradeep Kumar Uppala, Hyderabad PAN:AAEPU1436E	2013-14

Assessee by:	Sri M.V. Anil Kumar
Revenue by:	Sri V.V.S.T. Sai, CIT(DR)
Date of hearing:	03/02/2021
Date of pronouncement:	03/03/2021

ORDER

Per Smt. P. Madhavi Devi, J.M.

These are cross appeals of the respective assessees against the order of the CIT u/s 263 of the I.T. Act for the A.Y 2013-14 and the Revenue's appeals against the relief granted by the CIT (A) in the appeal against the consequential order passed by the AO u/s 143(3) r.w.s. 263 of the I.T. Act.

2. Both the assessees are brothers and facts and issues in both the cases are the same. Therefore, for the sake of brevity and ready reference, the facts in the case of Shri Pradeep Kumar Uppala in ITA No.278/Hyd/2018 are referred to hereunder:

3. Brief facts of the case are that both the assesseees are individuals. They filed their respective returns of income for the relevant A.Y. Their returns were selected for scrutiny and notices u/s 143(2) were issued respectively. Later, the assesseees filed their revised returns of income on 27.8.2015 declaring lower income than the income declared in their original returns of income. In response to the notices u/s 143(2), the assessee's Counsel appeared before the AO and submitted that the remuneration and the interest on their capital, though was not debited nor paid to the assesseees' by the partnership firm, Sri Krishna Jewellery Mart, was erroneously declared in their returns of income and therefore, they requested for acceptance of the revised returns of income. The AO considered the same and accepted the assesseees' contentions and thus the income declared by them in the revised returns of income was accepted.

4. Thereafter, the CIT perused the assessment record of both the assesseees u/s 263 of the Act, and observed that the assesseees were not entitled to file the revised returns of income as the original returns were filed u/s 139(4) and not u/s 139 (1) of the Act. Further, he also held that the assessment order was passed by the AO u/s 143(3) of the Act, without application of mind and therefore, it is erroneous in so far as it is prejudicial to the interest of the Revenue. He held that the AO ought to have recognized the revenue expenses on accrual basis and therefore, the remuneration and interest offered in the original returns of income should have been brought to tax. He accordingly directed the AO to redo the assessment afresh after examining the issue and after providing reasonable opportunity to the assesseees. Against this order of the CIT u/s 263 of the Act, the respective

assesseees are in appeal before this Tribunal, by raising the following grounds which are common in both the appeals:

“1. Your appellant submits that issue of notice u/s 263 of the Income tax Act, 1961 is bad in law.

2. Your appellant submits that Pr. CIT ought to have appreciated the fact that the assessing officer has made the correct assessment of real income and consequent revision of assessment order by Pr. CIT u/s 263 is unwarranted, as such assessment order cannot be said to be erroneous or prejudicial to the interests of revenue.

3. The Pr. CIT ought to have appreciated the fact that the firm in which your appellant is a partner has not claimed/allowed any deduction with respect to the interest and remuneration to partners, hence the same cannot be taxed in the hands of partner, the assessment order is not erroneous or prejudicial to the interests of revenue.

4. Your appellant submits that the assessing officer has considered the revised computation/return and made the correct assessment of income, which is not erroneous and is not prejudicial to the interests of revenue. Hence, revision of order by Pr. CIT is bad in law.

5. Your appellant submits that the assessing officer after application of mind has assessed the real and correct income. which is one of the plausible ways of the assessment. Therefore. the Pr. CIT ought not to have exercised revisionary powers u/s 263 of the Income tax Act.1961.

For these and such other grounds that may be urged at the time of hearing your appellant prays that the addition may be deleted”.

5. The learned Counsel for the assessee, Shri M.V. Anil Kumar, reiterated the submissions made by the assessee before the CIT and has also drawn our attention to the relevant papers wherein the firm, Sri Krishna Jewellery Mart had not debited nor claimed the expenditure of payment of remuneration and interest to the partners in its books of account. He submitted that erroneously, the assesseees had offered the income in their original returns of income but subsequently, they have revised their returns of income and the AO has considered the same and

rightly accepted the revised returns. Therefore, the assessment orders are neither erroneous nor prejudicial to the interest of the Revenue.

6. The learned DR, on the other hand, supported the orders of the CIT (A) and submitted that the original returns of income were filed u/s 139(4) and therefore, a revised return could not be filed u/s 139(5) of the Act and therefore, the revised returns of income should not have been considered by the AO making the assessment order erroneous and prejudicial to the interest of Revenue.

7. Having regard to the rival contentions and the material on record, we find that both the assesseees before us are the partners of Sri Krishna Jewellery Mart. The firm has filed its return of income on 29.9.2013 and from the Schedule 15 to the P&L A/c which is 'selling, general and administrative expenditure', it is seen that for the relevant year, the firm has not claimed any payment of interest or remuneration to the partners. We find that the assesseees have filed their returns of income on 29.3.2014 i.e. subsequent to the filing of the returns of income by the firm. The firm has not revised its returns of income, but it is the assesseees who have revised their returns of income. Therefore, the claim of the assesseees that they have erroneously offered the income to tax is not an after thought or a wrong claim. When it was brought to the notice of the AO by way of a revised return, the AO has accepted the revised returns of income. Now, the question is whether a return filed u/s 139(4) can be revised u/s 139(5) of the Act. The relevant A.Y before us is 2013-14 and during the relevant A.Y, section 139(5) allowed filing of revised

return only if the original return was filed u/s 139(1) or in response to notice issued u/s 142(1) of the Act. By Finance Act of 2016, section 139(5) has been substituted permitting the returns filed u/s 139(1) and 139(4) to be revised and it is applicable w.e.f. 1.4.2017 i.e. A.Y 2017-18 onwards. Therefore, the revised return of income by the respective assesseees are invalid and therefore, the assessment order is erroneous. But, during the course of assessment, the assessee can point out any mistake in the return of income and it is the duty of the AO to compute the correct income of the assessee. The CBDT vide Circular No.14 of 1955 dated 11.4.1955 has held that the Officers of the Department must not take advantage of ignorance of the assessee about his rights and it is their duty to assist the tax payer in every reasonable way particularly in the matter of claiming and securing reliefs. The Hon'ble Supreme Court in the case of CIT vs. Shelly Products reported in 261 ITR 367 (S.C) has held as under:

“We cannot lose sight of the fact that the failure or inability of the revenue to frame a fresh assessment should not place the assessee in a more disadvantageous position than in what he would have been if a fresh assessment was made. In a case where an assessee chooses to deposit by way of abundant caution advance tax or self- assessment tax which is in excess of his liability on the basis of return furnished or there is any arithmetical error or inaccuracy, it is open to him to claim refund of the excess tax paid in the course of assessment proceeding. He can certainly make such a claim also before the concerned authority calculating the refund. Similarly, if he has by mistake or inadvertence or on account of ignorance, included in his income any amount which is exempted from payment of income-tax, or is not income within the contemplation of law, he may likewise bring this to the notice of the assessing authority, which if satisfied, may grant him relief and refund the tax paid in excess, if any”.

8. The Hon'ble Allahabad High Court in the case of CIT vs. Lucknow Public Educational Society, in Income Tax Appeal No.134 of 2007 also reported in (TS-5024-HC-2009 Allahabad)-0) has considered similar circumstances wherein the original return was filed late, due to which, the revised return was treated by the

AO as nonest, the Hon'ble High Court held that a claim to which the assessee is legally entitled cannot be denied by the AO on technical grounds, even if such a claim has not been made by the assessee. Hence in this case, the assessee during the assessment proceedings made the claim and the AO after due verification has accepted the assessee's claim. Further, since the firm has not claimed the expenditure, there is no loss to the Revenue and the same cannot be brought to tax in the hands of the assessee without receipt or even credit to their a/c. Thus, there is also no prejudice caused to the Revenue. In view of the same, the orders u/s 263 in the case of both the assessee's are not sustainable and are accordingly set aside.

9. In the result, assessee's appeals are allowed. The Revenue's appeals are against the relief given by the CIT (A) in the appeal against the consequential order passed by the AO u/s 143(3) r.w.s. 263 of the I.T. Act. Since the very basis i.e. orders u/s 263 are set aside, the consequential orders have no legs to stand and therefore, the Revenue's appeals are infructuous. Further, the appeal in ITA No.433/Hyd/2019 is below the tax effect. Therefore, this appeal is liable to be dismissed on account of low tax effect as well.

10. In the result, assessee's appeals are allowed and the Revenue's appeals are dismissed.

Order pronounced in the Open Court on 3d March, 2021.

Sd/- (A. MOHAN ALANKAMONY) ACCOUNTANT MEMBER	Sd/- (P. MADHAVI DEVI) JUDICIAL MEMBER
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Hyderabad, dated 3rd March, 2021.

Vinodan/sps

Copy to:

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- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order