

IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH : BANGALORE

BEFORE SHRI GEORGE GEORGE K, JUDICIAL MEMBER  
AND

SHRI B.R BASKARAN, ACCOUNTANT MEMBER

ITA No.1298/Bang/2011

Assessment year : 2008-09

Dr. Harsha N Billangady, #95, 3 <sup>rd</sup> Main, Dollar Layout, 4 <sup>th</sup> Phase, J.P Nagar, Bangalore-560 078. PAN – AJAPB 0362 M	Vs.	The Dy. Commissioner of Income-tax Circle-5(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri V Srinivasan, Advocate
Revenue by	:	Shri Sankar Ganesh K, JCIT (DR)

Date of hearing	:	09.12.2021
Date of Pronouncement	:	09.12.2021

**ORDER**

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

The assessee has filed this appeal challenging the order dated 4/11/2011 passed by Id.CIT(A)-II, Bengaluru and it relates to assessment year 2008-09.

2. This appeal was originally disposed of by the co-ordinate Bench on 20/7/2012 dismissing the appeal of the assessee. Not satisfied with the order passed by the Tribunal, the assessee filed appeal before Hon'ble High Court of Karnataka and the same was numbered as ITA No.406 of 2012 in the High Court. Before the

Hon'ble High Court, the assessee raised an additional ground with regard to the validity of notice issued u/s 143(2) of the Act. Hence, the Hon'ble High Court restored the matter back to the file of the Tribunal for taking decisions in accordance with law after quashing the order passed by the Tribunal. The order passed by the Hon'ble High Court reads as under:-

*“This appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act for short) has been preferred by the assessee. The subject matter of the appeal pertains to the Assessment year 2008-09. The appeal was admitted by a bench of this Court vide order dated 22.07.2013 on the following substantial question of law:*

*(i) Whether the Tribunal or the authorities below was justified in rejecting the claim of the assessee for deduction under Section 54F of the Income Tax Act, 1961 from the facts and circumstances of the case?*

*2. After hearing learned counsel for the parties, this court passed the following additional substantial question of law.*

*(i) Whether the order passed by the Assessing Officer without issuing proper notice under Section 143(2) of the Act on the original return filed by the assessee is non est in the eye of law?*

*3. We have heard the learned counsel for the parties. The assessee had filed the return of income under Section 139(4) of the Act on 18.03.2009 declaring a total income of Rs.46,58,720/-. Thereafter, the assessee filed the revised return under Section 139(5) of the Act on 23.11.2009. It is the case of the assessee that considering the revised return of the assessee, notice under Section 143(2) of the Act was issued on 26.08.2010 and therefore, the notice issued under Section 143(2) of the Act is non est in the eye of law. Learned counsel for the parties jointly submitted that the issue with regard to validity of the notice under Section 143(2) of the Act requires factual adjudication. Even otherwise, the aforesaid question has been raised by the assessee for the first time in this appeal.*

*Therefore, in the facts and circumstances of the case, we deem it appropriate to quash the order dated 20.07.2012 passed by the Income Tax Appellate Tribunal and remit the matter to the Tribunal for decision afresh in accordance with law. All contentions available to both the parties are kept open.”*

3. The ld.AR advanced his argument on the legal issue relating to validity of notice issued u/s 143(2) of the Act. He submitted that the assessee filed return of income for assessment year 2008-09 belatedly on 18/3/2009 u/s 139(4) of the Act. Thereafter, he filed a revised return of income u/s 139(5) on 23/11/2009. The ld.AR submitted that, as per the provisions then existing, a revised return

of income can be filed only against the original return of income filed u/s 139(1) of the Act. In other words, the assessee cannot file revised return of income, if the original return of income was filed belatedly u/s 139(4) of the Act. Accordingly, he contended that the return of income filed by the assessee u/s 139(5) of the Act shall become *non-est* in the eyes of law. The ld.AR submitted that the AO has issued notice u/s 143(2) of the Act against the revised return so filed by the assessee. Since the above said revised return of income is *non est* in the eyes of law, the notice issued u/s 143(2) is not valid. Since the AO has completed the impugned assessment order on the basis of notice issued u/s 143(2), which is not a valid notice, the impugned assessment order is liable to be quashed.

4. The ld.DR submitted that the AO has completed the assessment by considering belated return filed u/s 139(4) of the Act.

5. In the rejoinder, the ld.AR submitted that the notice u/s 143(2) was issued on 26/8/2010 and original return of income u/s 139(4) was filed on 17/3/2009. In that case, the notice issued u/s 143(2) is beyond time limit prescribed under that section and the same is invalid on this count also.

6. We heard the parties and perused the record. Section 139(5) of the Act, then existing, reads as under:-

**Section 139(5)**

*“If any person, having furnished a return under sub-section (1), or in pursuance of a notice issued under sub-section (1) of section 142, discovers any omission or any wrong statement therein, he may furnish a revised return at any time before expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.”*

A perusal of the above said provision would show that the assessee is entitled to file revised return of income u/s 139(5) if he has furnished a return of income u/s 139(1) or in pursuance of notice issued u/s 142(1). In the instance case admittedly, the assessee has not filed return of income u/s 139(1) of the Act or in response to notice issued u/s 142(1). Hence, the revised return of income filed by the assessee cannot be considered as a valid return filed u/s 139(5) of the Act.

7. We earlier noticed that the AO has issued notice us/ 143(2) of the Act against the revised return of income filed by the assessee, for taking up same for scrutiny. Since the revised return of income filed by the assessee cannot be considered as a valid return in terms of sec.139(5) of the Act, the notice issued u/s 143(2) of the Act against the revised return filed by the assessee cannot be considered to be a valid notice, since the same has not been issued against a valid return. The Ld A.R also pointed out that the said notice cannot be considered to be issued against the original return of income filed u/s 139(4) of the Act, since the time limit for issuing notice had already expired by that point of time.

8. In this view of the matter, the impugned assessment order should be considered as having been passed without a valid notice u/s 143(2) of the Act and hence the same is liable to be quashed. We order accordingly.

10. In view of the above, we set aside the order passed by the Id.CIT(A) and quash the impugned assessment order passed for AY 2008-09.

11. In the result, the appeal filed by the assessee is treated as allowed.

Order pronounced in the open court on 9<sup>th</sup> December 2021.

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

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

Bangalore,  
Dated, 9<sup>th</sup> December 2021

/ vms /

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2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
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By order

Asst. Registrar, ITAT, Bangalore

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