

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

**Before: Shri P.M. Jagtap, Vice President
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 1202/Ahd/2019
Assessment Year 2013-14**

JCIT(OSD), Circle-2(1)(1), Ahmedabad (Appellant)	Vs	M/s. ECS Infotech Pvt. Ltd. Ahmedabad PAN: AACCE2661E (Respondent)
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**Assessee by: Shri Sunil Maloo, A.R.
Revenue by: Shri Purushottam Kumar, Sr. D.R.**

Date of hearing : 09-05-2022
Date of pronouncement : 30-05-2022

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-10, Ahmedabad in Appeal no. CIT(A)-10/10118/17-18 vide order dated 14/05/2019 passed for the assessment year 2013-14.

2. The Department has taken the following grounds of appeal:-

“1. The Ld. CIT(A) has erred in law and on facts in directing the Assessing Officer to consider the revised return.

2. The Ld. CIT-(A) has erred in law and on facts in law and on facts in not appreciating the fact that the return filed on 30.11.2013 was based on duly audited A/cs and hence there was no omission and mistake.

3. On the facts and in the circumstances of the case, the Ld. CIT(A), Ahmedabad ought not to have issued the direction to consider the revised return.

4. The appellant craves leave to amend alter any ground or add a new ground, which may be necessary.”

3. The brief facts of the case are that the assessee company had filed its original return of income for assessment year 2013- 14 within the time prescribed u/s 139(1) of the Act on 30.11.2013 in which returned income was declared at ₹ 3,04,05,460/- under the normal provisions of the Act and ₹ 4,00,05,265/- under the provisions of section 115JB of the Act. The assessee noticed that in the accounts, an accounting entry towards purchase amounting to ₹ 3,46,28,750/- remained to be passed and was omitted by the accountant which resulted in the profit being wrongly computed at a higher figure and also an amount of ₹ 31,18,679/- being purchase return was not considered by the accountant though the stock thereof was recorded in accounts. Accordingly, the assessee company filed a revised return by giving effect to the above mistakes. The revised return was filed on 31.03.2014 declaring normal income at ₹ (-) 72,17,997/- and income under s. 115JB of the Act at ₹ (-) 22,57,836/- .The reasons for revised return were furnished to

the AO during the course of assessment proceedings. However, the AO rejected the revised return and passed the assessment order on the basis of the original return. The reason given by the Ld. Assessing Officer for rejecting the revised return was that *“the assessee has not taken the effect of the above adjustments in the profit loss account but has reduced the same amounts in the computation of total income. Further, once the accounts of the assessee have been closed and the balance sheet has been drawn as on 31st of March of the relevant financial year, the assessee company is not allowed to carry out any variations in the accounts. Therefore, the revised return of income is not considered and the income is computed on the basis of original return of income which was filed on 30.11.2013.”* Accordingly, the Ld. Assessing Officer passed the assessment order by making adjustments to the original return of income and did not take into consideration the revised return filed by the assessee.

4. The assessee filed an appeal against the assessment order and Ld. CIT(Appeals) in appellate proceedings accepted the assessee's contention and set aside the assessment order by holding that that AO has erred in law in not accepting the said revised return only on the ground the effect of such a wrong credit of income is not given in the Profit and Loss Account and further that once the accounts have been closed and balance sheet drawn, no variation in the accounts can be allowed. The Ld. CIT(Appeals) held that once revised return has been filed validly, the legal position in this regard is that the revised return replaces the original return and this position is settled by the Gujarat High Court in the case of CIT v. Arun Textiles 192 ITR 700 (Gujarat), which has been affirmed by the Supreme Court in 109 Taxman

223 (SC). The Ld. CIT(Appeals) observed as under while passing the appeal order:

“I am of the opinion that AO has no jurisdiction to revert to original return once revised return was validly filed. In the instant case, the revised return is validly filed and the same replaces original return. No assessment can be made by adverting to original return which is substituted by the valid revised return..... The ground taken by the AO for not accepting revised figures of income is not that such revised figures are incorrect or are not justified of facts but that such figures were not accounted for by amending accounts as accounts were already closed. However, as rightly contended by the appellant, accounting entries do not determine the correct assessment of income..... I hold that AO was not justified in proceeding to make assessment by adopting figures as per original return and ignoring revised return. The assessment made is therefore held to be invalid. The AO is directed to accept the figures as per revised return. AO is directed to delete the amount of ₹ 3,46,28,750/- and ₹ 31,18,679/- by reducing the same from the figure declared in the original return considering the revised return. ”

5. The Department is in appeal before us against the above order passed by Ld. CIT(Appeals) setting aside the assessment order and directing the AO to accept the figures as per revised return. Before us, the Ld. DR argued that the Ld. CIT(Appeals) did not examine the genuineness of claim put forth by the assessee and simply directed the AO to accept the figures as per revised return. The Ld. DR invited our attention to relevant observations of the Ld. CIT(Appeals) and submitted that the Ld. CIT(Appeals) has not analysed the

facts while directing the AO to accept the figures as per revised return and directing the AO to delete the amount of ₹ 3,46,28,750/- and ₹ 31,18,679/- by reducing the same from the figures declared in the original return by considering the revised return. In response, the counsel for the assessee explained that it is a genuine mistake on account of accounts of the assessee being maintained under separate modules (Finance module and Inventory Module) as a result of which the omission occurred inadvertently. He submitted that even the AO has not challenged the genuineness of the figures given in the revised return. The revised return was filed strictly within the parameters of section 139(5) of the Act and once revised return has been validly filed, the legal position is that the original return gets substituted by the revised return and the AO is precluded from passing an assessment order on the basis of original return.

6. We have heard the rival contentions and perused the material on record. We are not disputing the legal position put forth by the counsel for the assessee that once revised return has been validly filed, the original return gets substituted by the revised return. However, in the instant facts we note that the genuineness of claim put forth by the assessee has not been examined at all by the Revenue. Neither the AO examined the factual aspect regarding the claim of the assessee and neither were the facts examined during the course of appellate proceedings. While, in principle we are in agreement that a validly filed revised return substitutes the original return, but at the same time, in the instant set of facts, the Revenue did not analyse the veracity of the facts/figures on the basis of which the return was revised by the assessee. Therefore, in the instant facts, in the interests of justice, we

are setting aside the matter to the file of Assessing Officer to examine the facts in detail and verify the claim of the assessee in the revised return. Accordingly, the matter is being set aside to the Assessing Officer with the above directions.

7. In the result, the appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the open court on 30-05-2022

Sd/-
(P.M. JAGTAP)
VICE PRESIDENT

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Ahmedabad : Dated 30/05/2022

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद