

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRIS.S. VISWANETHRA RAVI, JUDICIAL MEMBER

ITA No.388/PUN/2020

निर्धारण वर्ष / Assessment Year : 2007-08

SAJ Test Plant Private Limited 72/76, Mundhwa, Pune Cantonment, Pune – 411036 PAN : AABCS4227K	Vs.	DCIT, Circle 6, Pune
Appellant		Respondent

Assessee by Shri C.H. Naniwadekar
Revenue by Shri M.G. Jasnani

Date of hearing 26-08-2022
Date of pronouncement 29-08-2022

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee is directed against the order passed by the CIT(A) on 24-01-2020 in relation to the assessment year 2007-08.

2. The only issue raised in this appeal is against not accepting the second revised return filed by the assessee and consequently disallowing deduction of Rs.2,91,062 claimed by the assessee.
3. Succinctly, the facts of the case are that the assessee is a manufacturer of dynamometers, test benches, control systems and

exhaust emission analyzers, which are used for testing automobiles. A return was filed declaring total income under normal provisions at Rs.2,71,94,190. The first revised return was filed on 12.03.2008 showing total income of Rs.2,66,60,760, in which commission payable of Rs.5,33,430 was deducted. Thereafter, the assessee filed a second revised return on 14.03.2009 claiming deduction of Rs.2,91,062 on account of booking of double sales in the current year. The Assessing Officer (AO) did not accept the second revised return on the ground that the first revised return was processed u/s 143(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') on the same date, namely, 14.03.2009, on which the second revised return was filed. He, however, computed the total income under regular provisions by considering the income declared by the assessee in second revised return and thereafter, made disallowance of Rs.2,91,062 towards the deduction which was claimed by the assessee. The CIT(A) echoed the assessment order on the ground that the second revised return filed by the assessee was not valid. Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

4. Having heard the rival submissions and gone through the relevant material on record, it is seen that the dispute centres around the filing of the second revised return by the assessee on 14.03.2009. The AO did not accept the validity of second revised return only on the ground that the first revised return was processed on the same date and hence, the provisions of section 139(5) of the Act were not applicable. In this regard, it would be relevant to note the language of section 139(5) of the Act at the material time, which provides that: *'If a return is furnished under sub-section (1) or sub-section (4) and assessee discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.'* Admittedly the second revised return was filed on 14.03.2009, which is otherwise within period of one year from the end of relevant assessment year, namely, 2007-08. The question is as to whether the second revised return was filed after the completion of assessment? In this case, the return filed by the assessee was subjected to section 143(1) proceedings and the case was taken up for scrutiny after processing the return

u/s 143(1) on 14.03.2009. Obviously, when the assessee furnished the second revised return, the first revised return was only processed and intimation was sent to the assessee u/s 143(1) of the Act, which cannot be construed as an assessment so as to debar the assessee from filing the second revised return on the ground that the assessment was already completed. The Hon'ble Calcutta High Court in *Tata Metaliks Ltd. vs. CIT (2014) 368 ITR 643 (Cal)* considered an identical fact situation in which the AO refused to accept the revised return only on the ground that the first return was already accepted u/s 143(1) and hence, the assessee was prohibited from filing any revised return. Repelling the contention of the Revenue, the Hon'ble High Court upheld the view point of the assessee by holding that the processing of return u/s 143(1) could not be described as making of assessment. Though this judgment has been rendered for assessment year 1999-2000, however, the language of section 143(1) of the Act for the said assessment year is identical to the language of section 143(1) for the year under consideration, namely, 2007-08. Respectfully following the precedent, we overturn the impugned order on this

issue and hold that the assessee validly filed the second revised return.

5. In the second revised return, the assessee claimed deduction for a sum of Rs.2,91,062. The AO has not examined the deductibility or otherwise of this amount on merits and simply made disallowance on the ground that the second revised return was *non est*. As we have set aside the view of the authorities on the validity of second revised return, the deductibility of the expenditure needs to be examined by the AO. We, therefore, set aside the impugned order and remit the matter to the file of the AO for examining the deductibility or otherwise of the amount, claimed by the assessee in second revised return on merits, after allowing a reasonable opportunity of hearing to the assessee.

6. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the Open Court on 29th August, 2022.

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 29th August, 2022
GCVSR

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

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

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	26-08-2022	Sr.PS
2.	Draft placed before author	29-08-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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