



॥ आयकर अपीलीय न्यायाधिकरण, पुणे न्यायपीठ, "बी" बेंच, पुणे में ॥
IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE "B" BENCH, PUNE
BEFORE SHRI SS VISWANETHRA RAVI, JUDICIAL MEMBER
AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 825/PUN/2018

निर्धारण वर्ष / Assessment Year : 2012-2013

Vijay Channabasav Suttatti

Mulberry Garden, Magarpatta City, Pune.

PAN : ACMPS4486Q

..... अपीलार्थी / Appellant

बनाम / V/s.

Asstt. Commissioner of Income Tax,

Circle-13, Pune.

..... प्रत्यर्थी / Respondent

द्वारा / Appearances

Assessee by :Shri Kishor Phade

Revenue by :ShriM. G. Jasnani

सुनवाईकीतारीख / Date of conclusive Hearing : 06/09/2022

घोषणाकीतारीख / Date of Pronouncement : 09/09/2022

आदेश / ORDER

PER G. D. PADMAHSHALI, AM;

The extant appeal is challenged against the order of Commissioner of Income Tax (Appeals-8), Pune [for short "**CIT(A)**"] dt. 15/08/2018 passed u/s 250 of Income-Tax Act, 1961 [for short "**the Act**"], which ascended out of regular assessment order dt. 26/03/2015 passed u/s 143(3) of the Act, by Asstt. CIT, Circle-13, Pune [for short "**AO**"], for assessment year [for short "**AY**"] 2012-13.



2. The solitary dispute contested by the present appeal spins around the validity of revised return filed vis-a-vis claims made thereunder, where the original return of income was filed belatedly u/s 139(4) of the Act.

3. Before travelling to facts, it's necessary to reproduce the grounds assailed by the appellant as;

1. The learned CIT(A)-8, Pune erred in law and on facts in upholding the action of the learned ACIT, Circle-13, Pune (hereinafter referred to as the learned AO) in not considering the revised return of income filed by the appellant u/s 139(5) of the ITA, 1961 as original return of income was filed beyond time limit prescribed u/s 139(1) of the ITA, 1961.

2. The learned CIT(A)-8, Pune erred in law and on facts in taxing un-real Short Term Capital Gain of Rs. 94,80,778/- as disclosed by the appellant in the original return of income. The learned CIT(A)-8, Pune ought to have appreciated that appellant had in-fact incurred Short Term Capital Loss of Rs.1,02,07,817/- which was communicated by the appellant by filing a revised return.

3. Appellant contends that details and workings furnished along-with the revised return of income ought to have been considered by the learned AO for deducing “real income”, in any case.



4. The learned CIT(A)-8, Pune erred in law and on facts in not considering corrected claim of Short Term Capital Loss of Rs. 1,02,07,817/- vide revised return of income dated 18/03/2014; which was also substantiated through a specific claim during appellate proceedings.

5. The appellant craves leave to add / modify / amend / delete all / any of the grounds of appeal.”

4. The ground number 5 is general and the sum & substance of remaining four grounds seeks to adjudicate solitary legal issue, however before setting the ball rolling for adjudication, the facts of the case borne out of record pithily stated as; the assessee is an individual deriving income from salaries, house property, interest and capital gain etc., has for AY 2012-13 e-filed his Income Tax Return [for short **"ITR"**] u/s 139(4) on 28/02/2014 declaring total taxable income of ₹1,28,93,465/- which subsequent e-filing revised to ₹31,06,517/- on 18/03/2014 for the reason of change in capital gain computation. When the case of the assessee was subjected to scrutiny by service of notice dt. 04/09/2014 u/s 143(2) of the Act, the authorised representative appearing for the assessee [for short **"AR"**] made written submissions and put forth detailed



reasoning and circumstances which led to filing of incorrect belated return of income vis-à-vis revised return. Considering the factual matrix & evidential material laid in the course of regular assessment proceedings, the Ld. AO in the light of then applicable provisions, turned off the revised return as non-est in the eye of law and finalised the assessment on the strength and basis of original return filed with an addition of ₹5,235/- arising out of differential amount of interest earned by the assessee for impugned assessment year.

5. Next in the course of first appellate proceeding, the assessee challenged the taxability of unreal income submitting that, the assessee on becoming aware of correct position of capital loss suffered or incurred in place of incorrect capital gain reported in belated return filed hitherto, made a written representation accompanying evidential documents before Ld. AO with a proposition to tax the real income which the assessee has actually earned, but the same remained unattended. However the said submission did not inspire the Ld. CIT(A), who in turn reverberating the factual matrix in the light of



judicial pronouncement echoed with the views of Ld. AO in confirming the assessment without variation.

6. During the course of physical hearing, the Ld. AR recapitulated the reasons and circumstances in which both the returns were filed by the appellant and reiterating alike submission made before the tax authorities below, has strongly entreated against taxing unreal income by the Ld. AO. ***Au contraire*** the learned departmental representative [for short "**DR**"] pressing into service the decision of Hon'ble Apex Court in "**Kumar Jagdish Chandra Sinha Vs CIT**" reported in 220 ITR 67 (SC) vehemently argued that, the circumstances which led to filing of both the returns and the evidential material placed by the appellant were duly considered & examined by the Ld. AO in finalising regular assessment proceedings u/s 143(3) of the Act hence, there remains no cloud in the sky for altering the real income actually earned & reported by the appellant in his belated return and rightly assessed by the Ld. AO u/s 143(3) of the Act.



7. After hearing to the rival contentions of both the parties; and subject to the provisions of rule 18 of Income Tax Appellate Tribunal Rules, 1963 [for short **“ITAT, Rules”**] perused the material placed on records and duly considered the facts of the case in the light of settled legal position and the case laws relied upon by the appellant assessee as well the respondent revenue.

8. The adjudication for the impugned assessment year shall rest on answering two blatant questions; (a) whether income reported by filing belated return filed can be varies by filing revised return u/s 139(5) of the Act? And (b) whether income reported under belated return can be varied on the pretext of its un-realisation or unearned for any good and sufficient reasons?

9. In answering the aforestated first question **“(a)”**, it is enough to state that, the provisions relating to furnishing of a revised return is provided u/s 139(5) of the Act, which entitles an assessee to furnish a revised return if he discovers any omission or any wrong statement in the original return hitherto filed, however the very fact that,



for the impugned assessment year, this right or entitlement of revision was given to an assessee who has filed his original return either u/s 139(1) or in pursuance of notice u/s 142(1) of the Act, this by necessary implication means that, such a right was denied and not at all available to the assessee who has filed the return u/s 139(4) of the Act, this view has been historically held by the Hon'ble Supreme Court in much celebrated case of **“Kumar Jagdish Chandra Sinha Vs CIT”**(Supra). Thus, in the case before us, the appellant filed his original return otherwise than u/s 139(1) or 142(1), the revised return filed u/s 139(5) of the Act became non-est in the eyes of law, consequently the claim of capital loss made by the appellant in his revised return.

10. In so far as the second question is concerned, it is abundantly clear that, the evidential documents as regards to re-computation of capital loss were duly placed before the Ld. AO during the course of scrutiny assessment proceedings and after considering them, the assessment was culminated assessing the taxable income in terms of belated return, consequently it concludes that, the income



actually earned by the appellant as verified from the records was taxed and not the unreal income, and nothing contrary has shown to us in the present facts which would warrant taking a diverse view. In omnibus, we find no substance in the claim of the appellant vis-a-vis no infirmity with the order of tax authorities below to deviate, *ita* ground number 1 to 4 raised stand dismissed.

11. Resultantly, the appeal of the appellant assessee is dismissed in aforesaid terms.

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Friday 09th day of September, 2022.

-S/d-

SS VISWANETHRA RAVI
JUDICIAL MEMBER

-S/d-

G. D. PADMAHSHALI
ACCOUNTANT MEMBER

पुणे / PUNE ; दिनांक / Dated : 09th day of September, 2022.

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT, Pune (Mh-India)
4. The CIT, Pune (Mh-India)
5. विभागीय प्रतिनिधि, आयकरअपीलीय न्यायाधिकरण, पुणे "बी" बेंच, पुणे / DR, ITAT, Pune "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY RDER,
वरिष्ठनिजीसचिव / Sr. Private Secretary
आयकरअपीलीयन्यायाधिकरण, पुणे / ITAT, Pune.