

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES "B", BANGALORE**

**Before Shri George George K, JM & Ms.Padmavathy S, AM**

ITA No.456/Bang/2022 : Asst.Year 2017-2018

Sri.Kambegowda Puttanarasappa 1776, 8 <sup>th</sup> Cross, 6 <sup>th</sup> Main, Kampinagar, Vijayanagar, 2 <sup>nd</sup> Stage, Bangalore – 560 040. <b>PAN : AFXPP4415L.</b>	v.	The Principal Commissioner of Income-tax Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.Avinash Mallya, Advocate and  
Sri.Hemant Pai, CA

Respondent by : Sri.Manjunath Karkihalli, CIT-DR

<b>Date of Hearing : 19.10.2022</b>	<b>Date of Pronouncement : 20.10.2022</b>
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**ORDER**

**Per George George K, JM :**

This appeal at the instance of the assessee is directed against Principal Commissioner of Income-tax's (PCIT) order dated 30.03.2022, passed u/s 263 of the I.T.Act. The relevant assessment year is 2017-2018.

2. At the very outset, the learned A.R. by referring to ground 2, submitted that the initiation of proceedings u/s 263 of the I.T.Act is bad in law on the facts and circumstances of the case. In this context, it was submitted that the PCIT is seeking to revise the assessment order dated 28.11.2019 passed u/s 143(3) of the I.T.Act. It was submitted that the assessee had filed original return u/s 139(1) of the I.T.Act on 06.09.2017 and subsequently it was revised u/s 139(5) of the I.T.Act within the time limited prescribed on 07.03.2019. It was submitted that the assessment completed on 28.11.2019 stems from the original return filed on

06.09.2017. In this context, it was contended that the revised return filed on 07.03.2019 effaces and obliterates original return and only revised return is to be taken into account for the purpose of making assessment. Therefore, it was contended that the assessment order dated 28.11.2019 which stems out of the original return filed u/s 139(1) of the I.T.Act is bad in law and the PCIT's order to revise the same is also void ab initio. In this context, the learned AR relied on the following judicial pronouncements:-

- (i) ITO v. Ramesh Kumar Rathi (2005) 143 Taxman 33 (Kol)
- (ii) Niranjana Lal Ram Chandra v. CIT (1982) 134 ITR 352 (All.)
- (iii) Amjad Ali Nazir Ali v. CIT (1977) 110 ITR 419 (All.)
- (iv) Dhampur Sugar Mills Limited v. CIT (1973) 90 ITR 236 (All.)
- (v) CIT v. IDEB Buildcon Pvt. Ltd. ITA No.507/2014 (Kar.) (judgment dated 02.02.2016)
- (vi) CIT v. Mangalore Chemicals & Fertilizers Ltd. (1991) 59 Taxman 508 (Kar.)

3. The learned Departmental Representative, on the other hand, submitted that both the original return filed u/s 139(1) of the I.T.Act and the revised return filed u/s 139(5) of the I.T.Act were processed on 26.11.2018 and on 07.03.2019, respectively. Therefore, it was submitted that the case laws relied on by the learned AR is distinguishable.

4. We have heard rival submissions and perused the material on record. The undisputed facts are that the assessee had filed original return on 06.09.2017, which was processed on 26.11.2018 u/s 143(1) of the I.T.Act and the

same culminated in an assessment u/s 143(3) of the I.T.Act on 28.11.2019. It is also an admitted fact that the assessee had filed revised return on 07.03.2019. In the instant case, admittedly, the PCIT is seeking to revise the assessment completed u/s 143(3) of the I.T.Act which stems from the return of income filed u/s 139(1) of the I.T.Act. For doing so, the PCIT states that the revised return of income has been filed beyond the time limit prescribed u/s 139(5) of the I.T.Act and the same is non est. This statement of the PCIT in the impugned order dated 30.03.2022 is factually incorrect. The revised return filed u/s 139(5) of the I.T.Act dated 07.03.2019 is well within the time limited prescribed and the same is not non est.

5. The Hon'ble jurisdictional High Court in the case of CIT v. Mangalore Chemicals & Fertilizers Limited (supra) had held that when the assessee files a valid revised return, it completely effaces and obliterates the original return, and therefore, it is only the revised return that has to be taken into account for the purpose of assessment. The Hon'ble jurisdictional High Court was considering the following question of law:-

*“1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law while holding that when once a valid revised return was filed by the assessee, it completely effaces and obliterates the original return and, therefore, it is only the revised return that has to be taken into account for purpose of making the assessment?”*

6. In considering the above question, the Hon'ble jurisdictional High Court rendered the following findings:-

*“8. Regarding question No. 1 much discussion is not necessary because once the original return is withdrawn or is substituted by filing a valid revised return, the natural consequence is the earlier return would be effaced or obliterated for all purposes under the Act. The answer to the first question, therefore, necessarily will be in the affirmative and against the revenue. Similarly, the answer to the second question will be in the affirmative and against the revenue.”*

7. In view of the above finding of the Hon’ble jurisdictional High Court, since the assessee in the instant case has filed a valid revised return u/s 139(5) of the I.T.Act, which effaces the return filed u/s 139(1) of the I.T.Act, the assessment order ought to have been completed from the figures disclosed in the revised return. In the instant case, admittedly, the assessment order arises out of the original return of income, which was processed u/s 143(1) of the I.T.Act on 26.11.2018 (refer para 2 of the assessment order dated 28.11.2019). Therefore, the said assessment order is bad in law. Further, the PCIT’s order to revise the said assessment order u/s 263 of the I.T.Act is also bad in law. Hence, we set aside the impugned order of the PCIT dated 30.03.2022 passed u/s 263 of the I.T.Act. It is ordered accordingly.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 20<sup>th</sup> day of October, 2022.

**Sd/-**  
**(Padmavathy S)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(George George K)**  
**JUDICIAL MEMBER**

Bangalore; Dated : 20<sup>th</sup> October, 2022.  
Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The PCIT, Bangalore.
4. The CIT, Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore