

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI GAGAN GOYAL, AM

आयकर अपील सं/ I.T.A. No.2437/Mum/2017

(निर्धारण वर्ष / Assessment Years: 2013-14)

Rohit Infra Projects Pvt. Ltd. A-1/103, Orchid Plaza, R. T. Road, Dahisar, Mumbai-400068.	बनाम/ Vs.	DCIT, Central Circle-2 B, Wing, Ashar I. T. Park, Wagle Estate, Thane.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADCR4744C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Dharan Gandhi
Revenue by:	Shri T. Sankar (DR)

सुनवाई की तारीख / Date of Hearing: 16/09/2022

घोषणा की तारीख /Date of Pronouncement: 12/12/2022

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-11, Pune dated 31.01.2017 for the assessment year 2013-14.

2. The main grievance of the assessee is that the assessee had filed the *revised return of income* for AY. 2013-14 on 19.03.2015 which has not been taken into consideration by the AO, before framing the assessment order passed u/s 143(3) of the Income Tax Act on 27.03.2015, therefore, the assessment need to be made de-novo.

3. Brief facts as noted by the AO are that the assessee company is a Civil/Government Contractor; and his house and business premises were searched by the Income Tax Department on 23.05.2012 (i.e. AY. 2013-14). And thereafter, the AO notes that the assessee for searched



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assessment year had filed the original return of income u/s 139(1) of the Act on 29.03.2013 (*correct date as per assessee was rightly taken note by Ld. CIT(A) as 29.09.2013*) declaring total income of Rs. Nil and losses of current year to be carried forward of Rs.4,55,25,000/-. As noted earlier, the assessee's premises was searched by the income tax department on 23.05.2012 and this is the searched assessment year (AY. 2013-14). The AO notes in the assessment order that despite several notices, the assessee did not appear before him and taking into consideration the fact that the assessment was getting time barred on 31.03.2015, he issued show cause notice dated 06.02.2015 to the assessee; and pursuant to it the assessee filed the copy of audit report along with audited profit and loss account, balance-sheet and computation of income. According to the AO, he had made enquiries with various parties by issuing notice u/s 133(6) of the Act to verify the genuineness of the transactions carried out by the assessee, which were returned un-served. So the AO made an addition to the tune of Rs.5,83,67,870/-. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who partly allowed the appeal for AY. 2013-14. Aggrieved by the action of the Ld. CIT(A), the assessee is before us.

4. We have heard both the parties and perused the records. At the outset, the Ld. AR of the assessee pointed out that in this case the assessee is raising the preliminary objection to the action of the AO in not considering the *revised return of income* filed by the assessee on



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19.03.2015 which fact is evident from the admission made by the Ld. CIT(A) in his impugned order at para no. ninty four (94) wherein he notes “*the paper book contain audited accounts of this year and a copy of the revised return filed on 19.03.2015*”. Therefore, according to the Ld. AR, when the revised return was filed before the AO, he was bound to consider the revised return of income and thereafter he could have assessed the income of the assessee. For that, preposition, he drew our attention to the decision of the Hon’ble Karnataka High Court decision in the case of Magalore Chemicals & Fertilizer Ltd. reported in 59 taxmann 508 wherein the Hon’ble High Court has held that once a valid revised return is filed by assessee, it completely effaces and obliterates original return for all purposes under the Act; and, therefore, according to Ld. AR, it is only the revised return that has to be taken into account for the purpose of making assessment. The Ld. AR took us, to the question no. 1 framed by the Hon’ble High Court in CIT Vs. Mangalore Chemcials Fertilizers Ltd. (supra) which reads “*whether on the facts and circumstances of the case, the appellant Tribunal is right in law in 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.*” ? And this was answered by the Hon’ble High Court as under at para no. 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*



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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". In the light of the aforesaid judicial precedent, the Ld. AR of the assessee submits that since the fact remain that the assessee had filed the revised return on 19.03.2015, the same should have been considered by the AO before/while framing the income of the assessee, and failure to do so, vitiates the assessment order dated 27.03.2015.

5. Per contra, the Ld. CIT-DR for department first of all expressed doubt about the fact as to whether the assessee had filed the original return of income u/s 139(1) of the Act before the due date of filing or not. After having perused the copy of the original return of income which was shown to him as well as considering the Ld. CIT(A)'s observation that assessee had filed the original return on 29.09.2013, he expressed his satisfaction that assessee had filed the original return on 29.09.2013. Thereafter, the Ld. CIT-DR also perused the copy of the revised return filed on 19.03.2015 and submits that the assessee may have filed the same, but the AO who had framed the assessment may not be aware of the filing of the revised return. Be that as it may, we note as a matter of fact that the assessee had filed the original return of income u/s 139(1) of the Act on 29.09.2013. And thereafter, it has filed the revised return on 19.03.2015 which fact has been admitted by the Ld. CIT(A) at para no. 94 of his impugned order. Therefore, in the light of the judgment of the Hon'ble Karnataka High Court in the case of CIT Vs. Mangalore Chemicals & Fertilizers Ltd.



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reported in 59 Taxman 508 (Karnataka) order dated 31.01.1991 (supra), we are of the opinion that since the assessee had filed the revised return of income on 19.03.2015, the original return filed dated 29.09.2013 u/s 139(1) of the Act effaces and obliterates. Since the revised return of income was filed on 19.03.2015 u/s 139(4) of the Act, it was a valid revised return as per the law in force at that time. In such a scenario, the AO ought to have considered the revised return of income for assessing the income of assessee. But, despite assessee filing the same, the AO erred in not considering the same and passed the assessment on 27.03.2015. Therefore, we set aside the order of the Ld. CIT(A) and remand the assessment back to the file of the AO with a direction to frame de novo the assessment. Needless to say that the assessee would be given proper opportunity during the course of the assessment proceedings. And the Ld AR undertakes to diligently appear/file, the details/documents called for by the AO during the assessment proceedings. The AO frame de-novo the assessment taking in to consideration the revised return of income.

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

Order pronounced in the open court on this 12/12/2022.

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 12/12/2022.
Vijay Pal Singh, (Sr. PS)



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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai