

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A No.2130/Kol/2019
Assessment year: 2015-16

Tirumani Investment Private Limited
(Formerly Baccate Securities and Marketing Private Limited).....Appellant
A.C Bhuteria & Co., 2,
India Echange Place, 2nd Floor,
Kolkata-1.
[PAN: AAACB6491K]

vs.

DCIT, Circle-13(2), KolkataRespondent

Appearances by:

Shri Abhishek Bansal, AR, appeared on behalf of the appellant.

Shri Partha Pratim Barman, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : October 12, 2022

Date of pronouncing the order : January 9, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 29.08.2019 of the Commissioner of Income Tax (Appeals)-5, Kolkata [hereinafter referred to as the 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has taken the following grounds of appeal:

"1. For that the order dated 29th August 2019 passed by the Commissioner of Income Tax (Appeals) (in short, CIT(A)) is illegal, arbitrary, erroneous so far it relates to adjudication of ground 1 raised in appeal. Ground 1 raised in appeal is purely a question of law while the CIT(A) had erred in dealing with and adjudicating the same as a question of fact.

2. For that the CIT(A) failed to observe that the Assessing Officer (in short, A0) has not assessed the income at Rs.2,52,03,200/- in its Order under Section 143(3), but has considered the returned income at Rs. 2,52,03,200/- emanating from the original return filed on 30.10.2015, and thereupon conducted the limited-scrutiny' assessment, assessing the income at Rs.2,52,64,580/-

3. For that the CIT(A) failed to observe that in the Order under Section 143(3) the A.O has expressly recorded that "the assessment is completed considering the original return of income submitted by the assessee...without dwelling into the details of revised return and reason thereof...", and therefore, the question of non- acceptance of Or interference with the particulars of the revised return by the A0 does not arise.

4 For that further & in any event & without prejudice to above, once a revised return is lawfully filed, the original return must be taken to have been withdrawn and to have been substituted by a fresh return for the purpose of assessment and therefore, the income declared in the return so revised ought to have been considered for the purpose of framing assessment."

3. The brief facts of the case are that the return of income for the assessment year under consideration i.e. A.Y 2015-16 was filed by the assessee on 30.10.2015 declaring total income of Rs.2,52,03,200/-. Thereafter, the said return of income was revised on 25.06.2016 i.e. within the limitation period as prescribed u/s 139(5) of the Act and the income was offered at Rs.1,31,03,060/-. The claim of the assessee was that the interest income amounting to Rs.1,21,00,140/- was erroneously included in the original return. Subsequently, the case was picked up for limited scrutiny to examine the following issues:

- (i) Large increase in investment in unlisted equities during the year and,
- (ii) Mismatch in sales turnover reported in Audit Report and ITR.

4. During the assessment proceedings, the assessee duly explained the aforesaid two issues to the Assessing Officer, whereupon, the Assessing Officer got satisfied and did not make any addition in respect

of the aforesaid two issues. However, the Assessing Officer made addition on account of disallowance of Rs.61,388/- u/s 14A of the Act. However, the Assessing Officer while completing the assessment taken the assessed income as per the original return filed and not as per the revised return stating that the assessee's original return of income was selected for scrutiny assessment.

5. In appeal, the ld. CIT(A) deleted the disallowance made by the Assessing Officer u/s 14A of the Act. However, the ld. CIT(A) upheld the action of the Assessing Officer in treating the returned income as per original return of income at Rs.2,52,03,200/- as against the revised returned income of Rs.1,31,03,060/-, holding that while the assessee had revised the return, the books of account were not revised and that the Assessing Officer was justified in picking the returned income as per the original return of income.

6. Being aggrieved of the above order of the CIT(A), the assessee has come in appeal before us.

7. We have heard the rival submissions and gone through the record. A perusal of the assessment order reveals that the assessee has submitted the revised return revising total income to Rs.1,31,03,060/-. However, the Assessing Officer has taken up the returned income as per the original return of income only on the ground that the case was selected for scrutiny of the original return of income. In our view, the above action of the Assessing Officer is not justified at all. The original return of income of the assessee was substituted by the revised return of income which was filed within the prescribed time period. The case was selected for scrutiny on two issues, which the assessee successfully explained before the Assessing Officer. The Assessing Officer, therefore,

was supposed to assess the income as per the revised return of income. If the Assessing Officer wanted to scrutinise any other issue also including the withdrawal of interest income, which the assessee claimed to be erroneously offered, the Assessing Officer could have got converted the limited scrutiny assessment into full assessment by getting permission from the competent authority. Even otherwise, the Assessing Officer has merely taken the returned income as per original return of income without making any disallowance in respect of above issue in the revised return of income. Therefore, the action of the lower authorities in taking the returned income as per original return of income is not justified as the assessee had already filed a valid revised return within the statutory period and has also explained the issues satisfactorily to the Assessing Officer for which the return was selected for limited scrutiny. In view of this, the impugned order of the CIT(A) is set aside and the Assessing Officer is directed to accept the income of the assessee as per the revised return of income.

8. In the result, the appeal of the assessee stands allowed.

Kolkata, the 9th January, 2023.

Sd/-
[डॉक्टर मनीष बोरड /Dr. Manish Borad]
लेखा सदस्य /Accountant Member

Sd/-
[संजय गर्ग /Sanjay Garg]
न्यायिक सदस्य /Judicial Member

Dated: 09.01.2023.

RS

Copy of the order forwarded to:

1. Tirumani Investment Private Limited
(Formerly Baccate Securities and Marketing Private Limited)
2. DCIT, Circle-13(2), Kolkata

3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches