



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND ARUN KHODPIA, ACCOUNTANT MEMBER**

ITA No.42/CTK/2018

Assessment Year : 2014-15

ITA No.148/CTK/2018

Assessment Year: 2014-15

M/s. Grid Corporation of Orissa Ltd. Janapath, Bhubaneswar.	Vs.	DCIT, Corporate Circle-1(1), Bhubaneswar
PAN/GIR No.AABCG 5398 P		
(Appellant)	..	(Respondent)

Assessee by : S/Shri Ved Jain/P.V.Rao, ARs
Revenue by : Shri M.K.Gautam, Pr. CIT (OSD)

Date of Hearing : 29 /03/2023
Date of Pronouncement : 29 /03/2023

ORDER

Per Bench

ITA No.42/CTK/2018: Asst.year: 2014-15

This is an appeal filed by the assessee against the order of the Id CIT(A)-1, Bhubaneswar, dated 13.10.2017 in Appeal No.0154/16-17 for the assessment year 2014-15.

2. It was submitted by Id AR that the assessee is a Public Sector Undertaking, which had filed its return of income for the relevant

assessment year on 29.11.2014 showing positive income. Subsequent to the audit of the assessee's account, the assessee filed revised return u/s.139(5) on 24.6.2015 disclosing a loss of Rs.306 crores. Subsequently, on 18.2.2016, the assessee filed another revised return disclosing loss of Rs.660 crores. It was the submission that the Assessing Officer took the stand that the assessee having filed the return u/s.139(1) with a positive income, the return filed u/s.139(5) showing a loss could not be treated as return u/s.139(3) of the Act. It was the submission by Id AR that consequent to this view, the Assessing Officer rejected the revised return filed by the assessee and proceeded with the assessment by considering the original return. It was the submission by Id AR that the assessee has at no point of time raised any claim of return being filed u/s.139(3) of the Act. It was the submission that the due date of filing the original return u/s.139(1) of the Act for the assessment year 2014-15 was 30.11.2014 and the original return had been filed on 29.11.2014. It was the submission that the last date for filing the revised return u/s.139(5) of the Act was 31.3.2016 and the first revised return had been filed by the assessee on 24.6.2015 and at last the second revised return had been filed on 18.2.2016. It was the submission that as the assessee has filed its revised return within the due date, same is liable to be considered for the purpose of assessment as it effaced the original return u/s.139(1) of the Act insofar as it is a valid revised return filed within the period. It was the prayer that the AO may be

directed to redo the assessment afresh after considering the revised return filed by the assessee u/s.139(5) of the Act on 18.2.2016.

3. In reply, Id Pr.CIT(OSD) submitted that as the return filed by the assessee was positive return u/s.139(1) of the Act, the return filed by the assessee on 18.2.2016 being last return could not be considered in view of the provisions of section 80, which bars carry forward of the loss and as return has not been filed u/s.139(3) of the Act. It was the submission that the provisions of section 139(5) refers to a wrong statement or omission. The revised return filed by the assessee on 18.2.2016 does not show any omission or wrong statement. The Pr. CIT(OSD) placed reliance on the decision of the Hon'ble Supreme Court in the case of Pr. CIT vs Wipro Ltd., (2022) 140 taxmann.com 223 (SC), wherein, in para 9, it has been held as follows:

"9. In such a situation, filing a revised return under section 139(5) of the IT Act claiming carrying forward of losses subsequently would not help the assessee. In the present case, the assessee filed its original return under section 139(1) and not under section 139(3). Therefore, the Revenue is right in submitting that the revised return filed by the assessee under section 139(5) can only substitute its original return under section 139(1) and cannot transform it into a return under section 139(3), in order to avail the benefit of carrying forward or set-off of any loss under section 80 of the IT Act. The assessee can file a revised return in a case where there is an omission or a wrong statement. But a revised return of income, under section 139(5) cannot be filed, to withdraw the claim and subsequently claiming the carried forward or set-off of any loss. Filing a revised return under section 139(5) of the IT Act and taking a contrary stand and/or claiming the exemption, which was specifically not claimed earlier while filing the original return of income is not permissible. By filing the revised return of income, the

assessee cannot be permitted to substitute the original return of income filed under section 139(1) of the IT Act. Therefore, claiming benefit under section 10B (8) and furnishing the declaration as required under section 10B(8) in the revised return of income which was much after the due date of filing the original return of income under section 139(1) of the I.T.Act, cannot mean that the assessee has complied with the condition of furnishing the declaration before the due date of filing the original return of income under section 139(1) of the Act. As observed hereinabove, for claiming the benefit under section 10B(8), both the conditions of furnishing the declaration and to file the same before the due date of filing the original return of income are mandatory in nature.”

4. It was the submission that as the return of income has not been filed u/s.139(3) of the Act, the carry forward loss is not permissible.

5. In reply, Id AR submitted that the decision of the Hon'ble Supreme Court in the case of Wipro Ltd (supra) had no applicability insofar as the assessee has not claimed its return u/s.139(3) of the Act and in the case of Wipro Ltd (supra), the issue was in respect of allowability of the claim u/s.10B which itself had certain parameters to be complied with.

6. We have considered the rival submissions. A perusal of the facts of the present case clearly shows that the original return has been filed by the assessee on 29.11.2014. Thus, clearly this is a return u/s.139(1) of the Act. Here, it would be worthwhile to mention that it is incumbent on a company whether it makes profit or loss to file return u/s.139(1) of the Act in view of the provisions of section 139(1)(a) of the Act. The revised return filed on 24.6.2015 and 18.2.2016 are admittedly the returns filed within the time provided u/s.139(5) of the Act. If an assessee files its return within the

specified time provided under the Act, then such return cannot be treated as invalid return just because there is loss in such return. Nowhere, the assessee claims that the return filed by it is the return u/s.139(3). The requirement of return u/s.139(3) is that if the assessee wants to carry forward its loss only then it needs to file return u/s.139(3) of the Act. The time limit for filing the return u/s.139(3) is the same as u/s 139(1) of the Act. When once the provisions of sub-clause(a) of sub-section (1) of section 139 has been introduced and it has been made compulsory insofar as the word used in section 139(1) is "shall" in respect of companies what is the purpose of provisions of section 139(3) which used the word "may" is in any case not before us. Thus, in the case of companies, it has to be seen whether the return is filed u/s.139(1) or u/s.139(3), if it is a loss. A company is compulsory to file the return within the time provided, nothing else. The assessee admittedly has filed return u/s.139(1). The provisions of Income tax Act permit the assessee to file its revised return u/s. 139(5) subject to the condition that the return has been filed u/s.139(1). The Assessing Officer has also accepted the fact that return u/s.139(1) has been filed. The revenue having accepted the return u/s.139(1), now cannot bar the opportunity given to the assessee by the provisions of the Act in respect of section 139(5) of the Act. The decisions relied by the revenue in the case of Wipro Ltd (supra) is in regard to carry forward of loss and, therefore, it has no applicability to the facts of the case. This being so, it is held that

the revised return filed by the assessee on 17.2.2016 is a valid return and the AO is directed to redo the assessment after considering the revised return filed on 18.2.2016 as a valid return.

7. In the result, appeal of the assessee stands partly allowed for statistical purposes.

ITA No.148/CTK/2018: Asst.Year- 2014-15

8. This is an appeal filed by the assessee against the order of the Id CIT(A)-1, Bhubaneswar dated 10.1.2018 confirming the levy of penalty u/s.140A(3) of the Act.

9. It is fairly agreed by both the parties that the Co-ordinate Bench of this Tribunal in assessee's case for the assessment year 2014-15 in ITA No.42/CTK/2018 has set aside the assessment order and restored the issue to the file of the AO for re-adjudication by treating the revised return as valid return. It is also fairly agreed that the consequential levy of penalty u/s.140A(3) should also be restored to the file of the AO for re-adjudication. This being so, the issue of penalty u/s.140A(3) is also restored to the file of the AO for re-adjudication after granting the assessee adequate opportunity of hearing.

10. In the result, appeal stands partly allowed for statistical purposes.

Order dictated and pronounced in the open court on 29/03/2023.

Sd/-
(Arun Khodpia)
ACCOUNTANT MEMBER

sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 29/03/2023
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The appellant: M/s. Grid Corporation of Orissa Ltd. Janapath, Bhubaneswar.
2. The Respondent: DCIT, Corporate Circle-1(1), Bhubaneswar
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT-1, , Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack