

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI AMIT SHUKLA, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 3200/MUM/2022 (A.Y: 2021-22)

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| Anagha Kishor Chaudhari 1505, Sea Flama Dosti Flamingo T J Road, Sewree Mumbai- 400015 PAN: AAKPC6578K | v. | Commissioner of Income Tax (Appeals) Room No. 245-A, North Block New Delhi- 110001 |
| (Appellant) | | (Respondent) |

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|--------------------------------------|----------|---------------------------------|
| Assessee Represented by | : | Shri Kishor P. Chaudhari |
| Department Represented by | : | Shri Minal Kamble |
| | | |
| Date of conclusion of Hearing | : | 01.02.2023 |
| Date of Pronouncement | : | 02.05.2023 |

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 27.10.2022 for the A.Y.2021-22.

2. Brief facts of the case are, assessee filed its return of income for the A.Y. 2021-2022 on 09.02.2022 declaring gross total income at ₹.3,89,440/- by claiming deduction under Chapter VI-A and remitted the tax of ₹.11,90,549/- and Centralized Processing Centre, Income Tax Department, Bangalore (in short "CPC") also processed the above said return of income u/s. 143(1) of the Income-tax Act, 1961 (in short "Act") dated 22.03.2022 by determining the tax liability of refund of ₹.1,79,910/-. Subsequently, CBDT has extended the due date of filing of return of income to 15.03.2022 and assessee realized that the new scheme u/s. 115BAC is beneficial and accordingly, filed the revised return of income by seeking change over from the old scheme to the new scheme.

3. The revised return of income was also processed u/s. 143(1) of the Act by the CPC dated 04.08.2022 and in the above said intimation the date of filing of original return of income was also acknowledged by the CPC and determined the tax liability by considering the total declared income of ₹.40,44,440/-. By processing the revised return of income the CPC has considered the total gross income and determined the tax liability as per the gross total income declared in revised return

of income, the tax liability determined by the CPC was more than the tax liability in the old scheme of taxability.

4. Aggrieved, assessee tried to submit for reprocessing of return by CPC as per old scheme which was not permitted by the website. Assessee also tried to file the rectification u/s. 154 of the Act which was also not allowed by the website. Assessee also tried through other means like helpline etc., to reach CPC and they have expressed inability to advise in this matter.

5. Aggrieved with the above order assessee preferred an appeal before the Ld.CIT(A) i.e. National Faceless Appeal Centre, Delhi; after considering the submissions of the assessee Ld.CIT(A) has observed that assessee has filed the original return of income on 09.02.2022 which is within the due date and the assessee has to select taxation option u/s. 115BAC before filing the return of income. In this case while filing the original return of income assessee has not selected any of the option. Therefore, CPC has determined the tax liability under normal process and allowed the Chapter VI-A deductions. The Ld.CIT(A) further observed that assessee filed a revised return of income on 31.03.2022 and opted for taxation u/s. 115BAC of the Act. The

Ld.CIT(A) noticed that since the original return of income in which no such option for taxation u/s. 115BAC was exercised has already been processed u/s. 143(1) of the Act the revised return which was filed after prescribed due date u/s. 139(1) was also processed under normal provisions only.

6. Now the assessee claims that as per the requirements of Section 115BAC, the return ought to have been filed on or before extended period i.e., 15.03.2022, being the prescribed time limit u/s. 139(1) of the Act and since the revised return filed much later on 31.03.2022 was in violation of conditions prescribed u/s. 115BAC, the same ought to have been rejected by CPC. Ld.CIT(A) observed that it is evident that assessee was changing his claim and options for taxation in a casual and capricious manner by filing revised return with untenable option u/s.115BAC beyond the prescribed time limit which was rightly denied by CPC. Since it was otherwise a validly filed revised return filed u/s.139(5), it was processed accordingly u/s. 143(1) of the Act under normal provisions, as was done in the case of original return. When the income had been shown on a higher side in the revised return and no claim for deduction under Chapter VI-A was also made by the assessee

in the revised return, there is no scope or provisions u/s. 143(1) for CPC to travel beyond the revised return of income filed.

7. Ld.CIT(A) observed that now the assessee himself admits that the revised return filed wherein the option for taxation u/s. 115BAC was exercised for the first time, was filed beyond the prescribed time limit of 15.03.2022. However, it is also claimed that since the revised return filed was not in compliance with the requirements of Section 115BAC, it should have been ignored in entirety by CPC.

8. Ld.CIT(A) observed that this claim of the assessee is not tenable under the provisions of section 139(5) or u/s. 143(1) of the Act. The Processing u/s.143(1) is not an assessment proceeding where the correctness or otherwise of the claim can be subjected to detailed scrutiny and or verification so as to confer deductions not claimed by the assessee himself. It is an automated process subject to the permissible adjustments as provided for under the Act in section 143(1) and nothing more can be asked of it. He further observed that once a revised return is validly filed u/s. 139(5), the original return filed earlier ceases to exist. The only valid return is the revised return and the provisions of Act shall apply to its contents independent of the original return.

9. Ld.CIT(A) further observed that the provisions of Section 115BAC mandates that the option should be exercised on or before the due date for filing of return u/s. 139(1) and the option has to be duly exercised under sub section (5) of Section 115BAC of the Act by filing Form 10IE under Rule 21AG of Income Tax Rules, 1962. Therefore, when the assessee had failed to comply with the twin conditions of filing the return as well as Form 10IE before the prescribed due date u/s. 139(1), the option for 115BAC sought to be exercised through the belated revised return filed u/s 139(4) was rightly rejected by CPC. Ld.CIT(A) discussed the provisions of section u/s. 115BAC of the Act and Rule 21AG of ITR along with Form -10IE in his order. Ld.CIT(A) by relying on case laws held that the appeal filed by the assessee is not maintainable u/s. 246A and accordingly, Ld.CIT(A) dismissed the appeal filed by the assessee.

10. Aggrieved assessee filed appeal before us and raised various grounds of appeal as under: -

"1. The Asst. Director of Income Tax, CPC has erred in upholding the Order u/s 143(1) processing the return under old scheme without giving deduction for Chapter VI-A

2. The adjustment made u/s 143(1) is without any basis and is not in accordance with law.

3. *The Asst. Director of Income Tax, CPC failed to appreciate that the revised return seeking assessment under new scheme was not valid in view of section 115BAC(5)*

4. *The Assessing Officer who made the assessment u/s 143(1) as well as the Asst. Director of Income Tax, CPC who refused to grant relief in appeal, have failed to appreciate that such major adjustment cannot be done u/s 143(1), the scope of which is very limited.*

5. *The Asst. Director of Income Tax, CPC erred in not granting hearing to the assessee.*

6. *The Asst. Director of Income Tax, CPC grossly erred in making following observations which are Contrary to law. Processing u/s.143(1) is not an assessment proceeding. There is no issue for appeal under section 246A.*

7. *The Asst. Director of Income Tax, CPC failed to appreciate that these are assessment proceedings aimed at assessing correct income, which are quasi judicial in nature and opportunity of being heard is necessary, which was not granted.*

8. *The Asst. Director of Income Tax, CPC failed to appreciate that limitation of the software cannot be the reason for making incorrect assessment.*

9. *The Asst. Director of Income Tax, CPC failed to appreciate that the software limitation has been subsequently removed and from A.Y. 2022-23 onwards the software does not allow filing of belated returns claiming benefit of new regime u/s 115BAC.*

10. *The assessee reserves a right to add to, amend, alter, modify or substitute the grounds of appeal."*

11. In essence the assessee is aggrieved the processing of revised return of income without considering the original return of income filed by the assessee. When the CPC has already processed the original return of income and further, assessee has filed the revised return of income beyond the allowed extended period of time and also assessee

has not followed the due process of rule opting for the new scheme, CPC should have rejected the revised return of income.

12. Considered the rival submissions and material placed on record, we observe that assessee has filed original return of income on 09.02.2022 by not opting for new taxation as per section 115BAC of the Act. The same was processed by the CPC and intimation was forwarded to the assessee. Subsequently, assessee has filed its revised return of income on 31.03.2022 and CPC has also accepted the revised return of income in which assessee has opted for new taxation option u/s.115BAC of the Act and CPC has determined the tax liability by processing the revised return of income in the old taxation scheme rejecting the option selected by the assessee in revised return of income to be taxed u/s.115BAC of the Act. Since assessee has not claimed any Chapter – VI-A claim under revised return of income the CPC has proceeded to complete the assessment u/s. 143(1) of the Act without giving any benefit of Chapter – VI-A, however, followed the old scheme of taxation.

13. We observe that CPC is aware of the fact that assessee has filed its original return of income declaring the same gross total income and paid the due taxes as per the old scheme of taxation and further, while

filing revised return of income assessee has not followed the due process of law by first intimating the Assessing Officer with the option of selecting the new scheme of taxation u/s. 115BAC as per Rule 21AG. It is also fact on record that assessee has validated the taxation option while filing the revised return of income and CPC while processing the same has computed the taxable income by rejecting the taxation option selected by the assessee. It is not the case that CPC is not aware of the fact that assessee has not filed the original return of income it is evident that CPC is aware of the fact CPC has already released the refund as per original return of income. Now, assessee, though revised the same it is the duty of the CPC to ask the assessee for the clarification and in the clarification if the assessee has intend to further revise the return of income in order to claim the benefit under Chapter – VI-A considering the fact that the option selected by the assessee has to be rejected due to non-following of the respective rules.

14. It clearly shows that CPC has not followed the due process and merely accepted the revised return of income without extending and following due process of law. We observe from the order of the Ld.CIT(A) that in 143(1) intimation CPC has no role to play except it is

an automated process subject to the permissible adjustments as provided for under the Act in section 143(1), we are not in agreement with the above observation of the Ld.CIT(A). For the sake of clarity, Section 143(1) of the Act is reproduced below:-

"143. (1) *Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—*

(a) the total income or loss shall be computed after making the following adjustments, namely:—

*(i) any arithmetical error in the return; [***]*

(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;

[(iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;

(iv) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;

(v) disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, if the return is furnished beyond the due date specified under sub-section (1) of section 139; or

(vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:

Provided further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received

within thirty days of the issue of such intimation, such adjustments shall be made:]

...

(d) an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee under clause (c); and

(e) the amount of refund due to the assessee in pursuance of the determination under clause (c) shall be granted to the assessee:

Provided that an intimation shall also be sent to the assessee in a case where the loss declared in the return by the assessee is adjusted but no tax ⁸⁶[, interest or fee] is payable by, or no refund is due to, him:

Provided further that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the return is made.

Explanation.—For the purposes of this sub-section,—

(a) "an incorrect claim apparent from any information in the return" shall mean a claim, on the basis of an entry, in the return,—

(i) of an item, which is inconsistent with another entry of the same or some other item in such return;

(ii) in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished; or

(iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction."

15. As per the provisions of section 143(1) "an incorrect claim if such incorrect claim is apparent from any information in the return". In the given case, the CPC was aware that the assessee is making incorrect claim is very much apparent from the information available on record,

therefore, in the present case assessee has made a claim u/s. 115BAC in revised return of income and this claim is incorrect, considering the fact that the assessee has already filed original return of income which was also processed by the CPC u/s. 143(1) of the Act. The CPC cannot process the assessment under section 143(1) without intimating the assessee and getting the response from the assessee, in our view, assessment under section 143(1) should not have been processed. Therefore, in our considered view the section 143(1) processed by the Centralized Processing Centre is not proper and bad in law. Therefore, we are directing the CPC to restore the assessment made u/s. 143(1) of the Act dated 22.03.2022. Accordingly, ground raised by the assessee are allowed.

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

Order pronounced in the open court on 02nd May, 2023

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER
Mumbai / Dated 02/05/2023
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum