

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH, 'A' PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1097/PUN/2023

निर्धारण वर्ष / Assessment Year : 2015-16

Ganesh Rambhau Pakhe, G.P. Auto Stores, Cannaught Place, Town Center, CIDCO N-5, Aurangabad-431001 PAN : APRPP9431N	Vs.	ITO, Ward-2(3), Aurangabad
Appellant		Respondent

Assessee by Shri Prasad S. Bhandari
Revenue by Shri Ramnath P. Murkude

Date of hearing 13-11-2023
Date of pronouncement 14-11-2023

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal, involving a small but interesting point, is directed against the order dated 24-08-2023 passed by the CIT(A) in National Faceless Appeal Centre (NFAC), Delhi in relation to the assessment year 2015-16.

2. Succinctly, the facts of the case are that the assessee is an individual engaged in the business of sale of auto parts. Original return was filed on 11-09-2015 declaring total income at Rs.5,01,460/-, which was a belated return u/s 139(4) of the

Income-tax Act, 1961 (hereinafter called 'the Act'). Thereafter, the assessee filed a revised return on 11-02-2016 declaring total income at Rs.95,21,060/-. In this return, the assessee declared long term capital gain and also claimed exemption under section 54F of the Act. The Assessing Officer (AO) completed the assessment at a total income of Rs.1,51,53,060/- by adopting income as per the return of income filed at Rs.5,01,460/-. The Id. CIT(A) did not allow the assessee's claim of exemption u/s.54F on sale of the property and also confirmed the disallowance out of selling expenses. On the last ground raised before him, the Id. CIT(A) held that the case was selected for limited scrutiny under CASS on account of "Deduction claimed under the head Capital gains". He directed the AO to start the computation of income by adopting the income offered in the revised return at Rs.95,21,060/-. The assessee is in appeal before the Tribunal.

3. We have heard the rival submissions and gone through the relevant material on record. The Id. AR contended that the AO completed the assessment on the basis of a revised return, though starting the computation of total income with the amount declared in the original return. This was not approved by the Id. CIT(A),

who directed to compute the total income by taking the revised income as a starting point. Since the revised return, which was the basis of assessment, was not a valid one, the ld. AR contended that the assessment ought not to have been completed on the basis of such a return.

4. In order to appreciate the controversy, it would be apposite to take note of the factual scenario a little more elaborately. The assessee furnished the original return on 11-09-2015, which was a belated return u/s.139(4) of the Act. This return was filed declaring total income of Rs.5,01,460/-. In this return, the assessee had not disclosed capital gain on the sale of plots situated at Gut No.138, Village Pisadevi, District Aurangabad. The return was revised on 11-02-2016 with the returned total income at Rs.95,21,060/-, also disclosing long term capital gain on the transfer of the property and claiming exemption u/s.54F of the Act.

5. Sub-section (5) of section 139, prior to its substitution by the Finance Act, 2016 w.e.f. 01-04-2017, provides that: "If any person, *having furnished a return under sub-section (1)* or in pursuance to a notice issued under sub-section (1) of section 142

discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier". A bare perusal of the provision transpires that a return can be revised if it was originally furnished under sub-section (1) of section 139 or in pursuance to notice u/s.142(1). Undeniably, the return was not furnished pursuant to any notice u/s 142(1) of the Act. What is left out for consideration in the present context is whether that the original return furnished by the assessee was within the time permitted under section 139(1), so as to qualify for revision.

6. Coming to the factual panorama, it is noticed that the original return in the extant case was furnished on 11-09-2015. The assessment year under consideration is 2015-16. Ergo, the return furnished by the assessee on 11-09-2015 was a belated return filed u/s.139(4) of the Act. Revision of a belated return, prior to the assessment year 2017-18, was not permissible. Thus, the revised return filed by the assessee, being of the originally belated return, was an invalid return which did not require any action thereon. The AO was also cautious of this fact. He

recorded in para 1 of his order that: “ However, since, the original return itself was a belated one, the same would neither be revised nor processed and hence, the revised return is actually an invalid return”. If the revised invalid return is removed from consideration, what remains for assessment is only the originally filed return u/s.139(4) of the Act with declared income of Rs.5,01,460/-.

7. The moot question which now arises is whether the assessment was done of the original or the revised return? If the assessment is found to be done of the original return, then no illegality can be attributed to it. The case was selected for limited scrutiny under Computer Aided Scrutiny Selection (CASS) for the reason of “Deduction claimed under the head Capital Gains”. The assessee had neither offered any income from Capital gain nor claimed any deduction/exemption under this head in the original return. It was only in the revised return that the assessee offered income from long term capital gain after claiming exemption u/s.54F. This shows that the return taken up for scrutiny was the revised return and not the original one.

8. Section 143(2) is a jurisdictional provision, which gives to AO the requisite power to frame the assessment. This section clearly provides that: ‘Where a return has been furnished under section 139 or in response to notice under sub-section (1) of section 142, the Assessing Officer. . . . ,if, considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed the excessive loss, shall serve on the assessee a notice requiring him to produce or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return:” It is only by virtue of notice issued under section 143(2) that the AO acquires jurisdiction for framing assessment in respect of return filed under any sub-section of section 139, may be original, loss, belated or revised. Only when the notice is issued under this provision with reference to the relevant return that the assessment proceedings commence practically culminating into the passing of the order u/s.143(3) of the Act eventually.

9. Adverting to the notice u/s.143(2) of the Act, a copy placed at page 15 of the paper book, it is seen that the same was with

reference to “Limited Scrutiny”. Para 1 of the notice reads as under :

“This is for your kind information that the return of income for Assessment Year 2015-16 filed vide ack. No.950640970110216 on 11-02-2016 has been selected for Scrutiny. Following issues have been identified for examination.

i. Deduction claimed under the head Capital Gains.”

10. It is crystal clear from notice u/s.143(2) that the AO took up the assessment for ‘Limited scrutiny’ on the reason of “Deduction claimed under the head Capital Gains” with reference to the return filed by the assessee vide Acknowledgement No.950640970110216 on 11-02-2016. We have noticed above that the assessee did not offer any income under the head ‘Capital gains’ in the original belated return. It was only in the revised return that the assessee offered long term capital gain and also claimed exemption under the head ‘Capital gains’. From para 1 of the notice u/s.143(2), it is clear that it refers to the deduction claimed under the head ‘Capital gains’, which was claimed in the revised return filed u/s.139(5) on 11-02-2016 with the Acknowledgement No. 950640970110216. The Ackn. no. is also that of the revised return.

11. It thus become palpable that the revised return was considered for selection of the case under CASS and the notice u/s.143(2) was also issued with reference to the revised return only. It has been noticed above that the revised return did not conform to the prescription of section 139(5), before its substitution w.e.f. A.Y. 2017-18, which provided for revision of a return filed u/s.139(1) and not u/s.139(4) of the Act. The substituted section 139(5) now liberalizes the revision of return originally filed under sub-section (1) or under sub-section (4). The amendment has come into vogue from the A.Y. 2017-18. The assessment year under consideration is 2015-16. It is the pre-substituted provision which will prevail for the year under consideration, debarring the revision of any return filed u/s.139(4). Since the revised belated return filed on 11-02-2016 was an invalid one, the same could not have been acted upon for the assessment. Once the invalid return is excluded from consideration, what survives is the valid return filed by the assessee u/s.139(4) on 11-09-2015. The assessment could have been taken place only with reference to such return filed u/s.139(4) and not the invalid return filed by the assessee. The

selection of the case under Limited Scrutiny under CASS on the basis of the invalid return and thereafter the issuance of jurisdictional notice u/s.143(2) also *qua* such invalid return can have no consequence except the passing of an illegal assessment order. We, therefore, vacate the assessment order and the consequential proceedings flowing therefrom.

12. In the result, the appeal is allowed.

Order pronounced in the Open Court on 14th November, 2023.

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 14th November, 2023
सतीश

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The Pr.CIT concerned, Pune
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	13-11-2023	Sr.PS
2.	Draft placed before author	14-11-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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