

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND MS. SUCHITRA R. KAMBLE, JUDICIAL MEMBER

ITA No. 681/Ahd/2023
निर्धारण वर्ष/Assessment Year: 2017-18

Aark Infosoft Private Limited, 45, Shetrunjay, 2 nd Floor, Above Central Bank of India, Bhattha Cross Road, Paldi, Ahmedabad Gujarat-380007 PAN : AAHCA 9986 H	Vs.	The ACIT, Circle-1(1)(1), Ahmedabad
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Divyang Shah, AR	
Revenue by :	Shri Santosh Kumar, Sr. DR	

सुनवाई की तारीख/Date of Hearing : 08.02.2024
घोषणा की तारीख /Date of Pronouncement: 21.02.2024

आदेश/ORDER

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:

Present appeal has been filed by the assessee against order of the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)" for short] dated 27.07.2023 passed under Section 250 of the Income-tax Act, 1961 [hereinafter referred to as "the Act" for short], for the Assessment Year (AY) 2017-18.

2. The grounds raised by the assessee are as under:-

"1. Whether on the facts and circumstances of the case and in law, Ld. CIT(A) has erred in issuing a notice u/s 143(2) of the Act?"

2. Whether on the facts and in circumstances of the case and in law, Ld. CIT(A) has erred in making disallowance of Employees' contribution to PF and ESIC of Rs.5,51,657/- u/s 36(1) (va) of the Act?"

3. *Whether on the facts and in circumstances of the case and in law, Ld. CIT(A) has erred in making addition of Rs. 55,91,349/- on account of difference in receipt between "Form 26AS" and "Profit and Loss account"?*

4. *Whether on the facts and in circumstances of the case and in law, Ld. CIT(A) has erred in making disallowance of Rs. 1,31,527/- for interest on payment of TDS u/s 40(a)(ii) of the Act?*

5. *Whether on the facts and in circumstances of the case and in law, Ld. CIT(A) has erred in making disallowance of Rs. 17,790/- for penalty expenses?*

6. *Whether on the facts and in circumstances of the case and in law, Ld. CIT(A) has erred in making addition of Rs. 1,68,54,746/- on account of unsecured loan u/s 68 of the Act?*

7. *Whether on the facts and in circumstances of the case and in law, Ld. CIT(A) has erred in making addition of Rs. 32,95,776/- u/s. 269SS of the Act?*

8. *Whether on the facts and in circumstances of the case and in law, Ld. CIT(A) has erred in making disallowance of Rs.75,07,072/- for employees benefit expenses?*

9. *Whether on the facts and in circumstances of the case and in law, Ld. CIT(A) has erred in making disallowance of Rs.1,00,53,319/- for Web Design & Development expenses, Data entry operating expenses and Advertisement and promotion expenses?"*

3. The assessee has raised a legal ground before us in Ground No.1, challenging the validity of the assessment framed on account of the jurisdictional notice u/s 143(2) of the Act being issued beyond the limitation prescribed under the Act. The said ground, it was stated, has been raised for the first time before us and was sought to be admitted on the ground that it raised a legal issue, the facts relating to which were on record and needed to be admitted in view of the decision of the Hon'ble Apex Court in the case of National Thermal Power Co. Ltd. (NTPC) Vs. CIT, [1998] 229 ITR 383(SC). The Id. DR objected to the same.

4. Perusal of the ground reveals that the assessee has raised a legal ground before us, and in consonance with the decision of the Hon'ble Apex Court in the case of NTPC (supra), the same is admitted for adjudication.

5. The argument of the Id. Counsel for the assessee challenging the validity of the assessment framed in the present case was that the jurisdictional notice u/s 143(2) of the Act, as noted above by us, was issued beyond the time prescribed under the Act. The Id. Counsel for the assessee contended that, in the present case, after filing of the return of income, defect notice u/s 139(9) of the Act had been sent to the assessee which was cured by the assessee subsequently on 19.08.2018. That thereafter notice u/s 143(2) of the Act was issued to the assessee for assuming jurisdiction to initiate assessment proceedings, on 22.09.2019. The contention of the Id. Counsel for the assessee before us was that the limitation for issuing notice u/s 143(2) of the Act was to be determined not from the date/end of the financial year when the defect was rectified by the assessee but from the date/end of financial year when the original return of income was filed. He pointed out that, in the present case, the return of income was filed within the prescribed due date, i.e. on 28.10.2017, the assessment year being AY 2017-18. That, as per the provisions of Section 143(2) of the Act, notice was to be issued under the said section by 30.09.2018. That, however, it was issued on 22.09.2019, i.e. more than a year after the prescribed date under law for issuance of notice u/s 143(2) of the Act. That, therefore, the assessment framed was not sustainable and liable to be quashed. In this regard, he placed reliance on the decision of the Hon'ble jurisdictional High Court in the case of Kunal Structure (India) (P.) Ltd. Vs. DCIT, [2020] 113 taxmann.com 577 (Gujarat). Copy of the order was placed before us.

6. The Id. DR, however, contended that the assessee had cured the defect beyond the period prescribed u/s 139(9) of the Act dealing with defective returns. That, therefore, the decision of the Hon'ble High Court is of no assistance to the assessee. He further relied on the decision of the Hon'ble Supreme Court in the case of Deputy Commissioner of Income-tax (Exemption) Vs. Kalinga Institute of Industrial Technology, [2023] 151 taxamnn.com 434 (SC), for the proposition that where the assessee had not challenged the defect in the notice and participated in the proceedings, he thereafter subsequently was debarred from challenging jurisdiction of the Assessing Officer in terms of Section 124 of the Act. Copy of the order was placed before us.

To this, the Id. Counsel for the assessee countered by stating that the decision of the Hon'ble Apex Court was not applicable to the facts of the present case since it is dealt with the issue of jurisdiction of Assessing Officers whether the correct jurisdictional Assessing Officer had issued the necessary notices for assuming jurisdiction to frame assessment. That the issue before the Hon'ble Apex Court was not related to the aspect of jurisdictional notices being issued beyond the limitation prescribed under the law, which is the issue in the present case before us.

7. Having heard the contention of both the parties and having gone through the facts of the present case as brought to our notice, we shall now proceed to adjudicate the issue before us.

8. The short point for consideration is whether the jurisdictional notice issued in the present case for framing assessment issued in terms of Section 143(2) of the Act, was issued within the time limit prescribed under the Act for doing so , so as to validate the assessment order passed in pursuance to

the same. The relevant facts, which are not disputed, for adjudicating the issue are :

- the assessment year before us is AY 2017-18,
- return of income u/s 139(1) of the Act was filed by the assessee on 28.10.2017,
- thereafter defect notice was issued to the assessee on 06.06.2018,
- subsequent reminders for rectifying the defect were issued on 22.06.2018 & 10.07.2018, and
- ultimately the assessee rectified the defect on 19.08.2018.
- Thereafter, the return was subjected to preliminary assessment u/s 143(1)(a) of the Act which was completed on 30.03.2019 and
- refund issued to the assessee on 09.04.2019.
- Notice u/s 143(2) of the Act, which is in dispute before us on the issue of having been issued beyond the limitation prescribed, was issued on 22.09.2019.

9. The case of the assessee is that the notice was issued delayed in terms of the time prescribed u/s 143(2) of the Act. Section 143(2) prescribes the time limit as under:-

“143...

(2) Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer or the prescribed income-tax authority, as the case may be, if, considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return:

Provided that no notice under this sub-section shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished.]”

10. The contention of the Ld. Counsel for the assessee is that notice u/s 143(2) of the Act is to be issued within the time prescribed from the date of filing return of income. Therefore, as per law the notice u/s 143(2) of the Act in the present case ought to have been issued by 30.09.2018. That in the present case the limitation for issuance of notice has been taken from the date of defect in the return being cured by the assessee, which as per the Ld. Counsel for the assessee is of no relevance for the same. That in the facts of the present case, the notice having been issued on 22.09.2019 is clearly beyond time prescribed as per law. That jurisdiction assumed to frame assessment in pursuance to such notice is therefore invalid as also the order passed u/s 143(3) of the Act in consequence to assessment proceedings conducted in lieu of such time barred jurisdictional notice.

11. The case of the Revenue is that the limitation for issuance of notice u/s 143(2) of the Act was to be determined from the date when the defect was removed by the assessee, i.e. 19.08.2018 and therefore, in the present case, the notice u/s 143(2) of the Act was issued within the limitation prescribed under the Act.

12. We have gone through the provisions of law in this regard as prescribed under the Act, more particularly Section 139(9) of the Act which deals with the defective returns and on going through the same, we find that the said section itself amply and clearly brings out that the removal of defect is no bar to the Assessing Officer from proceeding with his assessment proceedings. That, he does not have to wait for the removal of the defects to proceed with the regular assessment. Section 139(9) of the Act is reproduced hereunder for reference along with the proviso thereto:-

“139....

(9) Where the Assessing Officer considers that the return of income furnished by the assessee is defective, he may intimate the defect to the assessee and give him an opportunity to rectify the defect within a period of fifteen days from the date of such intimation or within such further period which, on an application made in this behalf, the Assessing Officer may, in his discretion, allow; and if the defect is not rectified within the said period of fifteen days or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, the return shall be treated as an invalid return and the provisions of this Act shall apply as if the assessee had failed to furnish the return :

***Provided** that where the assessee rectifies the defect after the expiry of the said period of fifteen days or the further period allowed, but before the assessment is made, the Assessing Officer may condone the delay and treat the return as a valid return.”*

13. That, as per Section 139(9) of the Act, the assessee on being intimated of defects in their returns are required to remove the defects within the prescribed time limit. However, the proviso provides that if the defect is removed after the expiry of the time, **but before the assessment is made**, the Assessing Officer can condone the delay and treat the return as valid return – which means in clear terms and very clear language that the assessee can cure/remove defects upto to the framing of the assessment. This clearly implies that the Assessing Officer can proceed with the assessment without waiting for the removal of defects, which as per law can be removed upto or before the assessment is made.

14. This is further clarified from the fact that the defects which can be cured are in relation to non-filing of documents corroborating the return of income filed by the assessee like computation of income , proof of tax deducted at source , financial statements audited/ unaudited, personal accounts and such other financial data of assessee. These are not such grave defects to invalidate the return of income on the occurrence of such defects, but are curable and

hence opportunity is given to the assessee to cure the same and only when it remains uncured despite opportunity given that the return is treated as invalid. This is evident from the *Explanation* to Section 139(9) of the Act which lists the defects which can be cured u/s 139(9) as under:-

“Explanation. – For the purposes of this sub-section, a return of income shall be regarded as defective unless all the following conditions are fulfilled, namely :–

- (a) *the annexures, statements and columns in the return of income relating to computation of income chargeable under each head of income, computation of gross total income and total income have been duly filled in;*
- (aa) *[***]*
- (b) *the return is accompanied by a statement showing the computation of the tax payable on the basis of the return;*
- (bb) *the return is accompanied by the report of the audit referred to in section 44AB, or, where the report has been furnished prior to the furnishing of the return, by a copy of such report together with proof of furnishing the report;*
- (c) *the return is accompanied by proof of–*
 - (i) *the tax, if any, claimed to have been deducted or collected at source and the advance tax and tax on self-assessment, if any, claimed to have been paid :*

Provided *that where the return is not accompanied by proof of the tax, if any, claimed to have been deducted or collected at source, the return of income shall not be regarded as defective if–*

- (a) *a certificate for tax deducted or collected was not furnished under section 203 or section 206C to the person furnishing his return of income;*
- (b) *such certificate is produced within a period of two years specified under sub-section (14) of section 155;*
- (ii) *the amount of compulsory deposit, if any, claimed to have been made under the Compulsory Deposit Scheme (Income-tax Payers) Act, 1974 (38 of 1974);*
- (d) *where regular books of account are maintained by the assessee, the return is accompanied by copies of–*

- (i) *manufacturing account, trading account, profit and loss account or, as the case may be, income and expenditure account or any other similar account and balance sheet;*
- (ii) *in the case of a proprietary business or profession, the personal account of the proprietor; in the case of a firm, association of persons or body of individuals, personal accounts of the partners or members; and in the case of a partner or member of a firm, association of persons or body of individuals, also his personal account in the firm, association of persons or body of individuals;*
- (e) *where the accounts of the assessee have been audited, the return is accompanied by copies of the audited profit and loss account and balance sheet and the auditor's report and, where an audit of cost accounts of the assessee has been conducted, under section 233B of the Companies Act, 1956 (1 of 1956), also the report under that section;*
- (f) *where regular books of account are not maintained by the assessee, the return is accompanied by a statement indicating the amounts of turnover or, as the case may be, gross receipts, gross profit, expenses and net profit of the business or profession and the basis on which such amounts have been computed, and also disclosing the amounts of total sundry debtors, sundry creditors, stock-in-trade and cash balance as at the end of the previous year."*

15. It is abundantly clear therefore that as per law there is no bar in proceeding with assessment where returns are found defective and therefore the limitation for issuing notice u/s 143(2) of the Act for assuming jurisdiction to frame assessment will logically run from the year in which return is filed and not when the defect is removed by the assessee.

16. Even the Hon'ble jurisdictional High Court in the case of Kunal Structure (India) (P.) Ltd. (supra) noted the same from the reading of section 139(9) of the Act, finding that a defect in a return does not requiring any fresh return to be filed but only the defect to be removed. It was held that this act of removal of defect would relate back to the filing of return of income. The Hon'ble high court further noted that limitation prescribed for issuing notice u/s 143(2) of the Act runs from the date of filing return of income u/s 139 of

the Act or u/s 142(1) of the Act. Accordingly it was held that notice u/s 143(2) of the Act was to be issued within the time prescribed from the date of filing return of income and not from the date of removal of defect u/s 139(9) of the Act. The relevant portion of the order reads as under:

"6. In the backdrop of the facts and contentions noted hereinabove, the sole question that arises for consideration in this case is as to whether the impugned notice under sub-section (2) of section 143 of the Act has been filed within the period of limitation provided thereunder.

7. In this case, the original return of income under sub-section (1) of section 139 of the Act came to be filed on 10.09.2016. Intimation under sub-section (9) of section 139 of the Act came to be issued on 17.06.2017, calling upon the petitioner to remove the defects enumerated therein. Thereafter, on 05.07.2017, a reminder was given and the time to comply with the notice under section 139(9) of the Act was extended for fifteen days, that is, up to 20.07.2017. The petitioner rectified such defects on 07.07.2017, that is, within the time allowed by the Assessing Officer. The impugned notice under sub-section (2) of section 143 of the Act has been issued on 09.08.2018.

8. Undisputedly, if the date of the original return under sub-section (1) of section 139 of the Act, viz.10.09.2016 is required to be taken into consideration for the purpose of computing the limitation under section 143(2) of the Act, the impugned notice would be barred by limitation. However, if the date on which the defects in the original return came to be removed under section 139(9) of the Act viz., 07.07.2017 is to be taken into consideration for the purpose of computing the period of limitation, the impugned notice can be said to have been issued will within the period of limitation. The question that therefore, arises for consideration is as to which of the above two dates can be said to be the date on which the petitioner filed its return on income.

9. In this regard, it may be germane to refer to the provisions of section 139 of the Act, which to the extent the same is relevant for the present purpose, reads as under:

" 139. Return of income –

(1) Every person, –

(a) being a company or a firm; or

(b) being a person other than a company or a firm, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income tax,

shall, on or before the due date, furnish a return of his income or the income of such other person during the previous year, in the prescribed form and

verified in the prescribed manner and setting forth such other particulars as may be prescribed:

**

**

**

Explanation 2.- In this sub-section, "due date" means, –

(a) where the assessee other than an assessee referred to in clause (aa)] is

(i) a company;

(ii) a person (other than a company) whose accounts are required to be audited under this Act or under any other law for the time being in force; or

(iii) a working partner of a firm whose accounts are required to be audited under this Act or under any other law for the time being in force, the 30th day of September of the assessment year;

(aa) in the case of an assessee who is required to furnish a report referred to in section 92-E, the 30th day of November of the assessment year;

(b) in the case of a person other than a company, referred to in the first proviso to this sub-section, the 31st day of October of the assessment year;

(c) in the case of any other assessee, the 31st day of July of the assessment year;

**

**

**

(3) If any person, who has sustained a loss in any previous year under the head "Profits and gains of business or profession" or under the head "Capital gains" and claims that the loss or any part thereof should be carried forward under sub-section (1) of Section 72, or sub-section (2) of Section 73 or sub-section (2) of section 73-A, or sub-section (1) or sub-section (3) of section 74 or sub-section (3) of section 74-A, he may furnish, within the time allowed under sub-section (1) a return of loss in the prescribed form and verified in the prescribed manner and containing such other particulars as may be prescribed, and all the provisions of this Act shall apply as if it were a return under sub-section (1).

(4) Any person who has not furnished a return within the time allowed to him under sub-section (1), may furnish the return for any previous year at any time before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

(5) If any person, having furnished a return under sub-section (1) or sub-section (4), 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.

**

**

**

(9) Where the Assessing Officer considers that the return of income furnished by the assessee is defective, he may intimate the defect to the assessee and give him an opportunity to rectify the defect within a period of fifteen days from the date of such intimation or within such further period which, on an application made in this behalf, the Assessing Officer may, in his discretion, allow, and if the defect is not rectified within the

said period of fifteen days or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, the return shall be treated as an invalid return and the provisions of this Act shall apply as if the assessee had failed to furnish the return."

10. *A study of the provisions of section 139 of the Act shows that under sub-section (1) thereof, an assessee is required to file return on or before the due date. As to which is the due date for filing of return has been provided under Explanation 2 to sub-section (1) of section 139 of the Act. Sub-section (3) of section 139 contemplates filing of a return of income by any person who has sustained a loss in any previous year as provided thereunder, and further provides that all the provisions of the Act shall apply as if it were a return filed under sub-section (1). Therefore, a return filed under sub-section (3) of section 139 of the Act is treated as a return under sub-section (1) thereof. Sub-section (5) of section 139 of the Act provides that if a person who has filed a return under sub-section (1) or in pursuance of a notice under sub-section (1) of section 142, discovers any omission or wrong statement in such return, he can furnish a revised return within the time provided therein. Thus, sub-section (1) of section 139 of the Act contemplates filing of a return of income, sub-section (3) also contemplates filing of a return of income to which all the provisions of the Act apply as if it were a return filed under sub-section (1) and sub-section (5) provides for filing of a revised return where there is any omission or wrong statement in the original return of income filed under sub-section (1). Therefore, all these sub-sections clearly envisage filing of a return.*

11. *Sub-section (9) of section 139 of the Act is attracted when the Assessing Officer considers the return on income filed by the assessee to be defective. If the Assessing Officer considers the return of income to be defective, he is required to intimate such defect to the assessee and give him an opportunity to rectify such defect within a period of fifteen days from the date of such intimation or within such further time, which the Assessing Officer in his discretion allows on an application made by the assessee in this behalf. If the defects are not removed within fifteen days or within such further period granted by the Assessing Officer, then notwithstanding anything contained in any other provision of the Act, the return shall be treated as an invalid return and the provisions of the Act would apply as if the assessee has failed to furnish his return. Thus, if the defects are removed within fifteen days or within the further time granted by the Assessing Officer, the very same return would be considered to be valid.*

12. *If one looks at the language employed in sub-sections (1), (3) and (5) of section 139 of the Act, a common thread in all the sub-sections is that the assessee is required to file a return of income under those sub-sections. However, from the language employed in sub-section (9) of section 139 of the Act, the same does not require any return to be filed by the assessee. All that the section says is that the assessee is required to be given an opportunity to rectify the defect in the return*

filed by him within the time provided; failing which such return would be treated as an invalid return. Unlike sub-section (5) of section 139 of the Act which requires an assessee to file a revised return of income in case of any omission or wrong statement in the return of income filed under sub-section (1) thereof, sub-section (9) of section 139 of the Act, does not require an assessee to file a fresh return of income, but requires the assessee to remove the defects in the original return of income filed by him within the time provided therein. Once the defects in the original return of income are removed, such return would be processed further under the Act. In case such defects are not removed within the time allowed, such return of income would be treated as an invalid return.

13. *In view of what is discussed hereinabove, the contention that the return under sub-section (9) of section 139 of the Act was filed by the petitioner on 07.07.2017, and that it was this return which was selected for scrutiny under the CASS system in August 2018 and not the defective return filed on 10.09.2016, does not merit acceptance. While the impugned notice under sub-section (2) of section 143 of the Act does say that the return filed by the petitioner on 07.07.2017 has been selected for scrutiny, in the opinion of this court, the reference to the return as the return filed on 07.07.2017 is incorrect, inasmuch as sub-section (9) of section 139 of the Act, does not contemplate filing of a return of income. As noticed hereinabove, it is the original return filed by the assessee which gets rectified upon the removal of the defects contained therein.*

14. *At this juncture, it may be germane to refer to the notice issued under sub-section (9) of section 139 of the Act, the relevant part whereof has been extracted in the objection raised by the petitioner to the notice under section 143(2) of the Act. In the said notice, the petitioner has been told to inter alia note the following:*

"1. Please ensure no other information is changed apart from those errors listed below in Part-A, in case of any other changes in data, the return of income filed by you is liable to be treated as an invalid return.

2. While correcting the above mentioned defects, if any changes are being made, leading to change of income and/or taxation under other heads of income, you should file a revised return (and not a corrected return) as per the provisions of Income Tax Act, 1961.

*3. to 6. ***

7. If the above requirement is not complied within fifteen days of receipt of this notice, the return of income filed by you is liable to be treated as an invalid return."

15. *Thus, the petitioner has been called upon to ensure that no information in the original return is changed apart from the errors pointed out. The petitioner is also told that if while correcting the defects, any changes are made, leading to change of income and/or taxation under other heads of income, he should file a revised return and not a corrected return as per the provisions of the Act. In other words,*

if the petitioner wants to make any changes in the return of income, he is required to file a revised return under section 139(5) of the Act. In the present case, the petitioner has not filed revised return under sub-section (5) of section 139 of the Act, but has merely removed the defects in the original return, which is termed as a corrected return in the notice under sub-section (9) of section 139 of the Act.

16. It may be noted that there is no concept of corrected return of income under the Act. Therefore, in effect and substance, what the notice under sub-section (9) of section 139 of the Act does is to call upon the petitioner to remove the defects pointed out therein. Therefore, mere reference to the expression "corrected income" in the notice under sub-section (9) of section 139 of the Act does not mean that a fresh return of income has been filed under that sub-section. Thus, under sub-section (9) of section 139 of the Act, it is only the original return which gets corrected and no new return is filed. In other words, the original return which was defective when it was filed is rectified upon removal of the defects under sub-section (9) of section 139 of the Act and becomes a valid return. Thus, as held by the Bombay High Court in the decisions cited by the learned counsel for the petitioner as referred to hereinabove, the action of removal of the defects would relate back to the filing of the original return of income and accordingly, it is the date of filing of the original return which has been considered for the purpose of computing the period of limitation under sub-section (2) of section 143 of the Act and not the date on which the defects actually came to be removed.

17. Reference may also be made to the decision of this court in case of Babubhai Ramanbhai Patel (supra), on which reliance has been placed by the learned senior standing counsel for the respondents, wherein this court has placed reliance upon a decision of the Allahabad High Court in case of Dhampur Sugar Mills v. CIT [\[1973\] 90 ITR 236](#), wherein it has been held that there is a clear distinction between revised return and a correction of return. Once a revised return is filed, the original return must be taken to have been withdrawn and substituted by a fresh return for the purpose of assessment. Thus, when a revised return is filed under section 139(5) of the Act, the original return gets substituted and it is the revised return which is to be considered as a return for the purpose of assessment. However, the court has clearly drawn a distinction between a revised return and a correction of return. Adverting to the facts of the present case, this case relates to correction of the return of income originally filed and not a revised return. Had it been a case of filing of a revised return of income, the original return of income would have stood substituted by the revised return, but when it comes to correction of a return of income, it is only the original return of income which gets corrected.

18. Since the impugned notice has been issued under sub-section (2) of section 143 of the Act, reference may be made to the said sub-section, which reads as under:

"143.Assessment.- (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:-

**

**

**

(2) Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer or the prescribed income-tax authority, as the case may be, if, considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return:

Provided that no notice under this sub-section shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished."

19. On a plain reading of sub-section (2) of section 143 of the Act, it is apparent that the Assessing Officer or the prescribed income-tax authority must issue a notice under that sub-section only in those cases where a return has been made under section 139 or in response to a notice issued under section 142(1), if he considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, but such notice must be served within a period of six months from the end of the financial year in which such return is furnished. Thus, if, after furnishing a return of income, the assessee does not receive a notice under sub-section (2) of section 143 of the Act within the period referred to in the sub-section, the assessee is entitled to presume that the return has become final and no scrutiny proceedings are to be started in respect of that return. It is only after the issuance of notice under sub-section (2) of section 143 of the Act that the Assessing Officer can proceed further under sub-section (3) thereof to make an assessment order. Therefore, the notice under section 143(2) of the Act is a statutory notice, upon issuance of which, the Assessing Officer assumes jurisdiction to frame the scrutiny assessment under sub-section (3) of section 143 of the Act. Consequently, if such notice is not issued within the period specified in sub-section (2) of section 143 of the Act viz. before the expiry of six months from the end of the financial year in which the return is furnished, it is not permissible for the Assessing Officer to proceed further with the assessment.

20. In the facts of the present case, as discussed earlier, the petitioner filed its return of income under sub-section (1) of section 139 of the Act on 10.09.2016. Since the return was defective, the petitioner was called upon to remove such defects, which came to be removed on 07.07.2017, that is, within the time allowed by the Assessing Officer. Therefore, upon such defects being removed, the return would relate back to the date of filing of the original return, that is, 10.09.2016

and consequently, the limitation for issuance of notice under sub-section (2) of section 143 of the Act would be 30.09.2017, viz. six months from the end of the financial year in which the return under sub-section (1) of section 139 came to be filed. In the present case, it is an admitted position that the impugned notice under sub-section (2) of section 143 of the Act has been issued on 09.08.2017, which is much beyond the period of limitation for issuance of such notice as envisaged under that sub-section. The impugned notice, therefore, is clearly barred by limitation and cannot be sustained.

21. For the foregoing reasons, the petition succeeds and is, accordingly, allowed. The impugned notice dated 09.08.2018 issued under sub-section (2) of section 143 of the Act and all proceedings taken pursuant thereto are hereby quashed and set aside. Rule is made absolute accordingly, with no order as to costs."

17. In view of the above, we find that in the facts of the present case the jurisdictional notice u/s 143(2) of the Act having been issued beyond the limit prescribed under the Act, the assessment framed is without jurisdiction and, therefore, directed to be quashed.

18. The reliance placed by the Id. DR on the decision of Hon'ble Apex Court in the case of the Kalinga Institute of Industrial Technology (supra) has been rightly distinguished by the Id. Counsel for the assessee as pertaining to have challenged the jurisdiction of the Assessing Officers in terms of provisions of Section 124 of the Act and has nothing to do with the limitation prescribed under the Act for issuance of jurisdictional notice u/s 143(2) of the Act. The said decision we hold therefore, is of no assistance to the Revenue. As for the argument of the Id. DR that the assessee had not cured the defect within the period prescribed u/s 139(9) of the Act and therefore the original return was to be treated as invalid and limitation for issuing notice u/s 143(2) of the Act be determined from the date of removal of defect, we find, is a self-defeating argument. Going by this argument, if the original return is to be treated invalid since the defect was not cured in time, then considering the fact that no other return was filed by the assessee, we fail to understand how notice for

framing assessment, u/s 143(2) of the Act, could be issued in the absence of any valid return of income.

19. Even otherwise as per the proviso to the section 139(9) of the Act, as noted above by us, the Assessing Officer is empowered to condone the delay in the removal of the defect which, we have noted, he has done by accepting the defect removed by the assessee and subsequently processing the return u/s 143(1) of the Act and issuing refund to the assessee. So much so that as per the case of the Revenue itself, after removal of the defect, the Assessing Officer went on to issue notice u/s 143(2) of the Act. Meaning thereby that he had condoned the delay in removal of defect, which he was empowered to do in terms of Section 139(9) of the Act.

In view of the above, all the arguments of the Id. DR are rejected, and the appeal of the assessee is allowed.

20. Since we have quashed the assessment order finding the jurisdictional notice u/s 143(2) of the Act being issued beyond limitation prescribed under the Act, the other grounds raised on the merits of the case are rendered academic in nature, and are therefore not being adjudicated by us.

21. In effect, the appeal of the assessee is allowed in above terms.

Order pronounced in the open Court on 21/02/2024 at Ahmedabad.

Sd/-

**(SUCHITRA R. KAMBLE)
JUDICIAL MEMBER**

Ahmedabad; Dated 21/02/2024

**%

Sd/-

**(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

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

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

TRUE COPY

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad