

आयकर अपीलिय अधिकरण  
मुंबई पीठ "ए", मुंबई  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री एस. रिफौर रहमान, लेखाकार सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH " A ", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER

आअसं.2824/मुं/2023 (नि.व. 2013-14)  
ITA NO.2824/MUM/2023(A.Y.2013-14)

LIC MUTUAL FUND ASSET MANAGEMENT LTD.

4<sup>th</sup> Floor, Industrial Assurance Building,

Charchgate, Mumbai – 400 020

PAN: AAACJ-1166-H

..... अपीलार्थी/Appellant

बनाम Vs.

CIT(A), NORTH BLOCK,

North Block,

New Delhi 110 001.

.....प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Vijay Mehta  
प्रतिवादी द्वारा/Respondent by : Shri Manoj Kumar Sinha, Sr.A.R  
सुनवाई की तिथि/ Date of hearing : 11/12/2023  
घोषणा की तिथि/ Date of pronouncement : 26/02/2024

आदेश/ORDER

**PER VIKAS AWASTHY, JM:**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 22/06/2023, for the Assessment Year 2013-14.

2. The assessee in appeal has raised three grounds. The gist of issues raised in appeal by the assessee is as under:

(i) Disallowance of provision of expenses Rs.2,28,58,621/-;

(ii) Non-adjudication of additional ground No.1 & 2 pertaining to addition of Rs.1,23,04,929/- in respect of scheme related expenses and non-consideration

of Rs.2,28,59,621/- in respect of provision for expenses while calculating book profits u/s. 115JB of the Income Tax Act, 1961 [in short 'the Act']; and

(iii) Non-issuance of notice u/s. 143(2) of the Act, after revised return of income was filed by the assessee, thus making the assessment order bad in law.

3. Shri Vijay Mehta appearing on behalf of the assessee submitted that at this stage he would be confining his submissions only on ground No.3, which is a legal issue and goes to the root of validity of assessment order. Narrating sequence of events, the Id. Authorized Representative of the assessee submitted that the assessee filed original return of income on 29/11/2013. The Assessing Officer issued notice u/s. 143(2) of the Act on 05/09/2014. Thereafter, the assessee filed revised return of income on 31/03/2015. The Assessing Officer without issuing fresh notice u/s. 143(2) of the Act completed the assessment vide order dated 18/03/2016 on revised return filed by the assessee. The assessment made u/s. 143(3) without issuing notice u/s. 143(2) of the Act after the assessee had filed revised return of income makes the assessment invalid. To support his submissions the Id. Authorized Representative of the assessee placed reliance on the following decisions:

(i) CIT vs. IDEB Buildcon Pvt. Ltd. in ITA No.507/2014 decided by Hon'ble Karnataka High Court on 02/02/2016;

(ii) Ashok Reddy Cheruvu vs. DCIT in ITA No.1560/Hyd/2019 for Assessment Year 2014-15 decided on 26/03/2021; and

(iii) M/s. Yes & Yes Hitech Premier Homes vs. ITO in ITA No.22/Mds/2016 for Assessment Year 2012-13, decided on 19/06/2017.

3.1 The Id. Authorized Representative of the assessee submits that the CIT(A) dismissed the legal ground raised by the assessee assailing validity of assessment in the absence of notice u/s. 143(2) of the Act by placing reliance on the decision in the case of Padmini Products Pvt. Ltd. vs. DCIT in ITA No.527/Bang/2016 for Assessment Year 2012-13 decided on 03/03/2017 on the ground that there is no status to revised return of income in the eye of law as it is filed merely to rectify any omission or wrong statement made in the original return of income. The Id. Authorized Representative of the assessee submits that the rectification of return and filing of revised return are two different concepts. Rectification of return is made u/s. 139(9) without filing fresh return of income, whereas revised return is filed u/s. 139(5) of the Act. In support of his submissions that rectification of return and filing of revised return are not the same, he placed reliance on the decision of Hon'ble Gujarat High Court in the case of Kunal Structure India Pvt. Ltd. vs. DCIT, 113 taxmann.com 577. He further pointed that aforesaid decision of the Hon'ble High Court has been upheld by the Hon'ble Apex Court in 123 taxmann.com 392(SC).

4. Per contra Shri Manoj Kumar Sinha representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee. The Id. Departmental Representative submitted that undisputedly the Assessing Officer had issued notice u/s. 143(2) of the Act on the return filed by the assessee. There was no statutory requirement for the Assessing Officer to issue fresh notice u/s. 143(2) of the Act after filing of revised return by the assessee.

5. We have heard the submissions made by rival sides and have considered the decisions referred to by the Id. Authorized Representative of the assessee. The assessee by way of ground No.3 of appeal has raised legal issue challenging validity of assessment in absence of fresh notice u/s. 143(2) of the Act on the revised return filed by the assessee.

6. Before we proceed further to adjudicate the issue it would be relevant to note some vital dates:

Date	Events
19/11/2013	Original return of income filed by the assessee.
05/09/2014	Notice u/s. 143(2) issued by the A.O.
31/03/2015	Revised return of income filed by the assessee.
28/03/2016	Assessment Order u/s. 143(3) of the Act.

The assessee filed the original return of income returning loss of Rs.14,38,57,346/-. Later, the assessee filed revised return of income declaring loss of Rs.15,07,61,625/-. No notice u/s. 143(2) of the Act was issued by the Assessing Officer after assessee filed revised return of income. The Assessing Officer completed the assessment on the revised return of income. The above narrated dates and facts are not in dispute.

7. The short issue before us for consideration is: “ Whether the Assessing Officer was under obligation to issue fresh notice u/s. 143(2) of the Act after the assessee had filed revised return of income?”

Here it would be imperative to refer to the provisions of section 143(2) of the Act.

Section 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.”*

8. A bare reading of provisions of sub-section (2) to Section 143 would show that the notice u/s. 143(2) the Act is with reference to the return furnished u/s. 139 of the Act. In the instant case the Assessing Officer had issued notice u/s. 143(2) on 05/09/2014 with reference to original return of income filed by the assessee on 19/11/2013. Subsequently, the assessee filed revised return of income on 31/03/2015, which was accepted by the Assessing Officer and the assessment was framed on the revised return of income. Once a valid revised return of income is filed, the original return is deemed to be withdrawn. In other words, a valid revised return of income filed u/s. 139(5) of the Act substitutes the original return filed u/s. 139(1) of the Act. Thus, it is considered as assessee's final return of income. The Assessing Officer is under obligation to issue notice u/s. 143(2) of the Act in respect of return of income which he accepts for completing the assessment. As pointed earlier, notice u/s. 143(2) of the Act is specific to the return of income, not the Assessment Year. Therefore, we are of considered view that non-issuance of notice u/s. 143(2) of the Act after the assessee had filed revised return of income is an incurable defect and is fatal to the assessment order passed without the said notice.

9. The Tribunal in the case of Yes & Yes Hitech Premier Homes vs. ITO (supra) under similar set of facts held the assessment bad in law in the absence of notice u/s. 143(2) of the Act. The relevant extract of the findings of the Tribunal on the issue are as under:

*“5. We have considered the rival submissions. Admittedly, the last revised return filed by the assessee on 26.02.2014. This was admittedly a valid revised return. The AO has also not rejected the revised return. The assessee has also given his Explanation for filing the said revised return. In fact, after the said revised return was filed, notice u/s.142(1) has been issued on 10.12.2014 and show cause notice have been issued on 23.12.2014 and on 12.03.2015. In response to the show cause notice issued by the AO on 23.03.2015, intimating the assessee to provide his response by 27.03.2015, the assessee has intimated that the notice u/s.143(2) has not been issued on the assessee within the prescribed time. In fact, before the show cause notice being issued by the AO, the assessee never had an opportunity to intimate the AO that notice u/s.143(2) had not been issued. A perusal of the provisions of Sec.143(2) shows that the said notice is not assessment year specific but it is return specific. Its time limit is computed from the end of the financial year in which the return is furnished. It is mandatory for the issuance of notice u/s.143(2) in the event that the AO proposes to make assessment u/s.143(3). In the present case, the AO having not issued notice u/s.143(2) in respect of a valid revised return filed on 26.02.2014 and more so, the said return have not been treated as invalid, the consequential assessment is bad in law, in view of the principles laid down in the Hon’ble Supreme Court in the case of ACIT vs. Hotel Blue Moon reported in 321 ITR 362 (SC). Further, in view of the position in law that if a revised return is filed u/s.139(5) and if such return is a valid return then the assessment can be completed only on the basis of such revised return as has been held by the Hon’ble High Court of Orissa in the case of Orissa Rural Housing Development Corporation Ltd. reported in 343 ITR 316, the assessment is liable to be annulled.*

*6. In these circumstances, as notice u/s.143(2) has not been issued in respect of the valid revised return filed by the assessee u/s.139(5) on 26.02.2014, the consequential Assessment Order u/s.143(3) dated 30.03.2014 for the AY 2012-13, in the case of the assessee is bad in law and stands annulled.”*

Similar view has been taken by the Co-ordinate Bench in the case of Ashok Reddy Cheruvu vs. DCIT (supra). In so far as the decision rendered in the case of Padmini Products Pvt. Ltd. vs. DCIT (supra) we are not in agreement with the same. The original return of income u/s. 139(1) and the revised return of income u/s. 139(5) of the Act are returns under different provisions filed under

different circumstances. Therefore, it cannot be said that the revised return has no status in the eye of law. The statute provides for filing of revised return under specific circumstances. The revised return of income filed u/s. 139(5) of the Act substitutes the return filed u/s. 139(1) of the Act, if, filed within the period of limitation.

10. Thus, in facts of the case discussed above and in light of the provisions of section 143(2) r.w.s. 139 of the Act, we hold the impugned assessment order is without jurisdiction in the absence of notice u/s. 143(2) of the Act after revised return of income was filed by the assessee. The question in para-7 above, is thus, answered in affirmative. In the result, ground No.3 of appeal is allowed.

11. Since, we have allowed relief to the assessee on the jurisdictional issue, ground No.1 & 2 assailing addition on merits have become academic, hence, not deliberated upon.

12. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on Monday the 26<sup>th</sup> day of February , 2023.

Sd/-

(SHRI S.RIFAUR RAHMAN)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 26/02/2023

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्तCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt.Registrar)/Sr. Private Secretary ITAT,  
Mumbai