IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

Before Shri Sanjay Arora, AM & Shri Soundararajan K, JM

ITA No.383/Coch/2023 : Asst.Year 2014-2015
(SA No.68/Coch/2023)

Koonthali Kunjuvareed Johnson Koonthali House, PO Marthakara Thrissur – 673 001. [PAN:AEGPJ6231E]	vs.	The Income Tax Officer Ward 2(2) Thrissur.
(Appellant/Applicant)		(Respondent)

Appellant by:	Sh. Biju P.K., Adv.
Respondent by:	Sh. Sanjit Kumar Das, CIT-DR

Date of Hearing:	09.05.2024
Date of Pronouncement:	28.05.2024

O R D E R

Per Sanjay Arora, AM:

This is an Appeal by the Assessee agitating the Order dated 14.03.2023 by the Commissioner of Income-tax (Appeals), Income Tax Department [CIT(A) for short], dismissing the assessee's appeal contesting his assessment under section 143(3) of the Income-tax Act, 1961 (the Act) for assessment year (AY) 2014-15, vide order dated 30.12.2016. The assessee's stay petition was also posted along with his appeal.

2. The appeal, filed on 17.05.2023, is delayed by 4 days, which stands suitably explained per the condonation petition supported by an affidavit dated 16/5/2023. The appeal was accordingly admitted for being heard on merits.

3. The appeal raises a single issue, i.e., *qua* the sustainability in law, in facts and circumstances of the case, of the addition of Rs. 456.75 lacs made u/s.68 of the Act on account of addition to the assessee's capital account during the relevant previous year. The brief facts leading to the instant appeal are that the assessee, an individual

in the business of brick-making in his proprietary concern, M/s.Bhavana Tiles, returned his income for the year on 29.06.2015. Notice u/s.143(2) was issued on 27.07.2016 to verify huge/large accretion to capital. The assessee, in the assessment proceedings, explained the actual increase in the capital for the year, profit apart, as at (-) Rs. 0.25 lacs, as against the alleged Rs.456.75 lacs, reckoned with reference to the capital as on 31.03.2012 (corresponding to AY 2012-2013), and not 31.03.2013, i.e., the immediately preceding year. The same did not find favour with the Revenue inasmuch as the return for AY 2013-14, i.e., the intervening year, had not been filed. The return of income for that year, filed on 31/3/2014, was liable to be considered as *non est* as the same was filed physically, instead of, as was required to be, per the electronic mode, for which the assessee was, post filing his return, provided an opportunity to do so on 23/7/2014, allowing him a 7-day period for filing it thus, which was not availed. The fore-going sums-up the respective cases of the parties.

4. We have heard the parties, and perused the material on record.

4.1 The issue, as we see it, has both legal and factual aspects to it. We shall begin by considering the former first. The assessee banks on the Acknowledgement of his return for AY 2013-14 (PB pg. 14), and, to our mind, not invalidly so. No doubt, the same had to be filed electronically, which it was not, either in the first instance, or even later on being called upon to do so. Sec.139D, providing for the same, however, bears no reference to s. 139, under which the return for AY 2013-14 stands furnished. How we wonder could then s. 139D be read as in supersession of s. 139, or of the latter being subject to the former, and which is what the Revenue essentially implies, without stating the legal basis thereof? As explained in *CIT v. B.M. Kharwar* [1969] 72 ITR 603 (SC), the legal effect of the transactions cannot be ignored. True, s. 139D speaks of the Board making Rules in its respect. *The same have not been referred to in their orders by either authority – whose orders do not even as much as bear a reference to s. 139D, nor were referred to during hearing*, nor do we have the benefit thereof. The same is in any case delegated legislation, which would not have an

overriding effect over s.139, where-under the return for AY 2013-14 stands filed. No notice u/s. 139(9), or u/s. 139D r/w the relevant rule, it is to be noted, stands served on the assessee communicating his said return as *non est* inasmuch as he had not availed the opportunity for electronic filing, which opportunity would be in terms of the rules u/s. 139D. It's status as a valid return in law cannot therefore be questioned on that basis, and which perhaps also explains it's acceptance in the physical form.

4.2 Without prejudice to the fore-going, the issue before us is not the validity of the return for AY 2013-14, which could be answered conclusively only upon examining the relevant rules, as indeed the Board Instruction dated 01/5/2013, ostensibly issued u/s. 139D r/w rules there-under. And, sure, s.139 is to be read along with s.139D and the corresponding rules. So, however, we are unable to see as to why should the same operate to the detriment of the assessee. The assessee claims his returns for AYs. 2012-13 to 2014-15 to be in agreement with his audited accounts for the relevant years. It is on the basis thereof that the actual accretion to the capital during the relevant year is to be ascertained, on which the assessee may be questioned, i.e., *qua* the nature and source thereof, and in the absence of an explanation, or on it being found not satisfactory, the corresponding credit/s deemed as income as an unexplained credit. The final accounts form an integral part of the return of income, which is, where unaccompanied thereby, deemed deficient, non-rectification of which defect leads to it being deemed as invalid in law (section 139(9) r/w *Explanation* thereto). It is the return of income which is based on the regular books of account, and not the other way round. *The non-filing of final accounts along with the return of income, or even the non-filing of the return itself, would not alter the year in which a sum is credited in the assessee's accounts*. The former is essentially a part of the record management exercise by the Revenue (s. 139C). Rather than operating to the assessee's prejudice, it was incumbent on the AO to, even as provided therein, where required to determine matters arising before him, call for the same. The Revenue declining to admit and examine the assessee's audited

account/s, being the basis of his balance-sheet/s for the relevant year/s, i.e., the basis of his returns, forming part thereof, is, under the circumstances of the case and the law in the matter, incomprehensible, and inconsistent with the provisions of law. Reference in this context may be made to the orders by the Tribunal, as in *The Nehru Memorial Education Society v. ITO* (in ITA No. 159/Coch/2023, dated 07/3/2024) and *Sunil Kumar Maloo v. ITO* (in ITA 78/Jab/2022, dated 20/12/2022).

5. Under the circumstances, we only consider it fit and proper to, setting aside the assessment *qua* the impugned addition u/s.68 on account of unexplained increase in capital, since confirmed in first appeal, restore the matter to the AO to examine the same afresh, requiring the assessee to substantiate his claims, and decide thereon in accordance with law per a speaking order. We decide accordingly. As we have heard and decided the appeal, the assessee's stay petition becomes infructuous.

6. In the result, the assessee's appeal is allowed for statistical purposes, and his stay petition, dismissed.

Order pronounced on May 28, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-	Sd/-
(Soundararajan K)	(Sanjay Arora)
Judicial Member	Accountant Member

Cochin, Dated: May 28, 2024

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin