IN THE INCOME TAX APPELLATE TRIBUNAL

NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER

SMC MATTER

ITA no.38/Nag./2024
(Assessment Year : 2019–20)

Tushar Shankar Shinde
At Post Bhaurad
Tah. & Dist. Akola 444 001
PAN – DMTPS8002L

……. Appellant

v/s

Income Tax Officer
Ward–3, Akola

……. Respondent

Assessee by : Ms. Radhika Katoda
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 12/09/2024	Date of Order – 12/09/2024

O R D E R

The present appeal has been filed by the assessee challenging the impugned order dated 29/11/2023, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2019–20.

2. In its appeal, the assessee has raised following grounds:–

"1. The Ld. JCIT (A) erred in agreeing to the order of AO passed u/s 143(1) of Income Tax Act, 1961 by Asst. Director of IT. CPC.

2. The Ld. JCIT (A) erred in confirming the total income of Rs.14,39,800/- assessable to tax for AY 19-20 on mistaken belief and ought to have appreciated detailed submission made by the appellant.

3. The Ld. JCIT (A) dismissed the appeal filed for reduction of total income in AY 19-20 by erroneously considering it as a new claim to the assessing authority. That, the Ld. JCIT (A) erred in incorrectly applying the doctrine of 'Ratio decidendi in the judgement of Hon'ble Supreme Court of India in M/s Goetze (India) Ltd vs CIT dt. 24 March 2006 to the present appeal filed by the assessee.

4. The Ld. JCIT (A) erred in expecting the appellant to file a revised return, though barred by limitation, after making application for condonation of delay. Such view of the Id. officer to seek condonation of delay to file a revised return is not in line with section 139(5) of the Act and is bad in law.

5. The Ld. JCIT (A) erred in uplifting the true essence of vital facts of the appeal (Annexure B attached herewith) and decided the case on the basis of residual rights, ought to have been first sought after by the assessee, as provided in the Act.

6. The appellant craves, leave to add, alter or amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal."

3. Facts in Brief:– The assessee, for the assessment year under consideration, filed his return of income on 28/11/2020, disclosing total income at ₹ 14,39,800, which was processed under section 143(1) of the Income Tax Act, 1961 ("*the Act*") on 11/01/2021, and the total income was determined at ₹ 14,39,800. During the year under consideration, the assessee was a student and had no source of income. The assessee joined a corporate entity only in financial year 2019-20 and hence he was trying to file income tax return for first time for the financial year 2019-20. The assessee erroneously filed income tax return for first time for assessment year 2019-20 instead of filing for the financial year 2019-20 and hence the income tax return details in assessment year 2019-20 pertain to the financial year 2019-20. The assessee then filed his return of income for the assessment year 2020–21 offering the same income which was previously filed erroneously for the assessment year 2019–20. Meanwhile, the assessee has been assessed

twice for the same income earned in the assessment year 2020–21 leading to double taxation of the same income in two different assessment year years i.e., assessment year 2019–20 and 2020–21. Resultantly, though the assessee filed rectification application under section 154 of the Act for the assessment year 2019–20, however, the Assessing Officer did not allow reduction in total income. Aggrieved, the assessee filed appeal before the first appellate authority.

4. The learned CIT(A) dismissed the appeal filed by the assessee by observing as follows:–

> *"6. Decision: I have carefully considered facts of case and order passed by Ld AO against which appeal has been preferred. I have gone through appellant's submission, Form 35, intimation u/s 143(1) and provisions of relevant section and rules.*
>
> *6.1 Ground no. 1 relates to the claim of the appellant that the return of income was erroneously filed by the appellant.*
>
> *6.2 However, based on the facts and circumstances of the case, there is no error on the part of the AO. The AO had only processed that amount of salary that had been shown by the appellant. The claim of the appellant that the AO had to take only the figure appearing in the 26 AS and not the amount filed by him does not have any statutory basis. The amount appearing in 26AS only shows the amount on which tds had been deducted and there is always possibility of any other receipts on which tds had not been deducted. Moreover, the option to file a revised return with the revised details of salary and/or other incomes was always available to the appellant and appellant can also file the application to condone any delay in filing the revised ITR. Hence, it was totally justified on part of the AO to process the return as per the details provided by the appellant in his return of income. Further Hon'ble Supreme Court of India in its judgement in M/s Goetze (India) Ltd vs CIT on 24 March 2006, had made it clear that the assessee can make a new claim to the assessing authority only through filing of a revised return of income. Accordingly, this ground of appeal is hereby dismissed."*

The assessee being aggrieved again, filed appeal before the Tribunal.

5. Before us, the learned Authorised Representative appearing for the assessee submitted that the assessee erroneously offered income to tax for A.Y. 2019–20 (i.e., F.Y. 2018–19) which, in reality, pertained to A.Y. 2020–21 (i.e., F.Y. 2019–20). Consequently, error in the filing the return of income leads to double taxation of the same income in two different but adjacent assessment years. She accordingly prayed that the relief, as prayed for, be granted.

6. The learned Departmental Representative relied upon the order of the authorities below.

7. Having heard the rival arguments, perused the material available on record and gone through the orders of the authorities below, I am convinced with the submissions of the learned Authorised Representative that the assessee had filed his return of income erroneously and offered income to tax for A.Y. 2019–20 (i.e., F.Y. 2018–19) which, in reality, pertained to A.Y. 2020–21 (i.e., F.Y. 2019–20) and this mistake resulted in double taxation for the same income in two assessment years. Consequently, I set aside the impugned order passed by the learned CIT(A) and restore the matter back to the file of the Jurisdictional Assessing Officer and hereby direct him to pass order on merits after taking into account the real income of the assessee by considering the correct return of income as discussed above conducting due process of law. Accordingly, all the grounds raised by the assessee are allowed for statistical purposes.

8. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 12/09/2024

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

NAGPUR, DATED: 12/09/2024

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Nagpur; and
(5) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Sr. Private Secretary
ITAT, Nagpur