

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री वी. दुर्गराव, न्यायिक सदस्य एवं

श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.107/Vizag/2017

(निर्धारण वर्ष / Assessment Year: 2011-12)

ACIT, Circle-1(1),
Guntur

M/s. Kallam Brothers
Cottons (P) Ltd.,
Guntur

[PAN No.AACCK1510A]

(अपीलार्थी / Appellant)

(प्रत्यार्थी / Respondent)

C.O. No.49/Vizag/2017

(Arising out of I.T.A.No.107/Vizag/2017)

(निर्धारण वर्ष / Assessment Year: 2011-12)

M/s. Kallam Brothers
Cottons (P) Ltd.,
Guntur

ACIT, Circle-1(1),
Guntur

(अपीलार्थी / Appellant)

(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by

: Shri M.K. Sethi DR

प्रत्यार्थी की ओर से / Respondent by

: Shri G.V.N. Hari, AR

सुनवाई की तारीख / Date of hearing

: 07.09.2017

घोषणा की तारीख / Date of Pronouncement

: 08.09.2017

आदेश / O R D E R

PER V. DURGA RAO, Judicial Member:

This appeal filed by the revenue is directed against order of the CIT(A)-1, Guntur dated 30.11.2016 for the assessment year 2011-12 and the cross objection filed by the assessee is in support of order of the CIT(A)-1, Guntur.

2. Facts are in brief that the assessee is a Private Limited company carrying on business of manufacturing and sale of cotton, ginning, spinning and allied products and power generation, filed return of income for the assessment year 2011-12 on 23.9.2011 declaring total income of ₹ 3,32,45,620/-. The return filed by the assessee was processed on 10.2.2012 and the assessee's case was selected for scrutiny. Subsequently, the assessee has filed a revised return on 28.3.2013 declaring total income of ₹ 2,63,45,860/-. The A.O. has not considered the revised return filed by the assessee dated 28.3.2013 on the ground that the return filed by the assessee initially was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter called as 'the Act') and assessment was completed u/s 143(3) of the Act.

3. On being aggrieved, assessee carried matter in appeal before the Ld. CIT(A). The Ld. CIT(A) deleted the addition made by the A.O. by observing as under:

"I have gone through the facts of the case, contents of the assessment order, written submissions of the assessee and the case laws referred and relied by the assessee. The facts of the case in brief are that the assessee is a private limited company carrying on business manufacturing and sale of cotton, ginning, spinning and allied products and power generated plant, filed ROT for the A.Y. 2011-12 on 23.09.2011 declaring total income of Rs.3,32,45,620/-. The return was processed on 10.02.2012 and the case was selected for scrutiny. Subsequently, the appellant filed revised return on 28.03.2013, declaring total income at Rs.2,63,45,860/-. The scrutiny assessment was completed u/s.143(3) of the T.T. Act, 1961, by not considering the revised return filed by the appellant and computing the total income of the appellant is assessed at Rs.3,32,45,620/-.

A.O of the view that as per Sec.139(4) Any person who has not furnished a return within the time allowed to him under sub-section (1), or within the time allowed under a notice issued under sub-section(1) of section 142, may furnish the return for an previous year 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 and not considered to revised return filed by the assessee. s it is filed within stipulated time.

The assessee has filed the original return of income of the assessment year 2011-12 within the stipulated time u/s.139(1). An intimation u/s.143(1) dated 10.02.2012 was served on the assessee. Consequent to High Court of Andhra Pradesh there is merger of Janapadu Hydro Power Project Pvt. Ltd., with the assessee company. The assessee has filed a revised return of income for the assessment year 2011-12 on 28.03.2013, i.e., within the statutory time limit prescribed u/s. 139(5). The assessee would like to state for the purpose of completing the assessment u/s.143(3) of the I.T. Act, an intimation u/s.143(1) is not an assessment except for the purpose of sections 246 and 164 i.e., for filing an appeal or revision petition by the assessee and not for other purposes.

Hon'ble Gujarat High Court in the case of "S.R. Koshti Vs. CIT (2005) 276 1TR 165 it was held that "The authorities under the Income-tax Act, 1961 are under an obligation to act in accordance with law. Tax can be collected only as provided under the Act. If an assessee, under a mistake, misconception or on not being properly instructed, is over-assessed, the authorities under the Act are required to assist him and ensure that only

legitimate taxes due are collected.

Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue. When an Assessing Officer has adopted one of the courses permissible in law, which has resulted in loss of revenue, or where two views are possible and the Assessing Officer has taken one view, with which the Commissioner does not agree, the order cannot be treated to the erroneous and prejudicial to the interests of the Revenue. Once an assessee is in a position to show that he has been over-assessed under the provisions of the Act, regardless of the whether the over-assessment is as a result of the assessee's own mistake or otherwise, the Commissioner has the power to correct such an assessment under section 264(1) of the Income-tax Act, 1961. If the Commissioner refuses to give relief to the assessee, he would be acting de hors the powers under the Act. Intimation under section 143(1) is not an order of assessment."

Hon'ble Kolkata High Court in the case of Kalyanpur Cement Ltd. Vs. JCIT (2005) 195 CTR (Cal) 39, the assessee filed return under section 139(1). The return was processed u/s.143(1)(a). However, no notice u/s.143(2) was issued in relation to the original return. The assessee validly filed a revised return after issuance of intimation and, therefore, the assessee was also entitled to file another revised return of income. It was held that the intimation issued by the Assessing Officer u/s.143(1)(a) cannot be considerate as completion of assessment and therefore revised return was held valid because second revised return was also filed within prescribed time and before completion of assessment.

Taking into consideration the totality of the facts and circumstances and the court judgements the processing of the returns u/s.143(1)(a) cannot be considered as completion of assessment, the assessee has entitled to file the revised return within the prescribed time and before completion of the assessment. In this case the assessee has filed revised return within the stipulated time and before completion of the assessment. Hence, the addition made by the A.O is deleted and the assessee's ground of appeal is allowed.

As a result the appeal of the assessee is allowed."

4. On being aggrieved, revenue is in appeal before the Tribunal. The Ld. D.R. has supported the order passed by the A.O.
5. On the other hand, the Ld. Counsel for the assessee has supported the order passed by the Ld. CIT(A).

6. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The assessee has filed original return of income on 23.9.2011 by declaring total income of ₹ 3,32,45,620/-. The return filed by the assessee was processed u/s 143(1) of the Act on 10.2.2012. The assessee's case was selected for scrutiny and also a notice u/s 143(2) of the Act was issued on 27.9.2012. Subsequently, the assessee has filed a revised return on 28.3.2013 by declaring total income of ₹ 2,63,45,860/-. In the assessment order, the A.O. has observed that the revised return filed by the assessee on 28.3.2013 is not considered in view of the fact that as per section 139(4) of the Act, the assessee has furnished the revised return at any point of time before expiry of one year from the end of the relevant assessment year or before completion of the assessment, whichever is earlier. In this case, processing u/s 143(1) of the Act was completed on 10.2.2012, therefore, the revised return filed by the assessee is invalid and not considered. We find that the assessing officer is of the view that once the return filed by the assessee is processed u/s 143(1) of the Act, therefore, the assessment is completed and the revised return filed by the assessee is rejected. However, the A.O. has completed the assessment in the assessee's case u/s 143(3) of the Act dated 13.3.2014, therefore, the return filed by the assessee and

processed u/s 143(1) of the Act is not amounting to assessment, it is a mere process. In view of the above, the A.O. is not correct in rejecting the revised return filed by the assessee. We also find that the Ld. CIT(A) deleted the addition made by the A.O. without considering that the A.O. failed to consider the revised return and addition made by the A.O. is on the basis of original return. Under these facts and circumstances of the case, we are of the opinion that the order passed by the Ld. CIT(A) has to be set aside and we direct the A.O. to consider the revised return filed by the assessee dated 28.3.2013 and pass the assessment order de-novo in accordance with law. This appeal filed by the revenue is allowed for statistical purposes.

7. The Cross objection filed by the assessee is only supportive to the order passed by the Ld. CIT(A) and in view of the decision in preceding paragraphs the cross objection filed by the assessee is dismissed.

8. In the result, the appeal filed by the revenue is allowed for statistical purposes and the cross objection filed by the assessee is dismissed.

The above order was pronounced in the open court on 8th Sept'17.

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(वी. दुर्गाराव)

(V. DURGA RAO)

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 08.09.2017

VG/SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant – The ACIT, Circle-1(1), Guntur
2. प्रत्यर्थी / The Respondent – M/s. Kallam Brothers Cottons (P) Ltd., D.No.117, Ankireddypalem, Nallapadu Road, Guntur
3. आयकर आयुक्त / The CIT, Vijayawada
4. आयकर आयुक्त / The Principal CIT, Guntur
5. आयकर आयुक्त (अपील) / The CIT (A)-1, Guntur
6. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम /
DR, ITAT, Visakhapatnam
7. गार्ड फ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, VISAKHAPATNAM

