IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A": HYDERABAD

(THROUGH VIRTUAL CONFERENCE)

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No. 1876/Hyd/2019 Assessment Year: 2014-15		
The Dy.CIT Circle 17(2) Hyderabad	Vs.	M/s Zen Technologies Ltd. B-42, Industrial Estate Sanath Nagar Hyderabad – 500 018 [PAN: AAACZ0677K]
(Appellant)		(Respondent)
Revenue by:		Sri Kiran Katta, DR
Assessee by:		Shri Mohd. Afzal, DR
Date of hearing:		18/08/2021
Date of pronouncement:		20/09/2021

O R D E R

PER L.P. SAHU, A.M.:

This appeal filed by the Revenue is directed against CIT(A)-5, Hyderabad's order, dated 24/10/2019 involving proceedings u/s 154 of the Income Tax Act, 1961 [in short "the Act"]; on the following grounds of appeal.

1. The ld. CIT(A) erred in not considering the facts of the case that once the revised return is filed, the original return loses its

characteristics and becomes redundant. The latest revised return becomes valid for all purposes.

2. The Ld. CIT(A) erred in not considering the facts of the case that the addition or subtraction is made in the gross assessment order, the returned income was mistakenly taken from the original return which became invalid once the revised return was filed by the assessee. Hence, it is a mistake apparent from record.

3. The ld. CIT(A) erred in considering the rectification order u/s 154 of the Income Tax Act. 1961 as out of jurisdiction and merely change of opinion. However, the Assessing Officer, vide the rectification order, rectified a mistake apparent from the record.

4. The ld. CIT(A) erred in noticing the fact that the Assessing Officer merely mentioned the request of the assessee and didn't actually accept it as it improper/not correct to consider the invalid return of the assessee discarding the valid return filed by it.

5. Any other grounds urged at the time of hearing.

2. Brief facts of the case are that the assessee filed return of income on 23rd September,2014 declaring loss of Rs. 21,05,59,794/- the assessee later on filed revised return electronically on 28.10.2014 declaring loss of Rs.15,30,74,356/-. The case was selected for scrutiny and statutory notices were issued to the assessee. During the course of assessment proceedings the Assessing officer has observed as under:-

3. Disallowance of Weighted Deduction u/s 35(2AB) of the Income tax Act:

The assessee-company has claimed weighted deduction of Rs.34,18,55,969 under S.35(2AB) and Rs.3.45 lakhs as capital expenditure on buildings u/s.35(2) of the Act in its original return. In the Revised return of income, the assessee has claimed an amount of Rs.28,43,70,531/-. Vide its letter dated 22-08-2016, the assessee has requested to consider the original return of income instead of the revised return of income due to reasons explained in the note annexed to its letter.

However, as per Form No.3CL, the R&D expenditure for which assessee-company is eligible for deduction U/s..35(2AB) is Rs.1693.76 lakhs only. Thus, the allowable deduction at 200% of the Research & Development expenditure comes to Rs.33,87,52,000. Therefore, the excess weighted deduction of Rs.27,58,969 claimed by the assessee-company (Rs34,15,10,969 – Rs.33,87,52,000) is required to be disallowed. When put forth before the AR of the assessee, he has agreed for the addition of Rs.27,58,969/- to the total loss admitted.

Addition : Rs.27,58,969

4. Subject to the above discussion, the total taxable income and tax liability of the company is computed as under :

Tax as per normal provisions of the Act

Loss Returned	(-)	Rs.21,05,59,794
Add : Excess deduction claimed by the assessee u/s.35(2AB) of Act		Rs. 27,58,969
Total Loss	(-)	Rs.20,78,00,825

Out of the loss of Rs.20,78,0,825, Business loss of Rs.17,08,26,868 and Unabsorbed Depreciation of Rs.3,69,73,957/- is allowed to be carried forward.

Tax as per the provisions of section 115JB

Book profit : Rs.9,52,213

As the tax payable under provisions of section 115JB is higher than the tax payable under the normal provisions of the Income tax Act, the tax payable under the provisions of section 115JB has been adopted as under:

Book profit : Rs.9,52,213

Tax thereon @18.5%	1,76,159
Add: EC & SHEC	(-) 5,285
Total tax payable	1,81,444
Less: Prepaid taxes	
TCS/TDS	(-) 43,38,030
Balance demand	(-)41,56,586
Add : Interest u/s.244A	6,23,490
Refundable	Rs.47,80,080

Net amount refundable Rs.47,80,080

3.1. While completing the assessment the Assessing officer ignored the revised return filed by the assessee and took the figures of original return accordingly completed the assessment as above on 12th September, 2016. Later on the Assessing officer passed rectification order on 29th August, 2018 and considered the revised return filed by the assessee disclosing loss of Rs.15,30,15,387/- and rectified the mistake which was apparent from record u/s 154 of the Act.

3.2. Feeling aggrieved from the order of the Assessing officer passed u/s 154 of the Act, the assessee preferred appeal before the CIT(A); and the CIT(A) after considering the submissions of the assessee observed that it was not a mistake apparent from record as per sec.154, but it was a change of opinion and is not what is initiated as per sec.154 of the Act and allowed appeal of the assessee.

4. Aggrieved from the order of the CIT(A) the Revenue is in appeal before us on the above grounds.

5. The ld.DR relied on the order of the Assessing officer and submitted that CIT(A) was not justified to allow the assessee's appeal holding that it was a mere change of opinion. He further

submitted that once the revised return filed by the assessee then the Assessing officer should complete the assessment on the basis of revised return. Therefore, the Assessing officer was justified to pass the order u/s 154 of the Act which was a mistake apparent from record.

6. On the other hand, the ld.AR relied on the order of the CIT(A) and stated that the assessee has merely claimed deduction u/s 35(2)(AB) for which he was eligible, therefore, the assessee filed revised return and it was merely change of opinion of the Assessing officer which cannot be rectified to which the CIT(A) has rightly taken into cognizance. Therefore, the CIT(A) was justified to decide the issue in favour of the assessee.

7. After hearing both sides and perusing entire material available on record order passed u/s 154 of the Act dated 29th August, 2018, the original return was filed by the assessee on 29th September, 2014 and the assessee has filed a revised return on 28th October, 2014 which was within the due dates prescribed as per sec.139(5) of the Act, but while passing the order u/s 143(3) it was in the knowledge of the Assessing officer that the assessee has filed revised return which is clear from para no.3 of the assessment order. Further, we observe from the order of the Assessing officer that at para 3, the assessee requested the Assessing officer to consider the original return of income instead of the revised return vide letter filed by the assessee on 22.08.2016; whereas the Assessing officer considered at the time of completing the assessment the figures of original return. Once a revised return is filed by the assessee as per section 139(5), then it replaces the original return and the original return ceases to exist. The Assessing officer should consider the figures of the revised return. Our view is supported by the following decisions:-

(i) order of ITAT Kolkata SMC Bench in the case of ITO vs Ramesh Kumar Rathi in ITA 2109/Kol/2002 order dated 7th July, 2003 where at paras 3 and 4 it was held as under:-

"3. *On appeal, against the above order of the Assessing Officer, the CIT(A), vide order dated 14-2-2001 had sent back the matter back to the Assessing Officer to verify the contention of the assessee and allow carry forward of loss, if found permissible. The Assessing Officer in giving appeal effect repeated the finding recorded in the original assessment order and did not allow the benefit of carry forward of losses. The assessee approached the CIT(A) by way of further appeal and pleaded that the provisions of sections 139(1), 139(3) and 139(5) read with section 80 were misconstrued by the Assessing Officer. The CIT(A) held that since the revised return replaced the original return, it had the same effect as the original one. Relying on the decision of the Allahabad High Court in the case of Niranjan Lal Ram Chandra v. CIT 134 ITR 352 , the CIT(A) came to the conclusion that necessary conditions for carry forward of loss in this case were satisfied. Reliance was also placed by the CIT(A) on the decision of the Allahabad High Court in the case of Dhampur Sugar Mills Ltd. v. CIT 90 ITR 236 in support of his decision.*

4. Aggrieved, the revenue is in appeal. It is not in dispute that the assessee had filed the original return within the time prescribed under section 139(1). Section 139(5) permits an assessee to file a revised return if he discovers any omission or any wrong statement or mistake in the original return filed. If the filing of the revised return is within the prescribed time, the original return is submitted by the revised return and the Assessing Officer is bound to take cognizance of that return as if filed originally under section 139(1). It is not disputed that the original return disclosed a profit. Subsequently, it was found that the assessee had, in fact, incurred loss of Rs. 9,96,122. If the assessee had not committed to par take the original return filed by the assessee declaring positive income would be a loss return declaring a loss of Rs. 9,96,122. Thus, the only drawback in the return filed under section 139(1) within the prescribed time is that it was a positive income return as against a loss return. When the law permits the assessee to replace the original return by a revised return, on detection of any mistake in the original return, there is no reason as to why the said revised return could not be accepted as in place of original return filed under section 139(1). This view is also supported by the decisions of the Hon'ble Allahabad High Court in the cases of (i) Niranjan Lal Ram Chandra (supra) and (ii) Dhampur Sugar Mills Ltd. (supra). Respectfully following the aforesaid decisions, I uphold the

order of the CIT(A) and direct the Assessing Officer to allow the benefit of carry forward of loss in accordance with law by treating the revised return as a substitute to the original return. In this view of the matter, there is no justification for me to interfere with the impugned order of the CIT(A).”

(ii) Order of ITAT Madras Bench B in ITA no 2685/Mad/1994 in the case of Sujani Textiles (P) Ltd vs ACIT (2004) reported in 88 ITD 317 (Mad) order dated 20.012003, wherein at paras 7 and 8 it was held as under:-

“7. *We heard both sides in detail. An assessee is eligible to claim the benefit of carry forward of unabsorbed business loss on condition that a return of loss is filed under section 139(3). This condition is laid down in section 80 of the Income-tax Act. Section 139(3) enables an assessee to file a loss return. Once a return is filed under section 139(3), for the procedure of assessment, the said assessment is deemed as a return filed under section 139(1). Once a return filed under section 139(3) is treated as a return under sub-section (1), the assessee gets the benefit of filing a revised return under sub-section (5). The revised return is to be filed within the time provided for it. Therefore, it is permissible to read sub-section (3) along with sub-section (5) of section 139. When read so, it is to be seen that it is permissible to file even a revised return. Whether the revised return is a loss return or an income return, it has to be filed within the time provided. Once a revised return is filed under sub-section (5), it replaces the return earlier filed by the assessee. If the assessee has filed a return under sub-section (1), filing of the revised return under sub-section (5) replaces the original return filed under sub-section (1). Likewise, if the assessee has filed the loss return under sub-section (3), and when a revised loss return is filed under sub-section (5), the revised loss return replaces the original loss return filed under sub-section (3). Therefore it is not proper to presume that there is no provision for filing a revised loss return. The only point to be looked*

into is whether the revised loss return was filed within the time provided under sub-section (5) of section 139. By filing a revised loss return under sub-section (5), the factom of filing a loss return under sub-section (3) is not lost, but what happens is the revised return replaces the original return. That procedural process provided under section 139 does not in any way affects section 80 or vice versa. The equation between section 139(3) and section 80 is independent. Section 80 provides that the loss determined by an Assessing Officer in pursuance of the loss return filed under section 139(3) shall be carried forward for the succeeding assessment years. The operation of section 80 ends there. The inter se relation between sub-sections (1), (3) and (5) of section 139 does not have an equation or inter-linkage with section 80 of the Income-tax Act. Therefore, if the assessee has filed a loss return under sub-section (3) of section 139 within the period provided under the Act, and if the assessee has filed a revised loss return under sub-section (5) thereof, again within the prescribed time limit, the Assessing Officer is bound to take cognizance of the revised return, because the original return is replaced by the revised return.

8. This principle has been highlighted by the Hon'ble Gujarat High Court in the decision reported in Shri Vallabh Glass Works Ltd.'s case (supra) wherein the Hon'ble Court has held that when the Act permits the filing of a revised return, it is expected to be considered by the assessing authority, if the same is filed before the order is made by it; otherwise the very purpose of giving such a right would be frustrated.

8. We do not find any substance in the submissions of the A.R. The Assessing officer passed order u/s 154 which is correct because there was apparent mistake in the order passed u/s 143(3) of the Act. This is not change of opinion as considered by the CIT(A).

Considering the facts and circumstances of the case, we are allowing the appeal of the Revenue.

9. In the result, appeal of the revenue is allowed.

Pronounced on 20th September, 2021.

Sd/-	**Sd/-**
(S.S. GODARA)	**(L. P. SAHU)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Hyderabad

Dated: 20th September, 2021.

**gmv*

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