

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD

BEFORE

SHRI MANJUNATHA. G, ACCOUNTANT MEMBER
&
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 751/Hyd/2014
(निर्धारण वर्ष / Assessment Year: 2009-10)

Income Tax Officer,
Ward-16(1),
Hyderabad.

M/s. Lanco Hills Technology Park
Vs. (P) Ltd.,
Hyderabad.
[PAN: AABCL1228R]

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri P. Murali Mohan Rao, AR

राजस्व द्वारा/Revenue by: Mrs. M. Narmada, CIT-DR

सुनवाई की तारीख/Date of hearing: 02/01/2025
घोषणा की तारीख/Pronouncement on: 23/01/2025

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order dated 31/12/2013 passed by the learned Commissioner of Income Tax (Appeals)-V, Hyderabad ("Ld. CIT(A)"), in the case of M/s. Lanco Hills Technologies Park (P) Ltd, Hyderabad ("the assessee"), the Revenue preferred this appeal for the AY 2009-10.

2. Brief facts of the case, as could be culled out from the record, are that the assessee is deriving income from the business activity of real

estate and property development. Assessee filed its return of income on 29/09/2009 declaring an income of Rs. 8,65,65,355/-. Subsequently, it revised its Return of Income from time to time, namely, on 04/05/2010 and 01/09/2010 revising the income to Rs. 14,68,17,832/- and Rs. 5,21,00,400/- respectively, and lastly on 06/06/2011 declaring Nil income. In the third and fourth Returns of Income the gross sales were shown as Rs. 90,76,13,532/- as against the originally mentioned amount of Rs. 157,44,46,961/- in first and second Return of Income's. Vide order dated 29/12/2010 passed under section 143(3) of the Income Tax Act, 1961 (the Act), the learned Assessing Officer considered the income of Rs. 14,68,17,832/- as shown in the second ROI filed on 04/05/2010, and ignored the third and fourth Returns of Income's filed on 01/09/2010 and 06/06/2011, respectively.

3. Aggrieved of the action of learned Assessing Officer in not considering the later returns of income and considering the earlier ROI, assessee preferred an appeal before the learned CIT(A), and the learned CIT(A) after considering all the contentions of the assessee, and the learned CIT(A) allowed the same by order dated 31/12/2013, observing that the assessing officer is duty bound to adjudicate upon the claim of the assessee, even though the revised return is filed after the prescribed time u/s 139(5) but before the completion of the assessment. On this premise, the learned CIT(A) quashed the assessment. Hence this appeal by the Revenue, contending that the non-consideration of the he decisions of Gauhati High Court in the case of Sunanda Ram Deka vs CIT (Gau) 220 ITR 988 and Delhi High Court in the case of Golden Insulation and Engineering Limited vs CIT(Del) 305 ITR 427 by the learned CIT(A) is bad under law.

4. Learned DR vehemently supported the assessment order stating that the reason for filing of revised ROI is stated to be the economic

slowdown. He submitted that the price of SFT was reduced from Rs. 4520/- per sft to Rs. 3000/- per sft and the revision is not on account of claim of any deduction/exemption or any omission or wrong statement. According to him, the revision of income because of revision of accounts under Companies Act is highly objectionable, and as per scheme of taxation, preparation of accounts one for Companies Act and other for Income Tax Act is not permissible. learned DR, therefore, places heavy reliance on the observations of the learned Assessing Officer and submits that the original return of income dated 29/09/2009 and revised return dt. 04/05/2010 were filed as per the annual results and audited books of accounts since the sales declared in these returns are same, whereas in the subsequent return filed on 01/09/2010, the assessee reduced the sales from Rs.157,44,46,969/- to Rs.90,76,13,532/-, which means the assessee deviated from the audited book results. learned DR highlighted the observations of the learned Assessing Officer that reducing sales cannot be claimed as omission/wrong statement within the meaning of Section 139(5) of the Act, and the further revised return was filed on 06/06/2011, beyond the time limits prescribed and accordingly the same has been considered as invalid.

5. Per contra, learned AR strongly supported the decision of the learned CIT(A) in quashing the assessment order that was passed considering the earlier Revised ROI and by ignoring the subsequent Revised Return of Income. In support of his contention that the assessment order is voidable for it was based on second ROI ignoring the subsequent valid revised ROI, though it was filed beyond the period of limitation u/s 139(5) of the Act, learned AR placed reliance on the decision of the coordinate bench of the Mumbai Tribunal in the case of LOK Housing & Constructions Limited vs ACIT, 27 Taxmann.com 15.

6. Further according to the learned AR, it is incorrect to say that the sale price revision is not an omission under section 139(5) of the Act, and any discrepancy in turnover qualifies as an omission for revised returns. He submitted that the decision of the coordinate bench of the tribunal in the case of *Lok Housing & Constructions Ltd. v ACIT* holds that revised returns due to market price changes are valid under section 139(5), and the Bombay High Court approved this. He further submitted that the assessee filed a revised return on 06.06.2011, correcting income due to a CIT(A) order clarifying that income during the construction period isn't taxable and should be netted with the expenditure. According to him, even though the return was filed after the due date, it was based on the CIT(A)'s order and is valid as a claim in a revised return. He placed reliance on the decisions like *CIT v. Pruthvi Brokers* in support of his contention justifying the validity of claims in revised returns. He argued that the CIT(A) rightly allowed the revised claim, and it is well within his jurisdiction being the first appellate authority. He further argued that since the learned Assessing Officer did not issue a notice under section 143(2) after the third and fourth revised returns, assessment under section 143(3) is invalid, inasmuch as the notice under section 142(2) issued earlier is not valid. For this proposition, he placed reliance on the decisions reported in *MBS Implex Pvt. Ltd.*, *Ashok Reddy Chevvaru*, *Hotel Blue Moon*, and *Laxman Das Khandelwal*, basing on the premise, learned AR submitted that the assessment order is liable to be quashed for non-compliance with statutory procedures by the AO, rendering the assessment invalid. AO has completed the assessment without considering the concept of real income theory and also as per the Act actual income is to be assessed and not fictitious, unreal income.

7. We have gone through the record in the light of the submissions made on either side. It remains an undisputed fact that the assessee revised the return of income twice after the second revised return of

income and according to the assessee, the reason for such revision of the return was that due to the economic slowdown and market recession, the assessee revised its sale price from Rs. 4,250 per square foot to Rs. 3,000 per square foot to retain existing customers and attract new ones, which included public advertising; that the sale agreements with old customers were also revised, and new agreements followed the revised rates; and that based on the learned CIT(A) decision for the AY 2007-08, regarding the treatment of pre-construction expenditure and income like interest had to be netted off.

8. While computing the income of the assessee and completing the assessment, learned Assessing Officer based on first Revised Return of Income dated 04/05/2010, and did not consider the subsequent revised returns. According to the learned Assessing Officer, assessee deviated from the audited books of accounts while filing the 2nd revised Return of Income on 01/09/2010 and that the reduction of sales cannot be claimed as omission or wrong statement within the meaning of Sec139(5) of the Act. Learned Assessing Officer returned a finding that the Return of Income filed on 06/06/2011 does not merit consideration since it was filed beyond the time limits prescribed under law.

9. According to the learned CIT(A), learned Assessing Officer taking into account the Second Revised Return of Income and not considering the subsequent validly revised Returns of Income is not as legal. Further according to the learned CIT(A), the revised Return of Income, though filed beyond limitation time, but during the course of scrutiny proceedings merits consideration by the learned Assessing Officer for completion of assessment u/s 143(3) of the Act, and that the learned Assessing Officer is duty bound to adjudicate upon such claim even though preferred through the Return filed is out of time. To conclude so, learned CIT(A), placed reliance on the decision of Pune bench of ITAT in

the case of DCIT vs Lab India Instruments Private Limited (2005) 93 ITD 120 Pune, wherein it was held that when a valid return is revised with new facts, the assessment based on the original return is unsustainable and against legislative intent; that the learned Assessing Officer must accept and consider the revised return, even if it is filed after the prescribed deadline, as long as it is submitted before the completion of the assessment; that the learned Assessing Officer should review the revised return and allow the claims based on the new information; and that in view of the view taken in the decision reported in DCIT vs. Lab India Instruments Pvt. Ltd., confirming that even a late revised return should be considered during the assessment process, the assessment based on the original return was invalid, and the assessment was cancelled. Assessee is also placing reliance on the decision rendered in Lok Housing & Construction Limited and DCIT vs Kamadhenu Builders and Developers also.

10. In light of the above factual matrix and the judicial pronouncements cited, what falls for our consideration in this appeal is, can the learned Assessing Officer disregard a revised return, which is filed before the completion of assessment proceedings, and deny a claim made by the assessee in the subsequently revised return of income solely because the claim was not made in the original return of income, even though the original return was filed within the due date and the revised return complies with all the conditions for the deduction?

11. In the case of Lok Housing & Construction Limited the Mumbai Bench of ITAT clearly held that, if by way of a revised return of income, certain wrongly declared income was withdrawn, revised return being a valid return under section 139(5) of the Act, has to be taken into account for making assessment". In the case of Lab India Instruments Private Limited, Pune Bench of the Tribunal decided the issue relating to the

permissibility of making a claim for deduction during the assessment or appellate proceedings, even if the claim is not made by way of a revised return after a statutorily specific period and held that the assessee has the right to claim a deduction at any stage of the proceedings, including the appeal stage, and that the learned Assessing Officer is obligated to inform the assessee of such claims available under the law. The Tribunal rejected the argument that the assessee cannot make a claim simply because the revised return was not filed within the statutorily specific period and clarified that such claims do not necessarily need to be made through a revised return. Tribunal emphasised that claims for deductions can be made directly during the assessment process or even during appellate proceedings, which are considered part of the assessment process, thereby answered the issue in favour of the assessee.

12. In DCIT vs Kamadhenu Builders and Developers, a Mumbai bench of the Tribunal held that the revised return filed by the assessee was valid and should be considered by the learned Assessing Officer, even though the original return did not include the claim; that there is no requirement under the law for the claim to be made in the original return, and as long as the revised return was filed before the completion of the assessment, it should be accepted, and that the learned Assessing Officer has no valid grounds to deny the claim.

13. We, therefore, find force in the submissions made on behalf of the assessee that the learned Assessing Officer erred in not considering the information that was filed with the revised Return of Income before the completion of the assessment in making the final assessment, and in accordance with the established legal principles, the learned Assessing Officer is required to examine and take into account the details provided in the most recent ROI, even if they differ from those in the original return. It follows that the rejection of claim made by the assessee in the

revised ROI before the assessment is completed violates this legal requirement, which mandates that all relevant information submitted during the assessment proceedings must be considered fairly and judiciously.

14. With this view of the matter, we hold that there is no legal infirmity in the impugned order, and consequently there are no grounds to interfere with the same. Appeal preferred by the revenue is, therefore, devoid of merits and is liable to be dismissed. Grounds are answered accordingly.

15. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on the 23rd January, 2025.

Sd/-
(MANJUNATHA. G)
ACCOUNTANT MEMBER
Hyderabad, Dated: 23/01/2025
OKK/sps

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Copy forwarded to:

1. M/s. Lanco Hills Technology Park P Ltd., Lanco House, Plot No.4, Software Units Layout, Hitech City, Madhapur, Hyderabad.
2. Income Tax Officer, Ward-16(1), Room No.613, 6th Floor, Aayakar Bhavan, Basheer Bagh, Hyderabad-500004.
3. Pr. CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE.

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ITAT, HYDERABAD