HIGH COURT OF TRIPURA
AGARTALA

ITA No.01 of 2023

Tripura State Electricity Corporation Limited, Bidyut Bhawan, North Banamalipur, Agartala, West Tripura, Pin-799001

.....Appellant(s);

Versus

Principal Commissioner of Income Tax, Shillong, Aayakar Bhawan, Mahatma Gandhi Road, Shillong-793001

.....Respondent(s)

For Appellant(s) : Mr. Amit Goenka, Sr. Advocate,
Mr. Ramesh Goenka, Sr. Advocate,
Mr. U.K. Borthakur, Advocate,
Mr. R.G. Chakraborty, Advocate.

For Respondent(s) : Mr. Suman Chetia, Advocate,
Ms. Debadrita Roy, Advocate.

HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

Date of hearing : **04.08.2025**
Date of Judgment & Order : **14.08.2025**
Whether Fit for Reporting : **YES**

JUDGMENT & ORDER

(M.S. Ramachandra Rao, C.J.)

This appeal has been filed under Section 260A of the Income Tax Act, 1961 challenging the judgment dt. 19.12.2022 of the Income Tax Appellate Tribunal in I.T.A. No.297/GAU/2018 for the assessment year 2013-2014.

2. The appellant herein is the Tripura State Electricity Corporation Limited.

3. The appellant is engaged in the business of sale and distribution of electricity within the State of Tripura.

4. For the assessment year 2013-2014, the appellant had filed its return of income tax on 26.09.2013 disclosing total income computed at a loss

figure of (-) Rs.182,05,36,779- as against net loss as per profit and loss account of (-) Rs.1332,27,00,075/-.

5. The return of the appellant was taken up for scrutiny under the Computer Assisted Scrutiny Scheme (CASS) and accordingly notice under Section 143(2) of the Act was issued on 04.09.2014 to the appellant, and the details were furnished by the appellant on 23.09.2014.

6. During the pendency of the said proceeding initiated through the notice under Section 143(2) of the Act issued on 04.09.2014, the appellant on 23.02.2015 filed a revised return based on an audit objection by the CAG.

The assessment order dt.18.03.2016

7. In the meantime, due to change in incumbent in the office of the Assessing Authority, notice under Section 142(1) of the Act was issued on 08.06.2015. Subsequent notices were also issued on 04.08.2015 and 11.01.2016.

8. Thereafter, after issuing a show cause notice on 26.02.2016, the Assistant Commissioner of Income Tax, Agartala Circle, Agartala completed the assessment on 18.03.2016 by disallowing a deduction of Rs.40,36,51,685/- under Sections 40(a)(ia), 68 and 37 of the Act by making an assessment at Rs.1,41,68,85,094/-.

The Appeal to CIT (Appeals) and order of the said authority

9. Aggrieved by the Assessment Order dt. 18.03.2016 passed by the Assistant Commissioner of Income Tax, Agartala Circle, Agartala, the appellant preferred an appeal before the Commissioner of Income Tax (Appeals).

10. On 24.07.2018, the said appeal was allowed. The Appellate Authority held that the Assessment Officer did not speak anything about filing of the revised return; though a revised return was filed on 23.02.2015 after the issuance of the notice dt. 04.09.2014 under Section 143(2) of the Act, and since the revised return was filed within time, the original return did not survive and got substituted by the revised return; and it was not open for the Assessing Officer to advert to the original return. Certain decisions of the High Court of Punjab and Harayana, High Court of Karnataka and High Court of Gujarat were referred to by the Commissioner of Income Tax (Appeals). He held that the Assessing Officer has to issue notice under Section 143(2) on the revised return, and since the Assessment Order is totally silent about the revised return filed on 23.02.2015, the Assessment Order cannot be sustained and is annulled.

11. In the said order, it was also noted that under Section 139(5) of the Act, revised return may be filed if the assessee discovers any omission or any wrong statement in the return filed under Section 139(1) or in response to the notice issued under Section 142(1) of the Act; the said revised return had to be filed before expiry of one year from the end of the relevant assessment year or before completion of assessment, whichever is earlier; in the instant case the revised return could have been filed till 31.03.2016; it was however filed within time on 23.02.2015; since the revised return came to be filed because of comments given by the CAG, there was sufficient bona fide reason for filing of the revised return. It was also noted by the Appellate Authority that in the report of the Assessing Officer, it was stated that there was no violation of provision of law while filing the revised return.

12. The Appellate Authority held that once a revised return has been filed validly, an Assessment Order cannot be passed on the basis of the notice issued under Section 143(2) on the original return. It was not open for the Assessing Officer to advert to the original return or the statements filed along with the original return, and only the revised return has to be taken into account for the purpose of making the assessment.

The order dt.19.12.2022 of the ITAT

13. Challenging the same, the Revenue filed I.T.A. No.297/GAU/ 2018 before the Income Tax Appellate Tribunal, Kolkata.

14. It was contended in the said appeal by the Revenue that the CIT (Appeals) could not have annulled the Assessment Order because the assessee failed to bring to the knowledge of the Assessing Officer during the continuation of the proceeding under Section 143(2) on the original return, that the assessee filed a revised return subsequent to the receiving of notice under Section 143(2) on the original return, that too at the appeal stage.

15. The Tribunal held that in the cases cited by the appellant, it was held that when a revised return was being filed, then the original return would obliterate, and the determination of the taxable income is to be made on the basis of the revised return; but in those cases it was not held that Section 143(2) notice was a must on the revised return, and otherwise the whole assessment proceeding would vitiate.

16. The Tribunal erroneously noted that the revised return had been filed on 17.03.2016 (though it had been filed on 23.02.2015), and that this was not known to the Assessing Officer as the return had been filed at the receipt

counter and it was impossible for the Assessing Officer to take cognizance of such a fact in such a short period of time.

17. It, therefore, held that it was only an irregularity and not an illegality, and it could have been cured by the First Appellate Authority by calling a remand report from the Assessing Officer after redetermination of the income on the basis of the revised return, but the Assessment Order cannot be declared as null and void.

18. It therefore set aside the order of the CIT (Appeals) and restored the matter to the file of the Assessing Officer, and directed him to re-determine the taxable income of the assessee after taking the details from the revised return of income.

19. This appeal had been admitted on 10.10.2023 to consider the following substantial question of law:

> **"Whether, on the facts and in the circumstances of the case, the learned Tribunal was justified and correct in law in holding that non-issuance and/or non-service of notice under Section 143(2) in respect of a valid return furnished under Section 139(5) during the continuance of a scrutiny assessment proceeding under Section 143(3) was a mere irregularity and not an illegality, and therefore, in not annulling the assessment order under Section 143(3)?"**

20. Having heard the parties, we deem it appropriate to also frame the following additional substantial question of law:

> **"Whether the learned tribunal acted perversely in not setting aside the order of the assessing authority in spite of noticing that the appellant had filed a revised return and accepting the legal position that such revised return will obliterate the original return?"**

<u>Consideration by the Court</u>

21. Heard the counsel for the parties.

22. The admitted facts are that the appellant had filed its original return of income for the assessment year 2013-2014 under Section 139(1) of the Income Tax Act, 1961 on 26.09.2013 showing the loss of (-) Rs.182,05,36,779/-. The case of the appellant was selected for scrutiny and a notice under Section 143(2) of the Act was issued on 04.09.2014.

23. While the assessment proceedings were still pending, the appellant filed a revised return on 23.02.2015 under Section 139(5) of the Act showing total loss of (-) Rs.194,75,04,007/-.

24. Admittedly Section 139(5) as it stood at the relevant point of time provided that if any person, having furnished a return under Section 139(1) of the Act, discovers any omission or wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year i.e. 31.03.2015 or before the completion of assessment, whichever is earlier.

25. Thus, the time for filing the revised return would end on 31.03.2016, and the revised return had admittedly been filed on 23.02.2015, well within time.

26. Once the revised return is filed, it is well settled that the original return stands obliterated as rightly held by the CIT (Appeals) in his order dt. 24.07.2018 placing reliance on the judgments in ***C.I.T. v. Rana Polycot Limited***[1], ***Beco Engineering Co. Ltd. v. C.I.T***[2]***.***, etc.

27. So the Assessing Officer can only take into account the revised return for the purpose of making assessment, and he cannot act upon the original return which stood obliterated.

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[1] (2012) 347 ITR 466 (P&H)
[2] (1984) 148 ITR 478 (P&H)

28. For some reason in the instant case, the Assessing Officer took no notice of the revised return, and continued the proceedings on the basis of the original return and passed an Assessment Order on 18.03.2016. This is a clear illegality vitiating his order.

29. The CIT (Appeals) noted the correct legal position as set out above, and also gave a finding of fact that there was a bona fide mistake that impelled the assessee to file the revised return on 23.02.2015 i.e. it was necessitated due to comments given by the CAG. It also noted that once a valid revised return is filed, the Assessing Officer has to take cognizance of the same, and he had to issue notice under Section 143(2) on the revised return. The Assessment Order was totally silent about the revised return which disclosed a loss of (-) Rs.194,75,04,007/-, and that loss had not been considered in the final computation of income. He, therefore, rightly held that the assessment proceeding was vitiated.

30. Consequently, he ought to have remitted the matter back to the Assessing Officer after setting aside the Assessment Order passed on 18.03.2016, and directed him to pass an Assessment Order after taking into consideration the revised return. Instead he merely annulled the Assessing Authority's order.

31. In the order passed by the Income Tax Appellate Tribunal, there is a clear error in noting that the revised return was filed on 17.03.2016, just a day prior to the passing of the order on 18.03.2016.

32. The revised return had been filed on 23.02.2015 itself, and the Tribunal, had it noted the correct date of filing of the revised return, because there was at least a one year gap between the filing of the revised return and

the passing of the Assessment Order, would not have come to the conclusion that it was impossible for the Assessing Officer to take cognizance of the revised return. This is because a year's time is good enough for the Assessing Officer to take note of the revised return, ignore the original return, and then pass the Assessment Order on the basis of the revised return.

33. Its view that the step taken at the end by the assessee would frustrate the whole assessment machinery is clearly perverse because once the assessee has a right to file a revised return, and such a revised return was filed within time, the Assessing Officer has no choice, but to act on the revised return only because the original return stood obliterated. Once the statute permits the filing of the revised return by giving such a right to the assessee, the Income Tax Department cannot question the wisdom of the Parliament in providing such a right to the assessee, and the Tribunal cannot hold that filing of the revised return would frustrate the assessment machinery.

34. Its view that it is only an irregularity and not an illegality, is also unsustainable having regard to the judgments cited in the decision of the CIT (Appeals) and also more particularly the judgment of the Supreme Court in ***Commissioner of Income Tax v. Mahendra Mills***[3] and other connected matters confirming the judgment in ***CCIT v. Machine Tools Corpn. Of India***[4]. It was held at para 31 in ***Mahendra Mills*** (3 Supra) as under:

> *" 31. .... The Court also held that once a revised return is filed under Section 139(5) of the Act, the original return is substituted by the revised return and consequently the entries in the relevant claim of the original return seeking depreciation could not be used for any purpose. It is, therefore, not open to the Income Tax Officer to advert to the original return or statement filed along with it for the purpose of allowing*

[3] (2000) 3 SCC 615
[4] (1993) 201 ITR 101 (Karnataka)

deductions after such claim was expressly withdrawn under the revised return."

35. In our view, the Assessing Officer committed a clear illegality by ignoring the revised return, and the Tribunal got misled by noting the date of filing of the revised return incorrectly, and came to the perverse conclusion that it would only be an irregularity, and not an illegality.

36. Therefore the Tribunal ought to have modified the order of the CIT (Appeals) by setting aside the order of the Assessing Authority and remitted the matter back to the Assessing Officer for re-determining the taxable income of the appellant after taking the details from the revised return of income. Instead, it set aside the order of the CIT (Appeals), but restored the matter to the file of the Assessing Officer without setting aside the Assessment Order passed on 18.03.2016. This is a clear error of law.

37. Therefore, the second substantial question of law framed by us is held in favour of the appellant, and so we modify the decision of the ITAT in the following manner:

(a) The Assessment Order dt. 18.03.2016 is set aside;

(b) The order of the CIT (Appeals) is modified, and the matter is remitted to the Assessing Officer to re-determine the taxable income of the assessee after taking the details from the revised return of income, and this exercise should be carried out after providing due opportunity of hearing to the assessee.

38. Having regard to this view taken by us, it is not necessary to decide the substantial question of law initially framed in the matter, but we hold that the reference to Section 139 in sub-Section (1) of Section 143 would

include a revised return filed under sub-Section (5) of Section 139 also, and Section 143 cannot be applied only to original returns, and should be applied to revised returns too.

39. The appeal is partly allowed as above. No costs.

40. Pending application(s), if any, shall stand disposed of.

(S. DATTA PURKAYASTHA, J) **(M.S. RAMACHANDRA RAO, CJ)**

HIGH COURT OF TRIPURA
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