

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO.26/2014

Commissioner of Income Tax
Karnataka (Central) Bangalore,
Controlling Office of Central Circle,
Panaji). Appellant.

Versus

M/s. Mukhtar Minerals Private Limited,
having its office at G28, Phoenix Estate
Gogol, Margao, Goa. Respondent.

Ms. Amira Abdul Razaq, Standing Counsel for the Appellant.

Mr. P. S. Rao, Advocate for the Respondent.

***Coram : M.S. Sonak &
Dama Seshadri Naidu, JJ.***

Dated : 28th September, 2020.

ORAL JUDGMENT: (Per M.S. SONAK, J.)

Heard Ms. Razaq, learned Standing Counsel for the Appellant and Mr. P. Rao, learned Counsel for the Respondent.

2. This Appeal was admitted on the following substantial question of law :

“Whether on that facts and circumstances of the case, the Tribunal is right in law in accepting the contentions of the Assessee without giving an opportunity to the Assessing Officer by way of a remand, particularly, when the Assessee has withdrawn the statement unsuccessfully without legal basis ?

3. In this case, the Assessee, for the Assessment Year 2007-08, filed return of income on 31/10/2007, declaring an income of Rs.1,38,14,410/-. Thereafter, on 13/5/2009, the Assessee filed revised return, disclosing an income of Rs.5,33,14,420/-. Prior to this date, *i.e.* on 24/3/2009, a survey was conducted in the premises of the Assessee. In the course of such survey, the Assessee offered to bring to tax income of Rs.3,50,00,000/- under various heads. It is the case of the Revenue that the revised return was filed in pursuance of this offer.

4. Thereafter, the Assessee addressed a letter dated 28/12/2009, to the Assessing Officer (AO), urging that the revised return was filed only to cooperate with the Revenue. However, it was pointed out that the correct offer of income was reflected in the original return itself and, therefore, it is only the original return which may be assessed.

5. The AO, by order dated 30/12/2009, rejected the Assessee's contention and concluded the assessment by accepting the revised return filed.

6. The Assessee appealed to the Commissioner of Income Tax (CIT)(Appeals) which appeal was dismissed by order dated 12/12/2012. Therefore, the Assessee instituted an appeal bearing

ITA No.17/PNJ/2013 before the Income Tax Appellate Tribunal (ITAT), questioning the assessment order dated 30/12/2009 and the order of the CIT (Appeals) dated 12/12/2012.

7. The ITAT, by the impugned order dated 28/6/2013, held that the revised return filed by the Assessee was barred by limitation and, therefore the same could not have been acted upon by the AO. The ITAT went even further and determined that the disallowances were not justified and ordered deletion of the same. It is against this later portion of the ITAT's order that the Revenue has instituted the present appeal, in which the aforesaid substantial question of law came to be formulated.

8. Ms. Razaq, the learned Standing Counsel for the Appellant submits that the ITAT having held that the revised return was filed beyond the prescribed period of limitation, was not justified in addressing the issue of disallowances and thereby recording the finding of fact as if, it were the Assessing Authority. She submits that the ITAT has thus deprived the AO an opportunity of examining the original return filed by the Assessee, as also the evidentiary impact of the revised return upon the same. For these reasons, she submits that the substantial question of law, as framed, is liable to be answered in favour of the Revenue and against the Assessee.

9. Mr. Rao, the learned Counsel for the Assessee defends the

impugned order on the basis of the reasoning reflected therein. He submits that there is no dispute in the facts and circumstances of the present case that the revised return was filed beyond the prescribed period of limitation and therefore, the AO exceeded his jurisdiction in finalizing the return on the basis of the revised return. He pointed out that the ITAT was justified itself in holding that the disallowances were required to be deleted. He submitted that the findings of the ITAT are based upon the material on record and this is not a case where the ITAT can be said to have exceeded the jurisdiction vested in it. For all these reasons, he submits that this appeal is liable to be dismissed.

10. According to us, in the facts and circumstances of the present case, the ITAT was justified in holding that the revised return was filed by the Assessee beyond the prescribed period of limitation and, therefore, the AO could not have proceeded to assess only the revised return or finalized the proceedings only on the basis of the revised return. However, after having reached to this conclusion, we feel that the ITAT was not justified in going into the issue of disallowances before the AO had an opportunity of assessing the original return and determined the amount which was liable to be brought to tax. This later exercise involved examination of factual matrix which, in the facts and circumstances of the present case, the ITAT should not have undertaken as if it were the authority of the first instance.

11. The ITAT, in this case, after holding that the revised return was filed beyond the prescribed period of limitation, should have restored the original return before the AO and, thereafter, directed the AO to assess the original return in accordance with law. This would have afforded both, the Revenue as well as the Assessee, effective opportunity to putforth their respective versions on the issue of disallowances which, normally arise in the course of such assessment proceedings.

12. Accordingly, the impugned order made by the ITAT, to the extent it purports to delete various disallowances or to finalise the assessment, must be interfered with. This later portion of the impugned order is, therefore, set aside.

13. Consequent upon the ITAT's finding that the revised return was filed beyond the prescribed period of limitation, the matter is now remanded to the AO to assess the original return of the assessee, as expeditiously as possible, on its own merits and in accordance with law.

14. The issue of evidentiary value or the impact of the revised return upon assessment of the original return is, however, kept open to be decided by the AO, again on its own merits and in accordance with law.

15. The AO, in assessing the original return, need not be influenced by the deletion of the disallowances by the ITAT, which portion of the ITAT's order we have already set aside.

16. The substantial question of law is answered in favour of the Revenue and against the Assessee, subject, no doubt, to the aforesaid observations.

17. This Appeal is, accordingly, allowed and disposed of in the aforesaid terms.

18. In the facts and circumstances of the present case, there shall be no order as to costs.

Dama Seshadri Naidu, J.

M.S. Sonak, J.