

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH, AHMEDABAD**

BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER

**ITA No.2251/Ahd/2018
Assessment Year: 2007-08**

Kothari Brothers,
Opp. GSFC Main Road,
N.H. No.8, Vadodara.
[PAN – AAEFK 2943 G]
(Appellant) vs. The Income Tax Officer,
Ward – 2(1), Vadodara.
(Respondent)

Appellant by : Written Submission
Respondent by : Shri N.J. Vyas, Sr. DR

Date of hearing : 29.08.2022
Date of pronouncement : 21.09.2022

ORDER

This appeal is filed by the Assessee against the order dated 20.09.2018 passed by the CIT(A)-3, Vadodara for the Assessment Year 2007-08.

2. The assessee has raised the following grounds of appeal :-

“1) *On the facts and circumstance of the case as well as in law, Ld. CIT(A)-3, Vadodara was erred in rejecting our rectification application u/s.154. Please consider our rectification application u/s.154.*

2) *On the facts and circumstance of the case as well as in law, Id. CIT(A)-3, Vadodara was erred in treating revised return as invalid as notice u/s.143(2) was issued on revised return. Please consider revised return alternatively cancel the original assessment order as no notice u/s. 143(2) & 142(1) was issued for return on 24.11.2007.”*

3. The assessee filed return of income on 24.11.2007 declaring total income at Rs.3,52,960/- . During the period under consideration the assessee was engaged in the business of transportation on contract basis and booking agent for tanks and major business is operated by deploying own lorries. Notice under Section 143(2) of

the income Tax Act, 1961 was issued on 26.09.2008 and was served upon the assessee. Notice under Section 142(1) dated 01.06.2009 was issued and served. The assessee filed submissions through its AR from time to time along with details. During the course of assessment proceedings, the assessee was asked to submit the details of bank statement, copy of profit and loss account, balance and its annexures and copy of audit report. The assessee submitted the same. After taking cognisance of the details filed by the assessee along with submissions, the Assessing Officer made addition in respect of disallowance related to expenses amounting to Rs.75,484/- which included diesel expenses, trip and driver allowance expenses etc.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. At the time of hearing none appeared on behalf of the assessee but written submissions were filed on 06.05.2022 before us. Therefore, I am taking the submissions on record and proceeding with the matter.

6. Ld. DR submitted that the CIT(A) has rightly dismissed the appeal as the assessee has filed revised return on 27.02.2008 thereby declaring Nil income and claimed refund of Rs.1,21,308/- on account of TDS. The rectification proceedings were rejected by the Assessing Officer.

7. I have heard the Ld. DR and perused all the relevant material available on record along with written submissions dated 02.05.2022 filed by the partner of the assessee. The assessee submitted that the appeal before the CIT(A) was filed in respect of rejection of rectification application and thereby disallowance of claim for carry forward losses in revised return needs to be looked into. The original return of income for A.Y. 2007-08 was filed on 24.11.2007 declaring total income of Rs.3,52,690/-. As the assessee came to know that inadvertently the claim of set off of carry forward and assessed loss pertaining to 2005-06 were taken into account while filing original return of income. Therefore, the assessee filed revised return on 27.02.2018 declaring nil income by set off of carry forward losses. At the time of assessment proceedings the assessee has filed all the details of return as well as

revised returns before the Assessing Officer. The assessee in the submissions mentioned that neither any reason nor any opportunity was given to the assessee as to why the Assessing Officer has ignored return on which notice was issued and why assessment is being done on original return filed on 24.11.2017. Therefore, the assessee submitted that as per law and principles of natural justice assessment made on the original return filed on 24.11.2007 on the basis of which no notice was issued is not a valid assessment. On the basis of revised return filed by the assessee firm the assessee requested the Assessing Officer to give them refund for A.Y. 2007-08. The assessee submitted that the Assessing officer never said that the claim made in the revised return was not valid. The assessee filed rectification application dated 17.08.2016 for A.Y. 2007-08 and explained the Assessing Officer to allow the claim of refund of Rs.1,21,310/- for A.Y. 2007-08 which was issued to set off of carry forward of earlier years assessed loss. The Assessing officer rejected the application without adjudicating as to how the claim is tenable. The Assessing officer said that revised return is not valid as original return is not filed under Section 139(c) of the Act. The assessee in its submissions submitted that it is correct that revised return was not filed under Section 139(1) of the Act but while making assessment under Section 143(3) of the Act the Assessing Officer ought to have allowed the set off of carry forward losses. The assessee relied upon CBDT Circular No.14 dated 11.04.1955 as well as relied upon the decision of Hon'ble Apex Court in the case of Collector, Land Acquisition vs. Mst. Katiji & Ors. (1987) 167 ITR 471. The assessee also relied upon the decision of Tribunal in the case of Padamlal Dua vs. ITO in ITA No.2007/Del/2016, order dated 23.12.2016, and the decision in the case of Hemant Mittal vs. ITO. After going through the submissions of the assessee as well as the submissions made by Ld. DR it is pertinent to note that in the assessment order the Assessing Officer has not taken cognisance of the revised return filed by the assessee. Once the revised returns were filed, the Assessing Officer should take cognisance of the claim made by the assessee and accordingly should proceed in assessment stage. The original return was not filed under Section 139(1) of the Act but the revised returns were filed in proper manner and no discrepancy was pointed out by the Assessing Officer at any stage. In fact, the CIT(A) has also not given any finding as to why revised return should be rejected. The additions made by the Assessing Officer related to diesel expenses and trip & driver allowance expenses. The same was made on adhoc basis. As regards

application under Section 154 filed by the assessee, it is pertinent note that the return was totally on the basis of computation of income as per the original return of income by the assessee and the revised return was rejected as the original return was not filed under Section 139(1) of the Act. The Income Tax Statute has nowhere stated that revised return should not be taken into account while finalising the assessment order. The original return was not filed within the due date but it was filed belatedly and the same were never rejected by the Assessing Officer at any point of time. Once the threshold of assessment proceedings based on original return filed by the assessee, the revised return should be taken into account and precondition to revise comes in consonance with the filing of the original return. Therefore, the appeal of the assessee is allowed to the extent that the Assessing officer should take cognisance of the revised return and if the claim of assessee related to set off of carry forward of earlier years' losses are genuine, the same should be taken into account. Needless to say assessee be given opportunity of hearing by following the principles of natural justice. Appeal of the assessee is thus partly allowed for statistical purposes.

8. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on this 21st day of September, 2022.

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 21st day of September, 2022

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Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*

