

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH : BANGALORE**

**BEFORE SHRI A.K GARODIA, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No.1776/Bang/2019</b>
<b>Assessment Year : 2016-17</b>

M/s Sindhu Cargo Services Pvt. Ltd., Block 3 Sindhu Logistics Park, 34, Nilakunte Bettahalasuru, Hunsemaranahalli Post, Bellary-562 157.  <b>PAN - AACCS 9658 P</b>	<b>Vs.</b>	The Dy. Commissioner of Income-tax, Circle-6(1)(1), Bengaluru.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Siddesh S Gaddi, C.A
Revenue by	:	Shri Priyadarshi Mishra, JCIT (DR)

Date of Hearing	:	09-09-2020
Date of Pronouncement	:	16-09-2020

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal has been filed by assessee against order dated 24/06/2019 passed by Ld.CIT(A)-6, Bangalore for assessment year 2016-17 on following grounds of appeal:

- “1. The impugned order partly upholding assessment order passed under section 143(3) of the Act is erroneous and contrary to the law and facts, against weight of evidence and probabilities of the case;*
- 2. The impugned order passed by the Learned CIT(A), to the extent prejudicial to the Appellant, is not justified in law and on facts and circumstances of the case;*

3. *The Learned CIT(A) has erred in law and on facts in not appreciating that the order of the Learned AO is bad in law and on facts as the notice under section 143(2) of the Act is time barred;*
4. *The Learned CIT(A) has erred in law and on facts in upholding disallowance of brokerage and commission on sales to the extent of Rs. 13,95,847/-;*
5. *The Learned CIT(A) has erred in law and on facts in upholding disallowance of advertisement expenses of Rs. 4,11,175/-;*
6. *The Learned CIT(A) has erred in law and on facts in upholding disallowance of 'Business promotion -sales' expenses of Rs. 33,25,375/-;*
7. *The Learned CIT(A) in upholding additions to the returned income, has erred in not considering submissions made in support of the claim;*
8. *The Learned CIT(A) has erred in upholding adhoc disallowance;*
9. *The Learned CIT(A) and AO have erred in not invoking provisions of section 133(6) to get relevant information on genuineness of the claim of deduction;*
10. *The Learned CIT(A) and AO have failed to allow deduction of expenses*

*without considering that the same has been routed through banking channels (wherever it exceeded statutory limit) and appropriate taxes thereon has been deducted under the provisions of the Act;*

11. *The impugned adjustments being merely based on presumption and surmises, is to be deleted;*
12. *The Learned CIT(A) has erred in law and on facts in not appreciating that there is lack of opportunity of being heard and the assessment order has been passed against the principles of natural justice;*
13. *The Learned CIT(A) has erred in law and on facts in insisting on condition to allow deductibility of expenses which is not present in the Act;*
14. *The Learned CIT(A) has erred on law and on facts in not appreciating that the Appellant had only provided sample invoices and the Appellant was not provided an opportunity to furnish any additional document before being proceeded against.*  
*(Total tax effect: Rs. Rs. 16,16,808/-)*

*On the basis of above grounds and other grounds which may be urged at the time of hearing with the consent of the Honourable Tribunal, it is prayed that the order passed under section 250, to the extent it is against the Appellant, be quashed and relief sought be granted.*

**Brief facts of the case are as under:**

2. Assessee is a private limited company and filed its return of income for year under consideration electronically

on 28/09/2016 declaring loss of Rs.1,04,95,917/-. The said return was found defective and Ld.AO issued notice under section 139(9) of the Act. In response to notice, assessee corrected the return on 23/06/2017. The case was selected for scrutiny under CASS and notice under section 143(2) was issued on 14/08/2018. Subsequently, notice under section 142(1) of the Act, was issued calling for various information and details. Ld.AO examined details filed by assessee and passed order under section 143(3) of the Act on 28/12/2018, making following additions:

Brokerage and commission on sales Rs.13,95,847/-

Advertise meant Rs.4,11,175/-

Business promotion-sales Rs.33,25,375/-

Office function Rs.4,82,485/-

3. Aggrieved by additions made by Ld.AO, assessee preferred appeal before Ld.CIT(A).

4. Before Ld.CIT(A), assessee alleged that, assessment order passed by Ld.AO dated 20/12/2018 is beyond period of limitation as, time limit for passing assessment order starts from date of original return filed being 28/09/2016.

Ld.CIT(A) while considering this issue decided as under:

*“From a reading of the above provisions, it is clear that the if the assessee rectify the defect within the time allowed, then the corrected return can be as a valid return. Therefore, the return dated 28/09/2016 would have remained an invalid return but for the appellant having filed the corrected return on 22/06/2017 in response to the notice u/s 139(9). That being the case, the return filed on 22/06/2017 becomes the valid return and the period of limitation is to be counted from that date. The notice u/s 143(2) was issued on 14/08/2018 i.e. within six months of the end of the year when the valid return was filed and hence the notice u/s 143(2) is held to not have been barred by limitation. Accordingly, the*

*assessment completed pursuant to the issue of the notice u/s 143(2) is valid. The ground of appeal raised by the appellant has no merit and is dismissed as such”*

5. On merits, Ld.CIT(A), partly granted relief to assessee in respect of addition made of advertisement expenses, business promotion expenses. Regarding brokerage and commission on sales and office function expenses, Ld.CIT(A) upheld additions.

6. Aggrieved by order of Ld.CIT(A), assessee is in appeal before us now.

7. At the outset, Ld.AR submitted that, in Ground No.3 assessee challenges validity of assessment order passed under section 143(3), as it is passed beyond period of limitation.

8. Ld.AR submitted that, intimation of original return being defective was issued to assessee on 19/06/2017. It is also been submitted that as 19/06/2017 and assessee rectified the defects on 23/06/2017. Ld.AO issued notice under section 143(2) on 14/08/2018, reckoning period of limitation from date on which defects were rectified. It was submitted that, return filed in response to notice under section 139(9) of the Act, is not fresh return, but is in continuation of original return rectifying specified defects, indicated in notice issued under section 139(9) of the Act. It was submitted that, provisions of section 139(9) of the Act provide opportunity to assessee to remove any defects in original return filed, and if such defect/s are removed within time period allowed under section 139 of the Act, then the

same should be treated as a valid return duly filed with effect from the date of filing of original return.

9. He submitted that, original return was filed by assessee on 28/09/2016, and time limit for issuance of notice under section 143(2) ended on 30/09/2017. He submitted that, in present facts of case, notice under section 143(2) have been issued on 14/08/2018 which is beyond period of limitation, and hence assessment order passed is invalid. Ld.AR submitted that, in present facts of case, Ld.AO issued notice u/s.139(9) of the Act on 19/06/2017, granting assessee 15 days to rectify the defects. He submitted that defects were removed on 23/06/2017, which is well within time period allowed as per notice u/s.139(9) of the Act.

10. He submitted that, it is an accepted principle that, date of revised return/return curing any defect has no relevance, insofar as, issuance of notice under section 143 (2) of the Act is concerned. He submitted that, Proviso to section 143(2) requires notice to be issued within period of 6 months from end of financial year in which return was furnished under section 139(1) of the Act. The provision does not extend the ambit to date on which revised return or defect if any in the return is rectified. He placed reliance on decision of *Hon'ble Gujarat High Court* in case of *Kunal Structures India Pvt.Ltd. vs DCIT*, reported in (2020) 113 *Taxmann.com* 577.

11. On the contrary, Ld.Sr.DR placed reliance on observations of Ld.CIT(A) which reproduced hereinabove.

12. We have perused submissions advanced by both sides in light of records placed before us

13. We have also perused decision relied on by Ld.AR. *Hon'ble Gujarat High Court* had occasion to consider identical situation, as the one before us. It is noted that, *Hon'ble Court* while deciding similar issues by considered decisions rendered by various *High Courts*. *Hon'ble Gujarat High Court* observed and concluded as under:

**“16.** *It may be noted that there is no concept of corrected return of income under the Act. Therefore, in effect and substance, what the notice under subsection (9) of section 139 of the Act does is to call upon the petitioner to remove the defects pointed out therein. Therefore, mere reference to the expression “corrected income” in the notice under subsection (9) of section 139 of the Act does not mean that a fresh return of income has been filed under that subsection. Thus, under subsection (9) of section 139 of the Act, it is only the original return which gets corrected and no new return is filed. In other words, the original return which was defective when it was filed is rectified upon removal of the defects under subsection (9) of section 139 of the Act and becomes a valid return. Thus, as held by the Bombay High Court in the decisions cited by the learned counsel for the petitioner as referred to hereinabove, the action of removal of the defects would relate back to the filing of the original return of income and accordingly, it is the date of filing of the original return which has been considered for the purpose of computing the period of limitation under subsection (2) of section 143 of the Act and not the date on which the defects actually came to be removed.*

**17.** *Reference may also be made to the decision of this court in case of Principal Commissioner of Incometax1 v. Babubhai Ramanbhai Patel (supra), on which reliance has been placed by the learned senior standing counsel for the respondents, wherein this court has placed reliance upon a decision of the Allahabad High Court in case of Dhampur Sugar Mills v. CIT, [1973] 90 ITR 236, wherein it has been held that there is a clear distinction between revised return and a correction of return. Once a revised return is filed, the original return must be taken to have been withdrawn and substituted by a fresh return for the purpose of assessment. Thus, when a revised return is filed*

*under section 139(5) of the Act, the original return gets substituted and it is the revised return which is to be considered as a return for the purpose of assessment. However, the court has clearly drawn a distinction between a revised return and a correction of return. Adverting to the facts of the present case, this case relates to correction of the return of income originally filed and not a revised return. Had it been a case of filing of a revised return of income, the original return of income would have stood substituted by the revised return, but when it comes to correction of a return of income, it is only the original return of income which gets corrected.*

**18.** *Since the impugned notice has been issued under subsection (2) of section 143 of the Act, reference may be made to the said subsection, which reads as under:*

*“143.Assessment. (1) Where a return has been made under section 139, or in response to a notice under subsection (1) of section 142, such return shall be processed in the following manner, namely:*

*xxxxxxx*

*(2) Where a return has been furnished under section 139, or in response to a notice under subsection (1) of section 142, the Assessing Officer or the prescribed incometax authority, as the case may be, if, considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return:*

*Provided that no notice under this subsection shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished.”*

**19.** *On a plain reading of sub-section (2) of section 143 of the Act, it is apparent that the Assessing Officer or the prescribed income-tax authority must issue a notice under that sub-section only in those cases where a return has been made under section 139 or in response to a notice issued under section 142(1), if he considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, but such notice must be served within a period of six months from the end of the financial year in which such return is furnished. Thus, if, after furnishing a return of income, the assessee does not receive a notice under sub-section (2) of section 143 of the Act within the period referred to in the sub-section, the assessee is entitled to*

*presume that the return has become final and no scrutiny proceedings are to be started in respect of that return. It is only after the issuance of notice under sub-section (2) of section 143 of the Act that the Assessing Officer can proceed further under sub-section (3) thereof to make an assessment order. Therefore, the notice under section 143(2) of the Act is a statutory notice, upon issuance of which, the Assessing Officer assumes jurisdiction to frame the scrutiny assessment under sub-section (3) of section 143 of the Act. Consequently, if such notice is not issued within the period specified in sub-section (2) of section 143 of the Act viz. before the expiry of six months from the end of the financial year in which the return is furnished, it is not permissible for the Assessing Officer to proceed further with the assessment.*

**20.** *In the facts of the present case, as discussed earlier, the petitioner filed its return of income under sub-section (1) of section 139 of the Act on 10.09.2016. Since the return was defective, the petitioner was called upon to remove such defects, which came to be removed on 07.07.2017, that is, within the time allowed by the Assessing Officer. Therefore, upon such defects being removed, the return would relate back to the date of filing of the original return, that is, 10.09.2016 and consequently, the limitation for issuance of notice under sub-section (2) of section 143 of the Act would be 30.09.2017, viz. six months from the end of the financial year in which the return under sub-section (1) of section 139 came to be filed. In the present case, it is an admitted position that the impugned notice under sub-section (2) of section 143 of the Act has been issued on 09.08.2017, which is much beyond the period of limitation for issuance of such notice as envisaged under that sub-section. The impugned notice, therefore, is clearly barred by limitation and cannot be sustained.*

**21.** *For the foregoing reasons, the petition succeeds and is, accordingly, allowed. The impugned notice dated 09.08.2018 issued under sub-section (2) of section 143 of the Act and all proceedings taken pursuant thereto are hereby quashed and set aside. Rule is made absolute accordingly, with no order as to costs."*

14. Ld.Sr.DR could not produce before us any contrary decision by *Hon'ble jurisdiction High Court.*

Based on above discussions, we hold the impugned notice dated 14/08/2018 is issued beyond the period of limitation. Respectively following view taken by *Hon'ble Gujrat High Court* in case of *Kunal Structures India Pvt.Ltd. vs DCIT*



(*supra*), we quash and set aside impugned notice dated 14/08/2018 issued under section 143(2) of the Act, and all proceedings taken pursuant thereto.

**As we allow Ground 3, other grounds alledged on merits becomes academic.**

**In the result, appeal filed by assessee stands allowed.**

Order pronounced in the open court on 16<sup>th</sup> Sept, 2020.

Sd/-  
**(A.K GARODIA)**  
**Accountant Member**

Sd/-  
**(BEENA PILLAI)**  
**Judicial Member**

Bangalore,  
Dated, the 16<sup>th</sup> Sept., 2020.

/Vms/

**Copy to:**

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,  
Income-Tax Appellate Tribunal.  
Bangalore.

		<b>Date</b>	<b>Initial</b>	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-09-2020		Sr.PS
3.	Draft proposed & placed before the second member	-09-2020		JM/AM
4.	Draft discussed/approved by Second Member.	-09-2020		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-09-2020		Sr.PS/PS
6.	Kept for pronouncement on	-09-2020		Sr.PS
7.	Date of uploading the order on Website	-09-2020		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-09-2020		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	No		Sr.PS