

AO couldn't complete assessment based on original return if revised return was filed before completion of assessment

Summary – The Delhi ITAT in a recent case of Pawa Industries (P.) Ltd., (the Assessee) held that where assessment was not completed and assessee filed a revised return within a period of one year from end of assessment year, revised return being well within limitation period was a valid return in terms of section 139(9)

Where assessee plying of goods carriages having chosen option of declaring income at prescribed fixed rate in its revised return of income, income declared by assessee was to be held as declared according to section 44AE

Facts

- The assessee company was engaged in business of plying of tankers and earned freight charges from its clients. For the year under consideration, the assessee filed return of income on 28-9-2010 declaring total income of Rs. 44.90 lakhs. Subsequently, the assessee filed a revised return on 28-9-2011, in which the assessee declared the income from plying of tankers under presumptive scheme of taxation with reference to section 44AE(2) and total income was reduced to Rs. 12.84 lakhs. The notice for scrutiny was issued on 1-8-2012 and complied with.
- The Assessing Officer did not agree with the income declared in the revised return. Thus, the assessee sought directions under section 144A from the concerned Additional Commissioner. The Additional Commissioner directed the Assessing Officer that the assessee was required to declare its true and full income, which was Rs. 44.90 lakhs filed in the original return of income and under the circumstances, the revised return of income filed for the year under consideration on 28-9-2011 could not be accepted. Following the said directions, the Assessing Officer completed the scrutiny assessment at total income of Rs. 44.90 lakhs.
- On appeal, the Commissioner (Appeals) confirmed the action of the Assessing Officer.
- In instant appeal, the assessee contended that the revised return of income filed by the assessee was a valid return and, therefore, the Revenue authorities were not justified in not accepting the income declared therein, following the presumptive scheme for computing income from plying of goods carriages as laid down in section 44AE(2). On the other hand, the revenue submitted that notice issued under section 143(2) was beyond the prescribed period of limitation from the original return of income and, therefore, the assessment framed is without jurisdiction.

Held

- It is found that the original return of income under section 139(1) was filed on 28-09-2010 and the revised return has been filed on 28-09-2011. According to the section 139(5), a person may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment

year or before the completion of assessment, whichever is earlier. In this case the assessment was not completed and a period of one year from the end of the assessment year was expiring on 31-03-2012 and, therefore, the revised return filed by assessee on 28-09-2011 was well within the limitation period. This revised return was not held to be a defective return in terms of the section 139(9).

- Further, the notice under section 143(2) has been issued on 01-08-2012 and duly served upon the assessee. As per the provisions of the Act, notice under section 143(2) was required to be served within a period of six months from the end of the financial year in which return is furnished. Thus, according to the provisions of section 143, notice in the case of the assessee could have been served till 30-9-2012. In the case of the assessee notice under section 143(2) was issued on 01-08-2012 and was duly served upon the assessee. In view of these facts, the contention of the counsel that assessment was barred by limitation, is not acceptable due to the reason that the revised return of income was a valid return and notice under section 143(2) was served upon the assessee within the limitation period available as per provisions of the Act. Merely mentioning by the Addl. Commissioner in the direction issued under section 144A that the revised return cannot be accepted, cannot change otherwise validity of the assessment.
- The assessee has challenged assessing of income from plying of trucks as reported in the original return of income as against the income declared by the assessee in the revised return. The dispute in the case is related to the interpretation of clause (ii) of the section 44AE(2). The Commissioner (Appeals) has analyzed the relevant provisions during the relevant period as well as amended provision with effect from assessment year 2011-12.
- Clause (i) of section 44AE(2) during the relevant period , consists of two parts connected by the word 'or'. The first part lays down computation of income on estimate basis of prescribed fixed sum per month per goods carriage. The second part refers the income declared in the return of income, which is higher than the estimated income. Both parts of the clause (i) are connected by the disjunctive 'or'. The sentence, 'whichever is higher' of two, has been inserted with effect from Assessment year - 2011-12 only. Thus, during the relevant year, assessee was having option for choosing profit to be declared from the activity of plying goods carriages. The first option was to declare profit at the rate of a fixed prescribed sum per month per goods carriage. The second option was to offer the amount declared in the return of income, being higher than the first option. During relevant period, it was choice of the assessee to declare the income on estimate basis or to declare higher income from the business of plying of goods carriages. But with effect from assessment year 2011-12, the choice available with the assessee of choosing the option, has been taken away and now, the assessee is required to declare the income whichever is higher, out of estimated income or the amount claimed to have been actually earned from such vehicle. The CBDT circular No. 5 of 2010 dated 03-06-2010 has also clarified that this anti-avoidance clause was provided with effect from. Assessment year: 2011-12.

- In the instant case, the contention of the assessee is that in the revised return of income, the assessee has chosen to declare profit from plying of the goods carriages at the rate of Rs. 3500 per month per goods carriage as per the first option available. It is further submitted that even the income according to the second option would be of same amount as the income in the revised return of income, has been declared at the rate of Rs. 3500 per month per goods carriage, and thus, the income declared by the assessee should be accepted as according to section 44AE.
- During the relevant period, the assessee was having option of choosing a prescribed fixed sum towards profit from plying of goods carriages for declaration or higher amount declared in the return of income. The assessee has chosen the option of a prescribed fixed sum per month in the revised return of income, which has already been held as a valid return. The provision of assessing higher income out of two options has been made effective only from assessment year 2011-12 and not for the year under consideration.
- In view of above discussion, the Commissioner (Appeals) is not justified in directing the Assessing Officer to assess income from plying of goods carriages as was declared in the original return of income. Accordingly, the Assessing Officer is directed to compute profit from goods carriages at the rate of fixed sum prescribed for relevant period under clause (i) of section 44AE(2).