

AO's order rejecting ITR without providing opportunity to rectify defect u/s 139(9) liable to be set-aside: HC

Summary – The High Court of Madras in a recent case of Zeenath International Supplies, Chennai-1., (the Assessee) held that where AO rejected assessee's revised return at threshold on ground that same was not accompanied with tax audit report, in view of fact that assessee had not been given an opportunity to rectify said defect as contemplated under section 139(9), impugned order deserved to be set aside

Facts

- For relevant year, assessee filed its return declaring certain taxable income. Subsequently, assessee filed a revised return under section 139(5) within prescribed time period wherein value of closing stock was reduced and administrative cost was increased.
- The Assessing Officer rejected said revised return at the very threshold on ground that it was not accompanied with tax audit report.
- The Tribunal upheld order passed by Assessing Officer.
- On appeal:

Held

- Section 139(5) permits an assessee to file a revised return and the said provision states that if any person, having furnished the returns under sub-section (1) or sub-section (4) of section 139 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 or before the completion of the assessment, whichever is earlier.
- Admittedly, the assessee filed the revised return on 24-5-1999 well before the period stipulated under Section 139(5) of the Act. This has not been disputed by the Assessing Officer or the Appellate Authority or the Tribunal. However, after taking up the said revised return for scrutiny, the Assessing Officer, while passing the order under section 143(3) of the Act, rejected the assessee's claim, which, was at the very threshold.
- This is so because of the fact that if, in the opinion of the Assessing Officer, the return was defective, then the procedure contemplated under sub-section (9) of section 139 ought to have been followed. This provision enables the Assessing Officer to intimate the defect to the assessee and give an opportunity to rectify the defect within a period of 15 days from the date of such intimation or within such period, which, on an application made in this behalf, the Assessing Officer, may, in his discretion, allow and if the defect is not rectified within the said period of fifteen days or as the case maybe, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, the return shall be treated as an invalid return and the provisions of this Act

shall apply as if the assessee had failed to furnish the return. The proviso states that where the assessee rectifies the defect after the expiry of the said period of fifteen days or the further period allowed, but before the assessment is made, the Assessing Officer may condone the delay and treat the return as a valid return.

- Thus, sub-section (9) of section 139 is a beneficial provision to the assessee, which provides them an opportunity to rectify the defects. Since the intention being that the assessment proceedings are an outcome of dialogue and discussion, the Assessing Officer is entitled to clarify all issues by issuing notice to the assessee and calling upon them to produce documents and explain their books of account, *etc.* Unfortunately, in the instant case, such procedure was not adopted when the revised return was rejected at the very threshold, which, ought not to have been done.
- For the above reasons, on the peculiar facts and circumstances of the case, it is found that the assessee had not been given an opportunity to rectify defects as contemplated under sub-section (9) of section 139 of the Act and therefore, it is proper to remand the matter to the Assessing Officer to redo the assessment after giving an opportunity to the assessee in terms of section 139(5) to rectify the defects, which have been pointed out by the Assessing Officer in the assessment order.
- In the light of the above, assessee's appeal is allowed, and the matter is remanded to the Assessing Officer to redo the assessment after giving an opportunity to the assessee to rectify the defects in the revised returns.