

Assessee's claim raised in ITR to be considered by AO before passing assessment order: HC

Summary – The High Court of Karnatak in a recent case of Deepak Dhanaraj, (the Assessee) held that Assessee's claim raised in ITR to be considered by AO before passing assessment order

Facts

- The assessee filed his return of income offering to tax the capital gains along with other sources of income. The said return was held to be a defective return. The assessee thereafter filed a revised return declaring long-term capital gains and claiming deduction under section 48 and exemption under section 54F.
- The revenue without providing sufficient opportunity of hearing and without considering the return and the revised return vis-à-vis the claims made towards deduction/exemption under sections 48 and 54F passed the assessment order under section 143(3).
- Hence, petitioner filed instant Writ Petition.

Held

- The HC observed that while the original return was treated as defective and a revised return was filed, the Revenue did not acknowledge the filing of the revised return. Hence, no opportunity was provided to the assessee under section 139(9) to remove the defects in the returns pointed out by the Assessing Officer nor an opportunity was provided to file a return pursuant to the notice issued under section 142(1). Even if no revised returns could be accepted beyond the time prescribed under the Act, it is *sine qua non* for the Assessing Officer to consider the claims of deduction/exemption made by the petitioner-assessee and thereafter to return the said claims if the assessee is not entitled to the same by assigning the reasons.
- As per the assessment order *prima facie* it is clear that the deduction claimed under section 54F is not considered while computing the taxable turnover. This would certainly indicate the non-application of mind by the respondent/revenue.
- It is apparent that no reasons are forthcoming for rejecting the revised returns as well as the claims made under section 54 F.
- Hence, the assessment order and the consequent demand notice as well as the recovery notice need to be quashed.