

## Direct Tax Alert

August 6, 2021



### Fresh claims allowable in reassessment proceedings – Karnataka High Court

In a recent decision<sup>1</sup>, the Karnataka High Court has held that a fresh claim of loss during the reassessment proceedings under section 148 of the Income-tax Act, 1961 ('the Act') should be allowed, where the original assessment was not made.

#### Facts of the case

- The assessee was a co-operative apex bank registered under the Karnataka Co-operative Societies Act, 1959. It was granted a license to carry on the banking business by the Reserve Bank of India under the Banking Regulation Act, 1949.
- The assessee had filed a return of income for Assessment Year ('AY') 2007-08, declaring a total income of Indian Rupees ('INR') 40.77 crores. The return filed by the assessee was processed by the tax department, and an intimation under section 143(1) of the Act was issued. However, no regular assessment was carried out under section 143(3) of the Act.
- The Assessing Officer ('AO') issued a notice under section 148 of the Act on March 31, 2012. The assessee then filed a return under section 148 of the Act declaring total income of INR 32.56

<sup>1</sup> M/s The Karnataka State Co-operative Apex Bank Limited v. The Deputy Commissioner of Income Tax (ITA No. 392 of 2015) / [TS-591-HC-2021(KAR)]



crores by claiming an additional loss on sale of securities of INR 8.28 crores in its return, which was not claimed in the original return of income.

- The AO did not allow the additional loss claimed by the assessee, presumably on the basis of the decision of Supreme Court in case of *CIT v. Sun Engineering Works (P.) Ltd.*<sup>2</sup> which prohibits assessee to raise fresh claims during reassessment proceedings. Aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) ['CIT(A)'], and subsequently before the Income Tax Appellate Tribunal ('ITAT'). The claim of the assessee was rejected by both the appellate forums i.e. by the CIT(A) and the ITAT on the grounds that the claim of loss was not made by the assessee in the original assessment proceedings and therefore a fresh claim cannot be made in the reassessment proceedings.
- Aggrieved by the same, the assessee filed an appeal before the Karnataka High Court.

### Arguments by the assessee

- An intimation under section 143(1) of the Act is not an assessment order, and as there was no assessment, the issue of allowability of loss on sale of securities was never considered by the AO, and thus never reached finality.

- The decision of the Supreme Court in the case of *Sun Engineering Works (P.) Ltd (supra)* is distinguishable on facts, since in the case of *Sun Engineering Works (P.) Ltd (supra)*, the original assessment order had attained finality and therefore it was held that issues concluded in original assessment cannot be reagitated in re-assessment. In the assessee's case, the assessment proceedings did not take place and merely an intimation under section 143(1) was issued.
- The assessee placed reliance on the Supreme Court judgement in the case of *V. Jagan Mohan Rao v Commissioner of Income Tax and Excess Profits Tax*<sup>3</sup>, in which it was held that upon reassessment, the original assessment gets effaced and subsequent assessment proceedings have to be done afresh.
- The assessee also submitted that the loss claimed by it was an allowable expenditure under section 37 of the Act, and reliance in this regard was placed on various judicial precedents<sup>4</sup>.

### Arguments by the tax department

- The tax department contended that where any error or omission or any wrong statement is discovered in the return of income, a revised return of income may be filed by the assessee under section 139(5) of the Act. However, once the time

<sup>2</sup> (1992) 198 ITR 297 (SC)

<sup>3</sup> (1970) 75 ITR 373 (SC)

<sup>4</sup> ITO v Mewalal Dwarka Prasad (1989) 176 ITR 529 (SC), ITO v K.L. Srihari (HUF) (2001) 250 ITR 393

(SC), and ACIT v Rajesh Jhaveri Stock Brokers P. Ltd. (2007) 291 ITR 500 (SC)



limit under section 139(5) of the Act expires, the only remedy for the assessee is to seek condonation of delay in filing the return under section 119 of the Act.

- It was also submitted that section 148 of the Act provides remedy to the revenue and not to the assessee.
- It was also submitted that proceedings under section 148 of the Act can be initiated only in respect of income which has escaped assessment, basis the ratio laid down by the Supreme Court in the case of *Sun Engineering Works (P.) Ltd (supra)*, which has been rightly applied in the present case. Accordingly, no fresh claims can be made by the assessee during the reassessment proceedings.

#### **Ruling of the Karnataka High Court**

- Pursuant to an amendment made in section 143(1) of the Act by the Finance Act, 1999 with effect from June 1, 1999, an intimation under section 143(1) of the Act cannot be said to be an assessment order. Reliance in this regard was placed on the Supreme Court judgement in the case of *Rajesh Jhaveri Stock Brokers (supra)*.
- The High Court observed that in the instant case, there was no original assessment carried out, and the assessee had made a fresh claim of loss during the reassessment proceedings under section 148 of the Act.

- Relying on the Supreme Court decision in the case of *V. Jagan Mohan Rao (supra)*, the High Court observed that when there is a re-assessment or assessment under section 147 of the Act, the original assessment proceedings, if any, get effaced and the re-assessment has to be done afresh. This decision in the case of *V. Jagan Mohan Rao (supra)* has been subsequently upheld by the Supreme Court and by the various High Courts.
- The High Court further noted that the case of *Sun Engineering Works (P.) Ltd (supra)* has held that the issues forming part of the original assessment cannot be re-adjudicated by the AO. However, in the case of *Mewalal Dwarka Prasad (supra)*, it was held by placing reliance on the ruling in the case of *V. Jagan Mohan Rao (supra)* that once the reassessment proceedings are initiated, the original order of assessment gets effaced.
- The divergent view of the Supreme Court on this matter in *Mewalal Dwarka Prasad (supra)* and *Sun Engineering Works (P.) Ltd (supra)* was referred to the Supreme Court in the case of *ITO v K.L Srihari (HUF)*<sup>5</sup>, in which the Supreme Court held that reassessment proceedings under section 148 of the Act make a fresh assessment of the entire income of the assessee, and the original order of assessment gets effaced by the subsequent order.

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<sup>5</sup> (2001) 250 ITR 193 (SC)



- The High Court held that in the instant case there was no order of assessment, and there was only an intimation under section 143(1) of the Act, which cannot be treated as an order in light of the Supreme Court ruling in the case of *Rajesh Jhaveri Stock Brokers (supra)*.

The proceedings under section 148 of the Act were the first assessment, and the same should have been done after considering all the claims by the assessee. The decision in the case of *Sun Engineering Works (P.) Ltd (supra)* has no application to the present facts of the case.

- The High Court went to further hold that even if the intimation under section 143(1) of the Act is treated as an assessment order, it shall be effaced on initiation of subsequent reassessment proceedings and the AO is required to consider the proceedings *de novo* and to consider the claim of the assessee basis the ratio laid down by the Supreme Court in the case of *K.L. Srihari (HUF) (supra)*.
- In light of the above, the AO was directed to consider the claims of the assessee and adjudicate the same.

#### **Dhruva Comments**

- This is a significant ruling given its departure from the well accepted ratio which has been laid down by the

Supreme Court in *Sun Engineering Works (P.) Ltd (supra)* that reassessment proceedings are for the benefit of revenue and a taxpayer cannot make a fresh claim in the reassessment proceedings.

- Taxpayers may wish to evaluate the ruling in light of their facts and can explore the possibility of making fresh claims in reassessment proceedings especially those which have not been adjudicated in the original assessment proceedings. Even if a fresh claim is made in course of reassessment, interesting questions may arise on whether the returned income in reassessment can be lower than income offered in the original return of income or income originally assessed, as the case may be. Alternatively, one may need to evaluate if a fresh claim in reassessment can be made upto the quantum of additions made by the AO such that the income assessed under reassessment does not fall below the originally returned/assessed income. It is also relevant to note that though the Supreme Court in case of *K. L. Srihari (HUF) (supra)* has confirmed that the original assessment order gets effaced upon commencement of reassessment, however the question of law (not mentioned in the order) was kept open.
- The principle that reassessment proceedings cannot be used for review of an earlier assessment order or for a 'change of opinion' taken in the original assessment order still holds good.



- This decision opens up newer possibility which taxpayers may want to reevaluate in their given facts and to an extent reaffirms the belief that the tax law continues to evolve notwithstanding multiple Supreme Court decisions on a given issue. The decision would be equally relevant even in the context of new reassessment provisions which are applicable from April 1, 2021.

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