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### CASE LAW UPDATE

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**M/s. The Karnataka State Co-operative Apex Bank Limited v. DCIT**

**(ITA No. 392 of 2016) / [TS-591-HC-2021(KAR)]**

**Karnataka High Court**

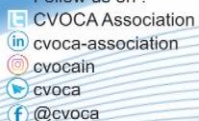
#### ❖ Summary

The Karnataka High Court holds that 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 under section 143(3) was not made.

#### ❖ Facts of the Case

- 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 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.* (1992) 198 ITR 297 (SC) 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.

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#### ❖ Tax Payer's Arguments

- 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, (1970) 75 ITR 373 (SC)*, in which it was held that upon reassessment, the original assessment gets effaced and subsequent assessment proceedings have to be done afresh.

#### ❖ Tax Department's Arguments

- 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 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.



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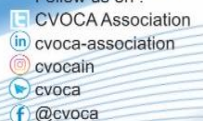
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#### ❖ Authority's Finding

- 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 *ACIT v. Rajesh Jhaveri Stock Brokers P. Ltd.* (2007) 291 ITR 500 (SC).
- 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.
- 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 *ITO v. Mewalal Dwarka Prasad* (1989) 176 ITR 529 (SC), 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 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)*.

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- 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 *ITO v. K.L. Srihari (HUF) (2001) 250 ITR 193 (SC)*.
- The AO was accordingly directed to consider the claims of the assessee and adjudicate the same.

#### ❖ Author's 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.
- Considering that the taxpayers are served with notices under section 148, the taxpayers may wish to evaluate the ruling in light of their facts and can explore the possibility of making fresh claims in reassessment proceedings on issues particularly those which have not been adjudicated in the original assessment proceedings.
- 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.
- The decision should be relevant even in the context of new reassessment provisions which are applicable from April 1, 2021.