

## Claiming Loss in Revised Return - Tread With Caution!

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Claim for carry forward and set off-of loss is a never-ending tussle between the taxpayers and the Revenue. Section 139(3) of the Income-tax Act, 1961 ('the Act') lays down that a taxpayer having sustained business loss or capital loss is required to file a return claiming such loss within the due date prescribed under section 139(1) of the Act. Moreover, section 80 of the Act restricts carry forward and set-off of business loss and capital loss amongst others, if such loss is not **determined** pursuant to a return satisfying the requirements of section 139(3) of the Act.

Also, as per section 139(5) of the Act, taxpayers have an option to revise their original returns within the prescribed timeline in case they discover any '**omission**' or '**wrong statement**' therein. The word omission would connote 'an unintentional act or neglect to perform what the law required', whereas the words 'wrong statement' would include in their scope 'a statement which was not false to the knowledge of the person making it'[\[1\]](#). It has been held at various judicial forums[\[2\]](#) that merely filing of the revised return post discovery of the omission or wrong statement would not be sufficient by itself. The omission or wrong statement in the original return must be due to a **bona fide** inadvertence or mistake on part of the taxpayer. Moreover, the omission or wrong statement should not be deliberate and if this is the case, then such revised return may not save the taxpayers from consequences of intentional filing of false or incorrect return[\[3\]](#).

Allowability of losses claimed in revised return has thus always been a contentious issue. Courts have expressed divergent views on the issue, some of which are discussed in ensuing paragraphs.

### Rulings in favour of the taxpayers

In **CIT v. Periyar District Co-op. Milk Producers Union Ltd** [\[4\]](#), the Madras High Court allowed the loss claimed by the taxpayer through the revised return, which was higher than that claimed in the original return, on the basis that once a return of loss was filed under section 139(1), all provisions of the Act, including ability to revise the return, would apply to such a return. Relying on the Madras High Court decision, the Delhi Tribunal has given a similar verdict in *Escorts Mahle Ltd v. DCIT*.[\[5\]](#)

Further, in **PCIT v. Babubhai Ramanbhai Patel**[\[6\]](#), wherein the taxpayer had filed a revised return claiming speculation loss, as against positive income declared in the original return, the Gujarat High Court held that section 139(5) did not envisage that filing a revised return in case of loss would be

impermissible; and that revision would be allowed so long as the return filed was within the prescribed due date and revision was on account of error/ omission in the original return.

In **Ramesh Shah v. ACIT** [7], the Mumbai Tribunal while discussing the interplay of sections 139(3), 139(5) and 80 held that section 80 would be triggered only when there was a loss in the original return. In case where there was a positive income in the original return in which an error / omission is discovered later leading to a loss, taxpayer should not be deprived of such loss claimed by way of revised return. The provisions of sections 139(1), 139(5) and 80 should be interpreted harmoniously.

### Rulings against the taxpayers

In **CIT v. Kerala State Construction Corporation Ltd** [8], the taxpayer filed revised return reporting business loss as against positive business income reported in the original return. The Kerala High Court while denying the carry forward of loss claimed in the revised return held that when a revised return was filed, it only substituted the original return filed under section 139(1) and not a return filed under section 139(3).

Moreover, **Karnataka Forest Development Corp. Ltd. v. CIT** [9], the Bangalore Tribunal observed that the omission on the taxpayer's part to declare the loss in the original return could not be considered as inadvertent and bona fide, and treated the revised return as null and void.

Furthermore, in **PCIT v. Wipro Ltd.** [10] the taxpayer had filed its original return declaring loss without opting out of exemption under section 10B of the Act that it was entitled to. After the due date under section 139(1), the taxpayer filed declaration with the assessing officer for opting out of the benefit of section 10B and filed a revised return claiming a carry forward of the loss declared in the original return. In this case, the Supreme Court ruled in favour of the Revenue and held that to opt out of exemption under section 10B, the declaration must be furnished before due date under section 139(1). Moreover, the Supreme Court observed that the revised return filed under section 139(5) could only substitute the original return under section 139(1) and could not transform it into a return under section 139(3). Review petition against this Supreme Court decision has also been dismissed [11].

### Tale of recent 'contrary' rulings

Recently, the Delhi Tribunal and the Pune Tribunal have delivered seemingly contradictory decisions on the issue of claim of loss through revised return.

### Comparison of facts and findings of both the decisions:

Particulars	RRPR Holding Private Limited v. DCIT [12]	Bilcare Limited v. DCIT [13]
Original Return	Within due date under section 139(1) with positive income of INR 45.98 crores and 4.17 lakhs	Within due date with a loss of INR 922 crores
Revised return	Filed during pendency of assessment proceedings additionally claiming long term capital loss of INR 206 crores from sale of shares	Long term capital loss of INR 922 crores from sale of shares claimed additionally
Whether transaction reported in financials	No	No
Genuineness of omission leading to revised return	Taxpayer could not explain even after being given multiple opportunities	Reason for omission was submitted to the Assessing Officer and was never disputed

Based on the above facts, the Delhi Tribunal observed that as the capital loss claimed in the revised return was not reported in the financials and the taxpayer was not able to explain the omission to report such a massive loss in the original return (having positive income), the genuineness of the loss itself was in doubt. The Tribunal upheld the stance of the Revenue and held that as the capital loss was claimed for

the first time in the revised return and the original return bearing positive income did not have any reference to it, section 80 of the Act was triggered and the claim for carry forward of the capital loss was denied.

On the other hand, the Pune Tribunal noted that amongst other reasons, the taxpayer had explained the reasons for omission to report the loss in the original return to the Revenue, which were uncontroverted, and the original return was filed under section 139(3) of the Act. The Tribunal therefore held that the omission could not be considered as not bona fide, and the Revenue was not justified in not accepting the revised return. Further, relying on a Supreme Court decision<sup>[14]</sup>, the Tribunal held that once a revised return is filed, the original return is substituted for all purposes. Moreover, placing reliance on other Supreme Court decisions<sup>[15]</sup>, the Tribunal also reiterated that absence of entries in the books of account is not a decisive factor in tax treatment.

The Tribunal also observed that in the case of Wipro Ltd (supra), the Supreme Court had mainly dealt with the interpretation of section 10B(8) of the Act and not on interpretation of sections 139(3) and 80 of the Act. The ruling was thus distinguished by observing that every interpretation by the Supreme Court does not constitute the ratio decidendi and the present case was factually different vis-à-vis Wipro's case.

### Parting Thoughts

The two Tribunal rulings discussed above, albeit seemingly contradictory, may not be really so. As stated above, in the case before the Delhi Tribunal, non-justification of omission of claim of loss in the original return proved to be a decisive fulcrum against the taxpayer coupled with the fact that the original return was filed with positive income. As against this, in the case before the Pune Tribunal (Bilcare Limited), the reason for omission was explained to the Revenue, which was uncontroverted and the original return was filed under section 139(3) of the Act. This fact, together with the Delhi High Court decision in CIT v. Nalva Investments Ltd<sup>[16]</sup> proved to be a vital cog in deciding the case by the Pune Tribunal in favour of the taxpayer. The Supreme Court's verdict in Wipro Ltd., if read in the light of the specific facts, may thus not be an absolute bar on claiming loss through a revised return.

The picture that we see after joining all these dots is not as negative as it may seem. In short, none of the judicial precedents on the issue are conclusive and they should be applied considering the facts of each case. Navigating through the maze of plethora of rulings on the issue of claim of loss through revised returns, taxpayers should bear in mind their own factual position and take a conscious call each time; exercising due care and diligence while filing the original return and considering whether they would be able to sufficiently substantiate some important factors like impossibility of claiming a particular loss in the original return, or in other words, the genuineness of the omission in the original return. There have been instances wherein taxpayers have filed return under section 139(1) of the Act with positive income which was assessed as a loss return – in such cases Courts<sup>[17]</sup> have allowed carry forward and set-off of losses for future years. Whether this is a defence in other cases or not, picture is not entirely bleak as it may appear – caution and substantiation is the key to avoid an oops moment!

*(with inputs from Tamanna Hinduja, Manager and Ekant Tyagi, Analyst at Nangia Andersen LLP)*

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[1] ACIT v. Tata Housing Development Co. Ltd [\[TS-5316-ITAT-2010\(MUMBAI\)-O\]](#)

[2] Sunanda Ram Deka v. CIT [\[TS-5104-HC-1994\(GAUHATI\)-O\]](#)

[3] CIT v. A. Sreenivasa Pai [\[TS-6175-HC-2014\(KARNATAKA\)-O\]](#)

[4] [\[TS-5130-HC-2004\(MADRAS\)-O\]](#)

[5] [\[TS-5235-ITAT-2008\(DELHI\)-O\]](#)

[6] [\[TS-5714-HC-2017\(GUJARAT\)-O\]](#)

[7] ITA 4312/Mum/2009 Order dt. 29.07.2011

[\[8\] TS-5331-HC-2019\(KERALA\)-O\]](#)

[\[9\] \[TS-216-ITAT-2012\(Bang\)\]](#)

[\[10\] PCIT v. Wipro Ltd. \[TS-544-SC-2022\]](#)

[\[11\] \[TS-544-SC-2022\]](#)

[\[12\] \[TS-341-ITAT-2023\(DEL\)\]](#)

[\[13\] \[TS-344-ITAT-2023\(PUN\)\]](#)

[\[14\] CIT v. Mahendra Mills / Arun Textile 'C' / Humphreys / Glasgow Consultants \[TS-17-SC-2000-O\]](#)

[\[15\] CIT v. Parakh & Co. India Ltd. \[TS-5006-SC-1956-O\]](#) and [Kedarnath Jute Manufacturing Co. Ltd. v. CIT \[TS-7-SC-1971-O\]](#)

[\[16\] ITA No. 822/2005](#)

[\[17\] CIT v. Srinivasa Builders, Karnataka High Court, ITA No 683/2007](#)