
(1976) 05 AHC CK 0051

In the Allahabad High Court

Case No : Income-tax Reference No. 544 of 1973

Additional Commissioner of Income Tax

APPELLANT

Vs

Seth Devi Chand and Sons

RESPONDENT

Date of Decision : 21-05-1976

Acts Referred:

Income Tax Act, 1961 — Section 139(1), 139(2), 139(4), 271(1)

Citation : (1978) 111 ITR 724

Hon'ble Judges : R.M. Sahai, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; R.K. Jain, for the Respondent

Final Decision : Allowed

Judgement

R.M. Sahai, J.—The Income Tax Appellate Tribunal, Delhi Bench "B", has referred the following question for the opinion of this court u/s 256(1) of the Income Tax Act, 1961 :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in cancelling the penalty u/s 271(1)(a)?"

2. The assessee, a firm, consisted of four partners. The business of the assessee-company was deriving income from its share in lease money paid by the lessors of the S. B. Sugar Mills, Bijnor, and from dealings in groundnut and seeds. The Income Tax Officer issued notice u/s 139(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), which was served on the assessee on June 24, 1963, requiring it to file its return of income by 23rd July, 1963. The firm filed its return after a delay of 17 months on 28th December, 1964. Penalty proceedings were initiated and show-cause notice was served on the assessee on 25th March, 1968. The assessee did not appear. The case was adjourned to 3rd January, 1970, but the assessee did not appear even on this date. The Income Tax Officer, in the circumstances, held that the firm had no explanation to offer for the delay in the filing of the return and accordingly imposed a penalty of Rs.

14,659 by his order dated 13th March, 1970. Aggrieved by the decision of the Income Tax Officer the assessee filed an appeal to the Appellate Assistant Commissioner and furnished explanation for the delay in filing the return which was not accepted. The plea was reiterated before the Income Tax Appellate Tribunal. The Tribunal, however, allowed the appeal relying on a decision in Commissioner of Income Tax, Punjab Vs. Kulu Valley Transport Co. P. Ltd., . The department is aggrieved and at its instance the Income Tax Appellate Tribunal has referred the question of law indicated above for the opinion of this court.

3. The question that arises for consideration on these facts is whether the penalty proceedings initiated against the assessee were justified. However, before dealing with the controversy on merits, it is necessary to quote the relevant provisions of the Act:

"139. (1) Every person, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to Income Tax, shall furnish a return of his income or the income of such other person during the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed.....

(4)(a) Any person who has not furnished a return within the time allowed to him under Sub-section (1) or Sub-section (2) may, before the assessment is made, furnish the return for any previous year at any time before the end of the period specified in Clause (b), and the provisions of Sub-section (8) shall apply in every such case."

4. Section 139 deals with the procedure for assessment and it requires an assessee to furnish a return of his income in the prescribed form and in the manner prescribed within the time provided. The proviso to Section 139(1) confers a discretion on the Income Tax Officer to extend the date for furnishing return. Section 139(4) permits an assessee to furnish the return as contemplated by Section 139(1) or (2) before the assessment is made or at any time before the end of the period specified in Clause (b). The two provisions operate at different points of time. The right to file a return u/s 139(4) accrues only when the period prescribed u/s 139(1), (2) or the proviso, has expired. A return filed u/s 139(4) for the purposes of assessment may be on the same footing as a return contemplated by Section 139(1). The question, however, is whether the assessee, which filed its return u/s 139(4) can absolve himself from the clutches of Section 271 of the Act.

5. A perusal of the Income Tax Act discloses that the interest of the revenue has been safeguarded by enacting provisions regarding accrual of automatic interest wherever the assessee desires to act beyond the prescribed period. It is noteworthy that even in those cases where discretion has been conferred on the Income Tax Officer to extend time, the accrual of interest is not obstructed. The provision of penalty stands on a completely different plane. The intent and

purpose is not only to safeguard the interest of the revenue but also to work as a deterrent and to check the evasive tendency of the assessee. It is no doubt true that the nature of penal provisions are quasi-criminal and though the courts have always insisted on strict compliance with it, yet the entire purpose would be frustrated if full effect is not given to the statutory provisions.

6. It has been urged by the counsel for the respondent that the provisions of Section 271(1)(a) are not applicable in this case as the return had been filed u/s 139(4). According to him, the first part of Section 271(1)(a) will not apply as it is not a case where no return was furnished. So far the second part is concerned, i.e., the late filing of the return, the penalty is imposable only if it was not in the manner required by subsection (1) of Section 139. Section 271(1)(a) lays down the point at which the default occurs. In the first part it occurs where the assessee fails to furnish the return of total income which he was required to furnish under Sub-section (1) or does not comply with the notice given under sub-section (2) of Section 139 or Section 148. The second part applies where the assessee without reasonable cause fails to furnish the return within the time allowed and in the manner required by Sub-section (1) of Section 139 or by such notice. The expiry of the time for filing of return and the default is simultaneous. Default having taken place, the second part of Section 271(1)(a) comes into play and the assessee becomes liable to penalty. We are not concerned in this case with the question whether there was any reasonable cause or not. In our opinion, the Income Tax Officer was justified in initiating proceedings and imposing penalty. The view taken by the Tribunal does not appear to be correct. The Supreme Court decision in *Commissioner of Income Tax, Punjab Vs. Kulu Valley Transport Co. P. Ltd.*, deals with an entirely different problem. The question that arose there was whether a voluntary return having been filed showing loss, the Income Tax Officer could decline to give benefit u/s 24(2) of the Act of carrying forward the amount on the ground that the assessee did not comply with the provisions of Section 22(2A) of the Act. It has been held that by virtue of provisions contained in Section 22(2A) a loss return can be filed by a person who has not been served with a notice under Sub-section (2) and he can get the benefit of the carry forward of loss u/s 24(2). It was in this context that it was observed by their Lordships of the Supreme Court that a voluntary return of loss filed u/s 22(2A) was a return as contemplated u/s 22 and within time. The controversy that has arisen in the present case is whether Section 271(1)(a) is applicable where a return has been filed u/s 139(4). To our minds it is not the applicability of Section 139(4) which is material. The penalty is imposed for not complying with the provisions of Section 139(1) and not for filing the return within the time allowed. It has nothing to do with Section 139(4). Once the assessee is in default, Section 271(1)(a) applies. Similar view has been taken by a Bench of the Andhra Pradesh High Court in a decision in *Poorna Biscuit Factory Vs. Commissioner of Income Tax*, . Reliance has also been placed on the latest decision in *Additional Commissioner of Income Tax Vs. Bihar Textiles*, . This case was concerned with the question whether the extension of time granted by the

Income Tax Officer under the proviso to Section 139(1) absolved an assessee of the penalty u/s 271. In our opinion, this decision does not help the assessee. For the reasons stated above, we are of the opinion that the question referred to us should be answered in the negative, in favour of the department and against the assessee. The revenue is entitled to its costs which we assess at Rs. 200.