

(1976) 03 P&H CK 0010
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 4773 of 1975

Auto and Metal Engineers

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 04-03-1976

Acts Referred:

Income Tax Act, 1961 — Section 139(1), 139(2), 144, 147, 148

Citation : (1978) 111 ITR 161

Hon'ble Judges : Muni Lal Verma, J

Bench : Single Bench

Advocate : D.D. Varma and R.N. Narula, for the Appellant; D.N. Awasthy, for the Respondent

Judgement

Muni Lal Verma, J.—This petition and reply thereto run into pages. Without referring to unnecessary averments made therein the facts which are relevant for decision of this writ petition may be briefly stated as under :

The petitioner is a partnership firm and is assessed to Income Tax as a registered firm. It runs business at Faridabad, Shrimati Sunanda Rani Jain, wife of Shri V.K. Jain, and Shrimati Karuna Jain, wife of Shri S.K. Jain, are its partners. The premises of the factory and business and also the residential places of the aforesaid partners of the firm were raided on April 24, 1971, and huge records including books of account and other documents were seized by the Income Tax authorities. The petitioner could furnish the Income Tax return (hereinafter referred to as "the return") for the year 1972-73 at the most by March 31, 1975. It failed to do so, and furnished it (the return) on May 12, 1975. The Income Tax Officer, therefore, ignored it and issued notice (annexure "P-2") (hereinafter referred to as "the notice") under Sections 147(a)/148 of the Income Tax Act, 1961 (hereinafter called "the Act"), on July 17, 1975, requiring the petitioner to file the return within thirty days from the date of service of the said notice. Therefore, the petitioner filed this writ petition impeaching the validity of the notice on various grounds which included (i) that the return had already been

filed and was pending ; (ii) that the assessment for the year 1972-73 had become time-barred; and (iii) the Income Tax Officer had no material with him to entertain the necessary belief that the income of the petitioner chargeable to Income Tax for the assessment year had escaped assessment. It was averred in the said grounds that the notice was ultra vires and without jurisdiction. The petitioner, therefore, claimed a writ in the nature of certiorari quashing the notice and a writ in the nature of mandamus or prohibition restraining the Income Tax Officer from making the assessment. The writ petition has been contested by the respondents.

2. The broad facts were admitted, but it was pleaded that since the return filed by the petitioner on May 12, 1975, was beyond the period prescribed for filing the same, the same was treated as non est and the notice had been validly issued.

3. The facts that the accounting year in question is 1971-72 and the assessment year is 1972-73 which ended on March 31, 1973, and the petitioner had to file the return by July 31, 1972, are not disputed. It is further acknowledged that the Income Tax Officer was competent to extend the date for furnishing the return and the maximum time for furnishing the return extended to two years ending on March 31, 1975. Sub-section (4)(b)(iii) of Section 139 of the Act prescribes the said outside limit for furnishing the return. Proviso to sub-section (1) of Section 139 of the Act empowers the Income Tax Officer to extend the date, which as indicated above was July 31, 1973, for furnishing the return, of course, subject to the aforesaid outside limit which extended to March 31, 1975.

4. Mr. D.D. Verma, learned counsel for the petitioner, has contended that the Income Tax Officer had issued a notice u/s 139(2) of the Act to the petitioner in or about the year 1974 and, therefore, the Income Tax Officer was bound to pass the assessment order on or before March 31, 1975, irrespective of the fact that the petitioner had not furnished any return before that date. According to him, when the petitioner failed to furnish the return, the Income Tax Officer should have proceeded to pass the assessment order to the best of his judgment u/s 144 of the Act. Since he did not do so, no assessment order could now be made by him. He relies on the provisions contained in Section 153(1)(a)(iii) in this behalf. He adds that there is no rule prescribing a specific form for a notice to be issued u/s 139(2) of the Act and the Act does not contain any provision other than the one enacted in Section 139(2) of the Act requiring the petitioner to file the return. Therefore any requisition, in whatever words, which had been made by the Income Tax Officer calling upon the petitioner to file the return should be deemed as notice u/s 139(2) of the Act. True, I have not been referred to any rule prescribing a specific form for a notice to be issued u/s 139(2) of the Act and I have also not been shown any provision other than the one contained in Section 139(2) of the Act which authorises the Income Tax Officer for issuing requisition to an assessee to file the return. But, for the reasons to be recorded presently, it cannot be maintained that any notice u/s 139(2) of the Act had at all

been issued by the Income Tax Officer to the petitioner.

5. The record which has been made available by Mr. D.N. Awasthy, learned counsel for the respondents, has been carefully examined by me and by Mr. D.D. Verma. It contains the first letter addressed by the petitioner on July 28, 1972, to the Income Tax Officer asking for extension of time for six months for furnishing the return. It is clearly mentioned therein that the time for furnishing the return was to expire on July 31, 1972. In that letter, the Income Tax Officer extended the time for filing the return up to October 30, 1972, and a letter dated January 19, 1973, was despatched to the petitioner in that behalf. Towards the end of the said letter it was remarked that "the return should now be filed without any further delay". Thereafter, the petitioner again applied on February 1, 1973, for extension of time for six months for filing the return. The Income Tax Officer declined to extend the time, vide his letter dated March 13, 1973. It was, however, remarked towards the close of that letter that "in any case you are allowed to file the return by April 30, 1973". Mr. Verma construes the said letters dated January 19, 1973, and March 13, 1973, addressed by the Income Tax Officer to the petitioner as notices u/s 139(2) of the Act. I am unable to agree with him. These two letters have to be read in the context of the correspondence that had been exchanged between the petitioner and the Income Tax Officer. It is manifest from the letters dated July 28, 1972, and February 1, 1973, addressed by the petitioner to the Income Tax Officer, that the petitioner had sought extension of time under the proviso to sub-section (1) of Section 139 of the Act for furnishing the return. It was in reply to the said letters that the Income Tax Officer had addressed letters dated January 19, 1973, and March 13, 1973, to the petitioner. Therefore, extension, if any, allowed by the Income Tax Officer to file the return, had been given under proviso to sub-section (1) of Section 139 of the Act. The words "the return should now be filed without any further delay" contained in letter dated January 19, 1973, or the words "in any case you are allowed to file the return by April 30, 1973" contained in letter dated March 13, 1973, addressed by the Income Tax Officer to the petitioner do not go beyond that, and were meant to convey the emphasis of the necessity to file the return. A notice when issued under sub-section (2) of Section 139 of the Act, contains a direction that the return should be furnished within thirty days from the date of service of the notice. No such direction was given in letter dated January 19, 1973, or in letter dated March 13, 1973, addressed by the Income Tax Officer to the petitioner. Therefore, in no way, the words referred to above contained in the two letters addressed by the Income Tax Officer to the petitioner can be construed as notice under sub-section (2) of Section 139 of the Act. So, it would be neither legitimate nor permissible to contend that any of the said two letters dated January 19 and March 13, 1973, addressed by the Income Tax Officer to the petitioner was notice u/s 139(2) of the Act. Letter dated January 15, 1974 (annexure "P-3 "), addressed by the Income Tax Officer to the petitioner, cannot be treated as notice under sub-section (2) of Section 139 of the Act, for the obvious reason that it was issued on January 15, 1974, i.e., after March 31,

1973, when the relevant assessment year had concluded. It is, thus, evident that no notice under sub-section (2) of Section 139 of the Act was at all issued by the Income Tax Officer to the petitioner. In these premises when no such notice had been issued by the Income Tax Officer to the petitioner, the Income Tax Officer could not make an assessment order according to the best of his judgment u/s 144 of the Act and the bar of making an assessment order provided in Section 153(1)(a)(iii) of the Act is not attracted. Therefore, I have no hesitation in finding that the contentions raised by Mr. Verma are more of convenience than real and, finding no force therein, overrule the same. To conclude, I find that the petitioner did not furnish any return even within the outside limit provided by law and since the Income Tax Officer did not issue any notice under sub-section (2) of Section 139 of the Act the question of rendering best judgment assessment as contemplated by Section 144 of the Act does not arise and the provisions contained in Section 153(1)(a)(iii) of the Act would be inapplicable.

6. As indicated above, the outside limit to file the return was March 31, 1975, and the return had been filed by the petitioner beyond that period, i.e., on May 12, 1975. Therefore, the said return according to the rules and law governing the same was invalid and the Income Tax Officer was not unjustified in treating the same as non est. Therefore, the ground that the notice (annexure "P-2") could not be issued because the return already filed by the petitioner was pending, is unsustainable. As remarked above, the provisions contained in Section 153(1)(a)(iii) of the Act are inapplicable and the plea that the assessment for the year 1972-73 has now become time-barred is without merit. Since the petitioner had been assessed to income-tax and was a registered firm, its name must be on the relevant register of assesseees and when it failed to file the return even within the outside limit, the Income Tax Officer could have reason to believe that the income for the aforesaid year 1971-72 had escaped assessment. In that view of the matter, the Income Tax Officer was empowered to take action u/s 147 of the Act and he was justified in issuing the notice (annexure "P-2") u/s 148 of the Act to the petitioner. It, thus, follows that the notice (annexure "P-2") does not suffer from any infirmity and this petition is bereft of any merit.

7. For the foregoing reasons, I dismiss this petition with costs which are assessed at Rs. 300.