

(1967) 02 KAR CK 0014
In the Karnataka High Court
Case No : Writ Petition No. 1067 of 1965

B.B. Danganavar

APPELLANT

Vs

Income Tax Officer, Special Survey Circle, Dharwar

RESPONDENT

Date of Decision : 09-02-1967

Acts Referred:

Income Tax Act, 1961 — Section 139 (1), 139 (3), 74 (1)

Citation : (1967) 65 ITR 370 : (1967) 1 MysLJ 426

Hon'ble Judges : B. Venkataswami, J;A. Narayana Pai, J

Bench : Division Bench

Advocate : V. Krishna Murthy, for the Appellant; S.R. Rajasekhara Murthy, for the Respondent

Judgement

Narayana Pal, J.—The petitioner seeks the issue of a writ of mandamus directing the respondent, Income Tax Officer, Special Survey Circle, Dharwar, to take up for consideration, and to dispose of, two returns made by him for purposes of the Income Tax Act in relation to assessment years 1962-63 and 1963-64.

2. A few facts, which are of relevance to the writ petition, are the following :

3. The petitioner started a business in February, 1961, and adopted for maintenance of his account the Deepavali year. For a couple of years the business did not yield any profits but during the Deepavali year October 29, 1962, to November 16, 1963, the petitioner earned a fairly large profit. On October 24, 1964, he filed before the respondent three returns - the first, for the assessment year 1962-63, covering his account from January 21, 1961, to November 8, 1961, disclosing a loss of Rs. 5,000, the second, for the assessment year 1963-64, relating to his account November 9, 1961, to October 28, 1962, disclosing a loss of Rs. 18,094, and the third, for the assessment year 1964-65, covering his account October 29, 1962, to November 16, 1963, showing a profit of Rs. 32,574, as against which he sought to set off the losses of the first two years and claimed that only the balance of Rs. 8,730 be subjected to tax. The respondent rejected the claim for set-off on the ground that the two earlier

returns disclosing losses had been filed beyond the period of limitation prescribed by sub-section (3) of section 139 of the Income Tax Act, 1961. An appeal by the assessee to the Appellate Assistant Commissioner, Dharwar Range, was also unsuccessful.

4. The petitioner thereupon has come to this court with this writ petition in which his principal contention is that it was wrong on the part of the Income Tax Officer to have thought that his first two returns were so invalid as to be actually put out of account or ignored and that he having failed to perform a statutory duty which the petitioner is entitled to ask him to perform in protection of his own right or interest, this court should compel him to perform that duty by the issue of a mandamus.

5. Section 139 of the Income Tax Act, to sub-section (3) whereof the respondent has made a reference in his assessment order, deals with the topic of making a return for purposes of assessment. Sub-section (1) obliges certain categories of persons to furnish a return even without any notice being served upon them. Those persons are persons whose total income inclusive of the income of other persons assessable in their hands exceeds the maximum amount which is not chargeable to tax during the relevant year. The sub-section also prescribes the period of time within which the return has to be made which is six months from the expiry of the accounting year adopted by the assessee or the 30th day of June of the assessment year, whichever is later, in the case of persons whose income includes income from business or profession, and the 30th day of June of the assessment year, in the case of every other person. The sub-section contains a proviso empowering the Income Tax Officer to extend the period in certain circumstances and subject to certain conditions. Sub-section (2) empowers the Income Tax Officer to serve any person with notice calling upon him to furnish a return. Sub-sections (3) and (4) read as follows :

"(3) If any person, who has not been served with a notice under sub-section (2), has sustained a loss in any previous year under the head "profits and gains of business or profession" or under the head "capital gains" and claims that the loss or any part thereof should be carried forward under sub-section (1) of section 72 or sub-section (2) of section 73, or sub-section (1) of section 74, he may furnish, within the time allowed under sub-section (1), a return of loss in the prescribed form and verified in the prescribed manner and containing such other particulars as may be prescribed, and all the provisions of this Act shall apply as if it were a return under sub-section (1).

(4) 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 four assessment years from the end of the assessment year to which the return relates, and the provisions of sub-clause (iii) of the proviso to sub-section (1) shall apply in every such case."

6. Sub-section (3) of the 1961 Act corresponds to sub-section (2A) of section 22 of the Act of 1922, which was inserted into it by the amendment of the year 1953. Sub-section (4) corresponds to sub-section (3) of the said section 22. For the purpose of reference we copy below sub-sections (2A) and (3) of section 22 of the 1922 Act.

"(2A) If any person, who has not been served with a notice under sub-section (2), has sustained a loss of profits or gains in any year under the head "profits and gains of business, profession or vocation", and such loss or any part thereof would ordinarily have been carried forward under sub-section (2) of section 24, he shall, if he is to be entitled to the benefit of the carry-forward of loss in any subsequent assessment, furnish within the time specified in the general notice given under sub-section (1) or within such further time as the Income Tax Officer in any case may allow, all the particulars required under the prescribed form of return of total income and total world income in the same manner as he would have furnished a return under sub-section (1) had his income exceeded the maximum amount not liable to Income Tax in his case, and all the provisions of this Act shall apply as if it were a return under sub-section (1).

(3) If any person has not furnished a return within the time allowed by or under sub-section (1) or sub-section (2), or having furnished a return under either of those sub-sections, discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made."

7. Before the insertion of sub-section (2A) into section 22 of the old Act, questions were raised and discussed as to whether there was any provision in the Income Tax Act enabling a person to make a return of loss or obliging the Income Tax authorities to entertain and deal with returns of losses, if any, made by an assessee or any person. Sub-section (1) of section 22, which corresponded to sub-section (1) of the present section 139, dealt with the returns of income, whether the same were beyond or below the exemption limit. There was no specific provision for the presentation of a return of loss. The Calcutta High Court in the case of Commissioner of Income Tax, West Bengal, Calcutta Vs. Govindalal Dutta, took the view that the voluntary returns of losses are not at all returns within the meaning of the Income Tax Act, and that the Income Tax Officer was not required by any provision of the Act to make an assessment in respect of them or pursuant to them. The High Court of Madras also in two cases - one decided by a Bench in O. M. Ahamed Sahib Vs. Commissioner of Income Tax., and the other by a Full Bench in Udaya Ltd., Madras Vs. Commissioner of Income Tax, Madras, - took the same view. In the latter case, it observed that the person whose income was below the taxable limit was not bound to submit a return and that, even if he submitted one, the Income Tax Officer was not bound to deal with it.

8. The Bombay High Court expressed a contrary view in the case of Ranchhoddas Karsondas Vs. Commissioner of Income Tax, Bombay City, . The decision of the

Bombay High Court in the said case was affirmed by the Supreme Court upon appeal and their judgment is reported as *The Commissioner of Income Tax, Bombay Vs. Ranchhoddas Karsondas, Bombay*, . The general observation made by their Lordships in the said case was that a return showing income below the taxable limit submitted voluntarily in answer to the general notice u/s 22(1) of the Income Tax Act was a good return, because it was a return which the assessee considered represented his true income. They also pointed out that there was no provision in the Income Tax Act which would enable the Income Tax authorities totally to refuse to consider a return, if filed. After noticing the difference of opinion referred to above, their Lordships made a general observation that they were unable to accept the view adumbrated in the Calcutta case.

9. The decision of the Supreme Court mentioned above was rendered upon an interpretation of section 22 of the Act of 1922 before it was amended by the insertion of the new sub-section (2A). The question whether the said amendment made any difference to the application of the general principles stated by the Supreme Court was examined in a subsequent case of the Bombay High Court reported in *Radhakrishna Rungta and Others Vs. Seventh Income Tax Officer, C-II Ward, Bombay*, . Their Lordships pointed out that the only extent to which the new sub-section may be said to have made a difference to the legal position was or should be limited to specific cases expressly dealt with in the said sub-section. Those cases are cases in which an assessee intends to carry forward his losses to a subsequent year - the effect of the section being that before he can be entitled to do so, he must make a return of his losses voluntarily before the expiry of the period limited by the first sub-section. It should also be noted that it refers to persons on whom no notice has been served. It was argued before the Bombay High Court that that was the highest that could be said about the effect of the new sub-section and that if the purpose of making a voluntary return of loss was not to get the benefit of carry-forward of the said loss to the subsequent year or years, the limitation prescribed thereby will not be applicable, and the general principle stated by the Supreme Court, already referred to above, will continue to apply. In that case, it was argued that quite apart from the benefit of carry-over, there may be other purposes to be served such as, for example, adjustments of a share in the loss of a registered firm against the individual income of the partners in the same assessment year.

10. The opposing views and the arguments pressed in support of them were not finally determined or decided by the Bombay High Court in the said case because they thought that it would be sufficient in that case to hold that the view taken by the Income Tax Officer to the effect that the return of loss made in the said case was totally invalid, having been filed beyond the period referred to in sub-section (2A) of section 22, was wrong and that, acting on the said wrong view, the officer had declined to apply his mind to the question whether the returns might or might not have served some purpose of the assessee other than the benefit of carry-forward of the losses. The High Court, therefore, issued a

mandamus to him to entertain and consider the returns.

11. The position under the new Act of 1961 is more or less same with some differences. The necessity for public notice under sub-section (1) of the old section 22 was done away with, and the obligation statutorily placed upon every person, whose total income or the total of all income assessable in his hands exceeds the maximum amount not chargeable to Income Tax during the relevant year, to furnish a return of income within the period prescribed by sub-section (1) of section 139 with power to the Income Tax Officer to extend the period of time in the circumstances and subject to the conditions mentioned in the proviso appended to the said sub-section. Sub-section (2) dealing with notice and consequence thereof does not also involve any great departure from the previous position. Sub-section (3), which corresponds to sub-section (2A) of the old section 22, involves a departure in one important particular. Whereas the return of loss under the old sub-section (2A) could have been made either within the time prescribed under sub-section (1) or within such further time as the Income Tax Officer in any case may allow, the benefit of extension of time by the Income Tax Officer is not found stated in sub-section (3) of the present section 139. It would appear therefore that whereas in cases covered by the old Act the Income Tax Officer had the power to extend the time, that power must be taken to have been taken away by the present sub-section (3). The argument, however, addressed on behalf of the petitioner is that after saying that the return of loss may be furnished within the time allowed by sub-section (1), the sub-section concludes with the words :

"all the provisions of this Act shall apply as if it were a return under sub-section (1)",

and that, therefore, there is no compulsion or logic to hold that the power of extending time under the proviso to sub-section (1) cannot be exercised in the case of voluntary returns of losses under sub-section (3). But the same words, or words to the same effect, were contained in the old sub-section (2A) also, viz. :

"all the provisions of this Act shall apply as if it were a return under sub-section (1)".

12. Those words, in our opinion, merely affirm that the return should be dealt with in the same manner as any other return for the purpose of scrutiny, assessment or appeal, etc., and not that the power of the Income Tax Officer to extend the time under sub-section (1) shall also apply.

13. There are also other reasons, in our opinion, why such should be the proper interpretation to be placed on the section.

14. u/s 80 of the new Act, a loss can never be carried over unless it has been determined in pursuance of a return filed u/s 139. The return referred to in the said section may be a return of income made under sub-section (1) or a return of loss made under sub-section (3). In the case of returns covered by sub-section

(1) which are of income and which may not in ordinary circumstances result in a loss being determined and may therefore result in imposition and collection of Income Tax, the interests of the revenue may be served by extending the time for making the return. In the case of returns of pure losses which are made or enabled to be made under sub-section (3) of section 139, to acquire a right to carry them over to a subsequent period, the interests of the revenue will be served better by obliging the making of those returns within a prescribed period and thereby preventing possible dishonest returns being made in the light of large profits subsequently made.

15. The omission to repeat in the new section 139(3) the words "or within such further time as the Income Tax Officer in any case may allow" occurring in the old section 22(2A) cannot be regarded as of no significance. It should be noted that the ordinary rule is that, for purposes of assessment, a year is a unit and that, therefore, the carry over of losses from a previous year or years for the computation of the gains of a subsequent year is a concession to the assessee. The normal rule of interpretation in relation to a provision of law granting a concession is that the conditions prescribed therefore should be strictly complied with. And when the period of limitation of time therefore stated in unqualified terms omitting the old provision for extension by the Income Tax Officer appears to subserve a definite purpose in the interests of the revenue as stated above, an interpretation which defeats such purpose should not, in our opinion, be adopted.

16. The result of the decisions discussed and the alterations in the law made by the new Act is that if a person desires to acquire the benefit of carry-over, or to become entitled to carry forward a loss incurred by him in any year to a subsequent year or subsequent years to be set off against the profits of such subsequent year or subsequent years, he should make a return of loss within the period prescribed by sub-section (1) of section 139. If he does not do so, he loses the benefit of carrying forward the loss on the expiry of the period of limitation prescribed therefor. A benefit so conferred by the statute subject to conditions stated in clear terms cannot thereafter be conferred upon him by the Income Tax Officer exercising his discretion of extending the time.

17. But, if his purpose is not to get the benefit of carry-forward, he will not be limited by the strict terms of sub-section (3) of section 139. If the case is one which is covered by sub-section (1) or sub-section (2) he may move the officer to extend the time, and if his case is governed by sub-section (4), he may present a return so long as assessment has not been completed, and the four years" period stated therein has not expired.

18. Now in the present case, there is no doubt that the only benefit which the petitioner wanted to get is the benefit of the carry forward of losses. It is not suggested, nor does it follow from the facts stated in the affidavit, that any other benefit is likely to be derived by him from a consideration of his returns of losses or that any detriment or prejudice is likely to result by the omission or refusal on the part of the Income Tax Office to examine those returns.

19. Hence, the rather loosely worded expressions of the officer in his assessment order to the effect that he cannot take cognizance of the returns or that the returns cannot be acted upon and should be filed are not of any direct bearing on, or relevance to, the rights and interests of the petitioner.

20. We are, therefore, for the opinion that this is not a case in which a writ of mandamus should issue to entertain and take up for consideration the returns made by the petitioner in respect of the assessment years 1962-63 and 1963-64.

21. The writ petition is, therefore, dismissed.

22. There will be no order as to costs.

23. Writ petition dismissed.