
(1984) 03 P&H CK 0094
In the Punjab And Haryana At Chandigarh
Case No : Income-tax Reference No. 2 of 1977

Commissioner of Income Tax

APPELLANT

Vs

Dr. Krishan Lal Goyal

RESPONDENT

Date of Decision : 30-03-1984

Acts Referred:

Income Tax Act, 1961 — Section 139, 140

Citation : (1984) 43 CTR 135 : (1984) 148 ITR 283

Hon'ble Judges : S.S. Kang, J;M.R. Sharma, J

Bench : Division Bench

Advocate : Ashok Bhan and Ajay Mittal, for the Appellant; B.S. Gupta and S.K. Mittal, for the Respondent

Judgement

Sukhdev Singh Kang, J.—The Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short "the Appellate Tribunal"), has, at the instance of the Commissioner of Income Tax, Amritsar-II, Amritsar, referred the following question of law for our opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the assessment made on the basis of the return filed by the assessee on May 22, 1968, was not valid ?"

2. The factual back-drop giving rise to this question may be noticed :

3. On May 22, 1968, Dr. Krishan Lal Goyal, an individual assessee, submitted a return of his income for the assessment year 1968-69, The ITO completed the assessment u/s 143(1) of the Income Tax Act, 1961 (for short " the Act "), on May 23, 1968, on the basis of this return. On January 22, 1969, the assessee filed an application u/s 154 of the Act, stating therein that the Income Tax return filed by him (on which the assessment order was passed) was unverified and mostly unfilled and as such it was no return in the eye of law. Section 139 of the Act and Rule 12(1) of the Income Tax Rules, 1962 (hereinafter referred to as "the Rules"), lay down that every return must be verified in the manner indicated

therein. Since the assessment was based on a return which was no return in the eye of law, the ITO committed a grave mistake in framing the assessment. This mistake was apparent on the face of the record. It was prayed that the same may be rectified and orders of assessment be cancelled. The ITO, vide his orders dated August 16, 1974, rejected this application mainly on the ground that though the return had not been verified by the assessee, yet annex. " A " showing details of salaries, annex. " G " showing computation of total income and page 23, indicating the details of annuity deposits, statement of salary and profession, annex. " B ", as well as the statement of capital marked " C " had been duly signed by the assessee. These indicate that the assessee had duly signed the various statements in the return as well as the statements annexed thereto. The omission on the part of the assessee to sign the verification does not make the return invalid. On appeal, the AAC accepted the contention of the assessee. He held that since the assessment had been framed on an invalid return, it was not valid in law. There was a mistake apparent in the assessment order. He allowed the appeal and rectified the mistake and cancelled the assessment order. The appeal by the Revenue failed and this order of the AAC was affirmed by the Appellate Tribunal, vide orders dated February 19, 1976. It was observed that the Department had not cited any authority in support of the proposition that an unverified return of total income could form the basis of a valid assessment. Relevant statutory provision of the Act as they stood at the relevant time may be noticed at this stage:

"Section 139. Every person, if his total income ... exceeded the maximum amount which is not chargeable to Income Tax, shall furnish a return of his income ... in the prescribed form and verified in the prescribed manner....."

"Section 140. The return u/s 139 shall be signed and verified--

(a) in the case of an individual, by the individual himself; where the individual is absent from India, by the individual concerned or by some person duly authorised by him in this behalf; and where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf. "

4. Rule 12 of the Rules lays down:

"Rule 12(1) The return of income required to be furnished under Sub-section (1), or Sub-section (2), or Sub-section (3), or Sub-section (4A), or Sub-section (4B) of Section 139 shall,--.....

(b) in the case of a person not being a company to which clause (a) applies, and not being a person to whom clause (c) applies --

(i) where the total income includes any income chargeable to Income Tax under the head " Profits and gains of business or profession ", be in Form No. 2 and be verified in the manner indicated therein;.....

5. It is manifest from the above-quoted statutory provision that a return, in

order to be valid, must comply with the conditions prescribed therein. There is a policy behind the prescription of the requirement of verification of the return. The assessee is enjoined to vouchsafe for the veracity and truth of the facts stated in the return so that the Income Tax authorities could proceed to make assessment on the basis of the return. If an assessee conceals particulars of income or deliberately furnishes inaccurate particulars of his income then he is liable to penal action. However, in the absence of a verification, it may not be possible to successfully launch penalty proceedings against a defaulting assessee.

6. For this reason, a return which is not verified is invalid and is no return in the eye of law. There is no provision in the Act permitting an assessee to amend his return. He can only, in certain specified cases, file a fresh return but he cannot add to or delete from the return, already filed. It is not necessary to dilate upon the point, because the matter is not *res integra*. In (1952) 22 ITR 339 , a Division Bench of the Nagpur High Court observed (at p. 343):

" Where a return made is not in the prescribed form, or is not signed and verified as required by the prescribed form, it is an invalid return and can be ignored by the Income Tax Officer who can thereupon make an assessment u/s 23(4) of the Act. "

7. The highest court in Commissioner of Agricultural Income Tax, Bengal Vs. Sri Keshab Chandra Mandal, has held (headnote):

"...that as there was no physical contact between the assessee and the signature appearing on the return it was not a valid return. "

8. In that case, the assessee was an illiterate person. Under the direction of the ITO, a fresh return was filed on his behalf. It was not signed or thumb-marked by the assessee, instead it was signed by the son of the assessee on his behalf. It was held that it was not a valid return.

9. The Allahabad High Court in CIT v. M.K. Gupta [1978] 113 ITR 473 , has held that a return which is not filed in the proper form is not a return in accordance with the provisions of the Act and the Rules and was liable to be ignored by the ITO. Of course, the Madras High Court in Commissioner of Income Tax Vs. Royal Textiles, , had held that a return filed by an assessee in a wrong form is not *non est*. The main reason for reaching this conclusion was that where the ITO himself had treated the return as valid and proceeded to make a provisional assessment u/s 141, it did not lie in his mouth to say that the same return on which he acted is *non est*. But this case does not lay down that a return sans verification is a valid return.

10. The decision of the Calcutta High Court in Mohindra Mohan Sirkar Vs. Income Tax Officer and Another, , is of no avail to the Revenue. The observations therein that (headnote) :

" It was not possible to agree with the learned judge that because the returns did not state the particulars of the profits and gains of the business of the assessee,

they were invalid and should be regarded as nonexistent. "

11. Are not applicable to the facts of the present case. In that case, the particulars of profits and gains of the business had not been given in the returns, though the returns had been signed and verified by the assessee.

12. In view of the preponderance of authorities in favour of the opposite view, we cannot accept the statement of law enunciated in this decision. To sum up, a return which is not verified does not conform to the salient requisites of a return as required by Section 139/140 of the Act and Rule 12 of the Rules, and is an invalid return and no assessment can be framed on the basis of such a return. We answer the question referred to us in the affirmative, i.e., in favour of the assessee and against the Revenue. There shall be no order as to costs.