
(2009) 01 P&H CK 0110
In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax

APPELLANT

Vs

Harjinder Kaur

RESPONDENT

Date of Decision : 12-01-2009

Acts Referred:

COMPANIES ACT, 1956 — Section 233B
Income Tax Act, 1961 — Section 139, 140, 148, 155, 203

Citation : (2009) 222 CTR 254 : (2009) 310 ITR 71 : (2009) 180 TAXMAN 23

Hon'ble Judges : Nawab Singh, J;J.S. Khehar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

J.S. Khehar, J.—The procedure for assessment under the IT Act, 1961 (hereinafter referred to as the 1961 Act) is laid down in the provisions contained in Chapter XIV. Section 139(9) of the 1961 Act stipulates as under:

139(9) Where the AO considers that the return of income furnished by the assessee is defective, he may intimate the defect to the assessee and give him an opportunity to rectify the defect within a period of fifteen days from the date of such intimation or within such further period which, on an application made in this behalf, the AO may, in his discretion, allow; and if the defect is not rectified within the said period of fifteen days or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, the return shall be treated as an invalid return and the provisions of this Act shall apply as if the assessee had failed to furnish the return:

Provided that where the assessee rectifies the defect after the expiry of the said period of fifteen days or the further period allowed, but before the assessment is made, the AO may condone the delay and treat the return as a valid return.

Explanation : For the purposes of this sub-section, a return of income shall be regarded as defective unless all the following conditions are fulfilled, namely:

(a) the annexures, statements and columns in the return of income relating to

computation of income chargeable under each head of income, computation of gross total income and total income have been duly filled in;

(b) the return is accompanied by a statement showing the computation of the tax payable on the basis of the return;

(bb) the return is accompanied by the report of the audit referred to in Section 44AB, or, where the report has been furnished prior to the furnishing of the return, by a copy of such report together with proof of furnishing the report;

(c) the return is accompanied by proof of:

(i) the tax, if any, claimed to have been deducted or collected at source and the advance tax and tax on self-assessment, if any, claimed to have been paid:

Provided that where the return is not accompanied by proof of the tax, if any, claimed to have been deducted or collected at source, the return of income shall not be regarded as defective if:

(a) a certificate for tax deducted or collected was not furnished u/s 203 or Section 206C to the person furnishing his return of income;

(b) such certificate is produced within a period of two years specified under Sub-section (14) of Section 155;

(ii) the amount of compulsory deposit, if any, claimed to have been made under the Compulsory Deposit Scheme (income tax Payers) Act, 1974 (38 of 1974);

(d) where regular books of account are maintained by the assessee the return is accompanied by copies of:

(i) manufacturing account, trading account, P&L a/c or, as the case may be, income and expenditure account or any other similar account and balance sheet;

(ii) in the case of a proprietary business or profession, the personal account of the proprietor; in the case of a firm, AOP or BOI, personal accounts of the partners or members; and in the case of a partner or member of a firm, AOP or BOI, also his personal account in the firm, AOP or BOI;

(e) where the accounts of the assessee have been audited, the return is accompanied by copies of the audited P&L a/c and balance sheet and the auditor's report and, where an audit of cost accounts of the assessee has been conducted u/s 233B of the Companies Act, 1956 (1 of 1956), also the report under that section;

(f) where regular books of account are not maintained by the assessee the return is accompanied by a statement indicating the amounts of turnover or, as the case may be, gross receipts, gross profit, expenses and net profit of the business or profession and the basis on which such amounts have been computed, and also disclosing the amounts of total sundry debtors, sundry creditors, stock-in-trade and cash balance as at the end of the previous year.

A perusal of Sub-section (9) of Section 139 of the 1961 Act leaves no room for doubt that in case of a defective return, the AO is required to afford an opportunity to an assessee to rectify the defect. Having given the aforesaid opportunity to the assessee, if he/she fails to rectify the defect, the AO is authorized to treat the return as an invalid return and to make an assessment, as if the assessee had failed to furnish any return. It is, therefore, apparent that an AO cannot make an assessment on an invalid return.

2. Insofar as the question of invalid return in the present case is concerned, the same has to be determined in reference to Section 140 of the 1961 Act, which inter alia mandates that a return submitted by an assessee is required to be signed and verified by him. Insofar as the present controversy is concerned, it is not a matter of dispute that the return under reference was neither signed by the assessee nor verified in terms of the mandate of Section 140 of the 1961 Act. It is in the aforesaid circumstances, the Tribunal vide its order dt. 29th Feb., 2008 (Annex. A3) set aside the assessment of income rendered by the AO.

3. In order to repudiate the determination rendered by the AO, learned Counsel for the appellant has invited this Court's attention to Section 292B of the 1961 Act, which is being extracted hereunder:

292B.-Return of income, etc., not to be invalid on certain grounds.-No return of income, assessment, notice, summons or other proceedings, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.

On the strength of the aforesaid provision, learned Counsel requires us to set aside the order passed by the Tribunal, dt. 29th Feb., 2008 (Annex. A3). In this behalf, it is the contention of the learned Counsel for the appellant that defects in returns filed by the assessee depicting mistakes or omissions of income, assessment, notice, summons or other proceedings, should be overlooked and need not be given effect to. It is, therefore, the contention of the learned Counsel for the appellant that the assessee in the present case had filed the return in response to a notice issued to her u/s 148 of the 1961 Act, as the return earlier filed by her as a member of HUF, was treated as a defective return.

4. Having given our thoughtful consideration to the submission advanced by the learned Counsel for the appellant, we are of the view that the provisions of Section 292B of the 1961 Act do not authorize the AO to ignore a defect of a substantive nature and it is, therefore, that the aforesaid provision categorically records that a return would not be treated as invalid, if the same "in substance and effect is in conformity with or according to the intent and purpose of this

Act". Insofar as the return under reference is concerned, in terms of Section 140 of the 1961 Act, the same cannot be treated to be even a return filed by the respondent assessee, as the same does not even bear her signatures and had not even been verified by her. In the aforesaid view of the matter, it is not possible for us to accept that the return allegedly filed by the assessee was in substance and effect in conformity with or according to the intent and purpose of this Act. Thus viewed, it is not possible for us to accept the contention advanced by the learned Counsel for the appellant on the basis of Section 292B of the 1961 Act. The return under reference, which had been taken into consideration by the Revenue, was an absolutely invalid return as it had a glaring inherent defect which could not be cured in spite of the deeming effect of Section 292B of the 1961 Act.

In view of the above, we find no merit in the instant appeal and the same is, accordingly, dismissed.