**(2005) 04 P&H CK 0048**

**In the Punjab And Haryana At Chandigarh**

**Case No :** IT Ref. No''s. 45 and 46 of 1998

Commissioner of Income Tax APPELLANT

Vs

K.K. Spun Pipe RESPONDENT

**Date of Decision :** 30-04-2005

**Acts Referred:**

Income Tax Act, 1961 — Section 139, 139(1), 139(4), 142, 142(1)

**Citation :** (2006) 200 CTR 107 : (2006) 284 ITR 301

**Hon'ble Judges :** D.K. Jain, C.J;Hemant Gupta, J

**Bench :** Division Bench

**Advocate :** Rajesh Bindal, for the Appellant; None, for the Respondent

## Judgement

D.K. Jain, C.J.—Income Tax Appellate Tribunal, Delhi Bench "C", New Delhi (for short ''the Tribunal), has referred u/s 256(1) of the IT Act, 1961 (for short ''the Act1), the following question for the opinion of this Court :

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in cancelling the penalties imposed on the assessee u/s 271B on the ground that same were not exigible in a case where the audit report u/s 44AB had been obtained on or before the specified date and the same was filed along with a return other than a return u/s 139(1) and no notice had been issued to the assessee by the AO u/s 142(1)(i) ?

2. Since the issue raised in the reference is purely legal and there is no controversy on facts, it is unnecessary to state the facts in greater detail. It would suffice to note that penalties amounting to Rs. 25,021 and Rs. 31,142 u/s 271B of the Act, in respect of asst. yrs. 1989-90 and 1990-91, respectively, were levied on the assessee for alleged violation on its part to file audit reports along with the return of income by the due dates for filing returns u/s 139(1) of the Act. The due dates for filing return u/s 139(1) of the Act were on or before 31st Oct., 1989 and 31st Oct., 1990, respectively. However, the returns of income were actually filed by the assessee on 26th March, 1991 and 1st Nov., 1991,

respectively, which were accompanied with the audit reports u/s 44AB of the Act. Rejecting the stand of the assessee that the return of income having been filed u/s 139(4) of the Act, there was no default on the part of the assessee in furnishing the audit reports along with the returns of income filed under Sub-section (4) of Section 139 of the Act, the AO levied the aforementioned penalties.

3. Being aggrieved, the assessee, unsuccessfully preferred appeals to the CIT(A). The matter was carried by the assessee in further appeal to the Tribunal. By the impugned order, the Tribunal has deleted the penalties by placing reliance on its earlier orders passed in other cases wherein the return of income had been filed u/s 139(4) and prior to the issue of notice u/s 142(1) of the Act. In those cases, the Tribunal had come to the conclusion that since the assessee had obtained the audit report as required u/s 44AB of the Act on 28th Oct., 1992, i.e., before the specified date and no notice u/s 142(1) of the Act had been issued, the provisions of Section 271B of the Act were not attracted. On Revenue''s moving application u/s 256(1) of the Act, the afore-mentioned question has been referred to this Court. We have heard Mr. Rajesh Bindal, learned counsel for the Revenue. No one appears for the assessee. We find that the issue raised in the reference is no more res integra insofar as this Court is concerned. In Income Tax Officer Vs. Kaysons India, and CIT v. Ashoka Dairy in IT Ref. No. 61 of 1995, it has been held that where the return of income has been filed under Sub-section (4) of Section 139 of the Act and the same is duly accompanied by the audit report obtained by the assessee in accordance with the provisions of Section 44AB of the Act, penalty u/s 271B of the Act is not exigible. Following the said decisions, with respect, we answer the question in the affirmative i.e., in favour of the assessee and against the Revenue. Reference stands disposed of.