
(1989) 11 CAL CK 0032

In the Calcutta High Court

Case No : Income-tax Reference No. 202 of 1981

Commissioner of Income Tax

APPELLANT

Vs

Mrinal Sen

RESPONDENT

Date of Decision : 20-11-1989

Acts Referred:

Income Tax Act, 1961 — Section 139, 72

Citation : (1991) 91 CTR 147 : (1991) 189 ITR 336 : (1990) 53 TAXMAN 346

Hon'ble Judges : Suhas Chandra Sen, J; Bhagabati Prasad Banerjee, J

Bench : Division Bench

Advocate : A.N. Bhattacharjee, for the Appellant; Mihir Bhattacharjee, for the Respondent

Judgement

Suhas Chandra Sen, J.—The following question of law has been referred to this court by the Tribunal u/s 256(1) of the Income Tax Act, 1961 :

"Whether, on the facts and in the circumstances of the case and having regard to the provisions of Section 139(3) of the Income Tax Act, 1961, limiting the time within which loss should be declared, the Tribunal was justified in holding that the assessee was entitled to carry forward the loss under the Act as amended by the Taxation Laws (Amendment) Act, 1970 ?"

2. The assessment year involved is 1976-77 for which the relevant accounting year ended on March 31, 1975. The question is about carry forward of loss. The Income Tax Officer disallowed the claim for carry forward on the ground that the assessee had not filed the return of income within the time allowed by Section 139(3) of the Income Tax, Act 1961. The Appellate Assistant Commissioner, on appeal, following the decision of the Supreme Court in the case of Commissioner of Income Tax, Punjab Vs. Kulu Valley Transport Co. P. Ltd., and also the judgment of this court in the case of Presidency Medical Centre (P.) Ltd. Vs. Commissioner of Income Tax, , held that this loss had to be allowed and the assessee was entitled to carry forward the loss of Rs. 1,57,441.

3. On further appeal, it was contended before the Tribunal that, in view of the amendment of Section 139 which came into force on April 1, 1976, the decision of the Calcutta High Court in the above-named case was no longer good law. The Tribunal further held that the amendment of Section 139(1) did not alter the principle laid down by the Calcutta High Court in the aforesaid case of Presidency Medical Centre (P.) Ltd. Vs. Commissioner of Income Tax, . In that view of the matter, the Tribunal upheld the order of the Appellate Assistant Commissioner.

4. Mr. A. N. Bhattacharjee, the learned advocate appearing on behalf of the Revenue, has seriously contended that this decision is not good law because of the minority judgment in the case of Commissioner of Income Tax, Punjab Vs. Kulu Valley Transport Co. P. Ltd., and also because of the view expressed by Mr. Justice R. S. Pathak, as his Lordship then was, in the case of Brij Mohan Vs. Commissioner of Income Tax , New Delhi, . In fact according to Mr. A. N. Bhattacharjee, the view expressed in a case decided today by this court in the case of CIT v. Eastern Navigation Pvt. Ltd. in Income Tax Reference No. 79 of 1984 needs reconsideration in view of these two decisions.

5. I am unable to uphold this contention. The question whether, even after the amendment made by the Taxation Laws (Amendment) Act, 1970, the assessee will be entitled to the benefit of carry forward of loss has been gone into and decided in the case of Commissioner of Income Tax Vs. Nagpur Steel and Alloys (P.) Ltd., .

6. Moreover, I fail to see how Mr. Bhattacharjee could rely on the minority decision of the Supreme Court in the case of Commissioner of Income Tax, Punjab Vs. Kulu Valley Transport Co. P. Ltd., and ignore the majority judgment. Furthermore, reliance placed on the case of Brij Mohan Vs. Commissioner of Income Tax , New Delhi, is entirely misplaced. In that case, the controversy was whether the penalty proceeding which was initiated was valid or not. One of the contentions made on behalf of the assessee was that as per Section 139, as it stood during the assessment year 1964-65, a return of income should have been filed by the end of September, 1964, and inasmuch as the return, although filed as late as April 24, 1968, was accepted by the Income Tax Officer, it should be deemed that the return was treated to have been filed within time. In that event, the submission was that the concealment of the particulars of income must be deemed to have taken place within the original Clause (iii) of Section 271(1) of the Act when the return was deemed to have been filed, that is, on September 24, 1964.

7. It was pointed out by the Supreme Court that the contention was without any force. u/s 139 of the Act, although the statute itself prescribed the date by which the return must be filed, power was given to the Income Tax Officer to extend the date of furnishing the return. The return filed within the extended period was a good return in the sense that the Income Tax Officer was bound to take it into consideration but nowhere did Section 139 declare that where a return was filed within the extended period it would be deemed to have been filed within the

period originally prescribed by the statute.

8. I fail to see how this principle can be invoked by the Revenue in the instant case. The return was filed within the extended period. This is not in dispute. The Supreme Court, has held that the Income Tax Officer is bound to take such a return into consideration. That is what the Tribunal has done in this case. Thereafter, whether Section 72 of the Act will apply or not will depend upon the terms of the section itself. Section 72 of the Income Tax Act, 1961, provides as follows :

"72. Carry forward and set off of business losses.--(1) Where for any assessment year, the net result of the computation under the head "Profits and gains of business or profession" is a loss to the assessee, not being a loss sustained in a speculation business, and such loss cannot be or is not wholly set off against income under any head of income in accordance with the provisions of Section 71, so much of the loss as has not been so set off or, where the assessee has income only under the head "Capital gains" relating to capital assets other than short-term capital assets and has exercised the option under Sub-section (2) of that section or where he has no income under any other head, the whole loss shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and (i) it shall be set off against the profits and gains, if any, of any business or profession carried on by him and assessable for that assessment year :

Provided that the business, or profession for which the loss was originally computed continued to be carried on by him in the previous year relevant for that assessment ; and

(ii) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on...."

So, the loss has to be computed and carried forward where the net result of the computation under the head "Profits and gains of business" was a loss to the assessee. There cannot be any dispute that, as a result of the computation, the assessee has suffered a loss. Such loss has to be either set off in the very year of assessment or if it cannot be so set off wholly or in part, the amount which cannot be set off has to be carried forward.

9. In view of the above, the question is answered in the affirmative and against the Revenue

Bhagabati Prasad Banerjee , J.

10. I agree.