

(1996) 09 MAD CK 0043

In the Madras High Court

Case No : T.C. No. 238 of 1982 (Reference No. 150 of 1982)

Commissioner of Income Tax

APPELLANT

Vs

P.R. Devaraj

RESPONDENT

Date of Decision : 24-09-1996

Acts Referred:

Income Tax Act, 1961 — Section 139, 139(1), 139(3), 139(4), 72(1)

Citation : (1998) 232 ITR 249

Hon'ble Judges : N.V. Balasubramanian, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; P.P.S. Janarthana Raja, for the Respondent

Judgement

K.A. Thanikkachalam, J.—At the instance of the Department, the Tribunal referred the following question for the opinion of this court u/s

256(1) of the Income Tax Act, 1961 :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is correct in law in holding that the assessee is entitled to carry

forward the loss even though it has submitted the return of income belatedly ?

2. The assessee is a partner in a firm called Orvee Construction Company. The return for the year under reference should have been filed by July

31, 1975, but it was filed on October 9, 1975, disclosing a loss of Rs. 61,730. That included the assessee's share of loss from Orvee

Construction of Rs. 82,825. After setting off the income from business and after making certain disallowances, the net loss was determined by the

Income Tax Officer at Rs. 60,019 by his order dated January 16, 1979. Instead of carrying forward this loss to be set off against the income of

future years, the Income Tax Officer declined to carry forward that loss on the

ground that though the return of income was due on July 51, 1975, as per the provisions of Section 139(1) it was filed only on October 9, 1975, and the assessee had not produced any evidence to show that extension of time for filing the return belatedly was asked for and granted by the Income Tax Officer and that, therefore, the loss cannot be carried forward.

3. Against such refusal to carry forward the loss to the subsequent years, the assessee filed an appeal before the Appellate Assistant

Commissioner. The Appellate Assistant Commissioner held that though no application for extension of time was filed by the assessee, the assessee

had reasonable cause for the delay in filing the return because the particulars of share income from, the firm Orvee Construction Company were

not available to the assessee till the firm itself filed its return of income, that the firm applied for extension of time to file its return of income and that

therefore, the delay in the filing of the return by the firm constituted reasonable cause for the assessee to delay the submission of his return. The

Appellate Assistant Commissioner observed that the Income Tax Officer should have, on the merits, appreciated the reasons for the delay in the

filing of the return and carried forward the loss. He held that a return filed within the time specified u/s 139 of the Act is still a valid return and the

loss has to be determined and carried forward as a matter of course u/s 72(1) read with Section 80 of the Income Tax Act even though the return

was not filed within the time provided u/s 139(1). He relied upon a decision of the Calcutta High Court in *Presidency Medical Centre (P.) Ltd. Vs.*

Commissioner of Income Tax, .

4. Aggrieved, the Department filed a second appeal before the Tribunal. The Tribunal, following the decision of the Supreme Court in the case of

Commissioner of Income Tax, Punjab Vs. Kulu Valley Transport Co. P. Ltd., and the decision of the Calcutta High Court in *Presidency Medical*

Centre (P.) Ltd. Vs. Commissioner of Income Tax, confirmed the order passed by the Appellate Assistant Commissioner.

5. Before us, learned standing counsel for the Department, submitted that the Tribunal was not correct in accepting the return filed by the assessee

belatedly without any application for condoning the delay. According to learned standing counsel, the Tribunal cannot suo motu condone the delay

in filing the return, when there was no request made by the assessee in that behalf. On the other hand, learned counsel appearing for the assessee,

while supporting the order passed by the Tribunal submitted that the order of the Tribunal is in accordance with the various decisions including that

of the Supreme Court in Commissioner of Income Tax, Punjab Vs. Kulu Valley Transport Co. P. Ltd., .

6. We have heard learned standing counsel for the Department and learned counsel appearing for the assessee. In the present case, for the

assessment year 1975-76, a return was filed disclosing a loss of Rs. 61,720. The return ought to have been filed by July 31, 1975 ; but it was filed

only on October 9, 1975. There was no request from the assessee to condone the delay in filing the return. The assessee wanted the Department

to determine the loss and permit the assessee to carry forward the loss to the subsequent years, to be set off against the income of future years.

The Income Tax Officer was of the view that since the return was filed belatedly and the delay in filing the return was not condoned, the assessee

will not be permitted to carry forward the loss to the subsequent years. The Tribunal was of the view that the return filed by the assessee must be

taken to have been filed u/s 139(4) of the Income Tax Act, 1961. Section 139(4) of the Income Tax Act, 1961, as it stood then, enabled the

assessee to file a return at any time before an assessment is made but within a particular time limit prescribed in Section 139(4)(b) of the Act. In

the present case, there is no dispute that the return was filed u/s 139(4) of the Act, before an assessment was made. Sub-section (4) of Section

139 would be applicable both to the returns filed u/s 139(1) and 139(2) as well as Section 139(3). Therefore, Subsection (4) of Section 139

would be applicable even if the return filed is under Sub-section (3) of Section 139. While considering the provisions of Section 139(4) of the

Income Tax Act, read along with Section 80 of the Act, as it stood at the relevant time, the High Courts of Allahabad, Andhra Pradesh, Bombay,

Calcutta, Delhi and Madhya Pradesh have taken the view that the returns filed or deemed to have been filed u/s 139(4) of the Act, before the

assessment is made, should be considered and the assessee is entitled to carry forward the loss determined by the Income Tax Officer, vide, CIT

v. Pratapgarh Cold Storage and Ice Factory, [1980] 3 Taxman 61 ; [1982] UPTC 129 (All) ; C.P. Sarathy Mudaliar (decd.) (by Lrs.) Vs.

Commissioner of Income Tax, ; Telster Advertising Pvt. Ltd. Vs. Commissioner of Income Tax, Bombay City I., ; Presidency Medical Centre (P.)

Ltd. Vs. Commissioner of Income Tax, ; Commissioner of Income Tax Vs. Nagpur Steel and Alloys (P.) Ltd., ; Co-operative Marketing Society

Ltd. Vs. Commissioner of Income Tax, ; and CIT v. Banhipur Iron Works Ltd., [1980] 3 Taxman 484. In CIT v. R. Chandran, [1991] 191 ITR

328, the Kerala High Court also took the same view, Lastly, the Guwahati High Court has also taken the same view in CIT v. K.C. Bezbarua,

[1992] 195 ITR 321. All these cases were based upon the decision of the Supreme Court in Commissioner of Income Tax, Punjab Vs. Kulu

Valley Transport Co. P. Ltd., . In view of the foregoing reasons, we see that there is no infirmity in the order passed by the Tribunal in affirming the

order passed by the Appellate Assistant Commissioner in directing the Assessing Officer to process the return filed by the assessee belatedly, but

within the time specified u/s 159(4)(b) of the Income Tax Act, 1961, and allowing the assessee to carry forward the loss to the subsequent years.

Accordingly, we answer the question referred to us in the affirmative and against the Department. No costs.