(1979) 11 AHC CK 0065

In the Allahabad High Court

Case No : Income-tax Reference No. 359 of 1977

Niranjan Lal Ram Chandra — APPELLANT

Vs

Commissioner of Income Tax — RESPONDENT

Date of Decision : 05-11-1979

Acts Referred:
Income Tax Act, 1961 — Section 139(1), 139(2), 139(5), 153(1)

Citation : (1982) 134 ITR 352

Hon'ble Judges : R.R. Rastogi, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : Swami Dayal and S. Chopen, for the Appellant; R.K. Gulati and A. Gupta, for the Respondent

Final Decision : Allowed

Judgement

C.S.P. Singh, J.—The Income Tax Appellate Tribunal, Delhi Bench, Delhi, has referred the following two questions for our opinion :

"1. Whether the second revised return filed on February 8, 1972, was a valid return under the provisions of Sub-section (5) of Section 139 of the Income Tax Act, 1961 ?

2. If the answer to question No. 1 is in the affirmative, then whether the time for the completion of assessment was extended up to February 7, 1973, u/s 153(1) (c) of the Income Tax Act, 1961 ? "

3. The assessee during the previous year relevant to the assessment year 1966-67, was carrying on business in the purchase and sale of motor parts, etc. He filed a return u/s 139(1) showing an income of Rs. 55,489. Thereafter, he filed a revised return u/s 139(5) on the 2nd of March, 1971, showing an income of Rs. 50,273. A second revised return was filed on the 8th of February, 1972, showing an income of Rs. 38,138. The assessment was completed on 6th February, 1973. The assessee appealed, and contended before the AAC that the assessment was time-barred, the contention being that limitation for making the

assessment had to be counted from the 2nd of March, 1971, the date on which the first revised return was filed in view of Section 153(1)(c), and should have been completed by the 2nd of March, 1972, and the ITO erred in calculating the limitation from the 8th of February, 1972, which was the date on which the second revised return was filed. In substance, it was urged that a second revised return could not be filed u/s 139(5), and, as such, the extended period of limitation provided by Section 153(1)(c) was not available in cases where a second revised return is filed. This contention has been rejected both by the AAC and the Tribunal.

4. Counsel for the assessee urged that Section 139(5) contemplated a single revised return, and once that had been filed, a further revision of the return could not be made. In case this contention is correct the assessment made would be barred by time, for, Section 153(1)(c) extends the period of limitation by an year, from the date of the filing of a return u/s 139(4) or Section 139(5). In order to resolve this dispute we will extract Section 139(5) :

"139. (5) If any person having furnished a return under Sub-section (1) or Sub-section (2), discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the assessment is made ". (Underlining ours)

5. It is the word "therein" which occurs in Section 139(5), which have given the impetus to this argument. It is undoubtedly true that a revised return may be furnished at any time before the assessment is made by a person who has furnished a return u/s 139(1) ''or Section 139(2), and once a revised return has been filed u/s 139(5); the original return is supplanted by the revised return, as a result of the; amendment made in the original return as effected by the revised return. See Amjad Ali Nazir Ali Vs. Commissioner of Income Tax, . In 1he case of Dhampur Sugar Mills Ltd. Vs. Commissioner of Income Tax, , Hari Swarup J., speaking for himself, held that once a revised return has been filed, the original return must be taken to have been withdrawn, and to have been substituted by a fresh return for the purpose of assessment. Pathak J., one of the other members of the Bench, did not, however, express himself on this proposition. The logical result of Amjad Ali Nazir Ali Vs. Commissioner of Income Tax, is that a revised return supplants the original return by effecting a revision therein. From this it follows that a return filed u/s 139(5) being a voluntary return is of the nature of a return u/s 139(1), or at best a return under both these provisions. The same consequence results from the view taken by Hari Swarup J. in Dhampur Sugar Mills Ltd. Vs. Commissioner of Income Tax, . For, if the original return filed u/s 139(1) is taken to be withdrawn, and the revised return substitutes itself in its place, it becomes a return u/s 139(1). This being the position of - a return filed u/s 139(5), we feel no difficulty in holding that a second revised return can be filed u/s 139(5) correcting omissions or wrong statements made in the first revised return, for, the first revised return filed u/s 139(5) would, in law be a return u/s 139(1) also. The result of filing a second revised return would be to extend the

period of limitation for purposes of Section 153(1)(c). In taking this view, we are mindful of the prevalent practice of filing more than one revised return, which the department has been accepting consistently, and also of the difficulty in which the assessee would be placed in case they are unable to correct bona fide mistakes or omissions in the first revised return.

6. We, accordingly, answer both the questions in the affirmative, in favour of the department and against the assessee. The department is entitled to its costs, which is assessed at Rs. 200. Counsel fee is assessed at the same figure.

