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(1989) 01 DEL CK 0062

In the Delhi High Court

Case No : IT APPEAL NO. 721 (DELHI) OF 1987

NORMA CABLE (P) LTD. V COMMISSIONER OF Income Tax.

Date of Decision : 27-01-1989

Acts Referred:

Citation : (1989) 30 ITD 201

Judgement

Per Enhance-The assessed is in appeal against the order dated 17-12- 1986 of the 1d. CIT (Appeals) - III, New Delhi, u/s 263, for the asst. year 1982-83.

2. The assessed is M/s Norma Cables (P.) Ltd. 2/65, Roop Nagar, Delhi, a private limited company, which carried on the manufacture, processing and fabrication design of all kinds of electrical wires, cables etc. It is not disputed before us that the return of income field by the assessed on 4-3-1985 was not signed or verified by anybody. However, since this fact was not noticed either by the ITO or on behalf of the assessed, assessment was completed by the ITO on a net loss of Rs. 1,03,857, as against the loss of Rs. 1,56,465, declared by the assessed.

3. The learned Commissioner of Income Tax after giving a notice dated 10-11-86, u/s 263 held that the aforesaid assessment order was erroneous insofar as it was prejudicial to the interests of the assessed, insofar as the unsigned and unverified return was not return. He, Therefore, annulled the assessment.

4. We have heard the learned representatives on both the sides on this point. On the behalf of the assessed, Shri Sunil Vasudeva, Advocate sought to justify the assessment order on the basis of the provisions of section 292B and section 139(9). Section 292B provides that no return of income furnished, shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return or income if it is in the substance and effect in conformity with or according to the intent and purpose of this Act. Section 139(9) provides that where the assessing officer considers that the return of income is defective, he may intimate the defect to the assessed and give him an opportunity to rectify the defect within the period of 15 days from the date of such intimation or within such further period which on an application made in this

behalf. The assessing officer may, in this discretion, allow and that if the defect is not rectified within the said period of 15 days or a the case may be, the further period so allowed then, notwithstanding anything contained in any other provision of the IT Act, 1961, the return shall be treated as invalid return and the provisions of the Act shall apply as if the assessed had failed to furnish the return. Reading the two provisions together, it appears to us that the ITO definitely failed in his duty to notice that the return filed was not signed or verified in the manner prescribed under the Act. Therefore, the return was defective. The ITO, Therefore, failed to exercise his jurisdiction u/s 139(9). This could not be cured u/s 292B because such a return could not be said to be in substance and effect in conformity with or according to the intent or the purpose of the Act. Therefore, there is no manner of doubt that the order of the assessment was erroneous insofar as it was prejudicial to the interests of revenue. Therefore, with reference to such an assessment order, the Commissioner was quite justified in invoking his jurisdiction u/s 263.

5. However, the matter does not end here. In terms of section 139(9), such an unsigned or unverified return could only be treated as an invalid return and the provisions of the Act relating to the failure to file the return could not be attracted unless the assessed had been given an opportunity of rectifying the defect within a time or extended time specified by the ITO for this purpose. Therefore, the learned Commissioner was not justified in annulling the assessment and in treating it as invalid right away. He should have only set aside the assessment order with directions to the ITO to give an opportunity to the assessed in terms of section 139(9) to remove the defect arising out of the return being unsigned and unverified. Thereafter, the ITO could have completed the assessment been done by the learned Commissioner, his order was modified to this extent that the assessment order will be stand set aside with directions to the ITO to complete the assessment fresh after following the exercise mentioned in section 139(9) as referred to above.

6. In the result, the appeal is partly allowed.

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