
(1985) 07 RAJ CK 0004
In the Rajasthan High Court
Case No : Income Tax Reference No. 8 of 1978

Smt. Sobharani

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 11-07-1985

Acts Referred:

Income Tax Act, 1961 — Section 139, 139(1), 139(2), 139(4), 139(5)

Citation : (1985) 49 CTR 53 : (1986) 160 ITR 453

Hon'ble Judges : S.S. Byas, J; M.C. Jain, J

Bench : Division Bench

Advocate : Vineeth Kothari, for the Appellant; B.R. Arora, for the Respondent

Judgement

1. The Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, has referred the following questions for the opinion of this court :

" 1. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that a return filed u/s 139(4) of the Income Tax Act, 1961, can be revised in terms of Section 139(5) of the Act ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that a revised return filed on December 7, 1972, could be further revised on December 5, 1973 ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the assessment order completed on March 30, 1974, as not barred by time ? "

2. The reference arises out of the following facts. The assessee, an individual, filed a return of income on March 2, 1971, thereafter revised the same on October 12, 1972, December 7, 1972, and December 5, 1973. The Income Tax Officer assessed the income, vide his assessment order dated March 30, 1974. The matter was taken up by the assessee before the Appellate Assistant Commissioner before whom it was submitted by the assessee that the

assessment should have been completed before March 31, 1973, and, therefore, the assessment made in the case was barred by time. The contention was advanced on the basis that the return in question was filed u/s 139(4) of the Income Tax Act, 1961, and subsequent revised returns could not be considered to be valid returns u/s 139(5) of the Act. The Appellate Assistant Commissioner upheld the contention and annulled the order of the Income Tax Officer. The Revenue went up in appeal before the Appellate Tribunal. The Appellate Tribunal accepted the contention of the Revenue and set aside the order of the Appellate Assistant Commissioner. Thereupon a reference application was made by the assessee and the aforesaid questions were referred to this court for its opinion.

3. The questions referred to this court for its opinion are squarely covered by a Division Bench decision of this court in *Vimalchand Vs. Commissioner of Income Tax*, (D.B. Income Tax Reference No. 11 of 1977 decided on January 17, 1985). In that decision, the Division Bench has observed as under (at p. 603) :

" The obligatory returns are under Sub-section (1) and (2) of Section 139 whereas the voluntary return is under Sub-section (4). In other words, filing a return u/s 139(4) is permissive and voluntary. Section 139(4) is merely an enabling provision though three different types of returns are contemplated u/s 139 but the right of the assessee to revise the return is only in respect of the return filed either u/s 139(1) or Section 139(2), that is to say, the third type of return filed u/s 139(4) is not the same return as envisaged by Section 139(1) and (2)."

4. As regards the validity of the assessment order, the Division Bench having regard to the date of the assessment order found that the order of assessment is a nullity in the eye of law as no cognizance is to be taken u/s 139(5) of the return filed u/s 139(4) of the Act, We may refer to some dates of that case for the sake of clarity. In that case, return was required to be filed on June 30, 1971, in respect of the assessment year 1971-72. The return u/s 139(4) was actually filed on August 29, 1971. Thereafter a revised return was filed on March 13, 1974. The assessment in that case was completed on November 6, 1974. If the revised return is taken out of consideration, then assessment was required to be completed on or before March 31, 1974. On the basis of above facts, the Division Bench held that the revised return filed by the assessee could not be taken cognizance of as Section 139(5) applies to returns furnished only under Sub-section (1) and Sub-section (2) of Section 139.

5. So far as the facts of the present case are concerned, from the dates given above, it would be clear that the assessment order can be considered to be within limitation if the revised return filed on December 5, 1973, is taken to be the return u/s 139(5) but as held in *Vimalchand's case* [1985] 155 ITR 593 (Raj), Section 139(5) of the Income Tax Act is not at all attracted to the case of returns filed u/s 139(4). In the present case, undoubtedly the return was filed u/s 139(4) and so, the subsequent returns cannot be considered to be returns u/s 139(5). In the light of the opinion expressed in *Vimalchand Vs. Commissioner of*

Income Tax, questions Nos. I and 2 have to be answered against the Revenue and in favour of the assessee and the Tribunal was not correct in holding that a return filed u/s 139 of the Act can be revised in terms of Section 139(5) of the Act and the Tribunal was also not right in holding that the revised return filed on December 7, 1972, could be further revised on December 5, 1973. If the subsequent returns are taken out of consideration, the assessment was required to be completed on or before March 31, 1973. In the present case, the assessment order was completed on March 30, 1974. So the assessment order is barred by time and is a nullity and non est. So question No. 3 is also answered against the Revenue and in favour of the assessee and it is held that the Tribunal was not justified in law in holding that the assessment order completed on March 30, 1974, is not barred by time.

6. All the three questions are answered as above. The parties shall bear their own costs of this reference. Information be sent to the Income Tax Appellate Tribunal, Jaipur.