Kumar Jagdish Chandra Sinha (dead) through Lrs.

Vs

Commissioner of Income-tax, West Bengal

Civil Appeals Nos. 1604-1605 of 1985 (with C. A. No. 4005-4006 of 1994)

(B.P. Jeevan Reddy, K.T. Thomas JJ)

23.04.1996

JUDGEMENT

B.P. JEEVAN REDDY, J:-

1.These appeals are preferred against the judgment of the Calcutta High Court answering the three questions referred to it under Section 256(1) of the Income-tax Act against the assessee and in favour of the Revenue. The three questions are :

> "1. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the return of income furnished by the assessee by virtue of the provisions contained in sub-section (4) of Section 139 of the Income-tax Act. 1961. beyond the time allowed under sub-section (1) or sub-section (2) of the said section, could not be construed as a return furnished under either of the latter sub-section and in that view holding that the assessee was not entitled to file a revised return under sub-section (5) of Section 139 of the Income-tax Act, 1961?

2. Whether, on the facts and in the circumstances of the case the assessment made by the Income-tax Officer for the assessment years 1964-65 and 1965-66 were within the time limit prescribed in Section 153 (1) (b) of the Income-tax Act, 1961?

> a. Whether, on the facts and in the circumstances of the case, the tribunal was correct in law in holding that the cases for the assessment years 1964-65, and 1965-66, were such as 'failing within clause(c) of sub-section (1) of Section 271?
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> b. While Question No.1 was referred at the instance of the Revenue, Questions 2 and 3 were referred at the instance of the assessee. The two assessment years concerned herein are 1964-65 and 1965-66.

3. Fore the assessment year 1964-65, the assessee did not furnish a return within the period prescribed by sub-section (1) of Section 139. No notice under sub-section (2) of Section 139 was served upon him. The assessee submitted a return on August 13, 1964, disclosing a total income of Rs. 42,131/-. This return, it is not in dispute, was filed under, and taking advantage of the provision contained in, sub-section (4) of Section 139. On January 18, 1969, he filed a revised return disclosing a total income of Rs. 40,388/-. The assessee also disclosed in this revised return a capital loss of Rs. 1,60,672/- on the sale of a plot of land. The Income-tax Officer did not complete the

assessment within four years of the expiry of the assessment year 1964-65 i.e., on or before 31-3-1969. He made the assessment order on January 15, 1970. He also initiated penalty proceedings under Section 271 (1) (c) and referred the same to Inspecting Assistant Commissioner as required by law in force at that time.

4. In respect of the assessment year 1965-66, also, the assessee did not file a return within the period prescribed by Section 139(1). No notice under Section 139(2) was served upon him. He filed a return under Section 139 (4) on December 17, 1965, disclosing an income of Rs. 3,76,628/- which included a capital gain of Rs, 3,52,420/-. On July 17, 1969, the assessee filed a revised return showing the total income at Rs. 2,50,719/-. This figure was arrived at after reducing the capital gains from Rs. 3,52,420/- (as disclosed in original return) to Rs, 2,52, 119/-. The Income-tax Officer did not complete the assessment before the expiry of four years from the end of the assessment year 1965-66 i.e., on or before 31st March, 1970. He made the assessment order only on July 6, 1970. In this year too, the Income-tax Officer initiated penalty proceedings and referred the same to Inspecting Assistant Commissioner.

5. Against the orders of assessment in respect of both the assessment years, the assessee went up in appeal to Appellate Assistant Commissioner. In these appeals he disputed the very validity of the assessment orders on the ground that they have been made beyond the prescribed period of four years. He submitted that the revised returns filed by him were inadmissible in law and therefore could not serve to extend the period for making the assessment as provided by Section 153(1) (c). He also disputed the correctness of various additions made by the Income-tax Officer. The Appellate Assistant Commissioner allowed the appeals on the ground that the assessment order having been made beyond the period of four years prescribed by Section 153(1) (a) (i) (as in force at the relevant time), they are bad in law. He held that inasmuch as the returns in both the assessment years were filed under Section 139(4), no revised returns could have been filed by the assessee. He held that sub-section (5) of Section 139 permits a revised return to be filed only where the return is filed under sub-section (1) or sub-section (2) of Section 139 but not where the return is filed under sub-section (4) of Section 139. In this view of the matter, the Appellate Assistant Commissioner held, the Income-tax Officer cannot claim the benefit of extended period provided by clause (c) of sub-section (1) of Section 153.

6. The Revenue challenged the decision of the Appellate Assistant Commissioner before the Tribunal. The Tribunal agreed with the Appellate Assistant Commissioner that no revised return can be filed by an assessee who has filed the return under Section 139(4) and that, therefore, the so-called revised returns filed by the assessee were not valid in law. The Tribunal, however, allowed the appeals filed by the Revenue on the ground that the assessment orders must be held to have been made within the time prescribed by Clause (b) of sub-section (1) of Section 153. In other words, the Tribunal was of the opinion that since there was a prima facie case for initiating action under Section 271(1) (c), the assessment order could have been made within a period of eight years from the end of the relevant assessment year, as provided by clause (b) of sub-section (1) of Section 153, as it stood at the relevant time.

7. At the request of Revenue and the assessee, as stated above, three questions were referred by the Tribunal under Section 256(1). The High Court discussed the legal position at length and held that even in the case of a return filed under Section 139(4), a revised return is permissible in law. Accordingly, the High Court held, the assessment orders made must be deemed to have been made within the period of limitation provided by Section 153(1) (c). The High Court also held that the Tribunal was right in holding that in the facts and circumstances of the case, the larger period of

eight years provided by clause (b) of sub-section (1) of Section 153 was also attracted in this case and that on this count also, the assessment orders must be held to have been made within the period of limitation prescribed by the Act.

8. Mr Ashok Sen, learned counsel for the assessee seeks to canvass the correctness of the view taken by the High Court.

9. It would be appropriate to set out the relevant provisions of the Act as obtaining at the relevant time for a proper appreciation of the questions arising herein. Sub-sections (1), (2), (4) and (5) of Section 139 read thus :

> "139. Returns of income. - (1) Every person, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to Income-tax shall furnish a return of this income or the income of such other person during the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed-
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> (a) In the case of every person whose total income, or the total income of any other person in respect of which he is assessable under this Act, includes any income from business or profession, before the expiry of six months from the end of the previous year or where there is more than one previous year, from the end of the previous year which expired last before the commencement of the assessment year, or before the 30th day of June of the assessment year, whichever is later,
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> (b) in the case of every other person before the 30th day of June of the assessment year:
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> (proviso omitted as unnecessary.)
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> (2) In the case of any person who, in the Income-tax Officer's opinion, is assessable under this Act, whether on his own total income or on the total income of any other person during the previous year, the Income-tax Officer may, before the end of the relevant assessment year, serve a notice upon him requiring him to furnish, within thirty days from the date of service of the notice, a return of his income or the income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed:
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> (Proviso omitted as unnecessary)
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> [4(a) Any person who has not furnished a return within the time allowed to him under sub-section (1) or sub-section (2) may before the assessment is made furnish the return for any previous year at any time before the end of the period specified in clause (b), and the provisions of clause (iii) of the proviso to sub-section (1) shall apply in every such case.(Subs. by Finance Act No. 19 of 1968, (w.e.f. 1-4-1968).]
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> (b) The period referred to in clause (a) shall be-
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> (i) where the return relates to a previous year relevant to any assessment year

commencing on or before the 1st day of April, 1967, four years from the end of such assessment year;

(ii) where the return relates to a previous year relevant to the assessment year commencing on the 1st day of April, 1968, three years from the end of the assessment year;

(iii) where the return relates to a previous year relevant to any other assessment year, two years from the end of such assessment years.]

(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."

10. Sub-section (1) of Section 153, which alone is relevant for our purposes read thus:

"153. Time-limit for completion of assessments and re-assessments.-(1) No order of assessment shall be made under Section 143 or Section 144 at any time after:-

[(a) the expiry of -

(i) four years from the end of the assessment year in which the income was first assessable, where such assessment year is an assessment year commencing on or before the 1st day of April, 1967;

(ii) three years from the end of the assessment year in which the income was first assessable, where such assessment year is the assessment year commencing on the 1st day of April, 1968;

(iii) two years from the end of the assessment year in which the income was first assessable, where such assessment year is an assessment year commencing on or after the 1st day of April, 1969' or] [Subs. by Finance Act. 1968, (w.e.f. 1-4-1969)].

(b) the expiry of eight years from the end of the assessment year in which the income was first assessable, in a case falling within clause (c) of sub-section (1) of Section 271; or

(c) the expiry of one year from the date of the filing of return or a revised return under sub-section (4) or sub-section (5) of Section 139, whichever is latest."

Section 271 (1) (c) ran thus:

"271. Failure to furnish returns, company with notices, concealment of income. etc. - (1) If the Income-tax Officer or the Appellate Assistant Commissioner in the Course of any proceedings under this Act, is satisfied that any person:

(clauses (a) and (b) omitted as unnecessary;)

(c) has concealed the particulars of his income or [***] [The word " deliberately" omitted by Finance Act. 1964, (w.e.f. 1-4-1964)] furnished inaccurate particulars of

such income, he may direct that such person shall pay by way of penalty, -

[(iii) in the cases referred to in clause (c), in addition to any tax payable by him, a sum which shall not be less than, but which shall not exceed twice, the amount of the income in respect of which the particulars have been concealed or inaccurate particulars have been furnished."]

11. The first question is whether a person who files a return under Section 139 (4) is entitled to file a revised return before the assessment is made. We think not. The furnishing of a revised return is provided by sub-section (5) of Section 139. According to this sub-section " any person having furnished a return under sub-section (1) or sub-section (2)" may furnish a revised return at any time before the assessment is made if he discovers any omission or any wrong statement in the original return. The very fact that this right is given to a person who has filed a return under sub-section (1) or sub-section (2) of Section 139 means by necessary implication that such a right is denied to a person who files the return under-Section 139(4). The High Court has, however, taken the other view relying upon the language of clause (c) of sub-section (1) of Section 153. Sub-section (1) of Section 153 prescribes the time limits for completing the assessment. In the present case, it is not in dispute, the period allowed for making the assessment is four years from the end of the relevant assessment year as provided by Section 153(1) (a) (i). Section 153 (1) (c) provides an alternate period of limitation. It says that if the assessment is made before 'the expiry of one year from the date of the filing of return or a revised return under sub-section (4) or sub-section (5) of Section 139" it would yet be within limitation not withstanding the fact that it may be barred under other provision contained in sub-section (1) of Section 153. The High Court is of the opinion that language employed in clause (c) of Section 153(1) contemplates the filing of a revised return even in a case where original return is filed under sub-section (4). We find it difficult to agree. Clause (c) employ both the expressions return and revised return and refers to both the sub-section(4) and (5) of Section 130. Reasonably read it means the return filed under sub-section (4) and the revised return filed under sub-section (5) of Section 139. It would not be reasonable to construe the said clause as indirectly conferring a right which is not conferred directly by sub-section (5) of Section 139. The High Court has drawn a distinction between a revised return and a rectified return. May be, there is a distinction. We are not concerned here with a rectified return but what was avowedly a revised return and which was in truth a new return. We find it equally difficult to agree with the rest of the reasoning of the High Court on this aspect. We are, therefore, of the opinion that no revised return can be filed under sub-section (5) of Section 139 in a case where the return is filed under Section 139 (4). Once this is so the revised returns filed by the assessee for both the said assessment years were not valid in law and could not have been treated and acted upon as revised returns contemplated by sub-section (5) of Section 139 - which means that Section 153(1) (c) was not attracted in this case. Indeed this is the view taken by all the High Courts as conceded by Mr. Ashok Sen. See O. P. Malhotra v. Commissioner of Income-tax, (1981) 129 ITR 379 : (1981 Tax LR 1108) (Delhi), Dr. S.B. Bhargava v. Commr. of Income-tax, (1982) 136 ITR 559: (1982 Tax LR 1605) (All), Vimal Chand v. Commr. of Income -tax, (1985) 155 ITR 593 : (1985 Tax LR 881) (Raj)and Eapen Joseph v. Commr. of Income-tax, (1985) 168 ITR 26:(1987 Tax LR 1171)(Kerala). Only the Calcutta High Court has taken the contrary view with which we are unable to agree.

12. The understanding of clause (b) of sub-section (1) of Section 153, however, appears to be a difficult one, because of the ambiguous language employed therein. It says that "in a case falling within clause (c) of sub-section (1) of Section 271", the period for making an order of assessment is eight years. Now what do the words " in a case falling within clause (c) of sub-section (1) of Section 271" mean? Different High Courts have spoken in different voices. Broadly speaking there are two

streams of thought. The first one is this : within the period of four years (or whatever the applicable period of limitation), the Income-tax Officer must either initiate proceedings under Section 271 (1) (c) or record his opinion that it is a case falling under Section 271 (1) (c) ; unless any such step is taken, it cannot be said that it is a case falling under Section 271 (1) (c) ; if this safeguard is not provided, the Income-tax Officer would be armed with a dangerous weapon and the assessee would be at his mercy ; the Damocle's sword would be kept hanging over the head of the assessee all the time. (This was said in the context of the provisions of 1922 Act where, in such a situation, no period of limitation was prescribed). An Income-tax Officer - the argument runs further - who is remiss in performance of his duties and does not make an order of assessment within the period prescribed, would make an assessment thereafter and start proceedings under Section 271 (1) (c) to justify, the making of the order of assessment beyond the prescribed period. As against this, the second stream of thought runs thus : the power conferred by Section 153(1) (b) is a power conceived in the interest of public and is designed to curb concealment of income by the assessees; while construing the said provision, the possibility of abuse or misuse should not be the guiding consideration; the law presumes, and the Court must also presume that every power would be used fairly and for advancing the purposes which the provision seeks to achieve. There are no words in the clause,- this argument runs further - which indicate by necessary implication that either the proceedings under Section 271 (1) (c) should be initiated or that some order should be passed or record made by the Income-tax Officer within the period of four years to indicate that it is a case falling under Section 271 (1) (c); imposing such a requirement would in effect amount to amending the clause and reading words into it which are not there; if in a given case, the Income-tax Officer, invokes the said provisions without justification, the assessee is not without a remedy; the Act provides adequate remedies by way of appeals, revision and reference to rectify and misuse or abuse of powers by the Income-tax Officer; if an Income-tax Officer makes an assessment order after the expiry of four years and within eight years relying upon Section 27(1) (c) and if it is found by the higher authorities that it was not a case falling within Section 271 (1) (c) , it is obvious, the assessment order will be set aside, besides quashing the penalty proceedings. It is, therefore, not necessary, - it is argued - that within the period of four years (or the other applicable period of limitation as the case may be), the Income-tax Officer should issue a notice or pass an order or make a record that it is a case falling within Section 271 (1) (c) and that the validity of the assessment order should be judged with reference to the date on which the assessment order is made.

13. We find that both the streams of thought aforesaid are equally attractive. Each has an appeal of its own. We are, however, relieved of making a choice in the matter because of the decision of this Court in Commr. of Income-tax v. Surajpal Singh, (1991) 188 ITR 297. It was an appeal against the decision of the Allahabad High Court in Commr. of Income-tax v. Surajpal Singh, (1977) 108 ITR 746:(1976 Tax LR 154). The Allahabad High Court discussed this problem at length (at pages 752 and 753): (of ITR): (at pp. 157 and 158 of Tax LR), but ultimately did not express any final opinion for the reason that it was not necessary to do so in view of the facts of and findings recorded in that case. We do not think it necessary to set out the entire reasoning of the High Court. It is sufficient to state that it espouses the first stream of thought mentioned above. On appeal, this Court purported to affirm the said line of thought which is evident from the following observations in the judgment. which, in effect, is practically the whole of the judgment:

> "The Income-tax Appellate Tribunal referred the following question to the High Court:
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> 'Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessment made by the Income-tax Officer was barred by

limitation.'

The High Court on a detailed consideration of the fact and circumstances of the case, held that the Tribunal was right in holding that the case was not one to which the provisions of Section 271 (I) (c) of the Income-tax Act. 1961, corresponding to Section 28(I) (c) of the old Act apply inasmuch as the Income-tax Officer had not recorded any finding or brought any material on record within a period of 4 years to show that it was a case of concealment. The High Court agreed with the findings recorded by the Tribunal that the assessment was clearly time-barred. After hearing learned counsel for the appellant, we do not find any good reason to take a different view. The appeal fails and is, accordingly, dismissed. There will be no order as to costs.

14. Since this Court has already taken one view and because the said view is one of the two possible views of the matter, we follow the same and accordingly uphold the first stream of thought mentioned above.

15. Applying the above understanding of Section 153 (1) (b), it must be held in this case that the assessment is barred by time. Admittedly the Income-tax Officer had not initiated the proceedings under Section 27(1) (c) within a period of four years prescribed by Section 153 (1) (a) (i) (which is applicable provision herein) nor had he made any order or record or a note in the relevant file indicating that it is a case falling under Section 271(1) (c). (If he made any such order or note in the file as aforesaid, he should have communicated it to the assessee - the expression "communicated" being understood as explained by this Court in State of Punjab v. Khemi Ram, (1970) 2 SCR 657 : (AIR 1970 SC 214). * In such a situation it must be held that the orders of assessment in respect of both the assessment orders concerned herein are barred by time and must be held to be invalid in law.

* Which means that it is enough if it is put in the course of transmission before the expiry of the relevant period ; it is not necessary that it should also be received by the assessee or his representative within the said period.

16. For the above reasons, the appeals are allowed. Question No.1 is answered in the affirmative holding that in case of a return filed under sub-section (4) of Section 139, a revised return contemplated by sub-section (5) of Section 139 cannot be filed. Question No. 2 is answered in the negative. It is held that the orders of assessment made in respect of the said two assessment years are barred and are not saved by Section 153(1) (b). Question No.3. is really consequential to Question No. 1. Once we hold that no revised returns could be filed by the assessee for the said two assessments made beyond the prescribed period of four years (but within five years) are not saved by Section 153) (1) (c).

17. There shall be no order as to costs. Appeals allowed.