RAJASTHAN HIGH COURT

Vimalchand

Vs.

Commissioner Of Income-Tax

D.B. Income-tax Reference No. 11 of 1997
(S.K. Mal Lodha and S.N. Bhargava, JJ.)

17.01.1985

JUDGMENT

S.K. Mal Lodha, J.

1. The Income-tax Appellate Tribunal, Jaipur Bench, Jaipur (for short "the Tribunal" herein), has referred the following question for our opinion: \

> "Whether, on the facts and in the circumstances of the cases, the Tribunal was right in holding that the assessments in question were valid and were completed within the period of limitation ?"

M/s. Manakchand Laxmichand, Sirohi, is a registered firm. Its partners are Laxmichand and Vimalchand. The previous year relevant to the assessment year ended on October 31, 1970, in the case of the firm as well as its partners. The three assessees, namely, the registered firm and its partners, Laxmichand and Vimalchand, were to file returns by June 30, 1971. No returns were filed within that time. It appears from the order of the Tribunal dated August 27, 1976, that no notice was issued under Section 139(2) of the I.T. Act, 1961 (No. XLIII of 1961) (for short "the Act"), to the assessees. Subsequently, the assessee-firm filed a return on March 11, 1974, declaring an income of ₹ 34,560. The assessment of the assessee-firm was completed on October 10, 1974, on a total income of ₹ 43,117. Laxmichand, one of the partners of the firm, filed a return under Section 139(4) on August 29, 1971, declaring an income of ₹ 32,292. Subsequently, another return (the alleged revised return) was filed on March 13, 1974, declaring a total income of ₹ 32,348. The assessment was completed

on November 6, 1974, on an income of ₹ 40,119. Vimalchand, the other assessee (partner of the firm), filed a return under Section 139(4) of the Act, on August 29, 1971, in which an income of ₹ 17,265 was shown. Another return (the alleged revised return) was filed on March 13, 1974, declaring an income of ₹ 17,327. The Income-tax Officer (ITO) completed the assessment, vide order dated November 6, 1974, on a sum of ₹ 17,327. The assessees went in appeal. The Appellate Assistant Commissioner (AAC) held that the returns filed by the assessee were no returns in the eye of law and that the period of limitation could not be extended by filing the returns under Section 139(5) of the Act. He opined that the assessments in question should have been completed by March 31, 1974, and as the assessments were completed beyond the said time, they were a nullity. Consequently, he annulled the three assessments made by the ITO. The Department filed appeals before the Tribunal. The Tribunal noticed *Commissioner of Income Tax v. Kulu Valley Transport Co. P. Ltd.* [1] On behalf of the *Department, Commissioner of Wealth Tax v. Kripashankar Dayashankar Worah* [2] *Bihar Electricity Board v. Commissioner of Income Tax* [3] *Commissioner of Income Tax v. Sahu Jain Ltd.* [4] and *Commissioner of Income Tax v. Gangaram Chapolia* [5] were cited. Learned counsel appearing for the assessees relied on *Vedadri v. Commissioner of Income Tax* [6] Addl. *Commissioner of Income Tax v. Santosh Industries* [7] *Shiv Shankar Lal v. CGT* [8] and *Venkata Krishnaiah & Co. v. Commissioner of Income Tax* [9] The Tribunal also considered the provisions of Sections 139(1), 139(4), 139(5) and 153(1)(c) of the Act and after relying on Kulu Valley Transport Co.'s case [1970] 77 ITR 518 (SC) and, examining the authorities cited on behalf of the Department and the assessees, observed as follows :

> "Provisions of Sections 139(4) and 139(5) are in parimateria with Section 22(3) of the 1922 Act. Thus, the return filed by the assessees under Section 139(4) of the Income-tax Act, 1961, shall be valid returns. Thus, the provisions of Section 139(1) for the purpose of assessments must be held to have been complied with. The assessees themselves filed the returns under Section 139(5) of the Act. They have themselves treated them as revised returns. In fact, the Income-tax Officer was within his right to complete the assessments before the expiry of one year from the date of filing of revised returns under Sub-section (5) of Section 139."

And thereafter it reached the following conclusions :

> "As discussed above, the assessees have filed returns under Section 139(4) of the Act. They were revised by the assessees under Section 139(5) of the Act. The revised returns under Section 139(5) were filed in March, 1974. The assessments were completed in October, 1974. Thus they are within time. The decisions relied on by the learned departmental representative support our conclusion."

2. In view of this, the orders of the AAC were set aside and it was held that the assessments were completed by the ITO within time. The Tribunal, therefore, remanded the appeals to the AAC to decide them on merits after hearing both the parties. Reference applications under Section 256(1) of the Act were filed by the assessees. According to the Tribunal, a question of law arose out of its order, and, therefore, it has referred the aforesaid question for our opinion.

3. Before we proceed to answer the question, we may notice the facts which are found mentioned in the statement of the case and regarding which there is no dispute. The relevant assessment year under consideration in respect of the assessees is 1971-72, the corresponding previous year ending on October 31, 1970. The returns of the assessee under Section 139(1) of the Act could be filed by June 30, 1971. Neither returns under Section 139(1) of the Act were filed nor notices were issued to the assessee under Section 139(2) of the Act. However, returns under Section 139(4) of the assessee-firm, M/s Manakchand Laxmichand, were filed on August 9, 1971. The partners, Laxmichand and Vimalchand, filed their returns under Section 139(4) on August 29, 1971. The assessment could have been completed of the assessee-firm according to the normal period of limitation by March 31, 1974. The extended time for filing of the returns in accordance with Section 153(1)(c) is one year from the date of the filing of the return under Section 139(4) or Section 139(5) from the date of filing of a return or revised return, whichever is the latest. The assessment order in the case of the firm was passed on October 10, 1974, and in the case of the partners, Laxmichand and Vimalchand, on November 6, 1974. Thus, admittedly, the assessment orders were passed after March 31, 1974.

4. Section 139 of the Act corresponds to Sub-sections (1), (2), (2A), (3) and (5) of Section 22 of the Indian I.T. Act, 1922 (No. XI of 1922) (for short "the Act of 1922"). We may notice the difference between the two provisions, which are relevant for our purpose,

(1) The liability to furnish a return of income under Section 22(1) flowed when a general public notice is issued requiring to furnish a return within the time specified in the notice. Whereas under Section 139(1), there is no necessity of issuing a general public notice. It fixes a statutory liability to furnish a return of income within the statutory period specifically mentioned in that section.

(2) Under Section 22(1) of the Act of 1922, the ITO was empowered under its proviso in his discretion to extend the date for furnishing the return and there was no provision for charging any interest on any such extension of time and no prescribed form was there for asking for extension. Under the original proviso to Section 139(1), extension of time can be granted only on an application made in the prescribed Form No. 6 but if it was beyond a certain date, interest was to be charged at the prescribed rate. Later, this proviso was substituted by a fresh proviso by the Taxation Laws (Amendment) Act 1970, with effect from April 1, 1971.

(3) There was no such prescription about time-limit in Section 22(2) of the Act of 1922, but it was interpreted to mean that a notice under that section can be served during the relevant assessment year and not after the expiry of the assessment year, whereas in Section 139(2), a specific provision has been made that a notice under this section can be issued and served before the end of the relevant assessment year.

(4) According to the provisions of Section 22(3), an assessee could furnish a return voluntarily if he had not filed any return under Section 22(1) or Section 22(2) at any time before the assessment was made, while under Section 139(4), the right of the assessee to furnish a return voluntarily does not extend beyond the period of time normally available to an Income-tax Officer to make a regular assessment.

5. Kulu Valley Transport Co.'s case [1970] 77 ITR 518 (SC) was a case under Sections 22(1), (2A), (3) and 24(2) and (3). It was held per majority (Shah J., as he then was, dissenting) that Section 24(2) confers the benefit of loss being set off and carried forward and there is no provision under Section 22 of the Act of 1922 under which losses have to be determined for the purpose of Section 24(2). It was further held that Section 22(2A) simply lays down that in order to get the benefit of Section 24(2), the assessee must submit his last return within the time specified in Section 22(1) and that that provision must be read with Section 22(3) for the purpose of determining the time within which a return has to be submitted. In other words, the

majority view was that Section 22(3) is merely a proviso to Section 22(1). On the basis of the aforesaid findings, it was held that a return submitted at any time before the assessment is made is a valid return and for considering whether a return filed is within time, Section 22(1) must be read with Section 22(3). It was observed by their Lordships of the Supreme Court as follows (p. 529):

> "A return whether it is a return of income, profits or gains or of loss must be considered as having been made within the time prescribed if it is made within the time specified in Section 22(3). In other words, if Section 22(3) is complied with, Section 22(1) also must be held to have been complied with. If compliance has been made with the latter provision, the requirements of Section 22(2A) would stand satisfied."

In coming to this conclusion, it was also opined that even if two views are possible, the view which is favourable to the assessee must be accepted while considering a provision of a taxing statute. His Lordship, Shah J. (as he then was), did not agree with the conclusion arrived at by the majority, on the ground that Sub-section (3) of Section 22 cannot be read as implying that notwithstanding the restriction placed by Section 22(2A), a return disclosing loss of income computable under Section 10 will not only be entertained but the loss determined and declared under Section 24(3) of the Act so as to enable the assessee to carry it forward. According to him, if a return of loss is filed in pursuance of the general notice under Sub-section (1), Sub-section (2A) will serve no purpose whatsoever. It was also observed that the limitation placed upon the right to file a return of loss is clearly intended to avoid practical difficulties in the administration of the Act of 1922. The majority approved *Radhakrishna Rungta v. Seventh ITO* [10] and affirmed *Kulu Valley Transport. Co. P. Ltd. v. Commissioner of Income Tax* [11] The decision in Kulu Valley Transport Co.'s case [1970] 77 ITR 518 (SC), gave rise to two different interpretations by some of the High Courts. Learned counsel appearing for the assessee has, in all fairness, placed both the views before us.

6. Before the Full Bench of the Allahabad High Court in *Metal India Products v. Commissioner of Income Tax* [12] Sections 139(1), (2) and (4) and 271(1) of the Act came up for consideration. One of the questions which was reframed by the learned judges was whether, on the facts and in the circumstances of the case, the return of income filed under Section 139(4) be treated as a return filed within the time prescribed by Section 139(1). Kulu Valley Transport Co.'s case [1970] 77 ITR 518 (SC) was distinguished on the ground that in that case no question of imposition of

penalty arose for consideration and it was held that a return filed beyond time prescribed by Section 22(2A) of the Act of 1922 was a valid return. In that connection, the learned judges referred to Santosh Industries' case [1974] 93 ITR 563 (Guj), Vedadri's case [1973] 87 ITR 76 (Mad), *Gangaram Chapolia's case* [13] and *Commissioner of Income Tax v. Seth Devichand & Sons* [14] It was held that a return of income filed under Section 139(4) cannot be treated as a return filed within the time prescribed under Section 139(1) of the Act. It may be mentioned that this was the view taken by this court in *Addl. Commissioner of Income Tax v. Noor Mohd. & Co.* [15] and *Commissioner of Income Tax v. Indra & Co.* [16]

7. The question relating to Section 139(1), (2), (4) and (5) of the Act directly arose before a Division Bench of the Allahabad High Court in *Bhargava v. Commissioner of Income Tax* [17]

8. The question referred was whether, on the facts and in the circumstances of the case, the assessment made by the ITO is barred by limitation as prescribed under Section 153 of the I.T. Act of 1961. In that case, the assessment year involved was 1971-72 and the accounting period ended on March 31, 1971. The assessee should have filed a return under Section 139(1) of the Act by June 30, 1971. No notice was issued to him under Section 139(2) of the Act.

9. He, however, filed a return on December 21, 1971, which was a return under Section 139(4) of the Act. The revised return was filed on March 23, 1974. The assessment was completed on January 23, 1975, and as against the disclosed income of ₹ 9,525 in the original return and ₹ 11,125 in the revised return, the total income was computed at ₹ 30,130. In those facts, the above question was referred. After noticing Sections 139(1), (2), (4) and (5) and Section 153 and referring to *Metal India Products' case* [18] and *Malhotra v. Commissioner of Income Tax* [19] and distinguishing Kulu Valley Transport Co.'s case [20] and *Niranjan Lal Ram Chandra v. Commissioner of Income* [21] it was observed as under (p. 564) :

> "On a reading of the provisions extracted above, it would appear that Section 139 broadly contemplates the filing of three returns: one under Sub-section (1), the other under Sub-section (2) and the third one under Sub-section (4). The returns contemplated under Sub-sections (1A) and (3) are to be treated as

> returns under Sub-section (1) and so also the return required under Sub-section (4A). The returns required to be filed under Sub-sections (1) and (2) are obligatory returns while the return which an assessee may file under Sub-section (4) is purely a voluntary return. It is an enabling or permissive "provision which empowers an assessee to file a return at any time before the completion of the assessment with a view to avoid the penalty of an ex parte assessment. A return required under Sub-section (1) is also a voluntary return but it is not of the same type as a return which an assessee can file under Sub-section (4) in the sense that it is obligatory on every person to furnish voluntarily a return of his total income or the total income of any other person in respect of which he is assessable, if such income during the previous year, bona fide calculated by him, exceeded the maximum amount which is not chargeable to income-tax. Similarly, under Sub-section (2) when a notice is served on an assessee or a representative assessee, whose total income in the opinion of the ITO renders him liable to income-tax, such an assessee is bound to furnish a return within thirty days of the notice or within such time which the ITO may extend within his discretion. Failure to comply with these provisions renders an assessee liable to penalty under Section 271(1)(a) and prosecution under Section 276CC of the Act whereas no such penalty is livable in regard to a return filed under Sub-section (4). For charging of interest under Sub-section (8), there is a specific mention of returns filed under these three separate provisions. In other words, an assessee filing a return under Sub-section (4) is equally liable to pay interest as is chargeable in respect of returns filed under Sub-sections (1) and (2). The Legislature is thus conscious of the three different types of returns and since Sub-section (5) does not give a right to an assessee to revise a return filed under Sub-section (4), we cannot intend such a provision therein by equating the return filed under Sub-section (4) with a return filed under Sub-section (1)."

The question was examined from another aspect also, namely, that different time-limit for completion of assessment was provided in respect of the cases where a return has been filed under Sub-section (4) or a revised return has been filed under Sub-section (5). In that connection, it was observed as under (p. 564):

> "Sub-section (5) does not provide for any separate category of return. It only gives a right to an assessee to revise the return filed under Sub-section (1) or Sub-section (2). When a revised return is filed, the original return stands

> supplanted or withdrawn. In other words, if the original return is under Sub-section (1) and a revised return is filed, then the revised return would be a return under Sub-section (1) and so will be the position if the original return was under Sub-section (2). In our opinion, therefore, the return provided for under Sub-section (4) stands in a category different from those provided in Sub-section (1) or Sub-section (2) and such a return cannot be revised under Sub-section (5) because that sub-section does not say so. That being the position, where a return is filed under Sub-section (4), the limitation for completing the assessment is 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. The revised return filed on March 23, 1974, was an invalid return and could not extend the period for completing the assessment.
> "

The facts in Kulu Valley Transport Co.'s case [1970] 77 ITR 518 (SC), were noticed and it was held that that decision does not lay down that a return filed under Section 139(4) can be equated with a return filed under Sub- Section (1) or Sub-section (2) as the Supreme Court in that case considered Section 22(2A) of the Act of 1922 which was a procedural section. The case was thus distinguished. It followed Metal India Products' case [1978] 113 ITR 830 (All) [FB] and Malhotra's case [1981] 129 ITR 379 (Delhi). So far as Niranjan Lal Ram Chandra's case [1982] 134 ITR 352 (All) is concerned, the question involved was whether the second revised return was a valid return under the provisions of Sub-section (5) of Section 139 and further whether it can extend the period of limitation for completing the assessment. The answer was given in the affirmative and it was held that the word "therein" occurring in Sub-section (5) negatives that a revised return may be furnished at any time before the assessment is made by a person who has furnished a return under Sub-section (1) or Sub-section (2) or whether once a revised return has been filed it is supplemented by the revised return. The learned judges have observed that in taking this view, they were mindful of the prevalent practice of filing more than one revised return, which the Department has been accepting consistently. Now, we advert to O. P. Malhotra's case [1981] 129 ITR 379 (Delhi), on which reliance was placed by the learned counsel for the petitioner-assessee. For the assessment year 1960-61, the assessee filed a return on March 30, 1965, and a revised return was filed on March 28, 1966. The ITO made an assessment treating the revised return filed on March 28, 1966, as invalid in law as the return filed on March 30, 1965, had not been filed either under Sub-section

(1) or under Sub-section (2) of Section 139 of the Act. On appeal, the assessee claimed that the return filed on March 28, 1966, was a valid return. This contention was accepted by the appellate authority and the assessment was set aside and the case was remanded for completing the assessment afresh taking note of the revised returns. A further appeal was preferred which was dismissed by the Tribunal. On a reference, the Delhi High Court held that the return filed on March 30, 1965, had to be treated as a return only under Section 139(4) of the Act and Sub- Section (5) of Section 139 does not refer to Sub-section (4) and, therefore, does not entitle the assessee to rectify or revise a return filed under Section 139(4). The levised return filed on March 28, 1966, was held to be invalid in law. It was observed as under (p. 383 of 129 ITR):

> "In view of the above provision, the return filed on March 30, 1965, has to be fitted against the provisions of one or other of the Sub-sections of Section 139, Since the return had not been filed within the time contemplated under Section 139(1) or Section 139(2) or Section 22(1) or Section 22(2), and since no extension of time had been asked for or granted, the return dated March 30, 1965, can be treated only as a return filed voluntarily by the assessee under Section 139(4) of the 1961 Act. That sub-section enabled the assessee to file a return within four years from the end of the assessment year provided the assessment was not completed by that time. In the present case, therefore, the return filed on March 30, 1965, was clearly a valid return filed under the provisions of Section 139(4) of the 1961 Act. "
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> "The argument put forward by the learned counsel is a plausible one but, in our opinion, it cannot be accepted. Taking first the language of the provision, it is seen that Section 139(5) in terms allows an assessee to revise only a return which has been furnished under Sub-section (1) or Sub-section (2). It carefully avoids a reference to Section 139(4) which, it seems to us, is significant considering that the purpose of the Legislature is to permit the assessee to revise a return which he has already filed and the Legislature has just outlined in Sub-section (4) one of the circumstances, in addition to those set out in Sub-sections (1) and (2) in which the assessee could have filed a return. The reference to Section 271(1)(a) does not help because that section deals with the delay in the filing of the return beyond the period contemplated by Section 139(1) or (2) and there can be no question of a delay under Section 139(4). Section 139(3) (which permits the filing of a return of loss) and Section 139(4A) (introduced subsequently) specifically provide that the returns filed under these sub-sections

> would attract all the provisions of the Act as if they were returns filed under Sub-section (1) while Sub-section (4) does not use any such language. It is, therefore, difficult to accept the argument that Section 139(5) entitles an assessee to rectify or revise a return filed by him under Sub-section (4) unless the return so filed can be fully equated to a return under Sub-section (1) or Sub-section (2)."

10. It may be mentioned here that a Special Bench of the Income-tax Appellate Tribunal, Bench Jaipur, was constituted for considering, inter alia, the provisions of Section 139(1), (2), (4) and (5). In *Income Tax Officer v. Bohra Film Finance* [22] various decisions were taken note of by the Special Bench and it has recorded amongst others, the following conclusions :

> (1) that the return filed under Section 139(4) cannot be treated as one under Section 139(1) or (2);
> (2) that it is not possible to construe the returns filed under Section 139(4) as filed under Section 139(1) or (2) or that Section 139(4) can be read as a proviso to Section 139(1) or (2);
> (3) that the return provided for under Sub-section (4) of Section 139 stands in a category different from those provided in Sub-section (1) or Sub-section (2) and such a return cannot be revised under Sub-section (5) because such sub-section does not say so;
> (4) that a return filed under Section 139(4) cannot be revised under Section 139(5) so as to extend the period of limitation for making the assessment.

11. A contention was raised in *Mst. Zulekha Begum v. Commissioner of Income Tax* [23] that the subsequent return could not be revised under Section 139(5) of the Act and that Section 139(4) did not authorize filing of more than one return and, therefore, the subsequent return is invalid and the assessment is barred. In support of that, Kulu Valley Transport Co.'s case [1970] 77 ITR 518 (SC) was referred. In that connection, it was observed by the learned judges constituting the Division Bench that all that the Supreme Court laid down was that a return whether showing either a profit or loss can be filed under Section 22(1) or Section 22(3) of the Act of 1922. In the facts and circumstances of that case, it was held that the subsequent return filed by the assessee was a valid return under Section 139(4) and the assessment made there under was within the prescribed time under Section 153.

12. Mst. Zulekha Begum's case [1981] 129 ITR 560 (Cal) was followed in *Kumar Jagdish Chandra Sinha v. Commissioner of Income Tax* [24] and dissent was expressed with Siddhartha. *Publications (P) Ltd. v. Commissioner of Income* [25] In that case for the assessment year 1964-65, the assessee did not file his return within the time specified in Section 139(1) nor was a notice issued to him under Section 139(2). He filed a voluntary return on August 13, 1964, and a revised return on February 18, 1969. Similarly for the assessment year 1965-66, he filed a voluntary return on December 11, 1965, and a revised return on July 17, 1969. The assessment for 1964-65 was completed on January 15, 1970. The assessment for the year 1965-66 was completed on July 6, 1970. Penalty Proceedings were initiated. It was contended that the revised returns were invalid, that the assessment proceedings were barred by limitation and that the penalty proceedings were invalid. It was held that the revised returns were valid and the assessments had been made under Section 143 and were within the time prescribed under Section 153. Their Lordships disagreed with the finding recorded in Malhotra's case [1981] 129 ITR 379 (Delhi), that in view of Section 297(2)(b) of the Act, the return filed on March 30, 1965, had to be fitted against one or other of the Sub-sections of Section 139 and it could be treated as a return filed by the asses-see only under Section 139(4). It was further held that Sub-section (5) of Section 139 apply only in a case where a person furnishes a return under Sub-section (1) or (2) and that sub-section did not refer to Sub-section (4) and, therefore, does not entitle an assessee to rectify or revise a return filed under Section 139(4).

13. A perusal of Section 139 shows that returns can be filed under Sub-section (1), Sub-section (2) and Sub-section (4) of Section 139. Thus filing of three returns is contemplated. The returns contemplated under Sub-sections (1A) and (3) are to be treated as a return under Sub-section (1) and so also a return required under Sub-section (4A). 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 under Section 139(4) is permissive and voluntary. Section 139(4) is merely an enabling provision though three different types of returns are contemplated under Section 139, but the right of the assessee to revise the return is only in respect of the return filed either under Section 139(1) or Section 139(2), that is to say, the third type of return filed under Section 139(4) is not the same return as envisaged by Section 139(1) and (2). Section 153 provides the time-limit for the completion of the

assessment. Sub-section (1) of Section 153 is relevant for our purpose and it is in the following terms :

> "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 an 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
> (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 a return or a revised return under Sub-section (4) or Sub-section (5) of Section 139, whichever is the latest."

According to it, the assessment on the return filed under Section 139(4) should have been completed by March 31, 1974, which admittedly was not done as the assessment order in the case of the firm was passed on October 10, 1974, and in the case of the partners on November 6, 1974. Thus the assessment orders passed on October 10, 1974, and November 6, 1974, are a nullity in the eye of law and they are non est, for, no cognizance could be taken under Section 139(5) of the return that was filed under Section 139(4) of the Act.

14. We may refer to instruction No. 888 dated October 1, 1975, of the Board of Direct Taxes and on the basis of the opinion given by the Law Ministry, it has been stated as under ;

> "It may, therefore, be noted that the extended time-limit of one year under Section 153(1)(c) will not be available in respect of a revised return of income purported to have been filed under Section 139(5) where originally the return

was filed under Section 139(4)."

We respectfully agree with the view taken in Metal Indict Products' case [1978] 113 ITR 830 (All) [FB], O.P. Malhotra's case [1981] 129 ITR 379 (Delhi) and Dr. S.B. Bhargava's case [1982] 136 ITR 559 (All) and with utmost deference express our dissent with the view taken in Mst. Zulekha Begum's case [1981] 129 ITR 560 (Cal) and Kumar Jagdish Chandra Sinha [1982] 137 ITR 722 (Cal). It may be mentioned that we approve of the view taken in Bohra Film Finance's case by the Special Bench of the Income-tax Appellate Tribunal Bench, Jaipur.

15. For the aforesaid reasons, we are of opinion that, on the facts and in the circumstances of the case, the Tribunal was not right in holding that the assessments in question were valid and that they were completed with in the period of limitation.

16. We, therefore, answer the question referred to us in the negative, i.e., in favor of the assessee and against the Revenue.

17. The parties are left to bear their own costs of this reference.

18. Let the answer be returned to the Tribunal in accordance with the provisions of Section 260(2) of the Act.

Reference answered in favor of assessee.

Cases Referred.

1. [1970] 77 ITR 518 (SC)
2. [1971] 81 ITR 763 (SC) (sic)
3. [1975] 101 ITR 740 (Pat)
4. [1976] 103 ITR 135 (SC) (sic)
5. [1976] 103 ITR 613 (Orissa) [FB]
6. [1973] 87 ITR 76 (Mad)
7. [1974] 93 ITR 563 (Guj)
8. [1974] 94 ITR 269 (Delhi)
9. [1974] 93 ITR 297 (AP)
10. [1963] 49 ITR 846 (Bom)

11. [1967] 64 ITR 121 (Punj)
12. [1978] 113 ITR 830,
13. [1970] 103 ITR 613 (Orissa) [FB]
14. [1978] 111 ITR 724 (All)
15. [1974] 97 ITR 705 (Raj)
16. [1971] 79 ITR 702 (Raj)
17. [1982] 136 ITR 559.
18. [1978] 113 ITR 830 (All) [FB]
19. [1981] 129 ITR 379 (Delhi)
20. [1970] 77 ITR 518 (SC)
21. Tax [1982] 134 ITR 352 (All)
22. (1983) 35 CTR (Trib) 23
23. [1981] 129 ITR 560 (Cal)
24. [1982] 137 ITR 722 (Cal)
25. Tax [1981] 129 ITR 603 (Delhi) (sic)