Income Tax Appellate Tribunal - Ahmedabad
Maneklal Sakarchand vs Income Tax Officer. on 29 July, 1994
Equivalent citations: (1994) 50 TTJ Ahd 370
ORDER PHOOL SINGH, J. M. : This appeal is directed against the order dt. 14th Feb., 1978 recorded by AAC Jamnagar Range, Jamnagar by which the appeal of the assessee relating to asst. yr. 1971-72 was disposed of.

2. Before taking up the appeal for disposal on merits, it may be pointed out that this appeal came up for disposal before the Tribunal, Ahmedabad Bench-A and this was disposed of vide order dt. 26th Dec., 1979 and at the instance of assessee R. A. No. 372/A/80 was allowed and the following question was referred to the Honble High Court at Ahmedabad for esteemed opinion :

"Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the revised return filed by the assessee on 5th March, 1974 was a valid return ?"

3. The Honble High Court disposed of IT Ref. No. 561/A/80 vide judgment dt. 24th Nov., 1993 directing the Tribunal to decide the matter afresh in the light of Instruction No. 388 issued by the CBDT, New Delhi. Accordingly, the matter has come up again for disposal before us and owe have heard the learned counsel for the assessee and the learned Departmental Representative and also perused the materials placed before us.

4. The relevant facts are that the assessee filed a return of income under S. 139(4) of IT Act, 1961 declaring total income of Rs. 10,412. As the ITO concerned raised certain enquiries during the process, the assessee filed a revised return declaring total income of Rs. 19,403 on 5th March, 1974. The ITO framed the assessment order vide order dt. 7th Feb., 1975 on a total income of Rs. 45,550 after making certain additions. The assessee came in appeal before the AAC, Jamnagar before whom one legal plea was also raised by the assessee that revised return filed on 5th March, 1974 cannot be treated as a valid return because the original return filed on 17th Nov., 1971 was neither filed under S. 139(1) nor under S. 139(2) of the IT Act. As the assessment order has been passed on 7th Feb., 1975, the same is time-barred. The assessee also challenged the additions on merits. The learned AAC dismissed the appeal repelling both the pleas of the assessee and concluded that assessment order was passed within time and additions made by the ITO were justifiable. The assessee preferred the present appeal which was disposed of as mentioned above and now it has come before us.

5. The only legal plea raised by the learned counsel for the assessee is that limitation of one year for passing of the assessment order is to start from 17th Nov., 1971, the date of filing of return under S. 139(4) of the Act and not from 5th March, 1974, the date of filing of revised return because that return cannot be treated as return under S. 139(5) of the IT Act. The learned counsel has placed reliance on different decisions of the following cases decided by different High Courts :

(1) O. P. Malhotra vs. CIT (1981) 129 ITR 379 (Del) (2) Dr. S. B. Bhargava vs. CIT (1982) 136 ITR 559 (All) (3) Vimalchand vs. CIT (1985) 155 ITR 593 (Raj) (4) Smt. Sobharani vs. CIT (1989) 160 ITR 453 (Raj) (5) Eapen Joseph vs. CIT (1987) 168 ITR 26 (Ker) He has also argued that matter in

controversy was engaging attention of higher authorities of Revenue and the matter was referred by CBDT to the Ministry of Law for their opinion and the Ministry of Law tendered an opinion on 22nd Nov., 1974 on the basis of which Instruction No. 388 was issued by the CBDT New Delhi, instructing the IT authorities that the extended time-limit of one year under S. 153(1)(c) will not be available in respect of a revised return of income purported to have been filed under S. 139(5) of the Act.

6. Contrary to it, the contention of the learned Departmental Representative is that other High Courts have taken a contrary view of the cases relied upon by the counsel for the assessee and in that connection, he has placed reliance on the following cases :

(1) Mst. Zulekha Begum vs. CIT (1981) 129 ITR 560 (Cal) (2) Kumar Jagdish Chandra Sinha vs. CIT (1982) 137 ITR 722 (Cal) (3) Nanjappa Textiles & Ors. vs. CIT (1985) 153 ITR 109 (Mad) (4) Balish Singh & Co. vs. CIT (1987) 165 ITR 575 (Cal) (5) CIT vs. Dr. N. Srivastava (1988) 170 ITR 556 (MP) On the basis of above case law, it has been contended by learned Departmental Representative that their Lordships have clearly laid down that assessee who has originally filed the return of income under S. 139(4) can also filed another return subsequently and limitation starts from the date of subsequent returns and not from the original return.

7. After going through the case laws relied upon by the learned counsel for assessee and learned Departmental Representative referred to above, it will be evident that there is conflict of opinion among the different High Courts on this issue. The view of Allahabad High Court laid down in the case of Dr. S. B. Bhargava (supra) is based on identical facts as to the facts before us. In that case, the year of assessment involved was 1971-72 as in the case before us and the return under S. 139(4) was filed on 21st Dec., 1971 while in the case before us it is filed on 17th Nov., 1971. In the same way, revised return was filed by Dr. Bhargava on 23rd March, 1974 and in the assessees case it was filed on 5th March, 1974. Assessment order framed in the case of Dr. Bhargava on 23rd Jan., 1975 while in the case before us assessment was completed on 7th Feb., 1975. In other words, all the facts including the dates are identical in both the cases and their Lordships after going through the provisions of S. 139 of the Act categorised the returns into three parts and the first was to be filed under sub-s. (1) the other order sub-s. (2) while the third to be filed under sub-s. (4). The other returns contemplated under Sub-ss. (1A) and (3) were also treated as included in sub-s. (1). However, it was pointed by their Lordships that return to be filed under sub-s. (4) is purely a voluntary return, but it is different from the return to be filed under sub-s. (1). According to & their Lordships, legislature was conscious of the three different types of returns and sub-s. (5) does not give a right to an assessee to revise a return filed under sub-s. (4), and for that purpose return under sub-s. (4) cannot be equated with the return filed under sub-s. (1). In he end their Lordships concluded that the revised return filed under sub-s. (5) of S. 139 being an invalid return cannot extend a period of limitation for completing the assessment. Their Lordships have placed reliance on the decision of ITO vs. Adarsh Construction Co. (1968) 70 ITR 796 (All), Metal India Products vs. CIT (1978) 113 ITR 830 (All) (FB) and decision of Delhi High Court in the case of O. P. Malhotra vs. CIT (1981) 129 ITR 379 (Del) and distinguished the reasoning of Honble Supreme Court in the case of CIT vs. Kulu Valley Transport Co. P. Ltd., (1970) 77 ITR 518 (SC) and a decision of the same Court in the case of Niranjan Lal Ram Chandra vs. CIT (1982) 134 ITR 352 (All).

8. The reasoning of Honble High Court of Allahabad in the case of Dr. S. B. Bhargava was followed by Honble Rajasthan High Court in the case of Vimalchand vs. CIT (supra) and in the case of Smt. Sobharani vs. CIT (supra) and the same view is laid down by Kerala High Court in the case of Eapen Joseph vs. CIT (supra).

9. Contrary view relied by the learned Departmental Representative is laid down in the case of Mst. Zulekha Begum vs. CIT (supra) in which it was laid down by Calcutta High Court that an assessee can file another return subsequently even if original return was filed under S. 139(4) of the Act and limitation starts from the date of subsequent returns. The same High Court followed that view in subsequent decisions of Kumar Jagdish Chandra Sinha vs. CIT (supra) and Balish Singh & Co. vs. CIT (supra) and the view of Honble Madras High Court and M. P. High Court is to the same effect.

10. The above discussion shall go to reveal that in spite of conflicting opinion of different High Courts on he matter in issue, the facts of the present case are similar to the fact of the case of Dr. S. B. Bhargava (supra) as mentioned above and it is also a settled preposition that if there are two opinions on an issue and one opinion favour the assessee, then said opinion should be followed and thus propriety requires us to follow the said reasonings of Dr. S. B. Bhargavas case (supra) which favours the assessee and that has also been followed by so many other High Courts.

11. It is also relevant here that this matter was engaging attention of the Revenue authorities, and CBDT referred the matter to the Ministry of Law for opinion. Ministry of Law tendered its opinion on 22nd Nov., 1974 in File No. 201/20/74-ITA-II and that is what the Honble High Court of Allahabad and that of Rajasthan, Kerala and Delhi have held in the above cases. On the basis of that opinion, CBDT issued the Instruction No. 388 on 1st Oct., 1975 and Instruction was issued to the IT authorities that extended time-limit of one year under S. 153(1)(c) will not be available in respect of a revised return of income purported to have been filed under S. 139(5) where originally the return was filed under S. 139(4) of the Act because an assessee who files a return of income under S. 139(4) is not entitled to file a revised return under S. 139(5) of the Act. This Instruction, in other words, is in consonance with the view of different High Courts favouring the case of assessee. As it was obligatory on the part of IT authorities to follow the said instruction and if that Instruction is not followed then its violation will also make the order against the provisions of said instruction and assessee will get benefit of that violation.

12. The matter now is confined to the facts that in the present case, assessee has originally filed under S. 139(4) of the Act and later on revised it by filing another return and that revised return cannot be treated a return under S. 139(5) of the Act and that is to be treated as invalid return in view of the reasonings laid down in the case of Dr. S. B. Bhargava & Ors. (supra) relied by the counsel for the assessee and further the Instruction No. 388, dt. 1st Oct., 1975, made it obligatory on IT authorities that time limit shall not be extended in case of filing of revised return as in the case of assessee. The result shall be that assessees initial return dt. 17th Nov., 1971 filed under S. 139(4) is to be treated as valid return for the purpose of S. 153(1)(a)(iii) of the Act and limitation for completion of assessment was one year at the relevant time. Admittedly, in the case in hand assessment has been completed on 7th Feb., 1975 just after more than four years and that is to be treated as time barred, in view of the case law as well as following the spirit of Instruction No. 388. The cumulative

conclusion shall be that said assessment order is liable to be annulled and is annulled accordingly.

13. However, we may point that while giving effect to the order of annulment, the ITO may keep in mind the reasonings of jurisdictional High Court laid down in the case of Saurashtra Cement & Chemical Industries Ltd. vs. ITO (1992) 194 ITR 659 (Guj) (FB) wherein it was concluded that regular assessment if annulled being time-barred then it does not entitled the assessee in whose case assessment is made or who has paid advance tax and/or self assessment tax, to get refund of the entire tax amount paid by him.

14. The appeal is allowed and the assessment order framed by the ITO is annulled, subject to observations made above.