

Supreme Court of India

Panchamahahal Steel Ltd. vs U.A. Joshi, Ito And Anr. on 24 September, 1996

Equivalent citations: 1997 225 ITR 458 SC

Bench: B J Reddy, S Sen

JUDGMENT

1. This appeal is preferred by the assessee against the judgment of the Gujarat High Court , dismissing its writ petition.

2. For the assessment year 1977-78, the assessee filed its returns. It appears that thereafter it filed a revised return and then a second revised return. After making the appropriate inquiry, the Income-tax Officer made a draft assessment order in view of the then existing provisions in Section 144B of the Income-tax Act. He sent a copy of the draft assessment order to the assessee as required by the said provision to which the assessee submitted its objections. Thereupon, the Income-tax Officer referred the matter to the Inspecting Assistant Commissioner, again as required by Section 144B of the Act. While the matter was pending before the Inspecting Assistant Commissioner, the assessee came forward with the third revised return. The Income-tax Officer rejected the third revised return by his letter dated the March 5, 1980. In this letter, he stated that inasmuch as he had already made a draft assessment order and communicated the same to the assessee and has, after receiving the assessee's objections, referred the matter to the Inspecting Assistant Commissioner he can no longer entertain the said revised return. Thereupon, the appellant approached the High Court by way of a writ petition.

3. The High Court rejected the appellant's contention that he has a right to file a revised return until the final assessment order is made. It held that once the draft assessment order was made, the Income-tax Officer's function is practically over and that thereafter there is no question of entertaining a revised return. Accepting such a return may involve, the High Court rightly pointed out, redoing the entire exercise done till then and may also require recalling the reference made to the Inspecting Assistant Commissioner.

4. We are of the opinion that the reasons given and the conclusion arrived at by the High Court are unexceptionable.

5. The assessee is expected to file a return within the time prescribed by Sub-section (1) of Section 139. In some, cases, an individual notice may also be given as contemplated by Sub-section (2) of Section 139. In addition to it, the assessee has been given a right to file a return at any time before the assessment is made by Sub-section (4) of Section 139. A further right is given to the assessee, who has filed a return under Sub-section (1) or (2) of Section 139, to file a revised return, at any time before making the assessment, if he discovers any omission or mistake in the return filed.

6. Sub-section (5) of Section 139, as it stood at the relevant time, read :

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.

7. The question is whether this right can be exercised even after the Income-tax Officer makes a draft order and after receiving the objections of the assessee, refers the matter to the Inspecting Assistant commissioner for directions.

8. Section 144B reads as follows :

144B. (1) Notwithstanding anything contained in this Act, where in an assessment to be made under Sub-section (3) of Section 143, the Income-tax Officer proposes to make any variation in the income or loss returned which is prejudicial to the assessee and the amount of such variation exceeds the amount fixed by the Board under Sub-section (6), the Income-tax Officer shall, in the first instance, forward a draft of the proposed order of assessment (hereafter in this section referred to as the draft order) to the assessee.

(2) On receipt of the draft order, the assessee may forward his objections, if any, to such variation to the Income-tax Officer within seven days of the receipt by him of the draft order or within such further period not exceeding fifteen days as the Income-tax Officer may allow on an application made to him in this behalf.

(3) If no objections are received within the period or the extended period aforesaid or the assessee intimates to the Income-tax Officer the acceptance of the variation, the Income-tax Officer shall complete the assessment on the basis of the draft order.

(4) If any objections are received, the Income-tax Officer shall forward the draft order together with the objections to the Inspecting Assistant Commissioner and the Inspecting Assistant Commissioner shall, after considering the draft order and the objections and after going through (wherever necessary) the records relating to the draft order, issue, in respect of the matters covered by the objections, such directions as he thinks fit for the guidance of the Income-tax Officer to enable him to complete the assessment :

Provided that no directions which are prejudicial to the assessee shall be issued under this sub-section before an opportunity is given to the assessee to be heard.

(5) Every direction issued by the Inspecting Assistant Commissioner under Sub-section (4) shall be binding on the Income-tax Officer.

(6) For the purpose of Sub-section (1), the Board may, having regard to the proper and efficient management of the work of assessment, by order, fix, from time to time, such amount as it deems fit :

Provided that different amounts may be fixed for different areas :

Provided further that the amount fixed under this sub-section shall, in no case, be less than twenty-five thousand rupees.

(7) Nothing in this section shall apply to a case where an Inspecting Assistant Commissioner exercises the powers or performs the functions of an Income-tax Officer in pursuance of an order made under Section 125 or Section 125A.

9. A reading of Section 144B shows that once a draft order is made and the matter is referred to the Inspecting Assistant Commissioner on receiving the objections of the assessee, the function of the Income-tax Officer practically comes to an end. Thereafter, the only remaining thing to do by him is to pass a final order of assessment pursuant to and in accordance with the directions given by the Inspecting Assistant Commissioner. He cannot vary or depart from the directions given by the Inspecting Assistant Commissioner. If the assessee's contention is accepted and if it is held that even after making such a reference, the assessee is entitled to file a revised return, it may mean re-doing the entire exercise over again. It may also happen that as a result of such re-doing, the reference already made to the Inspecting Assistant Commissioner may become unnecessary and has to be called back. The Act, however, does not provide for such a situation.

10. Sub-section (5) has to be construed and understood in the context of Section 139, indeed in the context of the entire enactment. It has to be construed and understood in a reasonable manner. Once the Income-tax Officer has done all that he has to do under the Act and makes a draft order and then refers to the Inspecting Assistant Commissioner as required by Section 144B, permitting the assessee to file a revised return would involve duplication of work and multiplicity of proceedings. By saying so, we are not rendering Sub-section (5) nugatory. All that it means is that the said right has to be exercised before the making of draft assessment order in cases where Section 144B was applicable.

11. Learned Counsel for the appellant brought to our notice another judgment of the Gujarat High Court in *Shri Vallabh Glass Works Ltd. v. ITO*, S.C.A. No. 2728 of 1981, in support of his contention. There, it appears, after the draft assessment order was made and the matter referred to the Inspecting Assistant Commissioner, a revised return was filed by the assessee. The Inspecting Assistant Commissioner rejected it and passed final orders. On a writ petition being filed, the High Court held that the Inspecting Assistant Commissioner was bound to take notice of the revised return since by that date no final order of assessment was made. We do not think that the view taken in the later judgment is consistent with the provisions of Section 139(5) read with Section 144B as it then stood. In our opinion the view taken in the judgment under appeal is the correct one and consistent with the provisions of the Act. The appeal accordingly fails and is dismissed. No costs.