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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 09.10.2023

+ **W.P.(C) 11875/2018**

SMC COMTRADE LTD Petitioner

Through: Mr Sumit Lalchandani with Mr Salil Kapoor and Ms Ananya Kapoor, Advs.

versus

ASST. COMMISSIONER OF INCOME-TAX,

CIRCLE 24(1) Respondent

Through: Mr Prashant Meharchandani, Sr Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. This writ petition concerns Assessment Year (AY) 2016-17. *Via* this, writ action the petitioner/assessee seeks to assail notice dated 11.08.2018 [hereafter referred to as “first notice”] issued under Section 143(2) and the notice dated 31.08.2018 issued under Section 142(1) of the Income-tax Act, 1961 [in short, “Act”] [hereafter referred to as the “second notice”].
2. The petitioner’s/assessee’s principal submission, in support of the relief sought in the writ petition, is that the aforementioned impugned notices are barred by limitation. This plea arises in the backdrop of the following facts that are not in dispute.
 - 2.1 The petitioner/assessee had filed its original Return of Income (ROI)

on 14.10.2016. In the ROI, the petitioner/assessee declared a loss amounting to Rs. 3,85,73,772/-. On 06.02.2017, the petitioner/assessee was served with a notice under Section 139(9). This notice stated that the ROI filed by the petitioner/assessee was defective and this regard made a reference to section 139(9) of the Act.

2.3 It is not in dispute that the petitioner/assessee removed the defects as pointed out by the respondent/revenue on 18.02.2017.

2.4 Evidently, the petitioner/assessee was served with another notice dated 10.07.2017, wherein, it was pointed out that the ROI filed for AY 2016-17 dated 14.10.2016 contained defects.

2.5 The petitioner/assessee, thus once again, removed the defects, *albeit*, on 20.07.2017.

2.6 Admittedly, the ROI filed on 14.10.2016 was processed by the Assessing Officer (AO) on 22.11.2017 after, as indicated above, the defects were removed. An intimation to that effect was served on the petitioner under Section 143(1) of the Act.

2.7 It is only thereafter that the petitioner/assessee was served with the first notice under Section 143(2) on 11.08.2018, and the second notice on 31.08.2018 under Section 142(1) of the Act.

2.8 The petitioner, *via* response dated 04.09.2018, took the stand that there was no revision of the original return filed on 14.10.2016, that the notice under Section 139(5) and compliance thereto cannot be treated on par with the provisions of Section 139(9); that the return was processed under Section 143(1) of the Act; and that the notices are invalid and illegal as they were barred by limitation. The point concerning the expiration of limitation was reiterated by the petitioner/assessee *via* communication dated

11.10.2018.

3. Thereafter, the petitioner/assessee received communication dated 24.10.2018, which in sum, rejected the petitioner's/assessee's stand that the impugned notices were time-barred.

4. It is this which impelled the petitioner/assessee to approach this court via the instant writ petition.

5. Mr Sumit Lalchandani, learned counsel, who appears on behalf of the petitioner/assessee, has submitted that the impugned notices are time-barred since they have been issued beyond the time prescribed in the first proviso appended to Section 143(2) of the Act. In the relevant AY i.e., 2016-17, with effect from 01.06.2016, the time limit provided for serving a notice under Section 143(2) of the Act was six (6) months from the end of the financial year (FY) in which the return is furnished.

5.1 Mr Lalchandani, thus, submits that the date for calculating limitation under the proviso to Section 143(2), would be six months (6) commencing from the last date of the FY in which the original ROI was filed i.e., 31.03.2017. Six (6) months after that i.e., 30.09.2017, would be the date on which limitation expires.

5.2 In support of the plea that the date of return would relate back to the date when the original return was filed, reliance was placed on the judgment of the High Court of Punjab and Haryana in *Commissioner of Income-tax vs. Sohan Lal Chhajan Mal* (2008) 307 ITR 53 (Punjab & Haryana).

5.3 According to Mr Lalchandani, a Special Leave Petition was preferred against the said judgment of the High Court of Punjab and Haryana, which was dismissed by the Supreme Court *via* order dated 21.07.2008 on grounds of both delay and merit.

6. As against this, Mr Prashant Meharchandani, learned senior standing counsel, who appears on behalf of the respondent/revenue, submits that a notice under Section 143 could only have been issued after the defect was removed, and therefore, the impugned notices were within the time prescribed by the statute.

7. We have heard counsel for the parties.

8. The dates and events adverted to hereinabove are not in dispute. As noted above, the original ROI was filed on 14.10.2016. Two notices were issued which alluded to defects in the ROI. The first notice was issued on 06.02.2017, while the second notice was issued on 10.07.2017. As indicated above, defects were removed for the first notice on 18.02.2017, and for the second notice on 20.07.2017.

9. Significantly, the AO took up the original ROI filed on 14.10.2016 for processing on 22.11.2017, after the defects were removed. Therefore, the AO considered the error-free ROI as the return that was required to be processed.

10. Thus, the submission advanced on behalf of the petitioner/assessee, that the return date relates back to the date on which the original ROI was filed seems to have been the yardstick that the AO applied in the instant case. The petitioner's plea, in this behalf, is supported by the decision taken by the High Court of Punjab and Haryana in *Sohan Lal Chhajjan Mal case*. The relevant observations made by the court read as follows:

“5. A perusal of the aforementioned provision makes it evident that when the return of income furnished by the assessee is defective then the Assessing Officer is to intimate the defect to the assessee, afford him an

opportunity to rectify the defect within a period of 15 days from the date of such intimation or within such further period which the Assessing Officer may in his discretion allow. If the defect is rectified then the return is to be considered as valid. The Explanation appended to sub-section (9) of section 139 of the Act clarifies that a return of income would be regarded as defective if the annexures, statements and columns in the return concerning computation of income, etc., are not fulfilled or copies of the audited or otherwise profit or loss account have not been attached as required by clauses (e) and (f) of the Explanation. **In other words, the statutory provision clearly envisages that in cases where profit and loss account and balance-sheet are not accompanying the return of income, it would be regarded as defective in contradistinction to invalid return. A defective return, therefore, cannot be regarded as invalid return ipso facto. It may assume the character of invalid return if the defect after due notice has not been removed by the assessee.** The question is not res integra and fell for consideration of a Division Bench of the Calcutta High Court in the case of CIT v. Bharat Refineries Ltd., [1986] 162 ITR 652. In that case, the profit and loss account and balance-sheet were not enclosed with the return as is the position in the instant case. The assessee in response to the notice had produced and filed its profit and loss account as well as the balance-sheet. The Assessing Officer completed the assessment. On appeal, the Commissioner of Income-tax (Appeals) held that the return was invalid and he set aside the assessment so far as the charging of interest was concerned and directed the Assessing Officer to charge interest on the return from the date of the return till the date of furnishing the profit and loss account and balance-sheet. On further appeal, the Tribunal found that the return filed by the assessee was accepted by the Assessing Officer as a legally valid return and he had acted upon the same. The Tribunal set aside the order of the Commissioner of Income-tax (Appeals). On a reference made to the High

Court, it was held that once the return has been found to be valid and only a defect within the meaning of section 139(9) of the Act was found then the Commissioner of Income-tax (Appeals) was not justified in levying interest.

6. We are in respectful agreement with the view taken by the Division Bench of the Calcutta High Court in the case of Bharat Refineries Ltd., [1986] 162 ITR 652; which has been correctly followed and applied by the Tribunal. The finding recorded by the Tribunal in the instant case that the return was defective in contradistinction to be invalid must be regarded as a question of fact. Moreover, the absence of profit and loss account and balance-sheet from the return is itself has been considered by clause (e) of the Explanation appended to sub-section (9) of section 139 of the Act. Therefore, it cannot be concluded that the return, in fact, was filed on the day when the defect was removed, i.e., on January 3, 1992. The date of filing the return would not change a fortiori. It follows that the period of limitation for issuance of notice under section 143(2) of the Act could be issued only within a period of six months (as prevailing at the relevant time, i.e., the assessment year 1989-90).

7. In view of the above, both the questions are answered against the Revenue and in favour of the assessee.”

[Emphasis is ours]

11. Concededly, as noted above, the SLP filed against the said judgment of the High Court of Punjab and Haryana was dismissed, not only on the technicality of limitation but also on merits *via* order dated 21.07.2008.

12. Therefore, by logical extension, if the date of the ROI originally filed on 14.10.2016 is taken into account, then, the impugned notices served on the petitioner/assessee would be time-barred, as the first proviso appended to Section 143(2) of the Act stipulated, at the relevant point in time, that the

notice under the said Section could not have been served on the assessee, in this case, the petitioner, after the expiry of six (6) months from the end of the financial year in which the ROI is filed. For convenience, Section 143(2) and the first proviso appended to it [as amended by the Finance Act, 2016, with effect from 01.06.2016] is extracted hereafter:

“(2) Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer or the prescribed income-tax authority, as the case may be, if, considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return:

Provided that no notice under this sub-section shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished.]”

[Emphasis is ours]

12.1 The financial year, in the case of the petitioner's/assessee's original return, would have ended on 31.03.2017. Six (6) months, as mandated by the proviso, would have ended on 30.09.2017.

13. Undoubtedly, the notice issued under Section 143(2) of the Act is time-barred. Consequently, the notice under Section 142(1) of the Act will also collapse. The impugned notices are, accordingly, quashed.

14. The writ petition is disposed of in the aforesaid terms.

15. Consequently, the interim order dated 01.11.2018, which was made absolute, shall stand vacated.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

OCTOBER 9, 2023/pmc

