

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

ITA.No. 60 of 2013

AGAINST THE ORDER IN ITA 149/2009 of I.T.A.TRIBUNAL, COCHIN BENCH, DATED 10-08-2012

APPELLANT/RESPONDENT:

THE COMMISSIONER OF INCOME TAX
TRIVANDRUM.

BY ADVS.SRI.P.K.R.MENON,SR.COUNSEL, GOI(TAXES)
SRI.JOSE JOSEPH, SC, FOR INCOME TAX

RESPONDENT/APPELLANT:

M/S. KERALA STATE SMALL INDUSTRIES DEVELOPMENT
CORPORATION LTD, P.BNO.50, SANTHI NAGAR,
TRIVANDRUM-695 001.

R1 BY ADV. SRI.JOSEPH MARKOSE (SR.)
R1 BY ADV. SRI.VABRAHAM MARKOS
R1 BY ADV. SRI.BINU MATHEW
R1 BY ADV. SRI.TOM THOMAS (KAKKUZHIYIL)
R1 BY ADV. SRI.ABRAHAM JOSEPH MARKOS
R1 BY ADV. SRI.ISAAC THOMAS
R1 BY ADV. SRI.NOBY THOMAS CYRIAC

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 06-08-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A: TRUE COPY OF THE ORDER OF THE ASSESSING OFFICER
UNDER SECTUIB 143(3) DATED 30.3.2006.

ANNEXURE B: TRUE COPY OF THE ORDER OF THE COMMISSIONER OF
INCOME TAX (APPEALS) DATED 3.11.2008.

ANNEXURE C: CERTIFIED COPY OF THE ORDER OF THE APPELLATE
TRIBUNAL DATED 10.8.2012 WITH A COPY.

// TRUE COPY //

P.A.TO JUDGE

ANTONY DOMINIC & SHAJI P.CHALY, JJ.

I.T.ANo.60 of 2013

Dated this the 6th day of August, 2015

JUDGMENT

Antony Dominic, J.

In this appeal filed by the Revenue, the challenge is against the order passed by the Income Tax Appellate Tribunal, Cochin Bench in ITA 149/09.

2. We heard the Senior Counsel for the appellant and the learned Senior Counsel appearing for the respondent assessee.

3. The assessee is a company fully owned by the Government of Kerala. Based on its provisional accounts, return for the assessment year 2003-2004 was filed by the assessee on 30.11.2004 declaring a loss of Rs.1.45 crores. Subsequently, following a notice issued on 17.11.2004 under Section 143(3), proceedings for scrutiny assessment was initiated. Still later, on finalisation of the accounts, the assessee filed a revised return on 14.2.2006 declaring a loss of Rs.1,87,85,111/-. On the basis that the revised return was filed beyond time provided under Section 139(5) of the Income Tax Act, the Assessing Officer completed the assessment ignoring the revised return. The appeal before the Commissioner (Appeals) was

rejected. In the further appeal filed, by the impugned order, the Tribunal set aside the orders passed by the lower authorities and directed re-examination of the matter by the Assessing Officer. This order is challenged by the Revenue in this appeal and the questions of law framed are the following:

“1. Whether, on the facts and in the circumstances of the case and also, on an interpretation of Section 139(5) of the Income Tax Act, 1961 the Tribunal is right in law-

i) In holding the 'revised return' of income filed by the assessee beyond the time limit prescribed under section 139(5) of the Income Tax Act is admissible.

ii) In directing the Assessing Officer to redo the assessment by considering the additional claims made in the 'revised return'.

iii) in its understanding of the observation of the Hon'ble Supreme Court which reads:-

“we cannot lose sight of the fact that the failure or inability of the Revenue to frame a fresh assessment should not place the assessee in a more disadvantageous position than in what he would have been if a fresh assessment was made.

as “the inability of the department to consider the belated revised return should not place the assessee in a more disadvantageous position”.

and are not the 'reading' and 'understanding' of the decision of the Supreme Court wrong and perverse”?

2. Whether, on the facts and circumstances of the case and considered in the light of the principle that no Court can go against the statute, the Tribunal is right in law in understanding the decision of the Supreme Court in Shelly products as against/inconsistent with Section 139 (5) of the I.T.Act.

3. Whether, on the facts and circumstances of the case is not the 'revised return' filed on 14.2.2006 beyond the time limit prescribed under Section 139(5) of the Income Tax Act for the assessment year 2003-04?”

4. Having heard the counsel for both sides, we are satisfied that the questions deserve to be answered against the Revenue and in favour of the assessee. Reading of the order passed by the Tribunal shows that the Tribunal has followed the Apex Court judgment in Commissioner of Income Tax v. Shelly Products and Another [2003 (261) ITR 367] where the Supreme Court has held thus:

“We cannot lose sight of the fact that the failure or inability of the Revenue to frame a fresh assessment should not place the assessee in a more disadvantageous position than in what he would have been if a fresh assessment was made. In a case where an assessee

chooses to deposit by way of abundant caution advance tax or self-assessment tax which is in excess of his liability on the basis of the basis of the return furnished or there is any arithmetical error or inaccuracy, it is open to him to claim refund of the excess tax paid in the course of the assessment proceeding. He can certainly make such a claim also before the concerned authority calculating the refund. Similarly, if he has by mistake or inadvertence or on account of ignorance, included in his income any amount which is exempted from payment of income-tax, or is not income within the contemplation of law, he may likewise bring this to the notice of the assessing authority, which if satisfied, may grant him relief and refund the tax paid in excess, if any. Such matters can be brought to the notice of the concerned authority in a case when refund is due and payable, and the authority concerned, on being satisfied, shall grant appropriate relief. In cases governed by Section 240 of the Act, an obligation is cast upon the Revenue to refund the amount to the assessee without his having to make any claim in that behalf. In appropriate cases therefore, it is open to the assessee to bring facts to the notice of the concerned authority on the basis of the return furnished, which may have a bearing on the quantum of the refund, such as those the assessee could have urged under Section 237 of the Act. The concerned authority, for the limited purpose of calculating the amount to be refunded under section 240 of the Act, may take all such facts into consideration and calculate the amount to be refunded. So viewed, an assessee will not be placed in a more disadvantageous position than what he would have been, had an assessment been made in accordance with law."

5. Applying these principles, the Tribunal held that it is open to an assessee to point out mistakes committed by it in the return filed and that the authorities under the Income Tax Act are bound to assess the income and loss of the assessee in terms of the provisions of the Act. Accordingly, the Tribunal concluded that it was open to the assessee to bring to the notice of the authorities the finalised accounts and the variation that has occurred in the loss in the return originally filed by it on 30.11.2004. It was on that reasoning that the Tribunal has directed the Assessing Officer to reconsider the matter.

6. Although it is true that by the time audited accounts and the revised return was submitted, the time limit provided in Section 139(5) of the Income Tax Act had expired that, in our view, did not stand in the way of the assessee in taking advantage of the principle laid down by the Apex Court in its judgment in *Shelly Products (supra)*. It is true that the learned Senior Counsel for the Revenue contended that the law declared by the Supreme Court is understood in the light of the provisions of Section 139(5). In our view, that principle does not in any manner come in conflict with the view taken by the Tribunal and,

therefore, in the facts of the case, we are unable to accept the contention.

In the light of the above, we are not in a position to accept the case of the Revenue. Appeal fails and it is accordingly dismissed.

SD/-
ANTONY DOMINIC
JUDGE

SD/-
SHAJI P. CHALY
JUDGE

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