



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

ITA No. 644 of 2009

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Decided On: 10<sup>th</sup> September, 2009.

COMMISSIONER OF INCOME TAX

through :

... Appellant

Ms. P.L. Bansal with Mr. Paras Chaudhary, Advocates. for the appellant.

VERSUS

HARYANA SHEET GLASS LTD.

through :

... Respondent

Mr. Amol Sinha, Advocate for the respondent.

## CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI

THE HON'BLE MR. JUSTICE VALMIKI J. MEHTA

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

Yes

A.K. SIKRI, J. (ORAL)

1. The assessee had filed its return on 01.11.2004 declaring loss of R.10,38,98,405/-. Thereafter, revised return was filed on 05.10.2005 declaring loss of Rs.7,20,50,041/-. The Assessing Officer, during the assessment proceedings, observed that the return was not signed and verified in accordance with the provisions of Section 140 of the Income Tax Act and revised return was also filed belatedly. In fact, the earlier return was filed by the Company Secretary of the assessee company and the revised return filed was signed by the Managing



and proceedings that the return was filed belatedly, he did not take the same into consideration. The CIT upheld the decision of the AO. However in further appeal, the ITAT has held that signing of the return by the Secretary was a curable irregularity. Therefore, when the Managing Director signed and filed the return, it should relate back to the date when the original return was filed under the signature of the Company Secretary. Since that original/revised return was within time, it could have been taken into consideration. In arriving at this conclusion, the learned Tribunal relied upon the judgment of this Court in the case of **Bharat Nidhi Ltd. v. Commissioner of Income Tax**, 306 ITR 230. The Tribunal has also referred to the judgment of Kerala High Court and the relevant discussion in this behalf runs as under:

"3. Before us, the learned counsel for the assessee relied on the decision of Hon'ble Delhi High Court in the case of **Bharat Nidhi Ltd. Vs. CIT** (2007) 165 Taxman 314. In that case, the assessee company had filed its return of income on 27.8.1996, which was signed by its Secretary. The notices were issued to the assessee on 30.6.1977 and 1.11.1977, in which it was not pointed out that the return ought to have been signed by the Managing Director or one of the directors in the absence of Managing Director. In the course of assessment proceedings, it was pointed out that the return was defective. Thereafter, the assessee filed a return on 27.11.1978, which was signed by the Managing Director. On these facts, the ITO completed the assessment on the second return, but held that the original return was invalid. The Hon'ble Court pointed out that the Secretary is otherwise a person who is competent to sign documents on behalf of the assessee although he may not be competent to sign a return u/s 140 of the Act. The moment this defect was pointed out to the assessee, a fresh return was filed, which was signed by the Managing Director. In the past the



explained by the Hon'ble Kerala High Court in the case of CIT Vs. Masoneilan (India) Ltd. (2000) 242 ITR 569 and that the defect was removed by filing a fresh return signed by the Managing Director of the assessee company. Therefore, this would then relate back to the original date of filing of the return. Accordingly, the matter was decided in favour of the assessee company.

4. In reply, the learned DR pointed out that the original return was defective not only on account of its being signed by the Executive, Finance & Taxation, who was authorized by the assessee company to sign the return in the board meeting held on 28.7.2003. He was otherwise competent to sign various statements in regard to financial and taxation matters. The defect was not pointed out to the assessee and it was only subsequently when the assessment proceedings were taken up that this defect was pointed out. Thereafter, the assessee filed a return accompanied by audited accounts and duly verified by the Managing Director. The learned counsel for the assessee had also placed before us the decision of Hon'ble Delhi High Court in the case of CIT Vs. Bhiwani Synthetics Ltd. 199 Taxation 2004. In that case, the return was signed by General Manager, Finance and Company Secretary of the assessee. The return was held to be invalid. The Hon'ble Court pointed out that a power of attorney was given by the assessee to the General Manager, Finance, viz., for signing the return and in such a situation it would have been appropriate if an opportunity had been granted to the assessee to file the return verified by the Managing Director or the Director. Therefore, there was nothing in the order of the CIT(A) which prejudiced the cause of the revenue when such a direction was given by him in his order. We find that this case also suggests that in a case of defect in verifying the return, an opportunity ought to have been granted to the assessee to cure the defect, which was not done in this case. In any case, the assessee had filed a valid return subsequently, which in terms of the decision of the jurisdictional High Court in the case of Bharat Nidhi Ltd. (supra) would relate to the date on which the first return was filed. Respectfully following this decision, it is held that the assessment shall be made on the footing that the assessee had filed a return on 1.11.2004"

2.  
3. We are of the opinion that the Tribunal rightly applied the doctrine of



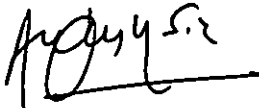
date, and the defect is cured, the filing of the return will relate back to the original date.

4. Learned counsel for the Revenue has drawn our attention to the judgment of this Court in the case of **Electrical Instrument Company Vs. Commissioner of Income-tax, 250 ITR 734**. That was a case where original income tax return filed was unsigned and unverified. In these circumstances, it was treated as invalid return.
  
5. It is trite law that if an act is invalid, it may not be cured and in these circumstances, the doctrine of relation back was not applied in the said case. Therefore, a fine distinction is to be drawn and understood. If the irregularity in the original return is curable, then the doctrine of relation back would apply, on the other hand, if there is a fundamental defect in the original return, which cannot be cured, then such a doctrine cannot be applied. It is clear that the Secretary has signed the return who is otherwise, as per the provisions of the Company Act, is competent to sign. Provision of Section 140 of the Income Tax mandates that the Managing Director or some other responsible officers can sign. Because of this reason, we are of the opinion that in a case like this, the irregularity was curable and the



6. Therefore, no substantial question of law arises for our consideration.

This appeal is accordingly dismissed.

  
(A.K. SIKRI)  
JUDGE

  
(VALMIKI J. MEHTA)  
JUDGE

September 10, 2009.  
pmc