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

\+ **ITA 132/2008**

Reserved on: October 29, 2015
Date of decision: November 23, 2015

VINOD KUMAR KHATRI ..... Appellant
Through: Mr. K.R. Manjani with Mr. B.K. Manjani, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX ..... Respondent
Through: Mr. Dileep Shivpuri, Senior standing counsel with Mr. Sanjay Kumar, Junior Standing counsel.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

J U D G M E N T

% 23.11.2015

S. Muralidhar, J.

1. This appeal by the Assessee, Vinod Kumar Khatri, under Section 260A of the Income Tax Act, 1961 ('Act') is directed against the impugned order dated 28th September 2007 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos. 764 & 2795/Del/2004 for the Assessment Year ('AY') 1992-93.

Background facts

2. The brief facts leading to the filing of the present appeal are that a search was conducted in the premises of the Assessee on 17th February 1992. Thereafter, on 31st August 1992 the Assessee for the first time filed his

original return of income for the AY 1992-93 declaring a total income Rs. 22,400. The said return was considered to be defective and incomplete. Since the Assessee did not respond to intimation sent to him under Section 139 (9) of the Act, this return was lodged. Subsequently, in response to a notice issued under Section 142 (1) of the Act, the Assessee filed his return of income on 19th January 1993 declaring again a total income of Rs. 22,400. This was accompanied by a computation of taxable income and statement of affairs as on 31st March 1992 and an income and expenditure account for the year ended on 31st March 1992.

3. In the assessment order dated 31st March 1994 the Assessing Officer ('AO') noted that in the assessment proceedings, notices were issued on 18th November 1992 and 29th December 1992 to the Assessee under Sections 143 (2) and 142 (1) of the Act. One Mr. Mahender Mahajan, Chartered Accountant (CA) appeared on behalf of the Assessee and filed replies dated 21st January 1993 and 8th February 1993 respectively to the aforementioned notices. Subsequently, notices were issued under Sections 143 (2) and 142 (1) of the Act along with a questionnaire dated 29th December 1993. However, no response was given by the Assessee to the said notices.

4. In response to another notice issued under Section 143 (2) of the Act, one Mr. Inder Mohan Singh on behalf of the Assessee attended the assessment proceedings on 27th January 1994 before the AO. A final show-cause notice ('SCN') dated 15th March 1994 was issued to the Assessee by the AO along with notices under Section 142 (1) of the Act setting out the proposals for AY 1992-93. In response to the said final SCN, Mr. Inder Mohan Singh, authorized representative (AR) of the Assessee, attended the assessment proceedings on 22nd March 1994 and requested for a short

adjournment to enable the Assessee to file a revised return of income.

5. At this stage it requires to be noticed that in his statement of affairs filed along with his return of income on 19th January 1993, the Assessee has shown an opening capital of Rs. 60,500 and on the liabilities side, a sum of Rs. 12,91,42,945.72 was shown towards advances received from Russia for exports. On the assets side, the Assessee showed loans and advances in the names of Dr. Gopal (Rs. 61,26,000), Mr. Deepak Jain (Rs. 30 lakhs), Mr. H.R. Shiv (Rs. 1.50 crores) and Mr. P.C. Sharma (Rs. 1 crore). He also showed cash with Income Tax Department (Rs. 8,94,10,873.72) and a further cash with the income tax department in account of Mr. P.C. Sharma (Rs. 55,74,912).

6. Mr. Inder Mohan Singh, AR who attended the assessment proceedings on 22nd March 1994 requested for a short adjournment to enable the Assessee to file a revised return of income in which he proposes to include the surrendered amount of Rs. 13.31 cores. The AO in the assessment order noted that this request was accepted and case was adjourned to 24th March 1994. Subsequent thereto, on 30th March 1994 just before the deadline for finalisation of the assessment, a revised return was filed by the Assessee. The AO noted in the assessment order that "in order to be fair to the Assessee who came forward with a revised return before the completion of the assessment, this revised return is being considered while passing this order."

The assessment order

7. In the assessment order, the AO noted that from the bank accounts of the Assessee's two proprietary concerns, viz., M/s. Trinity International Corporation (TIC) and M/s. Daffodil International Corporation (DIC) in

the course of the raid, an amounts of Rs. 8,94,10,873.72 was seized. T AO also set out the origin of the money into the bank accounts. The AO also noted that during the course of search on 26th February 1992 the Assessee admitted the fact of the money received in his bank accounts and further that the money belonged to him and that it represented his unaccounted income.

8. The assessment order then proceeded to set out the Assessee's statement recorded on 26th February 1992, during the course of search, as under:

> "Regarding deposit of Rs. 12.914 crores
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> **Q.1**: Shri Vinod Kumar Khatri – you are proprietor of M/s. Trinity International Corporation, having current account No. 9958 in Bombay Mercantile Cooperative Bank Ltd., Daryaganj, New Delhi. In the account money worth Rs. 12.89 crores have been received out of which at present you have a balance of Rs. 10,17,340. From the statement of account it is understood that large sums of money have been withdrawn in cash as well as by transfer through DDs. In this respect statement of yours was recorded on 17th February 1992 what do have to say in respect of this money which has come to your bank account.
>
> **Ans**. As already stated in my statement under Section 131 of IT Act, 1961 dated 17th February 1992 I am not in the knowledge about the details of the money received and the purpose of various withdrawals. As I have already stated on 17th February 1992 I have acted on the instructions of mainly Dr. Gopal, I cannot explain the sources of these receipts/withdrawals from the aforesaid current account No. 9958.
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> Being a proprietor of M/s. Trinity International Corporation, I offer this unexplained income for taxation under Section 134 (4) read with explanation 5 of Section 271 (1)(c) which has been duly explained and understood by me. I may be exempted therefore from penalty and prosecution proceedings. The aforesaid amount may be treated as my unexplained

income. I am voluntarily willing to pay taxes on the aforesaid unexplained income of Rs. 12.89 crores."

9. The AO noted that the surrendered amount of Rs. 12.89 crores was corrected to Rs. 12.914 crores in the subsequent statement recorded on 26th February 1992. The assessment order also set out the statement with regard to deposit of Rs. 40,00,500 in the account of DIC by the Assessee as under:

"**Q. 1** Shri Vinod Kumar Khatri – You are proprietor of M/s. Daffodil International Corporation having current account No. 10024 in Bombay Mercantile Cooperative Bank Ltd., Darya Ganj, New Delhi. In this account, an amount of Rs. 40.00 lakhs was deposited. In this respect statement of yours was recorded on 17th February 1992. What do you have to say in respect of this money which has come to your bank account?

Ans.: As already stated in my statement on 17th February 1992 I am not in the knowledge about the details of sources of the money received as aforesaid. I have already stated on 17th February 1992 that I have acted on the instructions of mainly Dr. Gopal. I cannot explain the sources of receipts in the current account No. 10024. Being the proprietor of M/s. Daffodil International Corporation, I offer this unexplained income for taxation under Section 132 (4) read with explanation 5 of Section 271 (1) (c) which has been duly explained and understood by me. I may be exempted therefore from penalty and prosecution proceedings. The aforesaid money may be treated as my unexplained income. I am voluntarily willing to pay taxes on the aforesaid unexplained income of Rs. 40 lakhs."

10. The AO noted that from the statement of declaration recorded on 26th and 27th February 1992 under Section 132 (4) of the Act, the Assessee had surrendered the deposits in the bank accounts totalling to Rs. 13.314 crores thereby claiming immunity from penalty and prosecution proceedings. By a letter dated 27th February 1992 addressed to the Commissioner of Income Tax, New Delhi ['CIT, New Delhi'], the Assessee requested that the seized amount should be adjusted towards his existing liability on account of

advance tax on the amount declared by him under Section 132 (4) of t Act. In the said letter he had worked out his advance tax liabilities to the extent of Rs. 7,45,43,028. He had also enclosed the advance tax challan to the said amount. Subsequently, during the proceedings under Section 132 (5) of the Act, the Assessee retracted from his earlier admission of unaccounted income declared under Section 132 (4) made by him on 26th and 27th February 1992. The Assessee now claimed that the said amount of Rs. 12.91 crores, which have been received from Russia through official banking channels represented 100 % advance money for supplying, by way of export, a certain number of nickel and cadmium batteries to a party in the USSR for which TIC had entered into a contract. The AO further noted that the Assessee could not substantiate the above claim and had in fact surrendered the said sum of Rs. 12.91 crores by filing the revised return of income on 30th March 1994 declaring a total income of Rs. 12,91,97,398.

11. As regards a sum of Rs. 40 lakhs received into the bank account of DIC by way of clearing on 23rd January 1992, the Assessee claimed that this represented an equal amount which was withdrawn in cash from the bank account of TIC and was given as a short-term advance to one Mr. Radha Krishnan of M/s. P.B.R. Engineering. Mr. Radha Krishnan had returned it to him on 23rd January 1992 by way of a draft/pay order which was deposited by the Assessee into the account of DIC. However, the Assessee was unable to produce any confirmation of these facts from Mr. Radha Krishnan. Consequently, the AO added a sum of Rs. 40 lakhs to the Assessee's total income. However, the AO observed that the Assessee was at liberty to approach the CIT if he could prove the above facts within the limitation period under the Act. Since the Assessee failed to include the said sum in his revised return of income, the AO noted that notice was being issued to the Assessee under Section 271 (1) (c) of the Act. The AO

also noted that the Assessee was unable to produce any confirmati regarding advance a sum of Rs. 3,41,26,000. This was despite being asked to provide the details by a questionnaire dated 29th February 1992. Consequently, the AO estimated a reasonable rate of return of 12% on the said advances which worked out to Rs. 40,95,120 which was, therefore, added to the total income of the Assessee. The calculation of the total income of the Assessee was computed by the AO and was rounded off to Rs. 13,73,70,620.

Proceedings before the CIT (A)

12. Initially the appeal filed by the Assessee against the aforesaid order was dismissed by the Commissioner of Income Tax (Appeals) ['CIT (A)'] by an order dated 27th July 1995 as being time-barred. However, the ITAT by its order dated 2nd January 2002 passed in the Assessee's appeal, ITA No. 5629/Del/1995 directed the CIT (A) to condone the delay and decide the appeal on merits after allowing an opportunity to the Appellant. Thereafter, the CIT (A) passed an order dated 30th January 2004 sustaining some of the additions made by the AO.

13. The Assessee also filed an application before the CIT (A) under Section 154 of the Act seeking rectification of the order dated 30th January 2004. This was dismissed by the CIT (A) on 19th April 2004. Against both the aforementioned orders, the Assessee filed ITA Nos. 764 & 2795/Del/2004 before the ITAT.

Appeals before the ITAT

14. The ITAT first took up ITA No. 764/Del/2004 for consideration. Of the five grounds urged in the appeal, the Assessee pressed only the following two:

> "3. The CIT (A) has erred on facts as well as in law in holding the amount of Rs. 2,91,42,945 as taxable only because the Appellant had shown it in revised return under the pressure of the department.
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> 5. The CIT (A) has erred on facts as well as in law in holding amount of Rs. 40,00,000 received from Shri Radha Krishnan is as unexplained even though the same was against money paid to him from withdrawals from the bank even though there is no increase in funds of the Appellant by this amount."

15. The ITAT dismissed the appeal after holding that the revised return was filed voluntarily by the Assessee on 30th March 1994 on the basis of the surrender of the amount declared by him in the statement recorded under Section 132 (4) of the act during the course of search. The Assessee had been unable to explain the source of this receipt and offered it as income in the form of unexplained credit. The declaration made by the Assessee was voluntary and he also expressed his willingness to pay the tax on the said undisclosed income. The Assessee was unable to substantiate that the amount received from Russia was a windfall without there being any source. The ITAT also noted the observations of the CIT (A) that once the assessment had been completed under Section 143 (3) of the Act, the Assessee could not be permitted to withdraw the revised return. The ITAT rejected the plea of learned counsel for the Assessee that the revised return filed on 30th March 1994 by the Assessee was under coercion.

16. The ITAT negatived the principal contention of the Assessee that since the original return was not filed within the due date prescribed under Section 139 (1) of the Act, the Assessee could not have validly revised the return under Section 139 (5) of the Act. The ITAT noted that the original return was filed on 31st August 1992, i.e., within the due date prescribed

under Section 139 (1) of the Act. The return subsequently filed on 1 January 1993 was only to rectify the defects pointed out by the AO under Section 139 (9) of the Act. After having rectified the defects, the return would relate back to the date of the original filing, i.e., 31st August 1992. Therefore, the Assessee was competent to file the revised return under Section 139 (5) of the Act and it could have been taken cognizance by the AO.

17. The ITAT also distinguished the decision of the Supreme Court in ***Kumar Jagdish Chandra Sinha v. CIT (1996) 220 ITR 67 (SC)***. In the said case, the original return was not filed within the time prescribed under Section 139 (1) of the Act. The time limit within which the assessment had to be completed under Section 153 (1) (a) of the Act was exceeded. However, in the present case, the assessment was completed on 31st March 1994 within the time limit prescribed under Section 153 (1) (a) of the Act. Further, the Assessee had admitted to the deposits in the bank accounts of his proprietory concerns. This circumstance corroborated the finding of the AO that the deposits in the bank account were unexplained and therefore, liable to tax.

18. As regards the retraction by the Assessee of the statement made by him under Section 132 (4) of the Act, the ITAT observed that although the statement was not available in the records, its existence was never denied by the Assessee in the course of assessment proceedings. The ITAT declined to accept the contention of the Assessee that no such statement under Section 132 (4) of the Act was recorded. The ITAT referred to Rule 10 of the Income Tax (Appellate Tribunal) Rules, 1963 ('ITAT Rules') in terms of which an affidavit had to be filed stating clearly and concisely about an alleged fact which cannot be borne out by, or is contrary to, the

records. No such affidavit had been filed by the Assessee. The ITA observed that "the onus is on the person retracting to demonstrate that the amount surrendered was not an income rather than the duty of the AO to bring evidence for accepting the admission made." The ITAT noted that "till today the Assessee has never supplied any such goods nor refunded the amount. This shows the conduct of the Assessee and also demonstrates that the amount received was never for supply of goods under the so called contract. These are merely an eye wash."

19. Referring to the sequence of events, the ITAT noted that apart from the fact that there was no material to substantiate the Assessee's allegations that the revised return was filed under coercion, such coercion could not have persisted after 22nd March 1994 since the Assessee filed a revised return as late as 30th March 1994. The ITAT noted that till date, i.e., in the proceedings before them, "the Assessee has not been able to file any evidence to suggest that the amount deposited in the bank account as explained and not unexplained deposit." Again in respect of addition of Rs.40 lakh, no material was produced before the ITAT to suggest that the amount withdrawn from the bank account was given as short term advance to Mr. Radha Krishnan. There was no confirmation letter from the side of Mr. Radha Krishnan who alleged to have repaid the said sum. The ITAT disposed of ITA No. 764/Del/2004 upholding the order of the AO and CIT (A).

20. As regards the other appeal, ITA No. 2795/Del/2004, against the order of the CIT (A) declining to rectify the order dated 30th January 2004, the ITAT in its para 10 of the said decision noted that learned counsel for the Assessee did not press the grounds set out in the said appeal. The ITAT accordingly dismissed ITA No. 2795/Del/2004 as having become

infructuous.

Proceedings before this Court

21. Initially this appeal was dismissed by the Division Bench on 31st August 2010 with liberty to the Assessee to file a writ petition challenging the order of the ITAT. This was because during the pendency of the said appeal, the ITAT rejected an application filed by the Assessee under Section 254 (2) of the Act seeking rectification of the purported mistakes. That application had been dismissed on technical grounds. The appeal filed against the said order was dismissed with liberty to file a writ petition. Learned counsel for the Assessee informed the Court that the Assessee was proposing to file a writ petition. By an order dated 31st August 2010 the Division Bench of this Court observed as under:

> "Since the entire case of the Appellant, in this appeal, is also founded on the purported mistakes committed by the Tribunal, it would be the outcome of the proposed writ petition, which the Assessee is contemplating to file, that will determine the fate of the aforesaid two additions made by the AO and sustained by the Tribunal.
>
> We accordingly dismiss this appeal with liberty to the Assessee to file the writ petition challenging the order of the Tribunal. We make it clear that if that writ petition is allowed and based thereupon the impugned order of the Tribunal also needs revision, if would be open to the Assessee to seek revival of this appeal."

22. Subsequently on 3rd September 2012 an order was passed by the Court noting that after dismissal of the writ petition challenging the order of the ITAT, the Assessee's fresh application under Section 254 (2) of the Act was dismissed on technical grounds. The said second rectification application was dismissed on 16th March 2012. The Court noted that the Assessee's appellate remedy under Section 260A of the Act had not been

exhausted. It accordingly directed that the present appeal ITA No. 132 2008 be restored to file.

23. Consequent upon the above order dated 3rd September 2012, the present appeal was revived. On 28th January 2013, the following questions were framed for consideration:

> "1. Whether the return filed on 30th March 1994 is a valid revised return?
>
> 2. If the answer to question (1) above is in the negative, whether the surrender made in that return dated 30th March 1994 can be regarded as a piece of evidence?
>
> 3. Whether the Income Tax Appellate Tribunal could have relied on a purported statement made by the Assessee under Section 132 (4) when the Tribunal specifically noted that the statement was not available on the record?

The Assessee fails to prove coercion

24. Since one of the issues concerns the statement made by the Assessee, which was not available in the file, this Court by its order dated 9th September 2015 directed the learned Senior standing counsel for the Revenue to keep ready for perusal by the Court all the original records of the assessment proceedings, the proceedings before the CIT (A) as well as the ITAT. However, despite their best efforts, the Revenue was unable to trace out the record containing the statement in original made by the Assessee. Nevertheless, the Court has proceeded to decide the case on merits. The reason for this is that at no stage of the assessment proceedings, or even in the memo of appeal filed before the CIT (A), was it urged by the Assessee that he had not made any statement of declaration under Section 132 (4) of the Act in the course of the search. This was too crucial an issue for the Assessee to have omitted mentioning. As rightly

pointed out by the ITAT, if as is sought to be contended by the Assesse no statement was given by him in the first place, then the question of having to retract such statement would not arise. The Assessee is, therefore, not consistent in his plea regarding the statement made in the first place and its retraction subsequently. In the absence of any affidavit filed and at any point in time, in terms of Rule 10 of the ITAT Rules, categorically stating that what has been set out in the assessment order was not the statement made by him, the Assessee cannot be said to have discharged the onus of showing that a fact not borne by the record was stated in the order of the AO or the CIT (A).

25. There is no reason why the AO should have 'compelled' the Assessee to file a revised return. Such an allegation ought not to be permitted to be casually made. An Assessee who makes such allegation will have to take the risk of stating it on affidavit at the earliest point in time. If it is done belatedly at the appellate stage, the Assessee will have to satisfy the appellate forum that there were good and genuine reasons that prevented the Assessee from making such allegation earlier. The rationale behind Rule 10 of the ITAT Rules will have to be borne in mind. A report will then have to be called for from the concerned authority, in this instance the AO, and thereafter a decision taken on whether such a plea can be accepted. In the present case, the Assessee has failed to discharge the onus of showing even *prima facie* that he was compelled to make a statement during the search or to file a revised return in the assessment proceedings. The record of the assessment proceedings show that adjournments were granted as and when requested by the Assessee. Apart from the fact that he was represented in the assessment proceedings by a CA or an AR, he also had sufficient time and opportunity to reflect on what had been stated by him during the search proceedings. The Court accordingly rejects the plea

that the Assessee did not voluntarily make the statement attributed to hi in the course of search or that he was coerced during the assessment proceedings to file the revised return.

Neither the original nor the revised return was non-est

26. The Court has examined Section 139 (1) (b), Section 139 (4) and Section 139 (5) of the Act. As already noted the return originally filed was found to be defective. A notice was issued under Section 139 (9) of the Act asking the Assessee to rectify the defects. Section 139 (9) itself states that if the defects are not rectified within the time allowed, then notwithstanding anything contained in any other provision of this Act, the return shall be treated as an invalid return and the provision of this Act shall apply as if the Assessee had failed to furnish the return. The first proviso to Section 139 (9) of the Act permits the AO to condone the delay where the Assessee rectifies the defect even after the period stipulated thereunder or such further period allowed by the AO as long as the rectified return was filed before the assessment was finalised.

27. It was urged by Mr. Manjani, learned counsel for the Assessee that if the revised rectified return was filed beyond the time allowed by the AO, it should be treated as 'non-est.' He placed reliance on the decisions in ***Suram Chand Rahlan vs. CIT (1997)226 ITR 927 (Del), Hind Samachar Ltd. vs. Union of India (2011) 330 ITR 266 (P&H), CIT v. Pawan Gupta (2009) 318 ITR 322 (Del)*** and ***DIT v. Society for Worldwide Inter Bank Financial, Telecommunications (2010)323 ITR 249 (Del)***.In support of the proposition that the retracted statement of the Assessee could not form the basis of an assessment, without any corroborative material, reliance was placed on the decision in ***CIT vs. S. Khader Khan Son (2013) 352 ITR 480 (SC)***.

28. In the present case, filing of the return by the Assessee on 19th January 1993 was only by way of rectification of the defects pointed out by the AO in the notice issued under Section 139 (9) of the Act. This rectified return was related back to the original date when the return was filed on 31st August 1992. It cannot, therefore, be said that the original return was itself 'non-est' as contended by the Assessee. Consequently, filing of the revised return in terms of Section 139 (5) of the Act by the Assessee prior to the completion of the assessment on 31st March 1994 was within the time prescribed. Notice had already been issued in the course of the assessment proceedings to the Assessee under Section 143 (2) and Section 142 (1) of the Act.

Non-consideration of documents

29. Mr. Manjani contended that the documents placed on record by the Assessee before the AO and CIT (A) included copies of the contract and receipts which purportedly substantiated the advance to Mr. Radha Krishnan of Rs. 40 lakhs. As regards receipt of advance from the Russian party for the export, he relied on certain copies of bank documents. However, as noted by the ITAT these were only photocopies and not originals.

30. A further aspect that requires to be noted is that even before the CIT (A) the Assessee did not urge that documents produced by him were not considered. A perusal of the order of CIT (A) dated 30th January 2004 reveals that initially the appeal, filed on 13th October 1994 against the assessment order dated 31st March 1994 contained the following grounds:

> "(1) Learned Assessing Officer has erred on facts as well as in law in making addition of Rs. 40 lacs as unexplained income in spite

of the fact that this amount is the return of the amount given earli by the Appellant.

(2) Learned Assessing Officer has erred on facts as well as in law in estimating the income from business at Rs. 1,00,000 against Rs. 22,400 declared by the Assessee.

(3) Learned Assessing Officer has erred on facts as well as in law in making the addition of Rs. 40,95,120 as notional interest, which is neither permissible under the Act nor has this income accrued or been received by the Appellant."

31. On 7th December 1994 the following additional grounds were raised:

"(1) That the assessment order made is liable to be set aside for a fresh assessment as no fresh notice were issued under Section 143

(2) After filing of the revised return under Section 139 (5) which was duly accepted and acted upon by the learned Deputy Commission Assessment which was filed on 30th March 1994 and the assessment order was passed on 31st March 1994.

(3) That no reasonable opportunity was given as the assessment was completed in a hurry on the next date of filing the revised return, particularly when after filing of revised return the assessment was not getting barred on 31st March 1994 and could have been completed within one year thereof that is 31st March 1995.

(4) That amount of Rs. 12,91,42,946 was a receipt which is claimed as non-taxable being advance which could not partake the character of income and that there has been no evidence that the same stands remitted to fall in the net of taxable income.

(5) Without prejudice it is submitted that the amount received from Russia was a windfall without there being any source and is casual receipt not liable to be taxed under the Income Tax Act."

32. There was no occasion, therefore, for the CIT (A) to consider the plea that the statement attributed to the Assessee, as recorded by the AO in the

assessment order, was not in fact made by the Assessee or that documer tendered by the Assessee were not considered by the AO. On the contrary, the order of the CIT (A) showed that in the course of appellate proceeding, a remand report was sought from the AO on the additional grounds urged by the Assessee. The remand report of the AO has been set out in para 7.2 of the CIT (A) order. The AO has subsequently denied the contention of the Assessee that no reasonable opportunity was given to the Assessee or that the assessment was completed in a hurry.

Was notice under Section 143 (2) required?

33. Mr. Manjani urged that it was incumbent on the AO to issue a fresh notice under Section 143 (2) before finalising the assessment made pursuant to the revised return filed by the Assessee and that the failure to do so invalidated the assessment made.

34. It has been pointed out by Mr. Shivpuri, learned counsel for the Revenue, that there is a division of opinion of the High Courts on the issue whether the filing of a revised return obliterates the original return, or whether the revised return only rectifies the deficiency in the original return, but did not obliterate it. The Gauhati High Court in ***Sunanda Rak Deka v. CIT (1994) 210 ITR 988 (Gau)*** and the Calcutta High Court in ***CIT v. India's Hobby Centre (P) Ltd (1995) 78 Taxman 377 (Cal)*** have held that the revised return substitutes the original return. On the other hand, the decisions in ***Deepnarain Nagu & Co. v. CIT (1986) 157 ITR 37 (MP), CIT v. Girish Chandraharidas (1992) 196 ITR 833 (Ker)*** and ***Pyramid Saimira Theatre Limited v. CIT (2009) 316 ITR 75 (Mad)*** emphasise that a revised return can be filed only if an "omission or wrong statement in the original return" is discovered by the Assessee.

35. There is merit in the contention that the revised return should rela back to the return originally filed, minus the omissions and wrong statements. Even if the revised return replaces the original return, the assessment proceedings leading up to the revised return do not get obliterated. The decisions in ***CIT v. Chitranjali (1986) 159 ITR 801 (Cal), F.C. Agarwal v. CIT (1976) 102 ITR 408 (Gau.)*** and ***Sivagaminatha Moopanar & Sons v. CIT (1964) 52 ITR 591 (Mad)*** appear to support this proposition. As rightly pointed out by Mr. Shivpuri, it could never have been intended by the legislature that the filing of the revised would wipe out the proceedings that have taken place till then. This would include the documents gathered or filed, and statements made, during the course of the assessment proceedings and the hearings conducted till then. The filing of the revised return was during the continuation of the assessment proceedings that began with filing of the return. The assessment proceedings continued till the finalisation of the assessment pursuant to filing of the revised return.

36. The Court is, therefore, inclined to accept the plea that with a number of hearings having taken place pursuant to the filing of the original return, as a result of which the Assessee volunteered to file a revised return, and with the revised return having been filed just before the deadline for conclusion of the assessment proceedings, there was no need for the AO to issue another notice to the Assessee under Section 143 (2) of the Act prior to finalising the assessment. The assessment proceedings, for all practical purposes, stood concluded by the time of filing of the revised return.

Conclusion

37. For the above reasons, the Court answers Question No. 1 in the affirmative and holds that the revised return filed on 31st March 1994 was a

valid return. In that view of the matter, Question No. 2 does not aris Question No. 3 it is answered in the affirmative i.e. in favour of the Revenue and against the Assessee. The ITAT did not commit any error in relying on the statement made by the Assessee under Section 132 (4) of the Act.

38. The appeal is, accordingly, dismissed but in the circumstances, with no order as to costs.

S. MURALIDHAR, J.

VIBHU BAKHRU, J.

NOVEMBER 23, 2015
Rk