PETITIONER:
COMMISSIONER OF INCOME TAX,JULLUNDUR

Vs.

RESPONDENT:
AJANTA ELECTRICALS, PUNJAB

DATE OF JUDGMENT02/05/1995

BENCH:
NANAVATI G.T. (J)
BENCH:
NANAVATI G.T. (J)
JEEVAN REDDY, B.P. (J)

CITATION:
1995 AIR 2172 1995 SCC (4) 182
JT 1995 (7) 429 1995 SCALE (3)336

ACT:

HEADNOTE:

JUDGMENT:
(WITH C.A. NOS.2499-2501 of 1977)
J U D G M E N T
NANAVATI, J.

These four appeals arise out of the judgment delivered by the Punjab and Haryana High Court in I.T. Reference Nos.17, 1 44 and 45 of 1974. A common question which arises for considera in these appeals is whether an application made under Section 139(2) of the Income Tax Act for extension of time for filing of the return of income, after the expiry of the stipulated peri could be regarded as legal and valid.

The respondent in Civil Appeal No.2636 of 1977 is a partnership firm and the respondents in Civil Appeal Nos. 2499-2501 of 1977 are its partners. In respect of the assessment year 1966-67 individual notices under Section 139(2) were issued to the firm and its three partners requiring them to furnish returns of their income within 30 days from the date of service of the notice. The notice was served upon the firm on 18.5.1966 and the partners were served on 24.6.1966. Therefore, the return was required to be filed by the firm on or before 19.6.1966 and the partners had to file their returns on or before 24.7.1966. All of them submitted their returns on 27.6.1967.

At the time of completing the assessments the I.T.O. initiated proceedings under Section 271(1)(a) for levying penal as there was delay in filing the returns without reasonable cause. In those proceedings the assessees pointed out that they had made applications to the I.T.O. on 29.6.1966 and 31.12.1966 for extending the time upto 31.12.1966 and 31.3.1967 respectively and contended that no penalty should be imposed upon them as they reasonably believed that those applications were granted since they were not rejected by the I.T.O. The I.T.O. did not accept this contention as in his view no authenti evidence was produced by the assesseees in that behalf and also because

such applications had to be made before the expiry of the due date for the filing of the returns. He, therefore, pass orders levying penalty upon them. The assessees went in appeal to the Appellate Assistant Commissioner. He recorded a finding that applications dated 29.6.1966 and 31.12.1966 were made by the assessees and that the firm had made one more application dated 15.5.1967 for extension of time upto 30.6.1967. He accepted the contention of the assessees that they had reasonably presumed that their applications were granted as they were not rejected and thus there was reasonable cause for the delay in filing the returns, till the last date upto which extension was sought for. He, therefore, cancelled the penalt imposed upon the firm and restricted the penalty imposed upon the partners to the period for which no reasonable cause was shown. The Revenue preferred appeals against those orders to the Tribunal. It held that belated applications cannot be regarded as legal and valid allowed the appeals and restored the orders passed by the I.T.O. At the instance of the assess the Tribunal made the references to the High Court. Main judgment was delivered by the High Court in I.T. Reference No. 17 of 1974. The High Court held that as the proviso to Section 139(2) does not contain any limitation to the effect that an application for extension should be filed within the stipulated time, an application for extension of time can be made even after the expiry of that period. The Form prescribed for making an application for extension of time also indicates that an application for that purpose can be filed even after the expiry of the due date. It, therefore, decided the question in favour of the assessees.

What is contended by the learned counsel for the Revenue is that the High Court has not interpreted the proviso to Section 139(2) correctly. It is submitted that the Income Tax Act is a complete Code by itself and in the absence of a specific provision in the Act or the rules made thereunder it should have been held that making an application for extension of time is not permissible after the expiry of the period either specified originally or extended by the I.T.O. for the filing of the return; and, therefore, the belated applications filed by the assessees were invalid.

Section 139(2), which was deleted with effect from 1.4.1989, at the relevant time read as under:-

> "(2) In the case of any person who, in the Income-tax Officer's opinion, is assessable under this Act, whether on his own total income or on the total income of any other person during the previous year, the Income-tax Officer may, before the end of the relevant assessment year, serve a notice upon him requiring him to furnish, within thirty days from the date of service of the notice, a return of his income or the income of such other person, during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed:
>
> Provided that on an application made in the prescribed manner the Income-tax Officer may, in his discretion, extend the date for the furnishing of the return, and when the date for furnishing the return, whether fixed originally or on extension, falls beyond the 30th day of September or as the case may be the 31st day of December of the assessment year, the provisions of sub-clause (iii) of the proviso to sub-section (1) shall apply."

It provided for the manner in which a person, who in the

opinion of the I.T.O., was assessable, could be directed to furnish a return of his income and the manner in which he had to file the return. A notice was required to be given to such person and he had to file the return within thirty days from the date of service of the notice. The period so fixed could be extended by the I.T.O., if an application for that purpose was made in the prescribed manner. The proviso enabled the I.T.O. to extend the date for furnishing the return and laid down the procedure for moving the I.T.O. for that purpose. The manner of making such an application was prescribed by Rule 13. The form prescribed was Form No.6. It reads as under:

"Form No.6: Under Section 139(1)/(2)/(3) of the Income-tax Act, 1961

I/We have to file the return of my/our income

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in income of.....in respect of which I/we are Iassessable
for the assessment year commencing on 1st April, 19
before 19. For the reasons given below
it is not possible
---
has not been possible
for me/us to file the return before the said date."

We are also referring to this prescribed form because the High Court after referring to it, has observed that "the prescribed form clearly shows that the application for extension of time may be filed even after the expiry of the period prescribed for filing the return." The Calcutta High Court in Sunderdas Thackersay & Bros. vs. C.I.T. 137 ITR 646 has also taken the same view.

Even when the I.T.O. extended the date, if it fell beyond the dates mentioned in the proviso, the provision of sub-clause (iii) of the proviso to sub-section (1) became applicable and interest at the rate of 6 per cent became payable as stipulated in that provision. The object of the provision was to see that the assessee did not gain in any way by postponement of furnishing the return with the hope that he could postpone payment of tax to a later date and have the advantages of utilising that amount during that period, as he was made to pay interest on the amount of tax found payable. At the same time, it was provided in sub-section (8) that the I.T.O. could in prescribed cases and under prescribed circumstances, reduce or waive the interest payable. Moreover, a person who failed to furnish the return within time allowed under Section 139(2) was at the relevant time not only liable to pay interest but also penalty under Section 271 and fine under Section 276.

In this context, the question whether a belated application could be regarded as valid or not has to be considered. As rightly pointed out by the Punjab and Haryana High Court while deciding these cases under Section 256(2) and by the Calcutta High Court in Sunderdas Thackersay & Bros. (Supra), there are no words of limitation in Section 139(2) to the effect that no application could be filed after the period allowed had expired. As we have stated earlier, it was a procedural provision. The limit of thirty days was not intended to be final as discretion was given to the I.T.O. to extend that date. The I.T.O. could have been called upon to exercise that discretion for proper reasons. No fetters were placed upon the discretion of the I.T.O. as regards the number of times he could extend the date or the period for which he could extend it. It is conceded that repeated applications could be made within the time allowed, in view of the clear indication to that effect in Form No.6,

by the use of words "it has not been possible". If it was intended that the application for extension of time under Section 139(2) was to be made within the time allowed originally or within the extended time then the words "it has not been possible" were not at all necessary and the words "it is not possible" would have been sufficient. Though the rule cannot affect, control or derogate from the section of the Act, so long as it does not have that effect, it has to be regarded as having the same force as the section of the Act. If Section 139(2) is read alongwith Rule 13 and Form No.6 it becomes clear that an application for extension could be made even after the period allowed originally or as a result of extension granted had expired. Keeping in mind the object of giving discretion to the I.T.O. and the consequences that were to follow from not filing the return within time, we see no justification for reading into the section any limitation to the effect that no application could be made after the time allowed had expired. We see no good reason to construe the section so narrowly.

We cannot accept the contention raised on behalf of the Revenue that the word 'extend' in the proviso to Section 139(2) implies that at the time of making the application the time allowed should not have expired. Though the Civil Procedure Code by itself does not apply to the proceedings under the Income Tax Act, we see no reason why a principle of procedure evolved for doing justice to a party to the proceeding cannot be called in aid to while interpreting a procedural provision contained in the Act. Section 148 of the Code provides that where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by the Code, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired. Various situations can be envisaged where a party to the proceeding is prevented by circumstances beyond his control from doing the required act within the fixed period. The assessee may be able to point out that because of a sudden death in the family or because he had to leave for an outside place all of a sudden or because he could not return from outside in spite of his best efforts, or for other good reasons, as the case may be, he was not able to file the return within time. This Court while dealing with the power of the Court under Section 148 observed as under in the case of Mahanth Ram Das vs. Ganga Das AIR 1961 SC 882:

> "The procedural orders though peremptory (conditional decrees apart) are in essence, in terrorem, so that dilatory litigants might put themselves in order and avoid delay. They do not, however, completely estop a Court from taking note of events and circumstances which happen within the time fixed."

This Court further observed that Section 148 clothes the Court with ample power to do justice to a litigant if sufficient cause is made out for extension and that an order extending time for payment, though passed after the expiry of the time fixed, could operate from the date on which the time fixed expired.

The learned counsel for the Revenue strongly relied upon the decision of the Andhra Pradesh High Court in T. Venkata Krishnaiah and Co. vs. C.I.T. 93 ITR 297 wherein it has been held that it is not open to the assessee to file an application beyond the period within which he was required to file his return as per the notice under Section 139 and submitted that it deserved to be accepted as laying down the

correct law on the point. In that case one of the questions which was referred to the High Court for its opinion was whether the Income Tax Officer should be deemed to have granted extension of time for filing the return when he did not pass any orders on the assessee's belated application? The High Court held:

> "There is no provision in the Act or the rules made thereunder which requires the Income-tax Officer to pass an order on an application filed by an assessee subsequent to the time given to him for filing his return pursuant to a notice under sub-section (2) to Section 139. ... We may add that there is no scope for presuming or assuming that an application filed by an assessee for extension of time must have been granted in its favour when no order has been passed on its application by the Income-tax Officer. There is no scope for such a presumption or deeming provision in a taxing statute. The Income-tax Act is a self-contained code. The provisions of the Act and the Rules made thereunder must specifically provide for such a deeming provision. Otherwise, the assessee cannot claim any advantage or derive benefit when the Income-tax Officer did not pass any order on its application filed beyond the time within which it was required to furnish its return."

The High Court also observed that as the application for extension of time was not received by the Income-tax Officer within time, he was not bound to pass any order thereon. It also observed that it was not open to the assessee to file an application beyond the period within which it was required to file its return as per the notice under Section 139. We do not think that High Court was right in holding that it was not open to the assessee to file an application beyond the period within which he was required to file his return. What appears to have weighed with the High Court while taking that view is the absence of any specific provision in the Act or the rules permitting the assessee to file such an application. For various reasons the Legislature may not make provisions in detail in matters of procedure to be followed. It may rest with conferring discretionary power upon the Court or the authority and leave it to the court or that authority to exercise that power in its discretion as deemed proper and just depending upon the facts and circumstances of each case. Whether a particular thing could be done or not in absence of a specific provision to that effect would depend upon the object of that provision and other relevant factors like the consequences which may follow if it is held that it cannot be done. From mere absence of a specific provision authorising the I.T.O. to entertain an application made beyond time it was not proper to hold that it was not open to the assessee to make an application under Section 139(2) for extension of time after the time allowed had expired and that such an application could not be entertained by the I.T.O. If an application could be made even after the time allowed had expired it became the duty of the I.T.O. either to grant it or reject it. Once the assessee called upon the upone I.T.O. to exercise his discretion it was not open to him to ignore that request and not to pass any order thereon. In our opinion, the Andhra Pradesh High Court did not correctly interpret the proviso to Section 139(2).

The Patna High Court in C.I.T. vs. S.P. Viz Construction Co. 165 ITR 732 has also, in the context of Section 139, held that "any application filed after the due date for filing the return loses all its sanctity." If the

assessee made an application for extension of time after the expiry of the time allowed then the Income Tax Officer was not bound under the provisions of the Income Tax Act or the rules made thereunder to pass any order thereon. The Patna High Court has only followed the decision of the Andhra Pradesh High Court in the case of T. Venkata Krishnaiah and Co. (supra). In Assam Frontier Veneer and Saw Mills vs. C.I.T. 104 I.T.R. 479, to which our attention was drawn by the learned counsel for the Revenue, the Gauhati High Court held that "the Income-tax Officer is not obligated to take into consideration an application for extension of time filed by an assessee in accordance with Form No.6, rule 13 of the Income-Tax Rules, 162, even when it is admittedly submitted long after the due date for filing the return, unless there be prima facie valid grounds taken therein, explaining the reasons for the delay." The Gauhati High Court referred to the decision of the Andhra Pradesh High Court in T. Venkata Krishnaiah and Co. (supra) and observed that it was in agreement generally with the observation made therein while answering the question whether the Income-tax Officer should be deemed to have granted extension of time for filing the return when he did not pass any orders on the assessee's belated application and particularly with the one stating "that it is the duty of an assessee to file his application for extension of time before the expiry of the due date of his return". Having said so the Gauhati High Court observed that "On the other hand, we also do not see that the Income-tax Officer would cease to have any power, under this proviso, to exercise his discretion to grant extension of time upon a belated application, provided it is filed before the essessment order." From a close reading of that decision it becomes clear that it does not support the contention now raised before us by the learned counsel for the Revenue. What it has really held is that the proviso did not oblige the Income-tax Officer to consider an application for extension, however, belatedly it might have been made and pass an order thereon, even when it had been made long after the due date of submission of the return.

We hold that the view taken by the Punjab and Haryana High Court in these cases and by the Calcutta High Court in Sunderdas Thackersay & Bros. vs. C.I.T. 137 ITR 646 is correct and the contrary view taken by the Andhra Pradesh High Court in T. Venkata Krishnaiah and Co. vs. C.I.T. 93 ITR 297, Guhati High Court in Assam Frontier Veneer and Saw Mills vs. C.I.T. 104 ITR 479 and the Patna High Court in C.I.T. vs. S.P. Viz Construction Co. 165 ITR 732 is not correct. The applications made by the assessees under Section 139(2) for extension of time after the expiry of the time allowed were maintainable and, therefore, valid. We, therefore, dismiss the appeals but pass no order as to costs.