

Commissioner of Income-tax, Punjab, Jammu and Kashmir and Himachal Pradesh, Patiala *v.* Nand Lal (Mahajan, J.)

by allowing him the benefit of rule 4.2. In the circumstances of the case, there will be no order as to costs.

D. K. MAHAJAN, J.—I agree.

R.N.M.

INCOME-TAX REFERENCE

*Before D. K. Mahajan and P. C. Jain, JJ.*

THE COMMISSIONER OF INCOME-TAX, PUNJAB, JAMMU AND KASHMIR AND HIMACHAL PRADESH, PATIALA,—*Appellant*

*versus*

NAND LAL,—*Respondent.*

**Income-tax Reference No. 33 of 1964**

August 6, 1969

*Income-tax Act (XI of 1922)—S. 28(1)(c) and 34(3)—Voluntary return filed after 4 years—Whether valid—Section (28)(1)(c)—Whether applicable—Assessment made on such return—Whether barred by time.*

*Held*, that a voluntary return filed after the expiry of four years from the assessment year is not a valid return and such a case should be regarded as if no return has been filed at all. As such, it cannot be said that there has been a concealment of the particular of income or deliberately furnishing of inaccurate particular and section 28(1)(c) of Income-tax Act, 1922 will not be applicable. Accordingly, the case will not be taken out of the operation of section 34(3) of the Act and an assessment made beyond period of four years on such return will be barred by time.

(Para 2)

*Case referred by the Income-tax Appellate Tribunal (Delhi Bench 'B') under Section 66(1) of the Income-tax Act, 1922 on 1st November, 1962 for opinion of the Hon'ble High Court on the following questions of law regarding Assessment year 1949-50:—*

"1. *Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the return filed by the assessee on*

*25th February, 1956, i.e., after the expiry of four years from the end of the assessment year was not valid return ?*

2. *Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the provisions of Section 28(1)(c) did not apply to the case and, therefore, the assessment was time-barred ?*"

D. N. AWASTHY AND B. S. GUPTA, ADVOCATES, for the Appellant.

S. S. KANG, ADVOCATE, for the Respondent.

### JUDGMENT

**MAHAJAN, J.**—The Income-tax Appellate Tribunal, Delhi Bench 'B', has referred the following two questions of law for our opinion:—

- "(1) Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the return filed by the assessee on 25th February, 1956, i.e., after the expiry of four years from the end of the assessment year was not valid return?
- (2) Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the provisions of Section 28(1)(c) did not apply to the case and, therefore, the assessment was time-barred?"

(2) On facts, there is no dispute. The assessee was assessed in the status of a individual for the assessment year 1949-50, the previous year of which ended on the 31st of March, 1949. He was assessed on the basis of a voluntary return filed on 25th February, 1956 showing an income of Rs. 2,594-8-0. The Income-tax Officer proceeded to assess him on an income of Rs. 37,313 on the 20th of February, 1958, on the ground that the assessee had concealed his income and, therefore, his case fell under section 28(1)(c). It may be mentioned that the Income-tax Officer proceeded to make the assessment under section 23(3) read with section 34. But no notice under section 34 was at all issued to the assessee under sub-section (1). The assessee went in appeal to the Appellate Assistant Commissioner who accepted the assessee's contention and held that as there was no return filed within four years' period during which the assessment could be lawfully made, there was no return at all; and

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the Income-tax Officer had no jurisdiction to make an assessment under section 23(3) read with section 34(1)(a) of the Income-tax Act, 1922. Against this decision, the Commissioner preferred an appeal to the Income-tax Appellate Tribunal; and contended that the view of the Appellate Assistant Commissioner was wrong because he had misinterpreted the decision of the Madras High Court in *S. Santosha Nadar v. First Additional Income-tax Officer, Tuticorin and another* (1). The Tribunal affirmed the decision of the Appellate Assistant Commissioner because the view, that had been enunciated in *S. Santosha Nadar v. First Additional Income-tax Officer, Tuticorin and another* (2), was reviewed. The facts of this case were as follows:—

The voluntary return was filed after the period of four years from the close of the assessment year. The question arose whether an assessment could be made on its basis under section 28(1)(c) of the Indian Income-tax Act, 1922. Srinivasan, J., held that:—

“\* \* As a voluntary return filed after the period of four years from the close of the assessment year is not a valid return, such a case should be regarded as if no return had been filed at all. It could not be said in such a case that there has been a concealment of the particulars of income or deliberate furnishing of inaccurate particulars and section 28(1)(c) of the Income-tax Act, 1922, would not be applicable; the case would come only within the scope of section 28(1)(a).

Section 28(2)(a) and section 28(1)(c) are mutually exclusive. Where no return is filed, the case could not fall under section 28(1)(c) and accordingly the case will not be taken out of the operation of section 34(3) of the Act and an assessment made beyond the period of four years would be invalid.”

(3) This decision fully applies to the facts of the present case. As a matter of fact, it has been held in *Commissioner of Income-tax,*

(1) 42 I.T.R. 715.

(2) 46 I.T.R. 411.

*Bombay City II v. Bhagwandas Amersey* (3); *Commissioner of Income-tax, Punjab, Jammu and Kashmir and Himachal Pradesh v. Sheikhpura Transport Co., Ltd.* (4), and *Keshav Silk Mills v. Income-tax Appellate Tribunal* (5), that a return filed after the period of four years is, in fact, no return.

(4) That being so, the answer to the questions referred must be returned in the affirmative. There will be no order as to costs.

PREM CHAND JAIN, J.—I agree.

R.N.M.

CIVIL MISCELLANEOUS

*Before Mehar Singh, C.J., and B. R. Tuli, J.*

SIALKOT SILK STORES,—*Petitioner*

*versus*

CHIEF COMMISSIONER, UNION TERRITORY, CHANDIGARH,—*Respondent*.

**Civil Writ No. 2199 of 1968**

August 7, 1968

*Punjab General Sales Tax Act (XLVI of 1948)—S. 6(2) and Schedule B—Punjab Reorganisation Act (XXXI of 1966)—Section 2(g) and 88—Existing State of Punjab before 1st November, 1966 issuing notification under section 6(2) of Act XLVI of 1948 indicating intention to amend Schedule B of the Act—Such notification—Whether a ‘law’ as defined in 2(g) of Act XXXI of 1966—Union Territory of Chandigarh amending the Schedule of Act XLVI of 1948, without pre-requisite notification under section 6(2)—Such amendment—Whether valid—Section 88 of Act XXXI of 1966—Whether attracted.*

*Held*, that a notification issued by the “existing State of Punjab” before November 1st, 1966, under sub-section (2) of section 6 of Punjab General Sales-Tax Act, 46 of 1948, giving three months’ notice of its intention to amend item 30 in Schedule B to that Act is not “law” as defined in section 2(g) of Punjab Reorganisation Act, 31 of 1966, because Court could not have compelled the ‘existing State of Punjab’ to proceed to carry out its intention thus expressed in the notification. Having issued that notification, on representation or objections to it by the persons interested, the ‘existing State of Punjab’ had the right to change its intention. It had the option or choice to proceed to carry out its intention or not to do so. A Court of law could not have enforced or have occasion to recognise that notification through a judicial process so as to have

(3) 50 I.T.R. 239.

(4) 51 I.T.R. 336.

(5) 55 I.T.R. 29.