

that there is no provision for inviting any objection to the report of the local Commissioner appointed under rule 9 thereof. In case, any such objections are filed by either of the parties to draw the attention of the Court as to the inherent defects therein, the Court may consider the same and if for any reasons dissatisfied with the proceedings of the Commissioner, may direct such further inquiry to be made as it shall think fit but neither of the parties is entitled to claim any issue with respect to the report. The only provisions under sub-rule (2) of rule 10 of Order 26 of the Code is to examine the Commissioners personally in open Court either by the Court itself or by any of the parties with the permission of the Court. The objection, if filed by the parties, shall be considered after the cross-examination, if any, of the local Commissioner by the Court under rule 10 of Order 26 of the Code and that too along with the other evidence at the time of final hearing.

(5) Consequently, this petition succeeds and the impugned order is set aside. However, it will be open to the parties to examine the Local Commissioner as provided under sub-rule (2) of rule 10 of Order 26 of the Code.

(6) Since the further proceedings were stayed by this Court at the time of motion hearing, the parties are directed to appear before the trial Court on March 16, 1989. As the suit is pending in the trial Court since July, 1984, it is directed to expedite the hearing of the same. It is also directed that the evidence, if any, will be produced by the parties at their own responsibility for which one opportunity will be given to each party to conclude the same.

R.N.R.

Before G. C. Mital and S. S. Sodhi, JJ.

SONEPAT IRON AND STEEL ROLLING MILLS, SONEPAT,—
Applicant.

versus

THE COMMISSIONER OF INCOME TAX, HARYANA,—
Respondent.

Income Tax Reference No. 35 of 1982

April 5, 1989.

Income Tax Act (XLIII of 1961)—Ss. 139(4), 153(1)(b)(c), 153(1)(a)(iii), 271(1)(c)—Assessee claiming false deductions—Fact brought

Sonepat Iron and Steel Rolling Mills, Sonepat vs. The Commissioner
of Income Tax, Haryana (G. C. Mital, J.)

to the notice of assessee—No Explanation put forward—Amounts to defraud the revenue—Income Tax Officer disallowing deductions—Period of limitation for framing assessment—Whether extends to 8 years.

Held, that the finding of fact recorded by the Tribunal is to the effect that the Income Tax Officer suspected the genuineness of the attendance/wages register within the limitation of two years and the report from Nasik Government Printing Press confirmed the suspicion. It came on 4th March, 1975 within the period of limitation. This was an endeavour to make false claim of deduction to defraud the revenue. Not only this, the material was brought to the notice of the assessee by four letters written within limitation. This clearly shows that there was application of mind by the Income Tax Officer on the point that the assessee had concealed his income and the evidence which proved that was brought to its notice. Hence the limitation of 8 years contained in Section 153(1)(b) of the Income Tax Act, 1961 would clearly apply to the case. (Para 6)

Reference Under Section 256(1) of the Income Tax Act, 1961 by the Income Tax Appellate Tribunal, Delhi Bench 'E' to the Hon'ble High Court of Punjab and Haryana for opinion of the following question of law arising out of the Tribunal's order dated 28th October, 1980 in R.A. No. 1450 (Del) 80 in ITA No. 383 (Chand) 79, Asstt. Year 1972-73.

"Whether, on the facts and in the circumstances of the case, and in law, the ITAT was justified in holding that the extended time limit for completion of the assessment was available to the assessing authority in terms of the provisions of section 153(1)(b) of the Income Tax Act, 1961?"

B. S. Gupta, Sr. Advocate with Mr. Sanjay Bansal, for the
Petitioner.

Ashok Bhan, Sr. Advocate with Ajay Mittal, Advocate, for the
Respondents.

ORDER

Gokal Chand Mital, J.

(1) The main point involved in this reference is whether the limitation of 8 years contained in Section 153(1) (b) of the Income Tax Act, 1961 (for short 'the Act'), would be applicable. The case relates to the assessment year 1972-73.

(2) On 26th September, 1974 the premises of the assessee were searched and documents, registers and account books were taken in possession. The deduction of salary paid to its workers as shown in attendance/wages register was claimed in the return by way of expenses for running business.

(3) The Income Tax Officer doubted the genuineness of the revenue stamps in the register and sent them to the Government Printing Press Nasik and on 4th March, 1975 report was received that revenue stamps fixed on the said register were printed on 8th May, 1972 and issued on 22nd May, 1972. On the basis of this report, the Income Tax Officer formed a tentative opinion that the revenue stamps were not in existence in financial year 1971-72. The register was fabricated and false claim of deduction was put in the return. He brought this fact to the notice of the assessee by letters dated 7th January, 1975, 10th January, 1975, 28th February, 1975 and 10th March, 1975. The assessee did not come forward to put any explanation. There were certain other matters also which needed probe as it was apparent to the Income Tax Officer that the assessee had concealed the true income and had understated his income in the return filed under Section 139(4) of the Act. Finally, on 16th September, 1976, the Income Tax Officer framed assessment after disallowing certain cash credits and the expenses claimed on account of wages paid to the employees as shown in the attendance and salary register. The assessee's stand before the Income Tax Officer was that the period of limitation of two years under Section 153(1) (a) (iii) of the Act expired on 31st March, 1975, and, therefore, assessment could not be framed. The alternative stand of the assessee was that since it had filed another return on 20th March, 1975, in view of Section 153(1) (c) of the Act, the assessment could be framed upto 20th March, 1976 and there was no limitation on the date the assessment was framed. On this basis he appealed to the Appellate Assistant Commissioner.

(4) Some additions were set aside but by maintaining remaining additions it concluded that before the Income Tax Officer, there was material in the nature of report received from Nasik that the wage register was forged and there was concealment of income and Section 271(1) (c) of the Act was applicable and the extended limit of 8 years contained in Section 153(1) (b) of the Act applied and on the date the Income Tax Officer framed assessment it was within limitation of 8 years.

Sonepat Iron and Steel Rolling Mills, Sonepat vs. The Commissioner
of Income Tax, Haryana (G. C. Mital, J.)

(5) On further appeal by the assessee before the Tribunal, the order of the Appellate Assistant Commissioner was upheld. At the instance of the assessee the Income Tax Appellate Tribunal, has referred the following question for opinion :

“Whether, on the facts and in the circumstances of the case, and in law, the ITAT was justified in holding that the extended time limit for completion of the assessment was available to the assessing authority in terms of the provisions of section 135 (1) (b) of the Income Tax Act, 1961 ?”

(6) The finding of fact recorded by the Tribunal is to the effect that the Income Tax Officer suspected the genuineness of the attendance wages register within the limitation of two years and the report from Nasik Government Printing Press confirmed the suspicion. It came on 4th March, 1975 within the period of limitation. This was an endeavour to make false claim of deduction to defraud the revenue. Not only this, the material was brought to the notice of the assessee by four letters written within limitation. This clearly shows that there was application of mind by the Income Tax Officer on the point that the assessee had concealed his income and the evidence which proved that was brought to its notice. Hence, in view of *S. Kanwal Tej Singh v. Income Tax Officer A-II, District New Delhi* (1), the limitation of 8 years contained in Section 153(1) (b) of the Act would clearly apply to the case.

(7) On behalf of the assessee, reliance was placed on certain observations in *M. B. Mercantile Co. v. C.I.T.* (2), and *C.I.T. v. Surajpal Singh* (3). There is slight over statement of law in these two cases. The facts of the case are such that even on the basis of these judgments he cannot succeed.

(8) On the other hand the counsel for the Revenue had relied on *T. B. Hanumantharaj (deceased) v. C.I.T.* (4). There appears to be slight understatement of law. Be that as it may, the

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- (1) (1966) 60 I.T.R. 23 (Punjab).
 (2) (1988) 169 I.T.R. 201 (Calcutta).
 (3) (1977) 108 I.T.R. 746 (Allahabad).
 (4) (1978) 111 I.T.R. 414 (Madras).

facts of the case are such that we are of the view that the Tribunal was justified in holding that the extended limitation provided in Section 153 (1) (b) of the Act was applicable and the referred question is answered in affirmative, in favour of the Revenue. No costs.

S.C.K.

Before G. C. Mital and S. S. Sodhi, JJ.

COMMISSIONER OF INCOME TAX, HARYANA, ROHTAK,
—*Petitioner.*

versus

M/S PRECISION STEEL AND ENGG. WORKS, FARIDABAD.—
Respondent.

Income Tax Reference No. 4 of 1986

May 4, 1989.

Income Tax Act (XLIII of 1961)—S. 40(b), Explanation (1)—Partners making deposits with firm—Receiving interest on such deposits—Partners also paying interest on withdrawals from the firm—Interest paid exceeding interest received—Addition of interest paid to the income of assessee firm—Validity of such addition—Circulars issued by the Central Board of Direct Taxes—Value of such circular.

Held, that only the net amount paid by the firm to its partners after adjusting the interest paid by the partners to the firm, can be disallowed under S. 40(b) of the Income Tax Act, 1961 since in this case the partners had paid more interest to the firm, the interest paid by the firm to the partners was rightly not disallowed by the Tribunal and the Tribunal was right in deleting the addition.

(Para 5)

Held, that the circulars issued by the Board are not binding on courts because if assessee wants to challenge its correctness, it is open to him to do so. But at the same time, the circular issued by the Board are binding on the department and the department cannot be allowed to raise argument opposed to the decision of the Board. In this case, we have to give effect to the circular, as it favours the assessee and would bind the department.

(Para 4)