Commissioner of Income Tax v. Vishwa Bhushan Banta

ITR 8/1995

No neutral citation stated in source | 2007-11-19

Historical section 148 fiction permitted carry-forward of determined loss despite failure of the section 139(4) route.

80 | 139(2) | 139(3) | 139(4) | 148

High Court of Himachal Pradesh | Division Bench | Deepak Gupta | V. K. Ahuja

Assessment years: 1984-85

01 FACTS OF THE CASE

No return was initially filed for AY 1984-85. After a section 148 notice dated 18 May 1985, the individual filed on 25 November 1987 claiming a Rs.3,15,200 loss. The AO determined only Rs.1,280 and refused carry-forward. CIT(A) allowed relief under section 139(4); the Tribunal rejected that route but sustained relief through the statutory section 148/139(2) fiction.

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02 DISCUSSION BY THE HON'BLE COURT

The Court held the return too late for the stated 31 March 1987 section 139(4) deadline. However, the then section 148 treated the notice as one under section 139(2); the resulting return therefore met section 80's then requirement of a return under section 139. The opening terms of section 139(3) excluded persons served under section 139(2). The Court distinguished the belated-return authorities and did not follow Ashima Hariharan on the statutory-fiction issue.

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03 JUDICIAL DECISION

The question was answered for the assessee: the determined loss could be carried forward under the then provisions despite failure to file within sections 139(3) or 139(4). A copy was directed to the Tribunal.

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04 OUTCOME / IN WHOSE FAVOUR

Assessee succeeded on carry-forward eligibility for the determined loss. The judgment did not restore the larger Rs.3,15,200 returned loss or quantify a set-off against later income.

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05 EXPERT COMMENTS

AKHB EXPERT COMMENTS — editorial analysis, distinct from the Court's findings.

The successful route was the notice fiction, not a timely belated return — The Court expressly rejected section 139(4) as unavailable. Relief instead followed the old section 148 fiction importing section 139(2), coupled with section 80's then wording. This chain should remain intact; describing the decision simply as allowing a late loss return would conceal the decisive statutory basis.

Eligibility and loss quantum remained separate — The AO determined Rs.1,280 from a claim of Rs.3,15,200. The reference challenged carry-forward eligibility, not that computation. Practical use therefore requires the assessed loss figure and any later set-off conditions; the favourable answer does not validate the original claimed amount.

Historical text and jurisdictional disagreement constrain comparison — The judgment declined the Kerala approach because it considered the section 148 fiction overlooked, and distinguished authorities depending on timely section 139(4) returns. It repeatedly says as the provisions then stood. Later return or reassessment regimes require independent examination; this source also contains year references that must not be silently normalized into a new statutory account.

Source: PDF p.2

SOURCE & VERIFICATION

20071119_HPHC010023771995.pdf

Complete source PDF reviewed: 13 physical pages.

All 13 original pages read and visually inspected; all five panels audited.

Open cited source rendition

All 13 pages read and visually inspected. Facts identify AY 1984-85; p.4 introduces statutory text as AY 1983-84 and p.8 prints year-end 31 March 1983 while retaining the 31 March 1987 filing deadline. These source inconsistencies are disclosed.

STATUTORY SCOPE

Historical sections 80, 139 and 148; the decision repeatedly confines its reasoning to their then wording.

LATER TREATMENT

Source checked 2026-10-21. Subsequent treatment has not been independently verified.

AI DISCLOSURE

AI-assisted research checked against the identified source. Extraction, interpretation or omission errors remain possible. Source review does not mean independent approval by a practising professional. Verify every material statement against the complete original judgment.

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