IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

ITR No. 7 of 1995

Date of Decision: 10.3.2008

M/s Purewal & Associates …Petitioner

Versus

Commissioner of income Tax … Respondent.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?

For the Petitioner (s): **Mr. Amit S.Chandel, Advocate vice Mr. Sunil Kumar Mukhi, Advocate.**

For the Respondent(s) : **Mr. Vinay Kuthiala & Ms. Vandana Kuthiala, Advocates.**

Deepak Gupta, J. (Oral)

The following questions have been referred for the opinion of this Court:-

i) "Whether under facts and circumstances of the case, the Income Tax Appellate Tribunal was justified in law in upholding the return filed beyond the time allowed u/s 139(1) for the assessment year 1988-89 as nonest on the basis that section 139(10) also applies to loss returns;

ii) In case the answer to the above question is in affirmative, whether under the facts and circumstances of the case the Income Tax Appellate Tribunal was justified in upholding the return as nonest which return contains carried forward losses and unabsorbed depreciation and also depreciation or other benefits of thee year under consideration claimed in that amount of loss returned."

The brief facts of the case are that the assessee was to submit the return for the assessment year 1988-89 on or before 31.7.1988. This return was actually filed on 1.2.1989 wherein loss of Rs. 66,62,817/- was shown. The Assessing Officer held that the return was nonest in view of the provisions of Section 139(10) of the Income Tax Act, 1961 as it stood at the relevant time. The CIT(A) affirmed the order of the Assessing Officer and the loss return was treated to be invalid return and the appeal was dismissed. The learned Tribunal also rejected the contention of the assessee and decided the case in favour of the revenue. Section 139(10) was amended by the Taxation Laws (Amendment &Miscellaneous Provisions) Act, 1986 w.e.f. 1.4.1986. After the amendment, the said section reads as follows:-

"**(10) Notwithstanding** anything contained in any other provision of this Act, a return of

income which shows the total income below the maximum amount which is not chargeable to tax shall be deemed never to have been furnished.

Provided that nothing hereinbefore contained shall apply to-

(a) a return furnished in response to a notice under sub-section (2) of section 148;
(b) a return of a firm or a partner of a firm;
(c) a return of loss which has been furnished in accordance with the provisions of sub-section (3);
(d) a return of a person who has claimed exemption of income from property held for charitable or religious purposes;
(e) a return furnished under sub –section (4B) in respect of a political party; and
(f) a return furnished in support of a claim for refund under Section 237."

This provision now stands omitted from the Act.

Before the amendment of Section 139(10), the Assessing Officer had the power to grant extension of time. This power was specifically taken away by the amendment. The Section as reproduced above only provides for six situations in which the return filed after the due date can be taken into consideration.

The return filed by the petitioner was not in response to notice under sub-section (2) of Section 148; (ii) the petitioner firm is a company and not a partnership firm; (iii) the return in question is not in terms of Section 139(3) which also prescribes that the return should be filed in time; (iv) the assessee is not holding property for charitable or religious purposes; (v) the assessee has not

furnished the return under sub-section (4B) in respect of a political party and (vi) the return has not been filed claiming refund under Section 237.

The language of Section 139 (10) is ambiguous. It clearly states that a return for an amount less than the minimum taxable amount shall not be considered to be a valid return, if not filed within the time prescribed. The return of loss is also a return showing income less than the taxable income. Since the return was not filed within the time prescribed, in terms of Section 139(10), the said return was rightly held to be nonest. The question No.1 is answered accordingly in favour of the revenue and against the assessee.

As far as question No.2 is concerned, in our opinion, the said question is not a question of law at all. The return of loss whether on account of depreciation or loss of business profits remains a return of loss. The mere fact that the losses also include depreciation loss does not take away the rigors of Section 139(10). This question is also answered against the assessee and against the revenue.

A copy of this judgment under the signature of the Registrar General of this Court be forwarded to the Tribunal.

(Deepak Gupta), J.

March 10, 2008. (Rajiv Sharma), J.

s.