

Court No. - 35

Case :- WRIT TAX No. - 795 of 2016

Petitioner :- Greater Noida Industrial Development Authority

Respondent :- Asst. Commissioner Of Income Tax, Circle-I Noida

Counsel for Petitioner :- Abhinav Mehrotra

Counsel for Respondent :- C.S.C.

Hon'ble Bharati Sapru,J.

Hon'ble Vinod Kumar Misra,J.

Heard Sri Balbir Singh, Senior Advocate assisted by Sri Abhinav Mehrotra and Ms.Rubal Maini, learned Counsel for the petitioner and Sri Gaurav Mahajan, learned Counsel for the department.

This writ petition has been filed by the petitioner for the assessment year 2009-10 seeking certain directions from this Court with regard to the reassessment proceedings, which have been initiated for the second time. There is an order of the authority dated 11.11.2016 in which the Assistant Commissioner, Income Tax has come to the conclusion that the return filed by the assessee was defective and, therefore, it would not constitute a valid return as per the provisions of Section 139 (9) of the Income Tax Act, 1961. Earlier in the same order an opportunity had been provided to the assessee to remove the defect. The provisions of Section 139 (9) of the Income Tax Act contemplate that an assessee may be given an opportunity of removing the defect within 15 days and if there is a defect then within some larger time. Section 139(9) of the Income Tax is quoted here-in-below:-

"(9) Where the Assessing Officer considers that the return of income furnished by the assessee is defective, he may intimate the defect to the assessee and give him an opportunity to rectify the defect within a period of fifteen days from the date of such intimation or within such further period which, on an application made in this behalf, the Assessing Officer may, in his discretion, allow; and if the defect is not rectified within the said period of fifteen days or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, the return shall be treated as an invalid return and the provisions of this Act shall apply as if the assessee had failed to furnish the return :

Provided that where the assessee rectifies the defect after the expiry of the said period of fifteen days or the further period allowed, but before the assessment is made, the Assessing Officer may condone the delay and treat the return as a valid return.

Explanation.—For the purposes of this sub-section, a return of income shall be regarded as

defective unless all the following conditions are fulfilled, namely :—

(a) the annexures, statements and columns in the return of income relating to computation of income chargeable under each head of income, computation of gross total income and total income have been duly filled in;

(aa) the tax together with interest, if any, payable in accordance with the provisions of section 140A, has been paid on or before the date of furnishing of return;

(b) the return is accompanied by a statement showing the computation of the tax payable on the basis of the return;

(bb) the return is accompanied by the report of the audit referred to in section 44AB, or, where the report has been furnished prior to the furnishing of the return, by a copy of such report together with proof of furnishing the report;

(c) the return is accompanied by proof of—

(i) the tax, if any, claimed to have been deducted or collected at source and the advance tax and tax on self-assessment, if any, claimed to have been paid :

Provided that where the return is not accompanied by proof of the tax, if any, claimed to have been deducted or collected at source, the return of income shall not be regarded as defective if-

(a) a certificate for tax deducted or collected was not furnished under section 203 or section 206C to the person furnishing his return of income;

(b) such certificate is produced within a period of two years specified under sub-section (14) of section 155;

(ii) the amount of compulsory deposit, if any, claimed to have been made under the Compulsory Deposit Scheme (Income-tax Payers) Act, 1974 (38 of 1974);

(d) where regular books of account are maintained by the assessee, the return is accompanied by copies of-

(i) manufacturing account, trading account, profit and loss account or, as the case may be, income and expenditure account or any other similar account and balance sheet;

(ii) in the case of a proprietary business or profession, the personal account of the proprietor; in the case of a firm, association of persons or body of individuals, personal accounts of the partners or members; and in the case of a partner or member of a firm, association of persons or body of individuals, also his personal account in the firm, association of persons or body of individuals;

(e) where the accounts of the assessee have been audited, the return is accompanied by copies of the audited profit and loss account and balance sheet and the auditor's report and, where an audit of cost accounts of the assessee has been conducted, under section 233B of the Companies Act, 1956 (1 of 1956), also the report under that section;

(f) where regular books of account are not maintained by the assessee, the return is accompanied by a statement indicating the amounts of turnover or, as the case may be, gross receipts, gross profit, expenses and net profit of the business or profession and the basis on which such amounts have been computed, and also disclosing the amounts of total sundry debtors, sundry creditors, stock-in-trade and cash balance as at the end of the previous year."

In view of the above, this Court directs that the authority concerned may give to the present petitioner also an opportunity of rectifying the defect within the next 15 days. It is open to the assessee to place such material and evidence before the authority concerned that it may have to justify its claims. The authority may thereafter, pass fresh orders. Needless to say that reasons have to be provided.

With the above directions, the petition stands disposed of. No costs.

Order Date :- 22.11.2016
S.P.

(Vinod Kumar Misra,J.) (Bharati Sapru,J.)