IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 19906 of 2011

Date of Decision: 30.7.2012

Tarsem Kumar

....Petitioner.

Versus

The Income Tax Officer and others

...Respondents.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE G.S. SANDHAWALIA.

PRESENT: Mr. Ravi Shankar, Advocate for the petitioner.

Ms. Urvashi Dhugga, Advocate for the respondents.

AJAY KUMAR MITTAL, J.

1. The claim of the petitioner is to quash the orders dated 3.3.2009 (Annexure P-8), dated 18.8.2011 (Annexure P-18) and dated 6.9.2011 (Annexure P-20) and to refund the amount of excess tax paid along with interest in terms of revised return filed on 26.9.2006 (Annexure P-3).

2. Put shortly, the facts necessary for adjudication of the present petition as narrated therein are that the petitioner deposited income tax for the assessment year 2005-06 vide challan dated 11.5.2004 (Annexure P-1) amounting to ₹ 3,60,000/-. The petitioner filed his original return for the assessment year 2005-06 on 26.7.2005 (Annexure P-2) declaring taxable income of ₹ 1,97,960/- on which the

petitioner had deposited ₹ 12,336/- as tax and ₹ 1,188/- as interest. However, the petitioner had omitted to claim the credit of ₹ 3,60,000/-. Thereafter, the petitioner filed a revised return on 26.9.2006 (Annexure P-3) claiming refund of ₹ 3,61,188/-. An application dated 7.3.2008 (Annexure P-4) was submitted by the petitioner and thereafter various reminders were sent to the Assessing Officer for refund of the said amount. The original return of the petitioner was processed under Section 143(1)(a) of the Income Tax Act, 1961 (in short "the Act") on 8.12.2005 and a refund of ₹ 240/- was issued vide voucher dated 29.12.2005. Thereafter the petitioner submitted various applications to the authorities for refund of ₹ 3,61,188/- but to no avail. However, vide order dated 18.8.2011 (Annexure P-18), respondent No.3 declined the claim of the assessee for refund on the ground that the revised return filed by him was not a valid return. The petitioner thereafter sent a letter dated 6.9.2011 (Annexure P-19) to respondent No.1 for supply of copy of intimation of the original return along with the refund and interest. Respondent No.2 vide letter/order dated 6.9.2011 (Annexure P-20) declined the claim of refund of the assessee on the similar grounds. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that the petitioner had filed the original return on 26.7.2005 for the assessment year 2005-06 which was processed under Section 143(1)(a) of the Act on 8.12.2005. Thereafter, the petitioner had filed a revised return on 26.9.2006 under Section 139(5) of the Act in which a refund of ₹ 3,61,188/- was claimed. The said refund had been illegally declined to the assessee on the ground that the revised return which was filed

was non-est.

4. On the other hand, learned counsel for the respondents supported the orders passed by the respondents and prayed for dismissal of the writ petition.

5. After hearing learned counsel for the parties, we find that the defence of the revenue is not acceptable. It would be advantageous to reproduce Section 139(5) of the Act which reads thus:-

> "139(5). If any person, having furnished a return under sub-section (1), or in pursuance of a notice issued under sub-section (1) of section 142, discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment whichever is earlier:
>
> Provided that where the return relates to the previous year relevant to the assessment year commencing on the Ist day of April, 1988, or any earlier assessment year, the reference to one year aforesaid shall be construed as a reference to two years from the end of the relevant assessment year."

6. A plain reading of sub-section (5) of Section 139 of the Act shows that where the assessee discovers any omission or any wrong statement in the original return filed is entitled to file a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment,

whichever is earlier.

7. In the present case, the assessee had been forwarded with the intimation regarding processing of return under Section 143(1)(a) of the Act on 8.12.2005. The question for consideration would be whether an intimation under Section 143(1)(a) of the Act would constitute assessment so as to disentitle the assessee to file the revised return. The said question stands answered by the Hon'ble Apex Court in **Assistant Commissioner of Income Tax v. Rajesh Jhaveri Stock Brothers P. Ltd. (2007) 291 ITR 500 (SC)** in the following terms:-

> "It is to be noted that the expressions "intimation" and "assessment order" have been used at different places. The contextual difference between the two expressions has to be understood in the context the expressions are used. Assessment is used as meaning sometimes "the computation of income", sometimes "the determination of the amount of tax payable" and sometimes "the whole procedure laid down in the Act for imposing liability upon the tax payer". In the scheme of things, as noted above, the intimation under section 143(1)(a) cannot be treated to be an order of assessment. The distinction is also well brought out by the statutory provisions as they stood at different points of time. Under section 143(l)(a) as it stood prior to April 1, 1989, the Assessing Officer had to pass an assessment order if he decided to accept the return, but under the amended

provision, the requirement of passing of an assessment order has been dispensed with and instead an intimation is required to be sent. Various circulars sent by the Central Board of Direct Taxes spell out the intent of the Legislature, i.e., to minimize the departmental work to scrutinize each and every return and to concentrate on selective scrutiny of returns. These aspects were highlighted by one of us (D. K. Jain J) in Apogee International Limited v. Union of India [1996] 220 ITR 248 (Delhi). It may be noted above that under the first proviso to the newly substituted section 143(1), with effect from June 1, 1999, except as provided in the provision itself, the acknowledgment of the return shall be deemed to be an intimation under section 143(1) where (a) either no sum is payable by the assessee, or (b) no refund is due to him. It is significant that the acknowledgment is not done by any Assessing Officer, but mostly by ministerial staff. Can it be said that any "assessment" is done by them? The reply is an emphatic "no". The intimation under section 143 (1)(a) was deemed to be a notice of demand under section 156, for the apparent purpose of making machinery provisions relating to recovery of tax applicable. By such application only recovery indicated to be payable in the intimation became

> permissible. And nothing more can be inferred from the deeming provision. Therefore, there being no assessment under section 143(1)(a), the question of change of opinion, as contended, does not arise.

8. The aforesaid judgment was was followed by the Division Bench of this Court in **CWP No. 17854 of 2007 (Baljit Singh v. Commissioner of Income Tax-II and another)** decided on 3.12.2007 (Annexure P-21).

9. Once that is so, there was no regular assessment framed in the present case. Therefore, the assessee for assessment year 2005-06 could file the revised return after complying with the provisions of Section 139(5) of the Act up to 31.3.2007. The revised return filed on 26.9.2006 was thus validly filed within limitation. Consequently, the claim of the petitioner-assessee for the refund of the additional tax deposited amounting to ₹ 3,61,188/- is valid and justified.

10. Learned counsel for the petitioner has further relied upon a Division Bench judgment of this Court in **Roadmaster Industries of India Pvt. Ltd. v. Commissioner of Income Tax and another, (2009) 329 ITR 69** to canvass that the petitioner was also entitled to interest from the date the amount was deposited till the date of granting of the refund to the petitioner. Reliance was placed on the following observations:-

> "As a sequel to the aforesaid discussion, these writ petitions are allowed and the order dated April 30, 2007 (P-12) passed by the Commissioner of Income-

> tax is hereby quashed. Consequently, the respondents are directed to calculate the amount of interest payable to the assessee-petitioner from the date the amount was deposited by it till the date the refund is granted. The assessee-petitioner shall also be entitled to the amount of interest on interest. The aforesaid directions shall be subject to adjustment of the amount which might have already been paid to the assessee-petitioner. The needful shall be done within a period of three months from the date of receipt of a certified copy of this order."

11. In view of the above, we allow the writ petition and direct that the refund be released to the petitioner within three months from the date of receipt of certified copy of order along with interest at the rate of 12% per annum till the date of making the payment to him.

(AJAY KUMAR MITTAL)
JUDGE

July 30, 2012
gbs

(G.S. SANDHAWALIA)
JUDGE