

**(2001) 02 DEL CK 0146**

**Delhi High Court**

**Case No:** Income Tax R. No. 189 of 1981

Commissioner of Income Tax

APPELLANT

Vs

K.C. Kashyap

RESPONDENT

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**Date of Decision:** Feb. 6, 2001

**Acts Referred:**

- Income Tax Act, 1961 - Section 139, 139(4), 148, 256(1)

**Citation:** (2001) 169 CTR 79 : (2001) 168 CTR 259 : (2001) 249 ITR 297 : (2001) 116 TAXMAN 815

**Hon'ble Judges:** Dr. Arijit Pasayat, C.J; D.K. Jain, J

**Bench:** Division Bench

**Advocate:** R.C. Pandey and Ajay Jha, for the Appellant; None, for the Respondent

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### **Judgement**

Arijit Pasayat, C.J.

At the instance of the Revenue, the following question has been referred for the opinion of this court u/s 256(1) of the Income Tax Act, 1961 (in short the "Act"), by the Income Tax Appellate Tribunal, Delhi Bench "C" (in short the "Tribunal") :

"Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that the assessed is entitled to the carry forward of the loss of Rs. 31,355 under the relevant provisions of the Income Tax Act, 1961 ?"

2. The dispute relates to the assessment year 1975-76 for which the relevant previous year ended on June 30, 1974. The factual background is as under :

The assessed, an individual, derived income from property and also shares from registered firms. According to the Revenue, a notice u/s 148 of the Act was issued for the assessment year in question on December 4, 1976, and it was served on December 15, 1976. A return was filed on July 8, 1977, declaring loss of Rs. 29,560. It was mentioned that this was a duplicate one as the original return was filed on December 30, 1976, vide receipt No. 5966. A revised return was filed on January 31,

1978, showing loss of Rs. 58,800. In the revised return, the assessed included loss of 1973-74 and 1974-75 also. According to the Income Tax Officer, the original return as well as the revised return were not filed voluntarily u/s 139 of the Act and, Therefore, the question of any carry forward of loss did not arise. The net loss was computed at Rs. 31,355 but it was not carried forward in view of the conclusions that the return was not filed voluntarily. The assessed preferred an appeal before the Appellate Assistant Commissioner (in short the "AAC"). It was pointed out that no notice u/s 148 of the Act was served. It was pointed out that the return filed on December 30, 1976, a duplicate of which was filed on July 8, 1977, was revised on January 31, 1978. These, according to the assessed, were returns u/s 139(4) of the Act. The Appellate Assistant Commissioner noticed that no reasons were recorded by the Income Tax Officer for initiation of proceedings u/s 148 of the Act and it was further noticed that there was no material to show about the service of notice u/s 148. Accordingly, the claim of the assessed was allowed.

3. Placing reliance on the decision of the apex court in [Commissioner of Income Tax, Punjab Vs. Kulu Valley Transport Co. P. Ltd.](#), the Revenue appealed before the Tribunal. On consideration of the rival circumstances, the Tribunal came to hold that there was no material to show about the service of notice u/s 148 and, Therefore, the returns were to be treated as voluntary returns. On being moved for a reference, the question as set out above, has been referred for the opinion of this court.

4. We have heard learned counsel for the Revenue. There is no appearance on behalf of the assessed in spite of notice. As the Tribunal has recorded a finding" of fact that there was no evidence of service of notice u/s 148 of the Act, the returns filed were to be treated as voluntary returns. In view of these factual conclusions, no question of law arises which needs determination. The question, Therefore, is not answered.

5. The reference is, accordingly, returned unanswered.