(supra), *Sham Suder's case* (supra) and *Mohan Lal* v. *State of Punjab* (8), holding that stirring was necessary in the case of Haldi powder and Ajwain. Contrary view was, however, taken by a Division Bench of this Court (M. R. Sharma and S. S. Kang, JJ.) in *Hukam Chand's case* (supra). It was held that the principle of mixing the total quantity of food article before taking the sample cannot be extended to wheat Atta. No reasoning is given in any of the Single Bench decisions for the conclusion that the Haldi powder or Ajwain must be mixed before taking sample. In fact, these judgments proceed on the assumption that such is the requirement of law. We have carefully examined this question and we have no doubt in our minds at all that there is no such requirement either in the Act or the Rules or the case law. We are, therefore, constrained to hold that the law on the point of stirring the food article before taking the sample in so far as Haldi powder or Ajwain or a similar food article is concerned, has not been correctly stated in the aforesaid Single Bench decisions. These are hereby overruled. On the contrary, we fully agree with the conclusion reached in *Hukam Chand's case* (supra) and hold that the principle of mixing the total quantity of food article before taking the sample cannot be extended to wheat Atta, Haldi powder, Ajwain or similar other food article and the analogy of stirring of milk before taking sample does not at all apply to such cases.

(7) For the foregoing reasons, we answer the question posed in the reference in the negative and direct that the present appeal as also other connected appeals pertaining to the same point shall be listed before the appropriate Bench for disposal according to law.

S.C.K.

Before : S. S. Sodhi & Ashok Bhan, JJ.

COMMISSIONER OF INCOME-TAX, JULLUNDER,—*Petitioner.*

versus

M/S SURINDER KUMAR PARMOD KUMAR AND OTHERS, JULLUNDER,—*Respondents.*

Income-tax Reference No. 161 *of* 1980

28th August, 1991

(1) *Income-tax Act,* 1961—*Ss.* 139 (2) *proviso* & 271 (1) (*a*)—*Furnishing of returns—Assessee seeking extension of time for filing of return after the expiry of due date—Validity of such application.*

(8) 1990 (1) Recent Criminal Reports 317.

Held, that application for extension of time filed befond due date are valid in law and the Income-tax Officer is bound to consider them.

(Para 5)

(2) *Income-tax Act,* 1961—*Ss.* 139 (2) *proviso* & 271 (1) (*a*)—*Extension application for filing return made after the expiry of due date—Non-communication either of acceptance or rejection of such application to the assessee—Effect of.*

Held, that if the applications filed by the assessee remain unreplied by the Income-tax Officer, the assessee is justified in presuming that extension applications having been made are duly granted by the Income-tax Officer.

(Para 8)

(3) *Income-tax Act,* 1961—*Ss.* 139 (2) *proviso* & 271 (1) (*a*)—*Delayed filing of return—Reasonable cause—Necessity of stating all the grounds in the explanation—Whether mandatory.*

Held, that it is not necessary for the assessee to state all the matters in its explanation and the absence of one or more causes in its explanation would not mean that such cause did not exist at all. The assessee may be prevented in not filing the return by several causes and it is not necessary for the assessee to state all causes in its explanation.

(Para 9)

Income Tax Reference from the order of Shri P. K. Mehta and Shri Om Parkash Income Tax Appellate Tribunal, Amritsar Bench, Amritsar dated 6th March, 1980 *arising out of ITA No.* 40 (*ASR*)/1978-79) *and RA No.* 183 (*ASR*)/1979 *referring the below said questions of law to the Hon'ble High Court for its opinion :*

(1) *Whether on the facts and in the circumstances of the case, the ITAT is correct in holding that the applications made after the expiry of the due dates are valid in law and that the ITO is bound to consider them ?*

(2) *Whether on the facts and in the circumstances of the case, the ITAT is correct in law in holding that if no rejection is communicated to the assessee, he is justified in presuming that the extension applications having been made were duly granted by the ITO ?*

(3) *Whether on the facts and in the circumstances of the case, the ITAT is correct in law in holding that the assessee is not required to incorporate all the reasonable causes in the*

explanation submitted by him to the ITO and that whether the ITAT is justified in considering a cause not so incorporated in the explanation ?

(4) *Whether on the facts and in the circumstances of the case, the ITAT is correct in law in holding that the assesses was not in default right from 10th June, 1971 when the return was due to the date the return was filed* ?

Dated the 28th August, 1991.

Ajay Mittal, Advocate, *for the Petitioner.*

Nemo, *for the Respondent.*

JUDGMENT

Ashok Bhan, J.

(1) The Income-Tax Appellate Tribunal, Amritsar, has referred to this Court the following four questions of law for its opinion :—

1. Whether on the facts and in the circumstances of the case, the ITAT, is correct in holding that the applications made after the expiry of the due dates are valid in law and that the ITO is bound to consider them ?

2. Whether on the facts and in the circumstances of the case, the ITAT is correct in law in holding that if no rejection is communicated to the assessee, he is justified in presuming that the extension application having been made were duly granted by the ITO ?

3. Whether on the facts and in the circumstances of the case, the ITAT is correct in law in holding that the assessee is not required to incorporate all the reasonable causes in the explanation submitted by him to the ITO and that whether the ITAT is justified in considering a cause not so incorporated in the explanation ?

4. Whether on the facts and in the circumstances of the case the ITAT is correct in law in holding that the assessee was not in default right from 10th June, 1971 when the return was due to the date the return was filed ?

The facts briefly stated are as under :—

(2) For the assessment year 1971-72, the department on 4th May, 1971 issued notices under section 139 (2) of the Income Tax Act (hereinafter referred to as the Act), asking the assessee to furnish the return within 30 days of the receipt of the notice. Notice under section 139 (2) of the Act was served on 11th May, 1971 and the return was due to be filed by the assessee on or before 10th June, 1971. Assessee filed the return on 13th February, 1974. As there was delay in filing of return, the Income-tax Officer initiated penalty proceedings under section 271 (1) (a) of the Act for default of the late filing of the return by 32 months. Assessee filed his reply to the show-cause notice. The Income-tax Office not being satisfied with the explanation of the assessee found that the assessee was not prevented by reasonable cause in filing of the return and she, therefore, imposed the penalty of Rs. 3,27,715 for late filing of return by 32 months. The Appellate Assistant Commissioner, in appeal reversed the order of the Income-tax Officer. The Appellate Assistant Commissioner found that the assessee was prevented by reasonable cause for not having filed the return up to 13th February, 1974 and as such the entire penalty was ordered to be cancelled. Being aggrieved, the Revenue filed an appeal before the Tribunal. The Tribunal upheld the order of the Appellate Assistant Commissioner and dismissed the appeal filed by the Revenue. At the instance of Revenue, four questions of law reproduced in the earlier part of this judgment, have been referred to this Court for its opinion.

(3) Another fact which may be adverted to at this stage is that assessee sought extension of time for filing of return by filing applications dated 27th September, 1971, 28th March, 1972, 19th September, 1972, 28th April, 1973 and 30th September, 1973 upto 30th December, 1971, 30th June, 1972, 31st October, 1972, 30th September, 1973 and 15th November, 1973 respectively. The extension applications were made by the assessee much after the expiry of due date and after the expiry of the dates for which extensions were sought by the assessee under various applications. The contention raised before the Tribunal was that assessee had filed applications for extension of period repeatedly which were made much after the expiry of the due date and after the expiry of the dates for which extension was sought and, therefore, such applications did not deserve any consideration. As against this, the contention of the assessee was that he had made number of applications for extension for filing the income-tax return but no order either accepting

or rejecting the applications for filing the return was ever conveyed to the assessee and, therefore, the assessee remained under the belief that the extension applications having been made had been duly granted by the Income-tax Officer. The question before the Tribunal was as to whether the extension applications given by the assessee were required to be disposed of under the law by the Income-tax Officer and whether the assessee was justified for having presumed that the extension applications made thereby were duly granted in the absence of any order to the contrary communicated to the assessee. Learned Tribunal relied upon two judgments of this Court in *Additional Commissioner of Income-tax, Haryana, Himachal Pradesh and Delhi III* v. *Roshan Lal Kuthiala (deceased)* (1), and *Karam Singh* v. *Commissioner of Income-tax, Patiala-II* (2), wherein it has been held that applications could be made even after the expiry of the prescribed period and the Income-tax Officer was under an obligation in law to either grant or reject the application for extension of time for filing the return and further that such an order, if passed, should be conveyed to the assessee. In this case, since the rejection order was not conveyed to the assessee by the Income-tax Officer, the assessee could be taken to be under a reasonable belief that his request had been acceded to and therefore, there was no delay in filing the return.

(4) We have considered the arguments advanced by the learned counsel appearing for the department. *Question No.* 1 is sequarely covered by the judgment of this Court in *Karam Singh's* case (supra) wherein it has been held as under :—

> "From the application form prescribed for asking for extension of time for filing of the return of income, it is clear that the application can be made even after the expiry of the prescribed date. Moreover, the proviso to section 139(2) of the Income-tax Act, 1961, does not contain any limitation to the effect that such an application must be made before the due date."

(5) Following the view taken by this Court in *Karam Singh's* case (supra), Question No. 1 is answered in affirmative i.e. in favour of the assessee and against the Revenue and it is held that application for extension of time filed beyond due date are valid in law and the Income-tax Officer was bound to consider them.

(1) 100 I.T.R. 329.
(2) 110 I.T.R. 726.

QUESTION NO. 2

(6) The facts giving rise to this question have been enumerated in the earlier paragraphs of this judgment. It has been held in *Karam Singh* v. *Commissioner of Income-Tax, Patiala-II* (3), *Harmanjit Trust* v. *Commissioner of Income-Tax, Patiala-I* (4) and *Additional Commissioner of Income-Tax, Haryana, Himachal Pradesh and Delhi III* v. *Roshan Lal Kuthiala (deceased)* (5), that a duty is enjoined upon the Income-tax Officer to intimate the assessee whether its request for extension of time for furnishing the return had been granted or refused. If no communication is addressed either accepting or rejecting the application within reasonable time by the Income-tax Officer then the assessee is justified in presuming that the extension applications filed by him were duly granted by the Income-tax Officer. Mr. A. K. Mittal, learned counsel appearing for the Revenue has challenged the correctness of the view taken by this Court and for that proposition relied upon the following three judgments :—

T. Venkata Krishnaiah and Co. v. *Commissioner of Income-Tax* (6), *Assam Frontier Veneer and Saw Mills* v. *Commissioner of Income-Tax, Assam, Meghalaya, Nagaland, Manipur and Tripura* (7), *and Commissioner of Income-Tax* v. *S. P. Viz Construction Co* (8).

The later two judgments have relied upon the reasoning given by Andhra Pradesh High Court in *T.* Venkata's case (supra). This Court in *Harmanjit Trust's* case (supra) has specifically disagreed with the view taken by their Lordship of the Andhra Pradesh High Court in *T. Venkata's* case (supra). Their Lordships of Patna High Court in *S. P. Viz Construction Company's* case (supra) have not noticed either of the three judgments of this Court referred to in the earlier part of this paragraph. Incidentally, their Lordships of the Patna High Court in *S. P. Viz Construction Company's case* (supra) have not taken notice of a judgment of their own Court in *C.I.T.* v. *Ram Dass and Sons* (9), where the said High Court had

(3) 110 I.T.R. 726 (P&H).
(4) 148 I.T.R. 214 (P&H).
(5) 100 I.T.R. 329 (P&H).
(6) A.P. 93 I.T.R. 297.
(7) 104 I.T.R. 479 (Gauhati).
(8) 165 I.T.R. 732 (Patna).
(9) (1980) 123 I.T.R. 889.

taken the view that when application for extension of time were not replied to by the Income-tax Officer, the assessee could presume that his request for extension of time had been granted and thus the assessee had reasonable cause for not filing the return by the due date. This Court in *Harmanjit Trust's* case (supra) relied upon the view taken by Patna High Court in *Ram Das and Sons'* case (supra).

(7) We have considered the matter afresh at length and we are in respectful agreement with the view taken by this Court in the pronouncements of this Court, referred to above. In *Harmanjit Trust's* case this Court has specifically disagreed with the view taken by the Andhra Pradesh High Court in *T. Venkata's* case (supra). We quote the following observations of this Court in *Harmanjit Trust's* case (supra) as having correctly enumerated the law on the point :—

> "xxx Duty was cast on the ITO to intimate to the assessee whether its request for extension of time for furnishing the return had been granted or refused. Thus, the predominant view in various High Courts is that the assessee can well presume that his request for extension of time for furnishing the return had been granted, unless the ITO well in time communicates to the assessee his refusal. And it is precisely for this reason that Form I.T.N.S. (annex 'F' with the statement) has been provided for use of the ITO to convey grant or refusal of extension of time. The lone voice of the Andhra Pradesh High Court *T. Venkata Krishnaiah and Co.* v. *C.I.T.* (1974) 93 ITR 297 holding the contrary view that the ITO was not bound under the provisions of any Act or the Rules made thereunder to pass any order on the application for extension of time, received after the expiry of the date given in the notice under section (2) to section 139, to our mind, with due aspect to the Hon'ble Judges of that court, is not sound and in line with the predominant and appropriate view taken by a majority of the High Courts and especially by this Court. The aforesaid view of the Andhra Pradesh High Court alone was the axis on which the appellate decision of the Tribunal revolved, and to our view not rightly."

(8) For the foregoing reasons, Question No. 2 is answered in affirmative i.e .in favour of the assessee and against the Revenue

and it is held that since the applications filed by the assessee remained unreplied by the Income-tax Officer and that the assessee was justified in presuming that extension applications having been made were duly granted by the Income-tax Officer.

QUESTION NO. 3

(9) Assessee had filed the extension applications stating therein several grounds in support of the reasonable cause for delayed filing of the returns. The assessee did not raise the plea in either of these applications that he was under a *bona fide* belief that since no reply of the extension applications had been conveyed, it was presumed by him that the applications filed for extension of filing of return stood sanctioned by the Income-tax Officer. An argument was raised before the Tribunal that since the assessee had never set up such a plea in its extension application which was submitted to the Income-tax Officer on 21st February, 1977 in reply to the show cause notice for levy of penalty under section 271(1)(a) of the Act and the assessee having not raised any plea regarding such belief, it was not open to the Tribunal to entertain this ground as it had not been taken as one of the grounds in reply to the show cause notice and, therefore, the same did not exist at all. The Tribunal repelled this argument and held that such a plea could be taken by the assessee at the appellate stage as well. It was argued that the Tribunal erred in taking the view to this effect. It is not necessary for the assessee to state all the matters in its explanation and the absence of one or more causes in its explanation would not mean that such cause did not exist at all. The assessee may be prevented in not filing the return by several causes and it is not necessary for the assessee to state all causes in its explanation. The absence of one or more causes in the explanation would not mean that such cause did not exist at all. It cannot be inferred that since the assessee did not take up the plea that he was under a *bona fide* belief that since no communication rejecting the application for extension had been received, therefore, the same stood granted; that this ground did not exist at all or in any case that such a cause could not be taken into consideration by the Tribunal specially in view of the law laid down by this Court in *Karam Singh's* and *Roshan Lal Kuthiala's* case supra. Question No. 3 is accordingly answered in the affirmative i.e. in favour of the assessee and against the Revenue.

QUESTION NO. 4

(10) Question No. 4 is essentially a question of fact. In any case, in view of what has been held on Questions No. 1, 2 & 3 this question does not survive for adjudication.

(11) No order as to costs.

S.C.K.

Before : A. L. Bahri, J.

DR. SHAM LAL,—*Petitioner.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 2237 *of* 1986.

8th January, 1991.

Punjab Ayurveda, Department (Class I and II) Service Rules, 1963 *as amended by State of Haryana in* 1975—*Appendix 'A'—Punjab State Faculty of Ayurvedic and Unani Systems of Medicine Act,* 1963—*S.* 21—*Appointment to the post of Director, Ayurveda—Challenge thereto on the ground that appointee did not possess requisite qualification i.e. G.A.M.S. awarded by the Punjab Faculty—State Faculty constituted in* 1961 *by notification and authorised to hold examinations with effect from April,* 1960—*Act, however, coming into force in* 1963—*Degrees obtained during transitional period validated by S.* 21(2) *of the Act—Degree so conferred is valid and immune from challenge—Prior to* 1960, *examinations conducted by Board of Examiners—Faculty had right to issue degrees on the basis of examinations held by the Board—Period of studies spent before the constitution of the Faculty was required to be taken into consideration for calculating five years Course of G.A.M.S.—Appointee was, therefore, qualified to hold the post of Director, Ayurveda—Advertisement of posts—After application invited, Central Government approached to send panel of names of eligible candidates—Action is not violative of Article* 16—*Seven years administrative experience required for the post—Even if appointee lacking administrative experience, appointment cannot be quashed as during the post-appointment period, appointee has gained necessary experience—Rules requiring knowledge of Sanskrit upto Madhyama (Benaras) or Visharad (Punjab) or its equivalent qualification—Rule*