(1992) 08 BOM CK 0034

In the Bombay High Court

Adamas Gem Industries Limited and another — APPELLANT

Vs

Smt. Neela Krishnan, Assistant Commissioner of Income Tax and another — RESPONDENT

Date of Decision : 24-08-1992

Acts Referred:

Income Tax Act, 1961 — Section 143(1), 143(1A)

Citation : (1993) 203 ITR 737

Hon'ble Judges : Sujata V. Manohar, J;B.N. Srikrishna, J

Bench : Division Bench

Advocate : N.A. Dalvi, for the Appellant; G.S. Jetly, for the Respondent

Judgement

Mrs. Sujata Manohar J.

1. This petition challenges the validity of an intimation dated February 20, 1991, issued u/s 143(1)(a) of the Income Tax Act, 1961. The relevant assessment year is 1990-91. By this intimation, the first respondent has adjusted the total income returned by the petitioners by adding a sum of Rs. 2,25,000.

2. In January, 1989, the petitioners had entered into an agreement with one Jayantilal Mohanlal Shah for purchase of office premises at Nariman Bhavan for a consideration of Rs. 1,75,00,000. Under the terms of the agreement, the sale was to be completed, in any event, not later than April 30, 1989. The sale, however, was completed on November 15, 1989. In respect of this delay in completion of the sale, by an agreement between the parties, the petitioners were paid by the vendor a sum Rs. 2,25,000. The first respondent has sought to add the sum of Rs. 2,25,000 to the income of petitioners for the assessment Year 1990-91.

3. u/s 143(1)(a), proviso, clause (iii), in computing the tax payable by, or refundable to, the assessee, any los carried forward, deduction, allowance or relief claimed in the return which, on the basis of the information available in such return, accounts or documents, is prima facie, inadmissible, shall be

disallowed. The present adjustment does not fall within the parameters of this proviso. [See in this connection a decision by a Division Bench of this court to which one of us (Mrs. Sujata Manohar J.) was a party in the case of Khatau Junkar Ltd. and another Vs. K.S. Pathania and another, . The first respondent, therefore, had no jurisdiction to adjust the sum of Rs. 2,25,000 at the stage of intimation u/s 143(1)(a) of the Income tax Act, 1961. The intimation dated February 20, 1991, is, therefore, set aside. The claim for additional tax u/s 143(1A) is also set aside and the respondents are directed to send a fresh intimation u/s 143(1)(a) in accordance with law and in the light of the ratio of the above judgment.

4. Rule is made absolute accordingly.