(2004) 09 MAD CK 0007

In the Madras High Court

Case No : Tax Case (Appeal) No. 572 of 2004

Commissioner of Income Tax — APPELLANT

Vs

Asian Peroxides Ltd. — RESPONDENT

Date of Decision : 07-09-2004

Acts Referred:
Income Tax Act, 1961 — Section 139, 143, 143(1), 143(1)(a), 154

Citation : (2005) 143 TAXMAN 306

Hon'ble Judges : P.D. Dinakaran, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : T. Ravikumar, for the Appellant;

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—This appeal is filed u/s 260A of the income tax Act against the order of the Tribunal in ITA No. 1300/Mad./1994,

dated 28th February, 2003. The assessment year is 1991-92. For the abovesaid assessment year, the assessee has filed a return. While

completing the assessment u/s 143(1)(a) of the income tax Act (hereinafter referred to as Act), the Assessing Officer has made adjustments by

adopting the written down value determined for the assessment year 1990-91 and disallowed the excess depreciation claimed in a sum of Rs.

24,14,298, against which, the assessee filed a petition u/s 154 of the Act for rectification, which has been rejected by the Assessing Officer. That

order is put in issue before the CIT(A). The CIT(A) has also confirmed the order of the Assessing Officer. Ultimately, the assessee moved the

Tribunal by way of an appeal as aforesaid by contending that while making adjustment, the assessing authority has exceeded his jurisdiction as

conferred on him u/s 143(1)(a) of the Act, which submission has been accepted by the Tribunal in toto and the order of the assessing authority as

confirmed by the CIT(A) has been set aside, which order is put in issue in the above appeal.

2. Learned counsel appearing for the Revenue has submitted that section 143(1) of the Act, as it obtained during the relevant assessment year,

provided that such exercise can be done by the Assessing Officer. To support his contention, learned counsel relied on clause (1) of section 143 of

the Act.

3. According to the learned counsel appearing for the Revenue, the rectification of arithmetical errors as contemplated u/s 143(1) of the Act would

include in it adoption of the written down value as per the previous year and the same has been done in this case. Hence, it is perfectly within the

jurisdiction of the Assessing Officer. According to him, the order of the Tribunal setting aside the order of the Assessing Officer, adopting the

written down value of the earlier assessment years for the purpose of assessment in respect of the assessment year 1991-92, by holding that while

making a prima facie adjustment, the Assessing Officer was expected to look into the return and its enclosures and if the Assessing Officer needs

any further particulars he ought to have issued notice u/s 143 of the Act. Without doing so, he cannot take the written down value of the previous

assessment year as incorrect. Any opinion other than the opinion as given by the Assessing Officer is not in accordance with law. Learned counsel

relied on two decisions to support his contention.

4. We heard the learned counsel in extenso and also perused the relevant provisions of the income tax Act. In order to clarify the issue, we are of

the view that clause (1) of section 143 of the Act has to be reproduced, which reads as follows:

Assessment. -(1)(a) Where a return has been made u/s 139, the Assessing Officer may, without requiring the presence of the assessee or the

production by him of any evidence in support of the return, make an assessment of the total income or loss of the assessee after making such

adjustments to the income or loss declared in the return as are required to be made under clause (b), with reference to the return and the accounts

and documents, if any accompanying it, and for the purposes of the adjustments referred to in sub-clause (iv) of clause (b), also with reference to the record of the assessments, if any, of past years, and determine the sum payable by the assessee or refundable to him on the basis of such

assessment.

(b) In making an assessment of the total income or loss of the assessee under clause (a), the Assessing Officer shall make the following adjustments

to the income or loss declared in the return, that is to say, he shall,-

(i) rectify any arithmetical errors in the return, accounts and documents, referred to in clause (a).

5. The language employed in clause (1) of section 143 of the Act ""rectify any arithmetical errors in the return, accounts and documents, referred to

in clause (a)"" would only per se means the arithmetical error in the returns or in the accounts or documents filed along with the returns in

accordance with clause (a) of section 143(1) of the Act. By no stretch of imagination, the particulars available in the assessment order in respect of

different assessment year would be substituted for the present assessment year and that substitution can be stated to be a rectification of

arithmetical error in the returns and accounts and documents referred to. The decision, which was relied on by the learned counsel in Ram Nath

Jindal and Another Vs. Commissioner of Income Tax, , wherein it was held that:

...The Assessing Officer could not grant the benefit of depreciation when it was not claimed by the assessee. There was no provision by which

depreciation can be fictionally deemed to have been claimed and granted. The assessment orders for the relevant assessment years had been

passed u/s 143(1), when the assessee has not claimed any depreciation and it was not permissible for the Assessing Officer to allow depreciation

when it was not claimed. Resultantly, the claim as made by the assessee with regard to the written down value of the vehicle had to be accepted on

the basis that the depreciation had not been claimed during the relevant years and the Assessing Officer''s computation of the profit u/s 41(2) was

not correct.

6. We are of the view that the above decision would not advance the case of the appellant/Revenue to conclude that rectification of the arithmetical

mistake would encompass with it supplementing particulars from taking from assessment order relating to the other assessment years. He wants the

Court to infer from the decision that as it would be impermissible for the

Assessing Officer to allow depreciation when it was not claimed in the

return, likewise, when the claim of depreciation is excess, the Assessing Officer can take the written down value of the previous year while framing

assessment order u/s 143 of the Act. So also the decision of the Calcutta High Court relied on by the learned counsel for the Revenue in Indian

Aluminium Co. Ltd. v. CIT [1986] 162 ITR 788 2, wherein it was only held that:

...the written down value means actual cost to assessee in the case of assets acquired during accounting year. In the case of assets acquired before

accounting year, written down value means the actual costs of acquisition less depreciation actually allowed while interpreting section 80J of the

income tax Act, 1961 and Income Tax Rules, 1962, rule 19A(2)(i).

That case also would not in any way support the case of the Revenue to contend that while making the assessment u/s 143(1) of the Act, the

Assessing Officer can substitute the material available outside the returns and other documents filed along with the returns to make a prima facie

adjustment.

7. Hence, we are of the view that the conclusion arrived at by the Tribunal while making assessment u/s 143(1) of the Act that de hors the

particulars provided under clause (a) of section 143(1) of the Act, the Assessing Officer cannot substitute any materials and that substitution could

not be considered as rectification of arithmetical error, is correct as the same is in compliance with section 143 of the Act. As there is no question

of law, much less substantial question of law, is made out for determination by us; we have to dismiss the above appeal and the same is dismissed

accordingly.