(2002) 07 CAL CK 0068

In the Calcutta High Court

Case No : Income-tax Reference No. 13 of 1998

Commissioner of Income Tax APPELLANT

Vs

Coventry Spring and Co. Ltd. RESPONDENT

Date of Decision : 09-07-2002

Acts Referred:
Income Tax Act, 1961 — Section 143, 143(1), 143(2), 154

Citation : (2002) 177 CTR 579 : (2002) 257 ITR 632 : (2003) 129 TAXMAN 863

Hon'ble Judges : Indira Banerjee, J;Ajoy Nath Ray, J

Bench : Division Bench

Advocate : Nizamuddin, for the Appellant; J.P. Khaitan, for the Respondent

Judgement

1. The question before us is as follows :

"Whether, on the facts and in the circumstances of the case and in law, the Income Tax Appellate Tribunal is justified in holding that intimation issued u/s 143(1)(a) cannot be rectified u/s 154 after issue of notice u/s 143(2) ?"

2. After the Assessing Officer issues intimation (under the old law then prevailing) u/s 143(1)(a), it is possible that both the Assessing Officer and the assessee pay nothing and the matter rests there.

3. However, it was possible for the Assessing Officer to issue a subsequent notice u/s 143(2) and to hear the assessee further before finalising the assessment.

4. However, the rectification procedure u/s 154 is not consistent with the issuance of a Section 143(2) notice. In this case apparently the Assessing Officer passed the order of regular assessment on the same day as he sought to pass an order u/s 154 rectifying his initial intimation u/s 143(1)(a).

5. No fewer than three High Courts have frowned upon this type of double rectification and we, with respect, find ourselves in complete agreement with their Lordships'' views. The cases are as follows :

(1) Commissioner of Income Tax Vs. Arihant Industries Ltd., ;

(2) Gujarat Poly-Avx Electronics Ltd. Vs. Deputy Commissioner of Income Tax, ; and

(3) Commissioner of Income Tax Vs. Punjab National Bank, .

6. Accordingly the question is answered in favour of the assessee and in the affirmative.