
(2003) 05 RAJ CK 0055
In the Rajasthan High Court
Case No : IT Appeal No. 79 of 2001

Commissioner of Income Tax

APPELLANT

Vs

Udaipur Distillery Co. Ltd.

RESPONDENT

Date of Decision : 12-05-2003

Acts Referred:

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

Citation : (2003) 184 CTR 72 : (2004) 267 ITR 366

Hon'ble Judges : Rajesh Balia, J;O.P. Bishnoi, J

Bench : Division Bench

Advocate : Sandeep Bhandawat, for the Appellant; K.N. Joshi, N.M. Lodha and Mahendra Gargieya, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Balia, J.

1. Heard learned counsel for the parties.

2. This appeal is directed against the order of the Tribunal, Jodhpur Bench, Jodhpur dt. 15th Dec., 2000.

3. At the time of admission following substantial question of law was framed which has arisen for consideration in this appeal :

"Whether, on the facts and in the circumstances of the case the Tribunal was justified in law in holding that there was no mistake within the meaning of Section 154 of the Act in allowing deduction of Rs. 6,00,000 by way of bank guarantee u/s 43B of the Act ?"

4. However, after hearing both the parties and upon perusal of the order passed in appeal, we are of the opinion that the question does not convey the real controversy raised in this appeal and it needs to be reframed for the purpose of deciding this appeal.

5. The question, which arises for consideration, in our opinion is, whether on the facts and in the circumstances of this case, an intimation making assessment u/s 143(1)(a) could be rectified by resorting to Section 154 after notice u/s 143(2) has been issued for making a regular assessment u/s 143.

6. The facts giving rise to this case are that the assessee has filed the return of his income for the asst. yr. 1991-92 on 31st Dec., 1991, declaring his income as Rs. 9,76,128. He claimed deduction of Rs. 6,00,000 on account of deposit made against bank guarantee furnished for payment of bottling fee, which was subject-matter of a pending proceeding before this Court, as per direction of this Court. According to Sub-section 143(1)(a) as existed at the relevant time, at the time of filing of return, the AO was required to send an intimation to the assessee specifying the sum so payable as tax or interest that may be found due on the basis of such return after adjustment of tax deducted at source, any advance or tax paid and any amount paid otherwise by way of tax or interest. If any refund is due on the basis of such return that was also required to be granted to the assessee. However, this process was subject to the regular assessment, which could take place by issuance of notice under Sub-section (2). In making this intimation, the proviso to Sub-section 143(1)(a) enabled the AO while computing the tax or interest payable or refundable to the assessee, the following adjustment shall be made in the income or loss declared in the return, namely :

(i) any arithmetical errors in the return, accounts or documents accompanying it shall be rectified.

(ii) any loss carried forward, deduction, allowance or relief, which, on the basis of the information available in such return, accounts or documents, is prima facie admissible but which is not claimed in the return shall be allowed and;

(iii) any loss 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.

7. Even where no such tax is found due, if any adjustment is to be made under the proviso, the same was required to be sent to the assessee. This provision was without prejudice to proceeding that may be taken under Sub-section (2) which may be taken by the AO. In anyway, Sub-section (1)(a) enables the AO to assess the tax payable or amount refundable on the basis of self-assessment subject to certain obvious adjustments which would be made in the return furnished by the assessee without ruling out the enquiry on the basis of available material in the return only. Prior to substitution of Sub-section (1)(a) in Section 143 of the Act, in the asst. yr. 1988-89, the assessee was given an option where adjustments were made by the AO in the return filed by him for the purpose of raising a demand or reducing the refund and to raise objections thereto on which the AO was obliged to take proceedings to its logical conclusion and pass necessary order u/s 143(3) of the Act. From asst. yr. 1988-89 onwards, the assessee was given remedy of approaching the assessing authorities under Sub-

section 143(1)(a) or to prefer an appeal, in case he is aggrieved with such adjustment made and intimation given to him. However, if the AO was of the view that return requires to be investigated, his jurisdiction remains to issue notice u/s 143(2) to the assessee to call for any requisite information from the assessee for the assessment year in question and to make a regular assessment within the meaning of Section 143(3) of the Act.

Apparently, the status of intimation given under Sub-section 143(1)(a) was of provisional nature subject to regular assessment if the AO opts to go for the same.

8. In the present case, in respect of the claim regarding deductions referred to above, no adjustment was made while intimation was sent to the assessee under Sub-section 143(1)(a). Thereafter, a notice under Sub-section 143(2) was issued to initiate regular assessment proceedings. The intimation was made in the first instance on 16th Jan., 1992. It appears that soon after the intimation u/s 143(1)(a) was issued, a notice u/s 143(2) was issued to the assessee for regular assessment for the asst. yr. 1991-92.

Thereafter, a notice u/s 154 was also issued for disallowing the deductions claimed by the assessee on account of deposits made for securing bank guarantee for payment of bottling fee, for creating an additional demand on the basis of return u/s 143(1)(a). The regular assessment for the year 1991-92 was made on 27th May, 1992, and rectification order was made on 16th Jan., 1992.

9. The deduction claimed by the assessee was disallowed in regular assessment, which was allowed by the Tribunal, which resulted in approaching this Court after the assessee was successful before the Tribunal and appeal filed by Revenue is pending under consideration. The question of allowability of the deduction claimed by the assessee is subject-matter of IT Appeal No. 97/2001.

10. The order of rectification in intimation was set aside by the Tribunal by holding that there was no error apparent on the face of the record which could be rectified by taking resort to the provisions of Section 154 of the Act. In coming to this conclusion the Tribunal relied on the decision of Hon"ble Supreme Court in T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, , as according to the Tribunal it involved interpretation of the provisions of Section 43B of the Act.

11. Apart from the fact, that the proceedings of the assessee's case itself shows that the issue about the allow ability of deduction claimed by him involved a seriously debatable question, the Tribunal has consistently taken the view that such deduction is allowable. This question has been found by this Court to be a substantial question of law in appeal. The decision of substantial question of law requires consideration of rival arguments and examination of pros and cons of rival contentions. Therefore, the dispute does not fall within the purview of a mistake apparent on the face of the record which could be rectified u/s 154 of the Act in view of the principle enunciated by the Hon"ble Supreme Court in T.S.

Balaram's case (supra). In this view of the matter, we are of the opinion that the Tribunal was right in holding that the AO could not have invoked the powers u/s 154 of the Act.

12. The aforesaid contention has already been answered in favour of the assessee by this Court in IT Appeal No. 10/2003, decided on 25th April, 2003 in the case of the very same assessee that such a course is not open to the assessing authority for creating additional liability by resorting to the rectification of intimation u/s 143(1)(a), where the regular assessment proceedings are set in motion. Sard decision was rendered by the Court relying on the decision of the Supreme Court in Commissioner of Income Tax Vs. Gujarat Electricity Board, and agreeing with the view expressed by the Calcutta High Court in Commissioner of Income Tax Vs. Coventry Spring and Co. Ltd.,

13. Following the aforesaid decision in DB IT Appeal No. 10/2003 it is held that the assessing authority was not justified in having recourse to the provisions of Section 154 of the Act after the regular assessment proceedings came to be initiated and, therefore, he must proceed with regular assessment proceedings only.

14. Hence, the appeal fails and is hereby dismissed.