(2003) 05 RAJ CK 0079

In the Rajasthan High Court

Case No : IT Appeal No. 5 of 2002 & Income Tax Appeal No. 7 of 2002

Commissioner of Income Tax APPELLANT

Vs

Udaipur Distillery Co. Ltd. RESPONDENT

Date of Decision : 09-05-2003

Acts Referred:
Income Tax Act, 1961 — Section 143(1), 143(2), 154, 43B

Citation : (2003) 182 CTR 289 : (2004) 267 ITR 363

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

Bench : Division Bench

Advocate : Sandeep Bhandawat, for the Appellant; N.M. Ranka, R.K. Yadav, Mahendra Gargieya and Rajesh Joshi, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal was admitted on 24th May, 2002, and the following substantial question of law was framed by the Court as arising in this appeal as per the suggestions made by the learned counsel for the appellant:

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in deleting the addition of Rs. 6,00,000 by holding that unpaid amount of bottling fee has, on furnishing of bank guarantee, to be treated as actual payment and accordingly the deduction in respect of the same cannot be denied u/s 43B of the IT Act, 1961?"

2. The learned counsel appearing for the respondent urged that the question framed on 24th May, 2002, is not the real controversy in this case and appears to have been framed because the fact must not have been brought to the notice of the Court that this appeal arises out of proceedings of rectification in intimation issued u/s 143(1)(a), as the assessee in his return claimed deduction the amount of cash deposit for obtaining the bank guarantee for satisfying the demand of bottling fee, in case he lost in the pending litigation. Subsequent to issuing of intimation, proceedings for regular assessment came to be instituted

by the assessing authority by issuing notice u/s 143(2) of the IT Act, 1961. When the assessee received a notice for rectification in intimation, he has raised the contention that once the regular assessment proceedings came to be instituted, the rectification in intimation u/s 143(1)(a) remains a provisional assessment and is to give way to the regular assessment which comes at the end of proceedings initiated u/s 143(2) and thereafter no rectification in intimation can be made. All questions then are to be determined and additional demand or refund to be made, must follow the regular assessment.

3. Therefore, the real question which is bone of contention between the parties in this appeal is whether after notice u/s 143(2) has been issued for regular assessment by enquiring into correctness of return filed by the assessee, any rectification can take place in the intimation u/s 143(1)(a) for creating additional demand under that provision, which remains subject to regular assessment.

4. It has been urged by Mr. Ranka, learned counsel for the respondent, that the aforesaid contention has already been answered in favour of the assessee by this Court in D.B. IT Appeal No. 10/2003, decided on 25th April, 2003 [reported as CIT v. Udaipur Distillery Co. Ltd. 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 rectification proceedings for intimation u/s 143(1)(a) where the regular assessment proceedings are set in motion. This 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., .

5. From the perusal of the material placed before us, we are of the opinion that the contention (counsel) of the respondent is right in submitting that the question whether such deduction as claimed by the assessee in his return is permissible in law or not can be decided substantively in the pending regular assessment proceedings and not by rectifying the intimation u/s 143(1)(a).

6. The learned counsel for the respondent is also right in his submission that the substantial question framed at the time of admission does not give the true picture of controversy for consideration in this appeal which arises out from the rectification proceedings by intimation u/s 143(1)(a), and relates to validity of rectification proceedings.

7. Even on merits, we are of the opinion that the question of deduction claimed by the assessee raises a debatable issue and cannot be considered as a mistake apparent from record applying the ratio laid down in T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, . It may be noticed that a substantial question of law to that effect has been framed in appeal arising from order of Tribunal passed in appeal arising from regular assessment u/s 143(3).

8. Following the aforesaid decision in D.B. IT Appeal No. 10/2003, decided on

25th April, 2003 (supra) this appeal also fails and is hereby dismissed with no order as to costs.

