
(2003) 04 RAJ CK 0063
In the Rajasthan High Court
Case No : IT Appeal No. 10 of 2003

Commissioner of Income Tax

APPELLANT

Vs

Udaipur Distillery Co. Ltd.

RESPONDENT

Date of Decision : 25-04-2003

Acts Referred:

Income Tax Act, 1961 — Section 143(1), 143(2), 143(3), 154, 260A

Citation : (2003) 182 CTR 284 : (2004) 267 ITR 358

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

Bench : Division Bench

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

Final Decision : Dismissed

Judgement

Rajesh Balia, J.—Heard learned counsel for the parties.

2. Having heard learned counsel for the parties, we are of the opinion that no substantial question of law for consideration arises in this appeal u/s 260A of the IT Act, 1961.

3. The facts of the case are that in respect of asst. yr. 1990-91, return of income was furnished by the respondent-assessee on 31st Dec., 1990, declaring loss of Rs. 49,65,836. This return was processed u/s 143(1)(a) with certain adjustment in the loss returned and an intimation to that effect was issued and served upon the assessee. Thereafter, it has been noticed that deduction for Rs. 7,00,000 on account of deposit made against bank guarantee furnished has been wrongly claimed and allowed u/s 43B of the Act.

4. After the intimation u/s 143(1)(a) was sent, a notice for regular assessment u/s 143(1)(a) was issued on 18th April, 1991, and proceedings for regular assessment u/s 143(3) came into existence.

5. It appears that thereafter the AO was of the opinion that prima facie the

deduction of Rs. 7,00,000 claimed by the assessee as bottling fees, represented as deposit with the bank for obtaining the bank guarantee for ensuring such payment as per interim order passed by this Court in the matter relating to demand raised as bottling fees in case the petitioner failed, was not allowable expenses on the ground that such deposit cannot be considered as actual payment. Therefore, after issuing notice u/s 154 on 4th March, 1992, an order u/s 154 rectifying the intimation u/s 143(1)(a) was passed disallowing the bottling fees claimed by assessee and a direction was issued to charge tax on additional amount on such sum of deduction disallowed by rectification.

6. The said order of rectification was challenged by the assessee before the CIT(A), Udaipur, who dismissed the same vide order, dt. 11th Sept., 1995, and further appeal was preferred before the Tribunal, Jodhpur Bench, Jodhpur.

7. The Tribunal found that aforesaid mistake was not rectifiable mistake and, therefore, AO was not justified in initiating the proceedings u/s 154 of the Act. The Tribunal following its earlier decision in the case of assessee held that disallowance of aforesaid claim u/s 43B is not sustainable by way of rectification of intimation u/s 143(1)(a) of the Act and accordingly the order of rectification was set aside.

8. Aggrieved by this order, the present appeal has been preferred wherein Revenue has formulated the following questions stated to be substantial question of law that arise for consideration in the appeal as under :

(i) "Whether, on the facts and in the circumstances of the case, the Hon'ble Tribunal is justified in holding the disallowance of bottling fee amount to Rs. 7 lacs to be not sustainable on the ground that the provisions of Section 43B would not apply in a case where cash payment was made to the bank for obtaining bank guarantee ignoring the fact that Section 43B deals with "actual payment" and bank guarantee cannot be equated with actual payment ?"

(ii) "Whether, on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified in law in holding that the disallowance u/s 43B did not fall in the ambit of Section 143(1)(a) of the Act ?"

9. On the other hand, Sh. N.M. Ranka, learned counsel for the respondents, urges that so far as disallowance of bottling fees on substantive basis is concerned, it has already been subject-matter of regular assessment in which AO has disallowed the said claim but the assessee's claim has been allowed by the Tribunal, in its appellate order arising out of regular assessment for the very asst. yr. 1990-91, concerning the very same issue. It is contended that since proceedings for regular assessment have been installed, no proceedings u/s 143(1)(a) could take place, nor any new intimation u/s 143(1)(a) could emanate thereafter by way of rectification of original intimation to create a new liability which now become subject-matter of enquiry under regular assessment proceedings. With the commencement of proceedings u/s 143(2), the intimation u/s 143(1)(a), which in the absence of proceedings, u/s 143(2) r/w Section

143(3) would have taken the shape of regular assessment, but once proceedings commence u/s 143(2) or Section 143(3), the intimation u/s 143(1)(a) remains an intimation only of self-assessment with prima facie adjustments made by the AO and becomes adjustable as per regular assessment. All issues then become open to be gone into by the AO and any proceedings thereafter cannot be taken which remain of provisional character only. All questions must be decided in regular proceedings which alone shall attain finality. That is the clear ratio emanating from decision of Supreme Court in Commissioner of Income Tax Vs. Gujarat Electricity Board, and applied to a like case as in hand by Calcutta High Court in like circumstances to hold that rectification of an intimation u/s 143(1)(a) is not permissible after issuance of notice u/s 143(2). Reliance was placed upon the decision of Hon'ble apex Court in CIT v. Gujarat Electricity Board (supra) and decision of Calcutta High Court in Commissioner of Income Tax Vs. Coventry Spring and Co. Ltd., . It has been urged that regular assessment u/s 143(3) had already taken place and travelled upto Tribunal. The Tribunal in appeal against regular assessment has held in favour of assessee and allowed the deduction in question on merit, The order of Tribunal arising from regular assessment has been subjected to appeal u/s 260A. Said appeals for different assessment years have been admitted by considering that a substantial question of law arises for consideration in such appeals.

10. We are of the opinion that regular assessment after notice u/s 143(2) has already come into existence and matter has already passed the stage of decision by Tribunal. Thus, so far as Revenue is concerned, a final order having already come into existence, intimation u/s 143(1)(a) has lost its importance to be substituted by another provisional order.

11. The rectification can only be of a mistakes, even if it were permissible, which is a mistake apparent on the face of record. In the present case, the question about claim to deduction is a debatable issue which is apparent. The AO in assessment u/s 143(3) has held the claim to be not allowable u/s 43B of the Act of 1961. The Tribunal has held it to be a claim allowable. This Court has held the question to be a substantial question of law required to be considered in appeals u/s 260A against appellate order of Tribunal which arose from regular assessment u/s 143(3). Obviously the said question of law will require consideration of rival contentions and final decision thereon will prevail. It will be too early to predict at this stage that the AO committed an error apparent on the face of record while issuing intimation u/s 143(1)(a) in the first instance by not making an adjustment of the deduction claim in question. Such a debatable issue, otherwise is not permissible u/s 143(1)(a) for raising any addition derived on the return as part of self-assessment on the basis of material disclosed in the return; which has given rise to a substantial question of law to be decided in appeal.

12. The question about claim to deduction being a substantial question of law to be debated in appeal cannot be considered, in the aforesaid circumstances, a

mistake apparent on the face of record which could be rectified u/s 154 of the Act.

13. A debatable question, answer to which depends upon weighing pros and cons of rival contentions by a long drawn reasons and on which there may possible two opinions, cannot be decided in rectification proceedings is well settled to need elaborations. If need be, reference can be made to T.S. Balram, ITO v. Volkart Brothers and Ors.(1971) 82 TTR 50.

14. An appeal has been preferred by the Revenue which has been admitted.

15. The Hon"ble apex Court in CIT v. Gujarat Electricity Board"s case (supra) has held that the legislature intended that where the summary procedure u/s 143(1) (a) has been adopted, there should be scope available for the Revenue, either suo motu or at the instance of the assessee, to make a regular assessment u/s 143(2). The converse is not available; a regular assessment proceeding having been commenced u/s 143(2), there is no need for a summary proceeding u/s 143(1)(a).

16. The Calcutta High Court in Conventry Spring & Co. Ltd. case (supra) has taken the view that rectification procedure u/s 154 is not consistent with the issuance of a notice u/s 143(2). Apparently initial intimation merges into regular assessment and once proceedings for regular assessment u/s 143(3) is commenced, there cannot be any recourse to bring into existence any order u/s 143(1)(a) of the Act whether originally or by rectification. Question before Calcutta High Court arose in like circumstances, the rectification of order u/s 143(1)(a) having been made by the assessing authority after institution of proceedings u/s 143(3) and set aside by the Tribunal.

17. We are in respectful agreement. In the present case the rectification proceedings commenced and concluded after issuance of notice u/s 143(2).

18. Therefore, we are of the opinion that the principles applicable to fact of the case are well settled and rightly applied to facts of the case, no substantial question of law arises in the case for consideration.

19. Hence the appeal fails and is hereby dismissed. No order as to costs.