
(2012) 05 DEL CK 0201
In the Delhi High Court
Case No : ITA 1250 of 1990

Easter Industries Limited

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 14-05-2012

Acts Referred:

Income Tax Act, 1961 — Section 139, 142, 142(1), 142(2), 143(1)

Citation : (2012) 349 ITR 324

Hon'ble Judges : Sanjiv Khanna, J;R.V. Easwar, J

Bench : Division Bench

Advocate : R. Santhanam, for the Appellant; Sanjeev Sabharwal, for the Respondent

Judgement

1. Easter Industries Limited has filed the present writ petition impugning three adjustments made by the Assessing Officer u/s 143(1)(a) of the Income Tax Act, 1961 (for short, "the Act") in the return of income for the assessment year 1989-90. The three adjustments made by the order dated 15.3.1990 are as under:-

Scientific Research Expenses

82310

Club Payments

2577

Under Section 43B

1669470

Total

1754357

With regard to the first two adjustments, we do not think that these are prima

facie adjustments which could have been made by the Assessing Officer in exercise of power u/s 143(1)(a) of the Act. The limited power and jurisdiction of the Assessing Officer to make the said adjustment was elucidated and explained by this Court in the case of S.R.F. Charitable Trust Vs. Union of India and others, , as.

143(1)(a). Where a return has been made u/s 139, or in response to a notice under subsection (1) of section 142,-

(i) if any tax or interest is found due on the basis of such return, after adjustment of any tax deducted at source, any advance tax paid and any amount paid otherwise by way of tax or interest, then, without prejudice to the provision of sub-section (2), an intimation shall be sent to the assessee specifying the sum so payable, and such intimation shall be deemed to be a notice of demand issued u/s 156 and all the provisions of this Act shall apply accordingly; and

(ii) if any refund is due on the basis of such return, it shall be granted to the assessee :

Provided that in computing the tax or interest payable by, or refundable to, the assessee, the following adjustments 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;

(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.

In the instant case, it is clause (iii) of the proviso which was sought to be applied by the income tax Officer. The said clause clearly provides that the income tax Officer can make an adjustment to the income or loss declared in the return if, on the basis of the information available in such return, accounts or documents, the deduction allowance or relief claimed is prima facie inadmissible. The conclusion that the claim of the assessee is inadmissible must, in other words, flow from the return as filed. No power is given to the income tax Officer to disallow a claim for the reason that there is no proof in support of the claim made by the assessee. In a way, the said clause (iii) of the proviso is analogous to section 154 of the Act.

Where it is evident from the return as filed, along with the documents in support thereof, that a claim of the assessee is inadmissible, only then an adjustment under the said proviso can be made. If proof in support of the claim is not, furnished by an assessee, then for the lack of proof, no dis-allowance or an

adjustment can be made. The only option which is open to the income tax Officer, in such a case, is that he can require the assessee to furnish proof in which case he will presumably have to issue notice u/s 143(2). This is also evident from the fact that, except for the documents specified, the assessee is not required to file the entire books of account or other documents along with the return. The proof in support of the claim may be evidenced from correspondence, from the books of account or other documents and it is not the law, as we understand it, that, in support of a claim made in the return for deduction or non-taxability of a receipt, all, the proofs available and original documents must be filed along with the return. It is apparent on a reading of the said provision that adjustment can be made only if there is information available in such return that prima facie a claim or allowance is inadmissible. For the aforesaid view which we are taking, support is available from the understanding of the said provision by the Department itself. Learned counsel for the petitioner has drawn our attention to Circular No. 549 reported at 1990 182 ITR (St.) 1, at page 21, issued by the Central Board of Direct Taxes wherein examples have been given of adjustments which can be carried out. The relevant part of the said circular is as under :

The prima facie adjustments mentioned at (ii) above can be made only on the basis of information available in the return or the accompanying accounts or documents and not on the basis of the past records of the assessee. Some examples of such prima facie admissibles or inadmissibles in respect of which adjustments can be made to the returned income or loss are :

(i) While computing income under the head "Salaries", standard deduction u/s 16(1) is not claimed, or claimed at a figure which is less than or in excess of the permissible limit.

(ii) While computing income under the head "Income from house property", deduction for 1/6th for repairs or for a new unit under the proviso to section 23(1) is not claimed, or claimed at a figure which is less than or is in excess of the permissible amount.

(iii) While computing income under the head "Profits and gains of business or profession", depreciation is claimed at rates lower or higher than those provided for in the income tax Rules.

(iv) While computing capital gains, deduction of Rs. 10,000 u/s 48(2) is not claimed or claimed less or in excess of this amount.

(v) Carried forward speculation loss set off against income from business or profession or against income under any other head.

(vi) Loss under any head, other than under the head "Profits and gains of business or profession", carried forward and set off against the current income.

(vii) Carried forward loss of business set off against income of the current year under other heads.

(viii) Old loss of more than eight assessment years set off against the current business income, if the information is available in the return or the accompanying documents.

(ix) Deduction u/s 80C in respect of provident fund contributions or life insurance premia or N. S. C. VI or VII Issue not claimed, though the information is available in the documents accompanying the return, or claimed at a figure which is less than or is in excess of the permissible amount.

(x) Deduction u/s 80L not claimed or claimed at a figure which is less than or is in excess of the permissible amount.

(xi) Deduction u/s 80G not claimed, although allowable on the basis of the information available in the return or the accompanying documents or claimed at a figure which is less than or is in excess of the permissible limit.

(xii) Deduction u/s 80M claimed at sixty per cent. Of gross dividend income instead of on net dividend income in violation of the provisions of section 80AA.

It may be mentioned that the above is not an exhaustive but only an illustrative list of prima facie admissibles or inadmissibles for which adjustments can be made to the returned income or loss."

The aforesaid examples contained in the circular clearly show that, for want of proof, no disallowance or adjustment can be made. It

is only when a disallowance is evident from the facts on record that an adjustment can be made.

2. With regard to the third adjustment, we find that the assessee along with the return had filed details of statutory dues as on 31.3.1989. The assessee had also filed details of payments made thereafter from 1.4.1989 till the date of filing of the return on 28.12.1989. The assessee in the form of a chart had given details of payments made to provident fund trust and also the sales tax dues. The total amount paid between 1.4.1989 till the date of filing of the return is as under:

Turnover Tax

20,951.00

P.F. Trust

1,02,020.00

16.4.89

464.00

13.4.89

1,00,250.00

13.4.89

242.00

15.7.89

64.00

1,01,020.00

Sales Tax Payable

(85,545.16-1,219.44) 84,325.72

8.5.89

34,727.56

12.5.89

46,855.60

29.4.89

3,962.00

85,545.16

professional Tax at Source

40.00

13.6.89

Interest accrued

6,83,24,235.00

12.4.89

3,74,026.00

17.5.89

11,09,589.00

1483615.00

The total amount works out to Rs.16,69,470/-.

3. There was debate whether the third addition could have been made by the Assessing Officer u/s 143(1)(a), but we need not examine this aspect as the addition itself u/s 43B is not justified and cannot be sustained. Section 43B was inserted in the statute in 1.4.1984 and thereafter the first proviso was inserted by Finance Act, 1987 which came into force with effect from 1.4.1988. Subsequently, explanation (ii) added to the Finance Act, 1989 with retrospective effect from 1.4.1984. Examining the purport of the first proviso of Section 43 B in Allied Motors (P.) Ltd. Vs. Commissioner of Income Tax, Delhi, it has been held

by the Supreme Court that the first proviso to Section 43B has to be treated as retrospective and should be read as a part of the Act with effect from 1.4.1984 itself. The Supreme Court observed that the amendment would not serve its objective unless it is construed as retrospective. Without first proviso, and explanation 2 would not obviate the hardship of Section 43B. The proviso supplies an obvious omission.

4. In view of the aforesaid position, the third addition also cannot be justified and has to be deleted on merits itself. In view of the aforesaid discussion, the present writ petition is allowed and the impugned order dated 15.3.1990 u/s 143 (1)(a) is set aside/quashed. The effect thereof will be that the impugned order u/s 154 as well as demand of additional tax plus interest are set aside. This order will not affect or be construed as expression of opinion on merits in case regular assessment proceedings were initiated u/s 143(2) of the Act. No costs