

(2000) 11 KAR CK 0017
In the Karnataka High Court
Case No : Income-tax Appeal No. 13 of 2000

Income Tax Officer

APPELLANT

Vs

Mandira D. Vakharia

RESPONDENT

Date of Decision : 17-11-2000

Acts Referred:

Income Tax Act, 1961 — Section 143 (1) (a), 154, 260 A, 80 GG, 80 HHE (4)

Citation : (2001) 167 CTR 224 : (2001) 250 ITR 432 : (2001) 117 TAXMAN 236

Hon'ble Judges : Ashok Bhan, J;A.V. Sreenivasa Reddy, J

Bench : Division Bench

Advocate : E.R. Indra Kumar, for the Appellant; S. Parthasarathy, for the Respondent

Judgement

Ashok Bhan, J.—Aggrieved against the order passed by the Income Tax Appellate Tribunal, Bangalore (for short "the Tribunal"), in I. T. A. No. 173/Bang. of 1993, dated September 23, 1999, relating to the assessment year 1992-93, the Revenue has come up in appeal u/s 260A of the Income Tax Act, 1961 (for short, "the Act"). According to the Revenue, the following substantial questions of law arise from the order of the Tribunal :

"(a) Whether, on the facts and circumstances of the case, the Tribunal was correct in holding that the disallowance made by the assessing authority in the assessee's case u/s 143(1)(a) of the Act was not proper?

(b) Whether, on the facts and circumstances of the case, the Tribunal was correct in law in holding that the assessing authority was required to rectify the mistake u/s 154 of the Income Tax Act, 1961 ?"

2. Admit.

3. With the consent of counsel for the parties, we proceed to answer the questions of law raised before us,

4. The respondent-assesses (for short, "the assessee"), is a software consultant

and is doing the business of exporting the software out of India. The assessee filed her return for the assessment year 1992-93. Deduction u/s 80HHE(4) and u/s 80GG of the Act was denied to the assessee on the ground that proof of certificate (report from the chartered accountant in the prescribed form) had not been enclosed with the return of income. The assessee filed a rectification application u/s 154 of the Act. With the rectification application, she attached the certificate in proof of the claim made by her u/s 80HHE and Section 80GG. The assessing authority declined to rectify its earlier order on the ground that the assessee is required to file the proof or certificate in support of the deduction claimed under Sections 80HHE and 80GG at the time of filing of the return and the proof or certificate filed by her with a rectification application could not be taken into consideration.

5. The assessee, being aggrieved by the order of the assessing authority, filed an appeal before the Commissioner of Income Tax (Appeals), which was accepted and held that non-filing of the proof or certificate from the chartered accountant with the original return was not fatal to the claim made by the assessee. That the proof could be furnished later on with the rectification application. The assessing authority should have taken into consideration the proof furnished by the assessee with the rectification application while considering the claim of the assessee for deduction under Sections 80HHE and 80GG of the Act. The Commissioner of Income Tax (Appeals) allowed the claim of the assessee in full.

6. Aggrieved by the order of the Commissioner of Income Tax (Appeals), the Revenue filed further appeal before the Tribunal which has been dismissed by the impugned order. The Tribunal has dismissed the appeal relying upon a circular of the Central Board of Direct Taxes (for short, "the Board circular"), holding that disallowance made by the Assessing Officer for not furnishing the particular form along with the return was not in accordance with the Board circular. That the assessing authority had erred in not rectifying the order u/s 154 of the Act after the assessee furnished the requisite proof/certificate in support of the claim made by her under Sections 80HHE and 80GG of the Act.

7. The operative portion of the Board circular reads (see [1994] 209 ITR 75) :

"Scope of prima facie disallowance u/s 143(1)(a) of the Income Tax Act, 1961-- Clarification regarding.

Section 143(1)(a) authorises, with effect from the assessment year 1989-90, inter alia, disallowance of any loss carried forward, deduction, allowance or relief claimed which, on the basis of information available in the return or the accompanying accounts or documents, is prima facie inadmissible. The earlier instructions of the Board were to the effect that no disallowance should be made of items on which two opinions are possible. The matter has been further considered by the Board in the light of the recommendations of the Tax Reforms Committee headed by Prof. Raja J. Chelliah (see Commissioner of Income Tax Vs. Builders Union, , and it has been decided that prima facie disallowances shall be

made only in respect of the following types of claims :

(a) ... (not relevant for the purpose of this appeal) ;

(b) any claim in respect of which there is an omission of information which is required, under the specific provisions of the Act or the rules, to be furnished along with the return to substantiate such claim. Example :

If the audit report specified u/s 80HHC(4), which is required to be filed along with the return of income, is not so filed, the deduction claimed under that section can be disallowed as a prima facie adjustment. Some more examples in this regard are the non-filing of audit reports or other evidence along with the return of income as required under Sections 12A(b), 33AB(2), 35E(6), 43B (first proviso) . . . 80-I(7), 80-IA(8) and the like. But if evidence is subsequently furnished, rectification u/s 154 should be carried out to the extent permitted by the Board's Circular No. 669, dated October 25, 1993. No prima facie disallowances shall, however, be made if any evidence, required to be filed along with the return of income only in pursuance of the non-statutory guidance notes for filing in the return of income, is not so filed."

8. By the Board circular, it has been made clear that if the audit report specified u/s 80HHC(4) is not furnished with the return, then the deduction may be disallowed as a prima facie adjustment. But, if evidence is subsequently furnished, rectification u/s 154 should be carried out to the extent permitted by the Board Circular No. 669, dated October 25, 1993 (see [1993] 204 ITR 105). The circular then proceeds to mention some other provisions in regard to the non-filing of the audit report or other evidence along with the return of income as required under various Sections such as 12A(b), 33AB(2), 35E(6), 43B (first proviso),

-I(7), 80-IA(8) and the like. The case of the Revenue is that since Sections 80HHE and 80GG are not specifically mentioned in the Board circular, the assessee would not be entitled to the benefit of deductions under Sections 80HHE and 80GG on the furnishing of the audit report/proof with the rectification application.

9. The submission is without any substance. The intention of the Board is clear. The illustrations and instances referred to in the Board circular are qualified by the words ". . . and the like". The illustrations and instances given by the Board are not exhaustive. The intention behind the Board circular is that in case the audit report required to be filed, was not furnished with the return of income, then the deduction claimed can be disallowed as a prima facie adjustment. But, if it is furnished subsequently, then rectification should be carried out to the extent permitted by the Board Circular No. GG9, dated October 25, 1993 (see [1993] 204 ITR 105). The illustrations given in the Board circular, being not exhaustive, it would include provisions like Sections 80HHE and 80GG as well. The assessee has claimed the same relief as would have been admissible to an assessee who was claiming deduction u/s 80HHC(4) and other sections mentioned in the

Board's circular. The assessee claiming deduction under Sections 80HHE and 80GG of the Act would be similarly situated as an assessee claiming deduction u/s 80HHC(4) of the Act or other provisions mentioned in the Board circular. The use of the words " . . . and the like", in the Board circular, would include the assessee who are claiming a similar relief although the provision of the Act is not specifically mentioned in the Board circular.

10. The assessee would be entitled to the deductions in the rectification u/s 154 to the extent permitted by the Board Circular No. 669, dated October 25, 1993 (see [1993] 204 ITR 105). The Assessing Officer was not right in law in disallowing the rectification application only on the ground that the assessee had failed to furnish the audit report along with the return of income.

11. The Tribunal was right in law in extending the benefit of the Board circular to the assessee's case as well. The Assessing Officer has rightly been directed to rectify his order and extend the benefit of deductions under Sections 80HHE and 80GG of the Act to the assessee in terms of the Board's circular.

12. For the reasons stated above, the substantial questions of law on which the appeal is admitted, are answered in the affirmative, i.e.. in favour of the assessee and against the Revenue.