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(1992) 08 BOM CK 0080

In the Bombay High Court

Case No : Writ Petition No. 2961 of 1991

Indian Rayon and Industries Ltd. and another — APPELLANT

Vs

J.R. Kanekar, Assistant Commissioner of Income Tax and another — RESPONDENT

Date of Decision : 24-08-1992

Acts Referred:
Income Tax Act, 1961 — Section 115J, 143(1), 143(1A), 80HHC, 80HHC(3)

Citation : (1992) 108 CTR 384 : (1993) 200 ITR 747

Hon'ble Judges : Sujata V. Manohar, J;B.N. Srikrishna, J

Bench : Division Bench

Advocate : A.V. Sonde, for the Appellant; G.S. Jetley, for the Respondent

Judgement

B.N. Srikrishna, J.—This writ petition impugns an intimation u/s 143(1)(a) of the Income Tax Act, 1961, which was issued on July 22, 1991.

2. In respect of the assessment year 1990-91, the petitioners returned a total income of Rs. 1,27,61,550. Purportedly, in exercise of jurisdiction u/s 143(1)(a) of the Income Tax Act, 1961, the Assessing Officer issued an intimation informing the petitioners that the total income after adjustment under the said section would be Rs. 4,95,84,870 and claimed a total tax of Rs. 88,52,902 inclusive of additional tax u/s 143(1A) amounting to Rs. 39,76,918. The adjustment memo attached to the intimation served on the petitioners shows that the Assessing Officer has disallowed the deduction u/s 115J claimed by the petitioners and has added a sum of Rs. 10,86,08,000, transferred from the revaluation reserve and an amount of Rs. 1,07,41,000 towards "fall in profit due to change in the method of valuation of closing stock as per audit note".

3. Reading the statement contained in the adjustment memo, in the light of the provisions of section 143(1)(a), particularly clauses (i), (ii) and (iii) appended to the first proviso thereof, we are of the view that the exercise carried out by the Assessing Officer, in the grab of adjustment u/s 143(1)(a), was wholly beyond his jurisdiction and impermissible under the first proviso to section 143(1)(a).

4. We have also noticed that the Assessing Officer has totally disallowed the claim u/s 115J on the ground that the petitioners had not filed the prescribed report from an accountant as provided u/s 80HHC(4) certifying the export turnover on which basis the deductible profits u/s 80HHC(3) were computed. Prima facie, we see no warrant for this finding, since section 115J does not require an assessee to produce any such certificate in order to claim the deduction prescribed therein. While it is true that section 80HHC(4) requires a certificate to be produced, this was a case where the petitioners had made no claim u/s 80HHC at all.

5. In any event, the adjustment of the three items made by the Assessing Officer, in our view, was wholly impermissible u/s 143(1)(a) as interpreted by a Division Bench of this court to which one of us (Mrs. Sujata Manohar J.) was a party in the case of Khatau Junkar Ltd. and another Vs. K.S. Pathania and another, . We are, therefore, of the view that the intimation dated July 22, 1991, u/s 143(1)(a) is erroneous and without jurisdiction and is, therefore, required to be quashed and set aside.

6. In the result, the impugned intimation dated July 22, 1991, exhibit ''F'' to the petition, is hereby quashed and set aside. Consequently, the claim made for additional tax u/s 143 (1A) is also set aside. The respondents are directed to issue a fresh intimation order u/s 143(1)(a) following the law laid down by the above judgment and to make consequential refund orders, if any, in the circumstances of the case.

7. Rule is made absolute accordingly.

8. No order as to costs.

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