
(2006) 02 KL CK 0031
In the High Court Of Kerala
Case No : IT Ref. No. 46 of 1998

Janatha Tile Works Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 10-02-2006

Acts Referred:

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

Citation : (2006) 202 CTR 103 : (2006) 283 ITR 35 : (2006) 2 KLT 426

Hon'ble Judges : K.T. Sankaran, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : P. Balachandran, for the Appellant; P.K.R. Menon and George K. George, for the Respondent

Judgement

K.S. Radhakrishnan, J.—Tribunal, Cochin Bench has made this reference u/s 256(1) of the IT Act, 1961. Three questions of law have been referred for consideration which are given below :

(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the intimation u/s 143(1)(a) would survive after passing an order of assessment u/s 143(3) of the IT Act, 1961 ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the intimation u/s 143(1)(a) could be rectified after the order u/s 143(3) was passed ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that there could be a levy of additional tax u/s 143(1A) for the first time by an order u/s 154 ?

The assessee filed return of income on 31st Dec, 1990 for the asst. yr. 1990-91 declaring a loss of Rs. 1,58,225. AO processed the return u/s 143(1)(a) on 20th Aug., 1991 accepting the returned loss. Later AO noticed that a mistake has been committed in processing the return as the provisions of Section 43B were not applied in respect of the assessee's claim of bonus. Assessee had claimed

deduction for Rs. 2,07,114 as bonus payable even though the liability was outstanding as on 31st March, 1990, last date of the accounting year. Assessee had no objection in rectifying the intimation u/s 154. AO passed the order of rectification on 26th Aug., 1992. Consequently, AO also levied additional Income Tax of Rs. 22,368 u/s 143(1)(a).

2. Assessee however took up the matter in appeal before the CIT(A) with the plea that after the return had been processed u/s 143(1)(a), AO completed the regular assessment u/s 143(3) on 27th March, 1992 and that after the passing of the assessment order the intimation u/s 143(1)(a) did not survive and so the same could not be subjected to rectification u/s 154 of the Act. CIT(A) did not accept the said contention and rejected the plea. The order was confirmed in appeal by the Tribunal. Correctness or otherwise of the decision of the Tribunal would depend upon the answers we give to the questions posed.

3. Senior counsel for the assessee Sri P. Balachandran submitted that after the passing of the assessment order u/s 143(3) proceedings u/s 143(1)(a) would not survive and as such ineffective proceedings could not be rectified u/s 154 of the Act. Counsel also submitted no intimation can be issued u/s 143(1)(a) after notice u/s 143 has been issued. Resultantly counsel submitted there could be no rectification of intimation. Counsel submitted in the instant case AO has passed an order of rectification u/s 154 and also levied additional Income Tax after the issuance of notice u/s 143(2) followed by regular assessment u/s 143(3) and so the order of rectification could not have been processed.

4. Counsel placed considerable reliance on the decision of the Calcutta High Court in *Coates of India Ltd. Vs. Deputy Commissioner of Income Tax and Others* (No. 1), . Reference was also made to the decision of the same Court in *Modern Fibotex India Ltd. and Another Vs. Deputy Commissioner of Income Tax and Others*, . Counsel also placed reliance on the decision of the Delhi High Court in *CIT v. Punjab National Bank* (2001) 166 CTR (Delhi) 340 : (2001) 249 ITR 763 and the decision of the Gujarat High Court in *Gujarat Poly-Avx Electronics Ltd. Vs. Deputy Commissioner of Income Tax*, .

5. Counsel appearing for the Revenue, Sri George K. George, on the other hand contended that in processing the return u/s 143(1)(a) AO ought to have disallowed the claim of bonus by applying Section 43B and then levied additional Income Tax. Counsel submitted that by mistake additional tax was not levied. Counsel submitted that the assessee did not dispute the fact that bonus of Rs. 20,714 outstanding as unpaid liability as on 31st March, 1991 was not allowable deduction and in view of the provisions of Section 43B the same should have been disallowed. Counsel submitted addition u/s 43B should have been made in processing the return u/s 143(1)(b). Counsel submitted that the Tribunal is justified in not following the decisions of the Calcutta and Delhi High Courts since the impact of the Finance Act, 1992 was not pointedly raised or considered in the above decisions. Counsel submitted that Revenue is justified in levying additional Income Tax of Rs. 22,368 u/s 143(1A) of the Act.

6. The question to be considered is whether the AO, u/s 154 could rectify the mistake in the intimation u/s 143(1)(a) in allowing the claim of bonus even though the liability had not been outstanding on the last day of the accounting year. Necessity of introducing Section 143(1A) was felt because of the increase in respect of the Income Tax assessees. On 1st April, 1989 a new scheme was introduced by which the requirement of passing an assessment order in all cases where returns of income are filed has been dispensed with and the issue of an acknowledgement slip to the assessee will conclude the matter if he has correctly paid the tax and interest, if any, due on the basis of the return. If on the basis of the return any amount is found due from the assessee, the same can be recovered and if any refund is found due it can be granted without passing an assessment order. Sub-section (1A) to Section 143 was inserted allowing the Department to make adjustments after filing the return. It is unnecessary to scan through the various amendments for answering the questions posed in this case; however we may extract the relevant provisions which are necessary to answer the questions.

7. Section 143(1) as it stood at the relevant point of time is extracted below.

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

Provided further that where adjustments are made under the first proviso, an

intimation shall be sent to the assessee, notwithstanding that no tax or interest is found due from him after making the said adjustments :

Provided also that an intimation for any tax or interest due under this clause shall not be sent after the expiry of two years from the end of the assessment year in which the income was first assessable.

(b) Where, as a result of an order made under Sub-section (3) of this section or Section 144 or Section 147 or Section 154 or Section 155 or Section 250 or Section 254 or Section 260 or Section 262 or Section 263 or Section 264, or any order of settlement made under Sub-section (4) of Section 245D relating to any earlier assessment year and passed subsequent to the filing of the return referred to in Clause (a), there is any variation in the carry forward loss, deduction, allowance or relief claimed in the return, and as a result of which,-

(i) if any tax or interest is found due, 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, it shall be granted to the assessee:

Provided that an intimation for any tax or interest due under this clause shall not be sent after the expiry of four years from the end of the financial year in which any such order was passed.

(c) Where the assessee is a partner of a firm or a member of an AOP or BOI and as a result of the adjustments made under the first proviso to Clause (a) of Sub-section (1) in the income or loss declared in the return made by the firm, association or body, as the case may be, or as a result of an order made under Sub-section (3) of this section or Section 144 or Section 147 or Section 154 or Section 155 or Sub-section (1) or Sub-section (2) or Sub-section (3) or Sub-section (5) of Section 185 or Sub-section (1) or Sub-section (2) of Section 186 or Section 250 or Section 254 or Section 260 or Section 262 or Section 263 or Section 264, or any order of settlement made under Sub-section (4) of Section 245D, passed subsequent to the filing of the return referred to in Clause (a), there is any variation in his share in the income or loss of the firm, association or body, as the case may be, or in the manner of inclusion of his share in the returned income, then,-

(i) if any tax or interest is found due, 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, it shall be granted to the assessee:

Provided that an intimation for any tax or interest due under this clause shall not be sent after the expiry of four years from the end of the financial year in which

any such adjustments were made or any such order was passed.

(IA)(a) Where, in the case of any person, the total income, as a result of the adjustments made under the first proviso to Clause (a) of Sub-section (1), exceeds the total income declared in the return by any amount, the AO shall,-

(i) further increase the amount of tax payable under Sub-section (1) by an additional Income Tax calculated at the rate of twenty per cent of the tax payable on such excess amount and specify the additional Income Tax in the intimation to be sent under sub-cl. (i) of Clause (a) of Sub-section (1).

(ii) where any refund is due under Sub-section (1), reduce the amount of such refund by an amount equivalent to the additional Income Tax calculated under sub-cl. (i).

(b) Where as a result of an order under Sub-section (3) of Section 143 or Section 154 or Section 250 or Section 254 or Section 260 or Section 262 or Section 263 or Section 264, the amount on which additional Income Tax is payable under Clause (a) has been increased or reduced, as the case may be, the additional Income Tax shall be increased or reduced accordingly, and,-

(i) in a case where the additional Income Tax is increased, the AO shall serve on the assessee a notice of demand u/s 156;

(ii) in a case where the additional Income Tax is reduced, the excess amount paid, if any, shall be refunded.

Explanation.-For the purpose of this Sub-section, "tax payable on such excess amount" means,-

(i) in any case where the amount of adjustments made under the first proviso to Clause (a) of Sub-section (1) exceed the total income, the tax that would have been chargeable had the amount of the adjustments been the total income;

(ii) in any other case, the difference between the tax on the total income and the tax that would have been chargeable had such total income been reduced by the amount of adjustments.

(2) Where a return has been made u/s 139, or in response to a notice under Sub-section (1) of Section 142, the AO shall, if he considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner, serve on the assessee a notice requiring him, on a date to be specified therein, either to attend his office or to produce, or cause to be produced there, any evidence on which the assessee may rely in support of the return :

Provided that no notice under this Sub-section shall be served on the assessee after the expiry of the financial year in which the return is furnished or the expiry of six months from the end of the month in which the return is furnished, whichever is later.

(3) On the day specified in the notice issued under Sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the AO may require on specified points, and after taking into account all relevant material which he has gathered, the AO shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him on the basis of such assessment.

(4) Where a regular assessment under Sub-section (3) of this section or Section 144 is made,-

(a) any tax or interest paid by the assessee under Sub-section (1) shall be deemed to have been paid towards such regular assessment;

(b) if no refund is due on regular assessment or the amount refunded under Sub-section (1) exceeds the amount refundable on regular assessment, the whole or the excess amount so refunded shall be deemed to be tax payable by the assessee and the provisions of this Act shall apply accordingly.

Abovementioned provision has been interpreted by the Calcutta High Court as well as the Delhi High Court and also by the apex Court. The scope of ss. 143(1) and 143(2) and (3) was also the subject-matter of several decisions.

8. The Supreme Court in *Commissioner of Income Tax Vs. Gujarat Electricity Board*, examined the question as to whether it is open to the Revenue to issue intimation u/s 143(1)(a) of the Act after notice of regular assessment has been issued u/s 143(2) of the Act and held as follows :

There is no dispute that Section 143(1)(a) of the Act enacts a summary procedure for quick collection of tax and quick refunds. Under the scheme if there is a serious objection to any of the orders made by the AO determining the income, it is open to the assessee to ask for rectification u/s 154. Apart therefrom, the provisions of Section 143(1)(a)(i) indicate that the intimation sent u/s 143(1)(a) shall be without prejudice to the provisions of Sub-section (2). The legislature, therefore, intended that, where the summary procedure under Sub-section (1) 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 under Sub-section (2) of Section 143. The converse is not available; a regular assessment proceedings having been commenced u/s 143(2), there is no need for a summary proceeding u/s 143(1)(a).

The Calcutta High Court in *Coates of India Ltd. v. Dy. CIT (supra)* however took the view that where the order u/s 143(1)(a) is followed by a regular assessment u/s 143(3), the order u/s 143(1)(a), insofar as it is contrary to the regular assessment u/s 143(3) ceases to be executable and becomes ineffective. The Court also opined that apart from the fact that no notice u/s 154 being permissible in the circumstances of the case, AO himself could not have decided any debatable issue u/s 143(1)(a). The Court held that by the issue of notice u/s

154 the Dy. CIT is seeking to correct the intimation u/s 143(1)(a) by introducing a matter which he could not have decided u/s 143(1)(a) in the first place. Calcutta High Court was in fact following its earlier decision in *Modern Fibotex India Ltd. v. Dy. CIT* (supra). Delhi High Court in *Punjab National Bank's case* (supra) also took the view that rectification of an intimation cannot be made after issuance of notice u/s 143(2) and during the pendency of proceedings u/s 143(3). The Court held that if any change was permissible to be effected, the same can be done in the assessment u/s 143(3) and not by exercising power u/s 154 to rectify the intimation issued u/s 143(1)(a). Delhi High Court though quoted Section 143, but omitted to note the inclusion of the words "Sub-section (3) of Section 143" in Sub-section (IA)(b) of Section 143 and therefore, the impact of those insertion could not be considered.

9. The Gujarat High Court in *Gujarat Poly-Avx Electronics Ltd. v. Dy. CIT* (supra) examined the scope of sub-ss. (1) and (2) of Section 143 and held that after the issuance of notice u/s 143(2) of the Act, it is not open to the AO to make adjustment or to pass an order u/s 143(1) of the Act, but he has to make assessment in accordance with law, that is, u/s 143(3) of the Act. The Gujarat High Court followed the principle laid down in the decision of the Calcutta High Court in *Modern Fibotex India Ltd. v. Dy. CIT* (supra).

10. We, with due respect, find ourselves unable to agree with the principles laid down by the High Courts of Gujarat, Calcutta and Delhi since those Courts have failed to examine the effect of insertion of the words "Sub-section (3) of Section 143" in Clause (b) of Section 143(1A) by the Finance Act, 1992 (18 of 1992) w.e.f. 1st April, 1989. Questions posed before us have to be answered taking into consideration the abovementioned insertion.

11. Section 143(IA)(b) was inserted w.e.f. 1st April, 1989 by the Direct Tax Laws (Amendment) Act, 1989 and subsequently amended w.e.f. 1st April, 1989 by the Finance Act, 1992 operative from 1st April, 1989, that is, for and from the asst. yr. 1989-90 till 31st May, 1999; provision was however ultimately omitted w.e.f. 1st June, 1999 by the Finance Act, 1999, but had taken care of a situation (i) as a result of an order of regular assessment u/s 143(3), (ii) a rectification order u/s 154 or Section 250 or Section 254 or Section 260 or Section 262 or Section 263 or Section 264, the amount on which additional Income Tax shall be increased or reduced accordingly. The provision made to increase or reduce the amount of additional tax as a result of an order under Sub-section (3) of Section 143 would show that the intimation u/s 143(1)(a) would survive after an order u/s 143(3) is passed. The abovementioned facts would evidently show that the legislature had envisaged a situation that intimation u/s 143(1A) would survive after the completion of the order u/s 143(3) is passed or else there was no need to introduce Section 143(IA)(b), a provision for increase or reduce the amount of additional Income Tax as a result of Section 143(3). After making regular assessment u/s 143 on the basis of the income thus determined, if there is any move for enhancement or reduction in the additional Income Tax this could be

possible only if proceedings u/s 143(1)(a) survives after the completion of assessment u/s 143(3). In order to meet this situation, Sub-section (3) to Section 143 was incorporated by the Finance Act, 1992 w.e.f. 1st April, 1989 so as to provide for enhancement or reduction in additional Income Tax. The above crucial fact was omitted to be taken into consideration by the Calcutta, Gujarat and Delhi High Courts in the abovementioned decisions.

12. We are, therefore, of the view that additional Income Tax u/s 143(1A) could be levied in an order u/s 154(1)(b) if the AO has failed to levy at the first instance in the intimation issued u/s 143(1)(a). We find it difficult to accept the contention that u/s 154 only a mistake in the quantification of income can be corrected and not a mistake in not levying additional Income Tax. Under the abovementioned circumstances we are inclined to answer the questions in favour of the Revenue and against the assessee.