

(1992) 08 BOM CK 0003
In the Bombay High Court
Case No : W. P. No. 532 of 1991

Mahalakshmi Glass Works Ltd. and another	APPELLANT
Vs	
Sunil Gupta, 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), 205(1), 3

Citation : (1993) 203 ITR 658

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

Bench : Division Bench

Advocate : N.A. Dalvi, for the Appellant; G.S. Jetly, for the Respondent

Judgement

Mrs. Sujata Manohar J.

1. The first petitioner is a limited company incorporated under the provisions of the Companies Act, 1956, and is engaged in the business of manufacture and sale of glass and glassware. In this petition, the petitioners have challenged the validity of an intimation sent by respondent No. 1 u/s 143(1)(a) of the Income Tax Act, 1961, increasing the first petitioner's returned total income for the assessment year 1989-90 by Rs. 11,35,690 and calling upon the first petitioner company to pay a total Income Tax of Rs. 25,88,717.

2. The previous year of the first petitioner for the assessment year 1989-90 was the period of 21 months starting from July 1, 1987, and ending on March 31, 1989. This was in view of the amendments made to section 3 of the said Act.

3. As per the accounts of the first petitioner-company for the year ending on June 30, 1987, the depreciation debited to the accounts for that year amounted to Rs. 52,31,168. The loss for that year after providing for depreciation was Rs. 53,85,585.

4. For the purpose of the Companies Act, 1956, the first petitioner prepared its accounts for the accounting year July to June of the next year. It has,

accordingly, prepared its accounts for the year ended on June 30, 1988. For the period July 1, 1988, to March 31, 1989, the account is prepared separately. Since the previous year relevant to the assessment year 1989-90 covered both these periods, the first petitioner-company computed its income by taking into consideration the accounts for both these periods. The book profits of the petitioners for the said period computed in accordance with section 115J amounted to Rs. 86,82,178. u/s 115J, 30 per cent. of this amount came to Rs. 26,04,653. Since this was less than the petitioners' total income of Rs. 31,19,800, as computed under the Act, the petitioner returned the total income of Rs. 31,19,800 as its chargeable income for the assessment year 1989-90.

5. The intimation dated August 3, 1990, which is issued by respondent No. 1, however, has adjusted the petitioners' total income at Rs. 42,55,489 as against the returned income of Rs. 31,19,800. This is because, in computing the first petitioner's book profits u/s 115J, the first respondent has not allowed any amount under the provisions of clause (b) of the first proviso to section 205(1) of the Companies Act. Accordingly, he has computed tax on the total income at Rs. 23,40,511, surcharge at Rs. 1,17,026 and additional tax u/s 143(1A) at Rs. 1,31,192. This has been adjusted against the refunds due to the first petitioner.

6. The intimation which is required to be given u/s 143(1)(a) must determine the tax found due on the basis of the return and if any refund is due on the basis of such return, it shall be granted to the assessee. The scope of an intimation u/s 143(1)(a) has been considered by a Division Bench of this court, to which one of us (Mrs. Sujata V. Manohar J.) was a party, in the case of Khatau Junkar Ltd. and another Vs. K.S. Pathania and another, . In view of the ratio which is laid down in that judgment, the first respondent had no jurisdiction u/s 143(1)(a) of the Act to reopen the account of the assessee and to recalculate the quantum of income of the assessee by allowing or disallowing certain deductions as set out hereinabove. The intimation dated August 3, 1990, is, therefore, set aside.

7. Since the impugned intimation u/s 143(1)(a) is set aside, the additional tax levied u/s 143(1A) is also set aside. The respondents are directed to issue a fresh intimation u/s 143(1)(a) of the Income Tax Act, 1961, in accordance with law and in the light of the ratio laid down by the above judgment and to grant to the petitioners refund, if any, due to them under the fresh intimation to be issued as aforesaid.

8. Rule is made absolute accordingly.

9. No order as to costs.