
(1991) 10 DEL CK 0026
In the Delhi High Court
Case No : C.W. No. 3699 of 1990

Modi Cements Ltd.

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 25-10-1991

Acts Referred:

Citation : (1992) 60 TAXMAN 500

Hon'ble Judges : B.N. Kirpal, J;Arun Kumar, J

Bench : Division Bench

Advocate : S.K. Aggarwal, for the Appellant; B. Gupta and R.K. Chaufla, for the Respondent

Judgement

B.N. Kirpal, J.—Enactment of new provisions in the Income Tax Act, 1961, instead of reducing more than not, increases litigation. This is either because of the ambiguity or lack of clarity in the provision enacted or the manner in which the newly enacted provision is applied. The present case falls in the second category as we shall presently see.

2. In respect of the assessment year 1989-90, the petitioner-company filed a return of loss of Rs. 1,36,83,23,142 and claimed a refund of Rs. 1,64,013 which was tax deducted at source. This return was filed on December 28, 1989, and, according to the petitioner, the same was accompanied by all the necessary annexures, documents, statements, annual reports, etc.

3. The Deputy Commissioner of Income Tax (Assessment), on August 30, 1990, intimated to the petitioner that this return of loss, subject to adjustments, had been accepted. The Deputy Commissioner disallowed expenses to the tune of Rs. 3,86,00,759 and the reason for this disallowance was contained in the adjustments explanatory sheet annexed to the said intimation sent u/s 143(1)(a) of the Income Tax Act. The said sheet disclosed three items of disallowance. The first was of Rs. 3,32,24,375 which was claim made u/s 43B. This was disallowed for want of proof of payment as the proof was allegedly not enclosed. Accordingly

to the petitioner, at the time when the return was filed, the duly audited balance-sheet along with the tax audit report had been enclosed and that itself was tantamount to proof of payment. The second item which was disallowed was sum of Rs. 1,55,860. The reason for the disallowance was "cost of individual items of presentation exceeding Rs. 50". The third item disallowed was of Rs. 52,20,524 which was the investment allowance which was claimed and the said disallowance was for the reason that the (requisite) reserve had not been created.

4. For the view which we are taking, it is not necessary for us to go into the correctness or legality of the aforesaid disallowances specially for the reason that proceedings u/s 143(3) in respect of the assessment year 1989-90, for which the aforesaid return was filed, have now been initiated by the assessing authority of the issuance of a notice u/s 143(2). The question as to whether the disallowances had been rightly made or not would be gone into in the regular assessment which is being framed.

5. Pursuant to the assessing authority having determined the amount of loss admissible, which came to the figure of Rs. 1,32,97,22,383, the Deputy Commissioner proceeded to invoke and apply the provisions of section 143(1A) and came to the conclusion that the additional tax of Rs. 38,60,075 was payable by the petitioner. It is this demand which has been challenged before us.

6. On a return being filed u/s 139 or in response to a notice under sub-section (1) of section 142, the Assessing Officer has an option to frame an assessment under sub-section (1) of section 143 on the basis of the return filed. The Assessing Officer is entitled to make adjustments in the income or loss declared. The adjustments which can be made are referred to in the first proviso to section 143(1).

7. Sub-section (1A) was inserted with effect from April 1, 1989. Sub-clause (a) of the said provision read as follows :

"143. (1A) (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 Assessing Officer 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-clause (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-clause (i)."

8. It is the aforesaid provision which has been applied by the Deputy Commissioner of Income Tax seeking to raise a demand of Rs. 38,60,075. Presumably, this amount represents 20% of the tax payable on Rs. 3,86,00,759.

9. A plain reading of section 143(1A)(a) shows that the said provision would apply only where, as a result of the adjustments carried out as per the first proviso to clause (a) of sub-section (1), the total income which is declared is exceeded. In other words, the return must declare an income and not loss for the said sub-section to apply and secondly, as a result of the adjustments, there should not be any loss but there should be an income. To put it differently, it is only if the adjustments which is made results in the reduction of loss that sub-section (1A) (a) of section 143 will not apply. Where, however, income and not loss is returned and the income declared is increased as a result of adjustments or if loss is returned but adjustments are carried out in accordance with the first proviso which result in an income, then, in our opinion, on a correct interpretation of sub-section (1A), the said provision would be applicable. This is for the reason that sub-clause (i) of section 143(1A)(a) uses the expression "further increases the amount of tax payable". This clearly indicates that, as a result of the adjustments made, there should be demand of tax and it is addition to this tax that 20% of the tax payable on the excess amount is also chargeable. The said provision clearly stipulate that, after an adjustment under sub-section (1) is made, the tax payable u/s 143(1) is determined. To the tax so determined, a further amount calculated at 20% of the tax payable on the amount adjusted is also livable and payable by the assessed. What is important is that, as a result of the adjustments carried out under sub-section (1) of section 143, the assessed became liable to pay some tax. Where, as in the present case, after the adjustments u/s 143(1) are carried out, the resultant figure is still a loss, the question of section 143(1A) applying does not arise. As a result of adjustments carried out, no tax is payable if the resultant figure is a loss and a question of there being any further increase to this does not arise. We are surprised that the Deputy Commissioner having accepted a huge loss of Rs. 1,32,97,22,383, still required the assessed to pay a sum of Rs. 38,60,075. If the interpretation sought to be put by the Department is correct, then there would be lot of force in the contention of Shri Aggarwal, learned counsel for the petitioner, that such a provision would be clearly arbitrary and may even have to be struck down.

10. In our opinion, however, there is no ambiguity in the said provision. As already indicated by us above, no additional tax u/s 143(1A) was payable by the petitioner in the present case.

11. In view of the fact that this writ petition is being allowed on the aforesaid interpretation of section 143(1A), it is not necessary for us to decide the other contentions.

12. For the aforesaid reasons, we issue a writ of certiorari quashing the intimation and order dated August 30, 1990, issued by the Deputy Commissioner of Income Tax in so far as it has raised a demand of Rs. 38,60,075 u/s 143(1A) against the petitioner.

13. The petitioner will be entitled to costs. Counsel's fee Rs. 500.