

(1998) 09 PAT CK 0040

In the Patna High Court

Case No : C.W.J.C. No's. 762 and 886 of 1992 and 493 of 1994

Parikh Engineering and Body Building Co. Ltd. and Another	APPELLANT
Vs	
Union of India (UOI) and Others	RESPONDENT

Date of Decision : 16-09-1998

Acts Referred:

Income Tax Act, 1961 — Section 115J, 143, 143(1), 143(3), 154

Citation : (2000) 158 CTR 469 : (1999) 238 ITR 554 : (1998) 3 PLJR 655 : (1999) 106 TAXMAN 19

Hon'ble Judges : Sachchidanand Jha, J;Aftab Alam, J

Bench : Division Bench

Advocate : Debi Pal, S.B. Gadodia, M.S. Mittal and R.K. Biswas, for the Appellant; Debi Prasad and K.K. Jhunjhunwala, for the Respondent

Judgement

S.N. Jha, J.—These writ petitions involving common questions of law and between the same parties have been heard together.

2. The dispute arises from the rectification of the so-called apparent mistake in the order passed u/s 143(3) in CWJC No. 493 of 1994(R), and intimation u/s 143(1)(a) in CWJC No. 762 of 1992(R) and CWJC No 886 of 1992(R), made in purported exercise of power u/s 154 of the Act in the matter of allowance of depreciation on account of bottles and crates. The difference between CWJC Nos. 762 of 1992(R) and 886 of 1992(R) on the one hand and CWJC No. 493 of 1994(R) on the other hand lies in the fact that for the assessment years 1989-90 and 1990-91, governed by amended Section 143(1)(a) there is a provision for sending "intimation" in token of acceptance of the return after making adjustments as mentioned without any summary assessment, for the assessment year 1988-89 governed by the earlier provisions, there was a provision for summary assessment u/s 143(1) followed by regular assessment, if any, u/s 143(3).

3. The facts of the case with respect to the assessment year 1988-89 as stated in the petition in CWJC No. 493 of 1994 may be set out as follows :

Petitioner No. 1, Parikh Engineering and Body Building Company Ltd., a company registered under the Indian Companies Act, 1956 (hereinafter referred to as "the company"), carries on business of body building of motor vehicles and is also a dealer of Maruti vehicles. It also carries on the business of bottling and selling/supplying of soft drinks to its customers in the course of its main business. It requires glass bottles and wooden crates for the purpose of supply and distribution of soft drinks. According to the petitioners, such glass bottles and wooden crates ordinarily last for 10-12 months whereafter they become unusable. The expenditure incurred on such bottles and wooden crates does not exceed Rs. 5,000 and, as such, the company is entitled to claim 100 per cent, depreciation on the actual cost of each glass bottle and wooden crates treating them as "plant", while computing its taxable income, in view of the proviso to Section 32(1)(ii) of the Act. For the accounting year relevant to the assessment year 1988-89, the company prepared its profit and loss account in accordance with the provisions of Schedule VI to the Companies Act showing a profit of Rs. 1,43,283. The said amount of profit was arrived at after allowing depreciation of Rs. 40,76,554.01 on bottles and crates at 100 per cent. The return, however, showed a loss of Rs. 15,79,876 on account of unabsorbed loss of previous years. According to the petitioners, the practice of writing off depreciation on bottles and crates at 100 per cent, was coming on since the assessment year 1979-80 and was never objected to by the Income Tax authorities. However, while completing the assessment for the assessment year in question (1988-89) u/s 143(3), the Assessing Officer allowed deduction on account of depreciation on bottles and crates to the extent of Rs. 21,03,233 as against the claim of Rs. 40,76,554.01, thus, disallowing the claim of 100 per cent, depreciation. The company preferred appeal before the Commissioner of Income Tax (Appeals), Ranchi. Although the appeal was partly allowed on October 18, 1989, the claim of 100 per cent, depreciation on bottles and crates was disallowed and the assessment made by the Assessing Officer in this regard was confirmed. The company, thereafter, preferred further appeal before the Income Tax Appellate Tribunal, Patna Bench. By order dated March 16, 1990, the Appellate Tribunal upheld the contention and allowed 100 per cent, depreciation on bottles and crates u/s 32(1)(ii) of the Act. The Assessing Officer thereafter passed an order giving effect to the said order of the Appellate Tribunal u/s 251 of the Act. The company filed an application for correction of calculation mistake which was allowed on June 15, 1990. On October 8, 1991, however, a notice was issued, purportedly u/s 154 of the Act, calling upon the petitioner-company to show cause as to why the necessary rectification in the order u/s 143(3) be not made.

4. In the meantime, similar notices with respect to assessment years 1989-90 and 1990-91 in the matter of rectification of the intimations u/s 143(1)(a) had been issued on July 29, 1991, and September 30, 1991. The notice stated that from the perusal of the records it appeared that there was a "mistake apparent from record regarding the calculation of book profit". The Act prescribes calculation of book profit in accordance with Schedule VI to the Companies Abt

but it was found that the company had taken the depreciation on bottles and crates at 100 per cent, which was not in accordance with the Companies Act. The calculation of book profit was, therefore, wrong and depreciation of 100 per cent, had been wrongly allowed while passing the order u/s 143(1)(a).

5. Against the former notice the petitioners moved this court in CWJC No. 1796 of 1991(R) taking the stand that after issuance of the intimation u/s 143(1)(a) regular assessment u/s 143(3) had been made and intimation had thus merged in the regular assessment order and was no more valid and operative and, therefore, the Assessing Officer had no jurisdiction to make any rectification in the intimation. By order dated August 30, 1991, this court directed the Assessing Officer (Assistant Commissioner of Income Tax, I. T. Circle II, Jamshedpur) to decide the question of jurisdiction by reasoned order. The company thereafter in the light of the said order of this court filed its objection before the said Assessing Officer.

6. On receipt of the aforementioned notice dated October 8, 1991 (for the assessment year 1988-89) also the petitioners filed their show cause on November 14, 1991, referring to the aforesaid order of this court dated August 30, 1991, and the show cause filed by them with respect to the assessment years 1989-90 and 1990-91 contending, inter alia, that 100 per cent, deduction on bottles and crates had been allowed pursuant to the order of the Appellate Tribunal and the Assessing Officer had no jurisdiction to make any rectification either in the intimation u/s 143(1)(a), or the order u/s 143(3) of the Act. The Assessing Officer, however, issued another notice, apparently not being satisfied with the show cause of the petitioner-company dated November 14, 1991, informing it that he proposed to make rectification of the apparent error in the calculation of taxable income in view of the provisions of Section 115J of the Act. The petitioners again by letter dated December 15, 1993, filed detailed representation. The Assessing Officer, however, rejected the contention advanced on behalf of the petitioner-company and allowing depreciation, at 15 per cent, instead of 100 per cent, on bottles and crates recalculated its taxable income on January 31, 1994. Notice of demand was issued on the same day. Xerox copies of the said order and the demand notice, marked annexures-10 and 11 to the writ petitions are under challenge in CWJC No. 493 of 1994(R).

7. The facts of the case of CWJC No. 762 of 1992(R) and CWJC No. 886 of 1992(R) are similar. The additional facts are that in accordance with the amended provisions of Section 143 effective from April 1, 1989, intimations were sent to the company u/s 143(1)(a) of the Act, whereafter notices were issued for regular assessment u/s 143(3) pursuant to which the petitioners produced their books of account, etc. The Assessing Officer did not allow depreciation at 100 per cent, on bottles and crates. However, on appeal, the Commissioner of Income Tax (Appeals), Ranchi, accepted the contention and allowed 100 per cent, depreciation and deduction in the light of the decision of the Income Tax Appellate Tribunal in the case of the petitioner-company itself for the assessment

year 1988-89, as stated above. Thereafter, consequential order giving effect to the said appellate order was passed by the Assessing Officer computing the taxable income of the petitioner-company at 30 per cent, of the book profit and allowing 100 per cent, depreciation and/or deduction on bottles and crates. On July 29, 1991 and September 30, 1991, respectively, notices, however, were issued to the company regarding the proposed rectification of the intimation u/s 143(1)(a) of the Act in terms of Section 154, as "already stated above. Against the former notice the petitioners moved this court in CWJC No. 1796 of 1991(R), and later, in the light of the order of this court dated August 30, 1991, they filed objection questioning the jurisdiction of the Assessing Officer to make rectification in the regular assessment order u/s 143(3) which was no more effective or operative and, therefore, could not be rectified. The Assessing Officer, however, vide his order dated January 28, 1992, held that as the computation of taxable income had not been made in accordance with the provisions of Section 115J of the Act, the mistake was apparent from the record and he had jurisdiction to rectify the same. After passing the said order on January 28, 1992, he proceeded to pass an order of rectification u/s 154 of the Act on February 3, 1992, allowing depreciation/ deduction at 15 per cent- instead of 100 per cent, and after adding back the amount calculated the taxable income at 30 per cent, of the book profit u/s 115J on the same lines like assessment year 1988-89, and issued revised intimation under Sections 143(1)(a) 154 of the Act on the same day. Xerox copies of the aforesaid orders dated January 28, 1992, February 3, 1992, and the demand notices dated February 3, 1992, marked annexures-12, 13 and 14 in CWJC No. 762 of 1992(R) and annexures-11, 12 and 13 in CWJC No. 886 of 1992(R), are under challenge in these two cases. Dr. Debi Pal, learned counsel for the petitioners, has contended that after notice u/s 143(2) of the Act has been issued, and much less after regular assessment order u/s 143(3) has been passed, it is not open to the Assessing Officer to make adjustment or to pass any order u/s 143(1)(a) of the Act ; more so, when the regular assessment order u/s 143(3) has been passed in the light of the appellate order of the Income Tax Appellate Tribunal or the Commissioner of Income Tax (Appeals). Dr. Pal submitted that the scope of Section 143(1)(a) is limited to making "prima facie" adjustments admissible on the face of the return and the documents enclosed therewith. Adjustments by way of allowance or disallowance, which are debatable in nature and require an investigation or adjudication, cannot be made u/s 143(1)(a), this can be done only after making enquiry in a regular assessment proceeding u/s 143(3). He urged that if the Assessing Officer cannot pass any revised order u/s 143(1)(a) after the issuance of notice u/s 143(2) and can only proceed to complete the assessment u/s 143(3), it is impermissible to pass any order u/s 154(1) purporting to rectify the order u/s 143(1)(a). After the regular assessment u/s 143(3) is made, the order u/s 143(1)(a), ceases to be an effective and operative order. Dr. Pal contended that in the present case, the taxable income of the company had been determined in accordance with the provisions of Section 115J of the Act and if it was not so, then the mistake does not come within the

purview of Section 154. In any view of the matter the question as to whether the determination of the taxable income of the petitioner-company had been made in accordance with the provisions of Section 115J of the Act or not, was a debatable question and lay outside the scope of Sections 143(1)(a) and 154 of the Act. He submitted that in an appropriate case, after regular assessment order u/s 143(3) is passed superseding the intimation u/s 143(1)(a) there may be justification to make rectification in the order u/s 143(3) but this cannot be done in a case where the order of the Assessing Officer u/s 143(3) has merged in the appellate order of the Commissioner/Appellate Tribunal and order giving effect to the appellate order has already been passed. Dr. Pal relied on a number of decisions in support of his contentions.

8. Mr. Debi Prasad, learned counsel for the respondents, submitted that the non-obstante clause contained in Section 115J of the Act gives it overriding effect superseding other provisions of the Act. In the present case, inasmuch as the taxable income of the company had not been determined in accordance with the relevant provisions of that section, the mistake in such determination was apparent from the record and could be rectified u/s 154 of the Act. He submitted that the provisions of Section 115J as a matter of fact cast a duty upon the Assessing Officer to not only compute the taxable income of certain companies in a particular manner but also to correct the mistake, if it has not been done so, u/s 154 of the Act.

9. Before dealing with the rival contentions of counsel for the parties, it would be proper to notice the relevant provisions of Section 115J of the Act.

10. It appears that prior to the insertion of this section, Section 80WA of the Act provided for payment of tax on at least 30 per cent, of the income. Studies carried out by the Central Board of Direct Taxes revealed that while the provisions of Section 80WA had the effect of subjecting companies to minimum taxes which they would not have otherwise paid, there were still companies which had no Income Tax liability despite substantial profits, on account of the fact that the companies were availing of full depreciation under the Income Tax Act. Thus, despite Section 80WA, the phenomenon of zero-tax companies continued. Section 80WA, in the circumstances, was considered to have become otiose. With the avowed object of bringing zero-tax prosperous companies within the taxable net, Section 115J was enacted by the Finance Act, 1987. The section as it originally stood and so far as relevant, was as follows :

"(1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee being a company (other than a company engaged in the business of generation or distribution of electricity), the total income, as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 1988 (hereinafter in this section referred to as the relevant previous year), is less than thirty per cent, of its book profit, the total income of such assessee chargeable to tax for the relevant previous year shall be deemed to be an amount equal to thirty per

cent, of such book profit.

Explanation.--For the purposes of this section "book profit" means the net profit as shown in the profit and loss account for the relevant previous year prepared in accordance with the provisions of Parts II and III of the Sixth Schedule to the Companies Act, 1956 (1 of 1956), as increased by-- . ."

11. By the Finance Act, 1989, the words "prepared in accordance with the provisions of Parts II and III of the Sixth Schedule to the Companies Act, 1956 (1 of 1956)" occurring in the Explanation were deleted and substituted by the words "prepared under Sub-section (1A)", and new Sub-section (1A) was inserted as follows :

"(1A) Every assessee, being a company, shall for the purposes of this section prepare its profit and loss account for the relevant previous year in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956 (1 of 1956)."

12. By the Finance Act, 1990, the words "but before the 1st day of April, 1991" were inserted after the words "the 1st day of April, 1988" in Sub-section (1). Thus, by virtue of this amendment, Section 115J ceased to be operative from April 1, 1991, i.e., from the assessment year 1991-92 onwards. In other words, Section 115J remained operative for the assessment years 1988-89, 1989-90 and 1990-91 alone. (These writ petitions relate to the aforesaid assessment years. While CWJC No. 493 of 1994(R) relates to assessment year 1988-89, CWJC No. 762 of 1992(R) and CWJC No. 886 of 1992(R) relate to the assessment years 1989-90 and 1990-91).

13. Stated in simpler words Section 115J lays down that if the total income of a company is less than 30 per cent, of its book profit, the total income shall be deemed to be an amount equal to 30 per cent, of such book profit. The assessee is required first to compute the total income in accordance with the Income Tax Act, and if it is less than 30 per cent, of the book profit, then, it has to prepare a profit and loss account under Sub-section (1A) for the relevant previous year in accordance with Parts II and III of Schedule VI to the Companies Act, The book profit so arrived at is to be adjusted by adding the various amounts enumerated in Clauses (a) to (ha), reduced by the amount mentioned in Clauses (i) to (iv) of the Explanation. The section begins with a non-obstante clause which means that although the total income of a company is not taxable in the normal circumstances, by virtue of the legal fiction the section creates, 30 per cent, of the book profit is deemed to be the income of the company liable to be taxed.

14. Mr. Debi Prasad, learned counsel for the Revenue, is, therefore, right in his submission that Section 115J of the Act casts an obligation on not only the assessee but also the Assessing Officer to compute the taxable income of the concerned companies in the manner laid down therein. The point for consideration is whether assuming that the taxable income of the company had not been correctly computed and determined in accordance with the provisions of

Section 115J, the same could be gone into either in the course of summary assessment for the assessment year 1988-89, i.e., prior to April 1, 1989, or in the course of intimation for the next two assessment years, and whether the mistake, if any, could be corrected as an error apparent from the record u/s 154 of the Act.

15. Prior to April 1, 1971, Section 143(1) of the Act provided that where the Income Tax Officer is satisfied, without requiring the presence of the assessee or the production by him of any evidence that the return is correct and complete, he shall assess the total income or loss of the assessee and determine the sum payable by him or refundable to him on the basis of such return. If he was not satisfied, he could serve on the assessee a notice under Sub-section (2). In other words, he could either accept the return, as filed, and make summary assessment or make a regular assessment after notice u/s 143(3). But, unlike the provisions as they stand now, he had no power to make any adjustment.

16. After April 1, 1971, by virtue of the amendment in Section 143(1)(a), the Income Tax Officer was competent to make certain adjustments to the income or loss declared in the return, and also rectify any arithmetical error in the return or accounts or documents accompanying it. He could also allow any deduction, allowance or relief which on the basis of information available in the return, accounts and documents were prima facie admissible but was not claimed, and similarly, he could also disallow any deduction, allowance or relief claimed in the return, which on the basis of information available in such return, account or documents was prima facie inadmissible. He was, however, required to make an assessment unlike the present provision by virtue of which without making any such assessment he is merely required to send an intimation after making adjustments, if any.

17. As per the amended provisions effective from April 1, 1980, the provision regarding adjustment was dropped. Only arithmetical errors could be corrected and certain adjustments as mentioned in Section 143(1)(b)(iv) could be allowed. The assessee, however, had right to object to such assessment and if he did so, he was not to be treated as an assessee in default in respect of the disputed amount, and no interest was to be charged on the disputed amount.

18. Substantial change was brought about by the Direct Tax Laws (Amendment) Act, 1987, effective from April 1, 1989. The procedure of summary assessment was dispensed with. Only an intimation is to be sent by the Assessing Officer, as envisaged u/s 143(1)(a), after making necessary adjustment on the basis of information available in the return, account and documents. Since the procedure relating to summary assessment has been dispensed with, the right of an assessee to object to summary assessment has also been deleted.

19. In *Khatau Junkar Ltd. and another Vs. K.S. Pathania and another*, , after elaborately referring to the legislative provisions of Section 143, the Bombay High Court observed (page 68) ;

"A survey of the previous provisions which are now replaced by the present Section 143 shows that, whenever in the past a similar power to make adjustments was given to the Income Tax Officer, this was in the course of summary assessment."

20. Proceeding further, dwelling upon the scope of the amended Section 143(1) (a), the court observed that adjustments under the said section can be made only on the basis of the information available from the return and the documents and accounts accompanying it. Thus, on the basis of materials available before him, the Assessing Officer may allow a claim and, similarly, disallow a claim for deduction, but he cannot disallow the claim because, according to him", adequate evidence in support of such claim is not before him. If he thinks that proof is required and a further enquiry is necessary in connection with such claim, he has no option but to issue notice u/s 143(2) and proceed to make regular assessment so that the assessee may be able to produce evidence in support of the claim because at the stage of Section 143(1)(a), the assessee has no such opportunity.

21. The court held that u/s 154 of the Income Tax Act the power of rectification of an intimation u/s 143(1)(a) is co-terminous with the power to make prima facie adjustments under that section. The court in this connection referred to a circular of the Central Board of Direct Taxes (Circular No. 581 (see [1990] 186 ITR 2), dated September 28, 1990) and observed (page 70) :

"The circular states that instances have come to the notice of the Board where deduction claimed u/s 43B of the Income Tax Act was disallowed as prima facie inadmissible u/s 143(1)(a) as the assessee had not furnished evidence of payment of taxes, duty, etc., along with the return. However, later on, the deduction claimed was allowed u/s 154 as the assessee subsequently furnished such evidence. This, according to the Board, is not in accordance with law. The sums disallowed as prima facie inadmissible u/s 143(1)(a), in the absence of requisite evidence of the payment, cannot be subsequently allowed u/s 154. This is because the scope of the powers to make prima facie adjustment u/s 143(1) (a) is somewhat coterminous with the power to rectify a mistake apparent from the record u/s 154. Therefore, the Board itself has viewed the power to make adjustments as coterminous with the power to rectify mistakes apparent from the record u/s 154."

22. It may be pointed out that in the aforesaid case of Khatau Junkar Ltd. and another Vs. K.S. Pathania and another, , the petitioners had challenged the validity of intimation u/s 143(1)(a) demanding income tax and additional tax u/s 143(1A), after making certain adjustments. The challenge was on the ground that u/s 143(1)(a), the Assessing Officer has jurisdiction to make only "prima facie" adjustments and the so-called adjustments involved debatable questions and, hence, lay outside the purview of the section. The challenge was sought to be repelled by the Revenue on the ground the assessee could apply for rectification of the intimation u/s 154 and produce evidence in support of the

claim. The contention of the Revenue was rejected holding that u/s 154 it is not open to the petitioner to produce evidence. The remedy of revision u/s 264 of the Act was also held to be inadequate. Further holding that the Assessing Officer committed error in going beyond the return, the court set aside the intimation and allowed the writ petition.

23. Although the case of *Khatau Junkar Ltd. and another Vs. K.S. Pathania and another*, , related to the assessment year 1990-91 governed by the earlier provisions, the position with respect to the assessment year 1988-89 involved in CWJC No. 493 of 1994(R) would be the same. The section as it stood at the relevant time provided for summary assessment. The summary assessment did not contemplate nor permit the Assessing Officer to go into debatable questions. He could only make arithmetical corrections or give effect to certain allowances and deductions as mentioned in Section 143(1)(b)(iv).

24. The Bombay High Court followed the earlier decision of the Delhi High Court in *S.R.F. Charitable Trust Vs. Union of India and others*, and the *Kamal Textiles and Others Vs. Income Tax Officer and Others*, . A similar view, it appears, has been taken later by the Rajasthan High Court in *JKS Employees' Welfare Fund Vs. Income Tax Officer*, the Calcutta High Court in *Modern Fibotex India Ltd. and Another Vs. Deputy Commissioner of Income Tax and Others*, , the Karnataka High Court in *GOD GRANITES Vs. CENTRAL BOARD OF DIRECT TAXES and Others*, , the Gujarat High Court in *Gujarat Poly-Avx Electronics Ltd. Vs. Deputy Commissioner of Income Tax*, and the Allahabad High Court in *Pradeep Kumar Har Saran Lal Vs. Assessing Officer*, .

25. In *JKS Employees' Welfare Fund Vs. Income Tax Officer*, while issuing intimation u/s 143(1)(a) the Income Tax Officer had assessed the tax at a higher rate in accordance with the provisions of Section 167B of the Act, On behalf of the Revenue it was contended that the assessment had been made on the same figure as was declared by the assessee, and it was only on account of the maximum marginal rate of tax as against the normal rate shown by the assessee that the demand had been raised. The Rajasthan High Court held that u/s 143(1) (a) the Income Tax Officer had to accept the return as it is or to make prima facie adjustments within the ambit of the proviso but he cannot create a demand in terms of a disputed provision, namely, Section 167B of the Act. The court observed that the dispute regarding application of a particular provision of the Act lies outside the scope of Section 143(1)(a) of the Act.

26. In *Modern Fibotex India Ltd. and Another Vs. Deputy Commissioner of Income Tax and Others*, , the assessee-company had received cash compensatory support to the tune of Rs. 7,99,144 from the Government. In its return for the assessment year 1988-89 the company claimed that the amount was not taxable. The amount was, however, taxed in view of the provisions of Section 28 of the Act as amended by the Finance Act, 1990 (with effect from April 1, 1967), and accordingly the intimation was issued. The application filed by the assessee under Sections 154 and 264 of the Act having gone in vain, the

assessee filed a writ petition. Allowing the petition, the Calcutta High Court held that the Assessing Officer had no jurisdiction to decide a debatable point, and when the assessee had shown the amount in its return, no intimation taking into account the amended provisions of Section 28 could be issued.

27. In GOD GRANITES Vs. CENTRAL BOARD OF DIRECT TAXES and Others, , there was controversy regarding certain deductions on account of export of unpolished granites u/s 80HHC of the Act. The Assessing Officer in the intimation sent u/s 145(1)(a) disallowed the deduction. The Karnataka High Court held that only such deductions could be disallowed which were "prima facie" inadmissible. Where there is controversy regarding such disallowance, the assessee must be heard.

28. In Pradeep Kumar Har Saran Lal Vs. Assessing Officer, , the Allahabad High Court held that in the garb of the adjustment permissible under the proviso to Section 143(1)(a), the Assessing Officer was not authorised to have recourse to Section 44AC and to bring the profits computed-under that provision to tax. The question regarding application of Section 44AC was highly debatable and, therefore, adjustment was ab initio void.

29. The legal position, thus, appears to be well settled that u/s 143(1)(a), of the Act the Assessing Officer has to proceed on the basis of the return (and the accounts or documents accompanying the same) as it is ; he can only make correction of arithmetical errors or adjustments which are "prima facie" admissible. "Prima facie", literally means "on the face of it". Hence, while allowing adjustments which are prima facie admissible and disallowing adjustments which are prima facie inadmissible, he has to confine himself to the materials before him in the return, etc. There is, therefore, no question of rejecting the return and "redetermining" the taxable income in a different manner applying a particular provision of law.

30. The moot question, therefore, is whether in the present case, assuming that the taxable income had not been computed and shown by the petitioner in its returns in accordance with the provisions of Section 115J of the Act, the Assessing Officer had jurisdiction to reject the return and re-determine the income disallowing 100 per cent, depreciation on bottles and crates u/s 143(1)(a) or in the course of summary assessment as per the earlier provisions. If the answer to this question is in the negative, as it has to be, it would follow that he cannot revise the intimation and recompute the income in purported exercise of power u/s 154. What could not have been done directly cannot be done indirectly in the garb of rectification power.

31. It is true that the provisions of Section 115J obliged the Assessing Officer to compute the income of the petitioner-company in a particular manner but this only meant that the Assessing Officer should have issued notice u/s 143(2) to it and proceeded to assess the income accordingly. As a matter of fact, as stated above, the Assessing Officer did issue notice and made regular assessment. If

such assessment was not in accordance with Section 115J, remedy could be else where but certainly not by way of recourse to rectification power u/s 154 of the Act. It is to be kept in mind that 100 per cent, depreciation on bottles and crates was allowed pursuant to the appellate orders of the Appellate Tribunal or the Commissioner in the light of which the Assessing Officer had also passed consequential orders, giving effect to them, as already mentioned above. In the circumstances, I find merit in the submission made on behalf of the petitioners that the effective and operative orders in these cases were the ones which had been passed giving effect to the said appellate orders and, therefore, they alone could be subjected to rectification of any "apparent mistake". Perhaps, as pointed out by learned counsel for the petitioners, one reason why the respondents chose to correct the so-called mistake in the intimation was that otherwise, they would not have been able to charge additional interest under Sub-section (1A) of Section 143 of the Act.

32. In fairness to the petitioners, I may again mention that it is their definite case that the book profit had been computed in accordance with the relevant provisions of the Companies Act, as required u/s 115J of the Income Tax Act. However, in view of my conclusions on the point of jurisdiction of the Assessing Officer to make correction of the intimations or the assessment orders in purported exercise of power u/s 154, in the facts and circumstances of the case, I do not consider it necessary to go into that larger question.

33. In *Lakhanpal National Ltd. Vs. Deputy Commissioner of Income Tax*, , the Gujarat High Court, following its earlier decision in *Gujarat Poly-Avx Electronics Ltd. Vs. Deputy Commissioner of Income Tax*, , has held that even after rectification of mistake in an intimation in terms of Section 154(1)(b), the Assessing Officer can issue notice u/s 143(2) because the rectified order would be deemed to be an order u/s 143(1)(a) but once having issued notice u/s 143(2), he has to complete the procedure of assessment u/s 143(3), and he cannot issue notice u/s 154. After noticing that in the case in hand, the order of assessment had been passed after scrutiny and application of mind u/s 143(3), the court observed (page 155) :

"In a case like this, after issuance of notice u/s 143(2) of the Act there is no question of issuing notice u/s 154(1)(b) of the Act . . . Therefore, the impugned notices deserved to be quashed and set aside."

34. Recently in *Commissioner of Income Tax (CNTL), Ludhiana Vs. Hero Cycles Pvt. Ltd., Ludhiana*, , the Supreme Court has also observed that rectification is not possible if the question is debatable.

35. Before I conclude, I must notice the cases cited by Mr. Debi Prasad, on behalf of the Revenue. He firstly placed reliance on a decision of this court in *Commissioner of Income Tax Vs. Tiwary Bechar and Co.*, . In the aforesaid case this court held that failure to charge interest u/s 139(8) of the Act amounts to failure to exercise jurisdiction, which is an error apparent from the record and

can be rectified u/s 154 of the Act. The decision, in my opinion, has no application in the present case. Interest is charged to compensate the loss of revenue on account of non-payment of tax within time. It does not involve any adjudication. The provisions of Section 115J, therefore, cannot be treated at par with Section 139(8). Mr. Debi Prasad also relied on two decisions of the Andhra Pradesh High Court in V.V. Trans-investments (P.) Ltd. Vs. Commissioner of Income Tax, and Suryalatha Spinning Mills Ltd. and Another and Suryavanshi Finance and Investments and Others Vs. Union of India and Another, . In those cases the court considered the scope of the provisions of Section 115J. Such not being the dispute in these cases, I fail to understand how the decisions can be of any avail to the Revenue.

36. In the facts and circumstances of the case and for the reasons stated above, it must be held that the Assessing Officer had no jurisdiction to revise the intimation/assessment order in purported exercise of power u/s 154 of the Act and the impugned orders are, therefore, fit to be quashed.

37. In the result, these writ petitions are allowed. The orders/notices contained in annexures-12, 13 and 14 in CWJC No. 762 of 1992 (R), annexures 11, 12 and 13 in CWJC No. 886 of 1992 (R) and annexures-10 and 11 in CWJC No. 493 of 1994 (R) are quashed. I would, however, make no order as to costs.

Aftab Alam, J.

38. I agree.