

(1991) 10 DEL CK 0051
In the Delhi High Court
Case No : C. W. No. 697 of 1991

S.R.F. Charitable Trust

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 25-10-1991

Acts Referred:

Citation : (1991) 100 CTR 160 : (1992) 193 ITR 95 : (1992) RLR 1

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

Bench : Division Bench

Advocate : M.S. Syali, for the Appellant; B. Gupta, for the Respondent

Judgement

B.N. Kirpal, J.—The challenge in this writ petition is to an order passed u/s 143(1) of the Income Tax Act whereby certain adjustments have been carried out by the Income Tax Officer which have resulted in taxable income being computed.

2. The petitioner filed a return for the assessment year 1989-90 and disclosed a loss of Rs. 53,850. The Income Tax Officer then issued an intimation dated October 29, 1990, u/s 143(1)(a) along with an Explanation slip whereby the petitioner was informed that certain additions were made as a result of which the total income computed came to Rs. 2,81,500. The additions which were made were of five items. They were corpus donation of Rs. 1,62,500; retainership fee of Rs. 76,950; medicine expenses of Rs. 23,550; rent of Rs. 9,600 and maintenance expenses of Rs. 8,910. The sum of Rs. 1,62,500 was regarded by the petitioner as not taxable because it was a receipt towards corpus of the charitable trust. The other four items were claimed as expenses and it is in this manner that the petitioner had declared a loss of Rs. 53,850. The additions were made by the Income Tax Officer only for one reason viz., that no proof in respect of the claim of the petitioner had been filed with the Income Tax Officer.

3. It is contended by learned counsel for the petitioner that, on a correct interpretation of section 143(1), no such additions for the reasons stated by the Income Tax Officer could have been made. We shall revert to that presently. Mr.

Gupta has vehemently contended that, after the aforesaid intimation had been sent, an order u/s 154 has been passed by the Income Tax Officer on August 12, 1991, whereby the adjustments which have been made u/s 143(1)(a) have been rectified and the income was put at a figure of "nil". It is contended by learned counsel that this writ petition was become infructuous. Learned counsel for the petitioner states that the grievance still subsists. As far as the petitioner was concerned, it had disclosed a return of loss of Rs, 53,850 but, as a result of an order u/s 154, the loss now stands converted to a figure of "nil". In other words, there is no taxable income nor is there any loss. It is further submitted by learned counsel that no reason has been given by the Income Tax Officer while passing the order u/s 154 merely states that, after considering the facts, the income is rectified to "nil income" Learned counsel submits that in future also there is no guarantee that, on account of lack of proof, the Income Tax Officer may not make disallowance u/s 143(1) and, Therefore, a judicial pronouncement on a correct interpretation of the said provisions is called for.

4. In our opinion, the contention of learned counsel for the petitioner is right. There is no reason given in the impugned order dated October 29, 1990, as to why the additions are being made. The order passed u/s 154 contains no reason. The reason for making the additions, in the first instance was that no proof had been furnished along with the return. The question which arises for our consideration is whether an adjustment can be made in the event of non-filling of proof for claim of deduction or for claim of a receipt being non-taxable. In order to appreciate the contention of learned counsel for the petitioner, it is necessary to refer to section 143(1)(a) and the first proviso thereto. The said proviso is as under :

"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 provision of sub-section (2), an intimation shall be sent to the assessed 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 assessed :

5. Provided that in computing the tax or interest payable by, or refundable to, the assessed, 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."

6. In the instance case it is clause (iii) of the proviso which was sought to be applied by the Income Tax Officer. The said clause clearly provides that the Income Tax Officer can make an adjustment to the income or loss declared in the return if, on the basis of the information available in such return, accounts or documents, the deduction allowance or relief claimed is prima facie inadmissible. The conclusion that the claim of the assessed is inadmissible must, in other words, flow from the return as filed. No power is given to the Income Tax Officer to disallow a claim for the reason that there is no proof in support of the claim made by the assessed. In a way the said clause (iii) of the proviso is analogous to section 154 of the Act. Where it is evident from the return as filed, along with the documents in support thereof, that claim of the assessed is inadmissible, only then an adjustment under the said proviso can be made. If proof in support of the claim is not furnished by an assessed, then for the lack of proof, no disallowance or an adjustment can be made. The only option which is open to the Income Tax Officer, in such a case, is that he can require the assessed to furnish proof in which case he will presumably have to issue notice u/s 143(2). This is also evident from the fact that, except for the documents specified, the assessed is not required to file the entire books of account or other documents along with the return. The proof in support of the claim may be evidenced from correspondence, from the books of account or other documents and it is not the law, as we understand it, that, in support of a claim made in the return for the deduction or non-taxability of a receipt, all the proofs available and original documents must be filed along with the return. It is apparent on a reading of the said provision that adjustment can be made only if there is information available in such return that prima facie a claim or allowance is inadmissible. For the aforesaid view which we are taking, support is available from the understanding of the said provision by the Department itself. Learned counsel for the petitioner has drawn our attention to Circular No. 549 reported at [1990] 182 ITR (St.) 1, issued by the Central Board of Direct Taxes wherein examples have been given of adjustments which can be carried out. The relevant part of the said circular is as under :

"The prima facie adjustment mentioned at (ii) above can be made only on the basis of information available in the return or the accompanying accounts or documents and not on the basis of the past records of the assessed. Some examples of such prima facie admissible or inadmissible in respect of which adjustments can be made to the returned income or loss are :

(i) While computing income under the head "Salaries" standard deduction u/s 16(1) is not claimed, or claimed at a figure which is less than or in excess of the

permissible limit.

(ii) While computing income under the head "Income from house property", deduction for 1/6th for repairs or for a new unit under the proviso to section 23(1) is not claimed, or claimed at a figure which is less than or is in excess of the permissible amount.

(iii) While computing income under the head "Profits and gains of business or profession", depreciation is claimed at rates lower or higher than those provided for in the Income Tax Rules.

(iv) While computing capital gains, deduction of Rs. 10,000 u/s 48(2) is not claimed or claimed less or in excess of this amount.

(v) Carried forward speculation loss set off against income from business or profession or against income under any other head.

(vi) Loss under any head, other than under the head "Profits and gains of business or profession", carried forward and set off against the current income.

(vii) Carried forward loss of business set off against income of the current year under other heads.

(viii) Old loss of more than eight assessment years set off against the current business income, if the information is available in the return or the accompanying documents.

(ix) Deduction u/s 80C in respect of provident fund contribution or life insurance premia or N. S. C. VI or VII Issue not claimed, though the information is available in the documents accompanying the return, or claimed at a figure which is less than or is in excess of the permissible amount.

(x) Deduction u/s 80L not claimed or claimed at a figure which is less than or is in excess of the permissible amount.

(xi) Deduction u/s 80G not claimed, although allowable on the basis of the information available in the return or the accompanying documents or claimed at a figure which is less than or is in excess of the permissible limit.

(xii) Deduction u/s 80M claimed at sixty per cent of gross dividend income instead of on net dividend income in violation of the provisions of section 80A.

It may be mentioned that the above is not an exhaustive but only an illustrative list of prima facie admissible or inadmissible for which adjustment can be made to the returned income or loss."

7. The aforesaid examples contained in the circular clearly show that, for want of proof, no disallowance or adjustment can be made. It is only when a disallowance is evident from the facts on records that an adjustment can be made.

8. As already noted, in the present case, the adjustment were made for the reason that, in support of the claim, the petitioner had not furnished the proof. The stage of furnishing of the proof is reached as and when proof is demanded by the Income Tax Officer on a notice u/s 143(2) being issued. If no proof in support of the claim was available with the Income Tax Officer, he could have issued a notice u/s 143(2) but he could not have unilaterally made this disallowance by seeking to invoke the provisions of the first proviso to section 143(1) because the said provisions were not applicable in the present case.

9. For the aforesaid reasons this writ petition is allowed. The intimation dated October 29, 1990, is quashed. There shall, however, be no order as to costs.