

Khatau Junkar Ltd. and Another Vs. K.S. Pathania and Another

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Court : Mumbai

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[1992]196ITR55(Bom)

Judge : S.H. Kapadia and;Sujata V. Manohar, JJ.

Acts : [Income Tax Act, 1961](#) - Sections 16, 23(1), 32A, 32A(4), 37, 40A(3), 43B, 44AB, 48(2), 80C, 80L, 80M, 80AA, 115J, 139, 142, 143, 143(1), 143(1A), 143(2), 154, 156 and 264; [Constitution of India](#) - Article 226

Appeal No. : Writ Petitions Nos. 2587 and 2850 of 1991

Appellant : Khatau Junkar Ltd. and Another;jct Ltd. and Another

Respondent : K.S. Pathania and Another;hari Kishan and Another

Advocate for Def. : G.S. Jetley, Adv.

Advocate for Pet/Ap. : S.E. Dastur, Adv.

Judgement :

Mrs. Sujata V. Manohar J.

1. The first petitioner is a public limited company. In this petition, the first petitioner has challenged an intimation sent to it under section 143(1)(a) of the Income-tax Act demanding income-tax and additional tax under section 143(1A) of the

Income-tax Act for the assessment year 1990-91.

2. For the assessment year 1990-91, the first petitioner filed its return of income declaring a total income of Rs. 41,64,600 consisting of income chargeable under the head 'Business or profession'. Along with the return of income, the first petitioner also filed a tax audit report in Form No. 3CD as required under the provision of section 44AB of the Income-tax Act. The first petitioner claimed various deductions in the return of income.

3. On May 16, 1991, the first petitioner received an intimation under section 143(1)(a) of the Income-tax Act dated March 18, 1991. Along with the intimation, an adjustment explanatory sheet was annexed. In that sheet, the first respondent had determined the total income at Rs. 68,81,158 as against the returned income of Rs. 41,64,596. The additional of Rs. 27,16,562 was on account of the following :

(a) The first petitioner had purchased during the relevant period new machinery of the value of Rs. 1,25,28,140 and had claimed a deduction under section 32A of the Act on account of investment allowance amounting to Rs. 25,05,628. The first petitioner had made the required reserve and had fulfilled all the conditions required under the Act for the grant of deduction under section 32A. The first respondent added back the claim on the ground that no proof of purchase of new machinery is enclosed with the return of income;

(b) The first respondent added back an amount of Rs. 26,505, being the value of presentation articles not bearing the logo of the first petitioner. The first petitioner had claimed that these articles were not covered under rule 6B of the Income-tax Rules, 1962, and hence the first petitioner was entitled to a deduction of this amount as business expenses;

(c) The first respondent also disallowed a sum of Rs. 75,165, being ex gratia payment to employees drawing more than Rs. 2,500 per month. The first petitioner had stated that the ex gratia payment was not bonus or commission payable to employee covered under the Bonus Act, 1965. It was, therefore, allowable under the provisions of section 37. The first respondent added back the amount on the ground that no proof of payment of ex gratia amount was enclosed with the return;

(d) The first petitioner had made certain payments which were in excess of Rs. 10,000 by cash. These were to the extent of Rs. 35,663. The first petitioner claimed that these payments were made under the exceptions, specified in rule 6DD(j) of the Income-tax Rules and hence they should not be disallowed under the provisions of section 40A(3). This amount was disallowed by the first respondent. He has stated against this amount 'under section 43B of the Act as per tax audit report.'

(e) The first petitioner had debited an amount of Rs. 83,631 in the profit and loss account of the relevant previous year. This pertained to expenditure which pertained to an earlier year, although the bills were received and the amount was paid in the relevant year. It was the contention of the first petitioner that although the expenditure related to an earlier previous year, it was expenditure which had accrued or arisen during the relevant previous year, i.e., the year ending on March 31, 1990. This amount was added back by the first respondent on the ground that the first petitioner was following the mercantile system of accounting.

4. Thus, adding back a total of Rs. 27,16,562 to the income, the first respondent determined the first petitioner's total income at Rs. 68,81,158. He further proceeded to levy additional tax under section 143(1A) of the Act amounting to Rs. 2,93,388.

5. Without prejudice to his contention that the intimation so received was totally illegal, the first petitioner filed an application for rectification under section 154 of the Act on June 27, 1991. The petitioners have also filed the present petition challenging the intimation so received. It is the contention of the petitioners that the intimation is wholly illegal and beyond the authority of the first respondent conferred on him under section 143(1)(a) of the Income-tax Act, 1961.

6. In order to consider this contention, it is necessary to look at the provisions of section 143(1)(a) of the Income-tax Act, as it now stands by virtue of its being amended by the Direct Tax Laws (Amendment) Act, 1987, with effect from April 1, 1989. The relevant provisions of section 143(1)(a) are as follows :

'143. (1)(a) Where a return has been made under section 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 under section 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.'

7. On a plain reading of section 143(1)(a) of the Act, therefore, it is clear that if, on the basis of the return which is filed by the assessee, any tax or interest is found due after adjustments, as set out in the section, an intimation shall be sent to the assessee specifying the sum so payable. Similarly, if any refund is due to the

assessee on the basis of such return, it shall be granted to the assessee. Therefore, such an intimation can be sent to the assessee only on the basis of the return. The proviso, however, to the section permits certain adjustments to be made while calculating the tax or interest payable or while granting a refund. These permissible adjustments are :

(1) any arithmetical error in the return, accounts or documents accompanying it can be rectified;

(2) 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 is not claimed in the return, can be allowed; and similarly

(3) any such loss carried forward, deduction, allowance or relief which is claimed in the return but which, on the basis of the information available in such return, accounts or documents, is prima facie inadmissible, shall be disallowed.

8. Apart from these provisions, sub-section (2) of section 143 empowers the Income-tax Officer, 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, to serve on the assessee a notice requiring him to produce before him any evidence on which the assessee may rely in support of the return. Thereafter, under sub-section (3), he can proceed to make a regular assessment. The other relevant provision of section 143 is sub-section (1A) under which, where, after making the adjustments under section 143(1)(a), it is found that the total income exceeds the income declared in the return by any amount, the Assessing Officer shall further increase the amount of tax payable by additional income-tax calculated at the rate of twenty per cent. of the tax payable on such excess amount. This additional income-tax shall be specified in the intimation which is to be sent under section 143(1)(a).

9. The question before us relates to the scope of adjustments permissible under section 143(1)(a). In order to interpret the present section 143(1)(a), it is necessary to refer briefly to the history of this section.

10. Brief history :

Prior to April 1, 1971, section 143(1) 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 completed, he shall assess the total income or loss of the assessee and shall determine the sum payable by him or refundable to him on the basis of such return. If he is not so satisfied, he has to serve on the assessee a notice under sub-section (2). Therefore, under this provision, originally, the Income-tax Officer was required to make a summary assessment, unlike the present section which requires merely an intimation to be sent. If the Income-tax Officer wanted to make such an assessment on the basis of the return, he had to take the return as he found it. He had no power to make any adjustment.

11. After April 1, 1971, however, section 143(1)(a) was amended as a result of which, if the Income-tax Officer wanted to make an assessment on the basis of the return as filed, he was entitled to make certain adjustments to the income or loss declared in the return. Under this provision, he could rectify any arithmetical error in the return or accounts and documents accompanying it. He could allow any deduction, allowance or relief which, on the basis of the information available in the return, accounts and documents, was prima facie admissible but was not claimed; and, similarly, he could disallow any deduction, allowance or relief claimed in the return which, on the basis of the information available in such return, accounts or documents, was prima facie inadmissible. The provision, therefore relating to adjustment was similar to the present provisions. However, he was required to make an assessment. Further, under section 143(2), if the assessee objected to such assessment, a procedure was provided for regular assessment after service of notice on the assessee. The power to make adjustments under section 143(1)(b) was, therefore, very similar to the present power to make adjustments. However, there were certain safeguards provided to the assessee. He could object to the assessment so made. Secondly, even under a regular assessment, he was entitled to obtain a refund unlike under the present section. Under the scheme of this section, there was also an assessment at all stages.

12. This section was again changed with effect from April 1, 1980. The explanatory note in respect of the amendment of section 143(1) under the Finance (No. 2) Act, 1980, stated, inter alia :

'Experience has also shown that while there are a number of cases which require rectification of arithmetical errors in the return..... only in a very few cases, the deductions admissible to the assessee were not claimed or incorrect deductions or allowances were claimed. The Finance Act has omitted the requirement of making adjustments under sub-clauses (ii) and (iii) or clause (b) of section 143(1).'

13. This note clearly shows that the adjustments which could be made earlier were only regarding incorrect deductions on the face of the return. Since very few returns needed such adjustments, this provision was considered redundant and was dropped. The present provision is worded in identical language.

14. After the 1980 amendment, only arithmetical errors could be corrected. The previous provisions relating to the right of an assessee to object to such assessment was also retained and, if he so objected, he would not be treated as an assessee in default in respect of the disputed amount and no interest would be charged on the disputed amount.

15. From this overall position of an assessee regarding summary assessments, a substantial change has been brought about by the present amendments. The new provisions have been brought into effect from April 1, 1989, under the Direct Tax Laws (Amendment) Act, 1987. As a result, there is no summary assessment to start with. Only an intimation has to be sent by the Income-tax Officer as set out in section 143(1)(a) as now in force. Since there is no assessment, the right of an assessee to object to a summary assessment has also been deleted. Under section 143(1A), there is also a provision for charging additional tax on the increased amount which may be found due as per such intimation, as set out earlier. And refunds have now to be granted at the stage of intimation and not on regular assessment which may or may not be made.

16. 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 a summary assessment. Secondly, as the note to the Finance Act of 1980 shows, there were hardly any occasions when, on the basis of the return as well as the documents annexed to it, such an adjustment was required to be made. The errors which were mainly required to be corrected were only arithmetical errors. This clearly shows that no substantial adjustments which would require examination of any evidence or which would require a hearing to be given to the assessee are contemplated whenever such a power of making adjustment without hearing the assessee is conferred

17. In fact, the wording of this provisions itself makes this very clear. Under clause (ii) of the proviso to section 143(1)(a), any loss carried forward, deduction, allowance or relief has to be allowed on the basis of the information available in such return or accounts or documents accompanying it. Similarly, under clause (iii) of the proviso, to disallow any deduction, allowance or relief claimed, such deduction, allowance or relief must be such as is, on the basis of the information available in the return, accounts or documents, prima facie inadmissible. The Income-tax Officer therefore, has no power to go beyond or behind the return, accounts or documents, either in allowing or in disallowing any such deduction, allowance or relief.

18. Under clause (iii) to the proviso, unless the return or the accompanying documents or accounts shows that the deduction claimed is prima facie inadmissible, such deduction cannot be disallowed at the intimation stage. If the Income-tax Officer is not satisfied with the claim for deduction, or if he requires any further information or any further evidence in that connection, he is bound to follow the procedure prescribed under section 143(2) of giving a notice to the assessee. It is not open to him to disallow such a claim under section 143(1)(a).

19. In connection with this new provision, the Central Board of Direct Taxes issued Circular No. 549 dated October 31, 1989 (see : [1990]182ITR1(Mad)). The circular points out inter alia, that under the new scheme of assessment, 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 acknowledgment slip to the

assessee will be the end of the matter, if he had correctly paid tax and interest, if any, due on the basis of the return. But if, on the basis of the return, any amount is found due from the assessee, it can be recovered and, if any refund is due to the assessee, it can be granted without passing an assessment order. The assessment order will be passed only in a very limited number of cases selected for scrutiny. While dealing with adjustments to be made in the income or loss declared in the return, the circular provides in paragraph 5.4 that prima facie adjustments mentioned in clause (ii) can be made only on the basis of information available in the return or the accompanying accounts or documents. The examples given of such prima facie admissible or inadmissible adjustments are very illuminative. These are as follows (see : [1990]182ITR21(Bom)) :

'(i) While computing income under the head 'Salaries', standard deduction under section 16(i) 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 one-sixth 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 claimed at rate lower or higher than those provided for in the Income-tax Rules.

(iv) While computing capital gains, deduction of Rs. 10,000 under section 48(2) is not 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 under section 80C in respect of provident fund contributions or life insurance prima 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 under section 80L not claimed or claimed at a figure which is less than or is in excess of permissible amount.

(xi) Deduction under section 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 amount.

(xii) Deduction under section 80M claimed at 60 per cent. of gross dividend income instead of on net dividend income in violation of the provisions of section 80AA.'

20. This illustrative list clearly points out that only adjustments which are, on the basis of the return and documents accompanying it, allowable or disallowable, can be adjusted.

21. The Central Board of Direct Taxes has issued Circular No. 581 dated September 28, 1990 (see [1990] 186 ITR 2), which also proceeds on a similar assumption. Under section 154 of the Income-tax Act, the power of rectification can be exercised in respect of an intimation under section 143(1)(a). In this connection, the circular states that instances have come to the notice of the Board where deduction claimed under section 43B of the Income-tax Act was disallowed as prima facie inadmissible under section 143(1)(a) as the assessee had not furnished evidence of payment of tax, duty, etc., along with the return. However, later on, the deduction claimed was allowed under section 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 under

section 143(1)(a), in the absence of requisite evidence of the payment, cannot be subsequently allowed under section 154. This is because the scope of the powers to make prima facie adjustments under section 143(1)(a) is somewhat conterminous with the power to rectify a mistake apparent from the record under section 154. Therefore, the Board itself has viewed the power to make adjustments as conterminous with the power to rectify mistakes apparent from the record under section 154.

22. We are not here concerned with a case where, under any specific section of the Income-tax Act, a certain deduction or allowance cannot be granted unless certain specified documents are annexed to the return. In such a case, it may be possible to say that, in the absence of such a document, the deduction cannot be granted because the section of the Income-tax Act itself says so. We, however, have not examined this aspect of the matter as it does not arise in the cases which are before us. But, in any event, in the absence of any specific provision in the Income-tax Act which disallows a deduction because a specific document specified in that section is not annexed to the return, the Income-tax Officer cannot, under clause (iii) of the proviso to section 143(1)(a), disallow a claim or a deduction because, in his view, adequate evidence in support of such a claim or deduction is not before him. He can disallow a claim for deduction only if he is satisfied, on the basis of the material which is before him, that the assessee is not entitled to such a deduction.

23. The use of the phrases 'prima facie admissible' in clause (ii) to the proviso and 'prima facie inadmissible' in clause (iii) to the proviso also lend support to this interpretation. In its literal sense, 'prima facie' means on the face of it. Hence, on the face of the return and the documents and accounts accompanying it, the deduction claimed must be inadmissible. Only then, can it be disallowed under the proviso to section 143(1)(a). If any further enquiry is necessary, or if the Income-tax Officer feels that further proof is required in connection with the claim for deduction, he will have to issue a notice under sub-section (2) of section 143.

24. In the case of *SRF Charitable Trust v. Union of India* [1992] 193 ITR 95 (C. W. No. 697 of 1991), the High Court of Delhi (B. N. Kirpal and Arun Kumar JJ.), by its

decision dated October 25, 1991, has come to a similar conclusion while interpreting section 143. the Delhi High Court has also held that no power is given to the Income-tax Officer to disallow a claim on the ground that there is no proof in respect of the claim made by the assessee. It goes on to say that clause (iii) of the proviso is analogous to section 154. Where it is evident from the return as filed, along with the documents in support thereof, that a claim of the assessee 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 assessee, then for lack of proof, no disallowance or adjustment can be made. The only option open to the Income-tax Officer in such a case is that he can require the assessee to furnish particulars in which case he will have to issue a notice under section 143(2). We respectfully agree with this reasoning of the Delhi High Court.

25. It is rightly urged before us by Mr. Dastur, learned counsel for the petitioners, that, if anything more is read into the power to make adjustments under section 143(1)(a), such power would be grossly arbitrary and unreasonable and in total violation of the principles of natural justice, because section 143(1)(a) does not provide for any notice being given to the assessee, nor does it provided for any hearing being given to the assessee before disallowing the claim made by him. A genuine claim of the assessee may thus be disallowed although the assessee is entitled to it and has documentary proof in support of his claim. The law does not require the assessee to furnish with his return all documents to prove every single claim made in the return. If unilateral adjustments are permitted on the ground of absence of proof in the return, several genuine claim will be disallowed. The assessee will not be able to produce documents even in a rectification application under section 154. He has rightly submitted that such an interpretation of section 143(1)(a) may violate article 14 of the Constitution. We should not read into section 143(1)(a) more than what is provided, which would result in the section becoming arbitrary or unreasonable.

26. Dealing with a similar argument, the Madhya Pradesh High Court, in the case of Kamal Textiles v. ITO : [1991]189ITR339(MP) , held that the provisions of section 143(1)(a)(i) of the Income-tax Act, 1961, are not opposed to natural justice and are not ultra vires. It says that the intimation under the provision is issued on

the basis of the assessee's own return. Permissible adjustments are, inter alia, only of those claims which are, on the basis of information available in the return, prima facie inadmissible. The assessing authority is not permitted under the guise of making adjustment to adjudicate upon any debatable issue. Hence, the provision is valid. We respectfully agree with these observations of the Madhya Pradesh High Court also.

27. In the premises, in our view, under section 143(1)(a)(i) of the Income-tax Act, it is not open to the Income-tax Officer to disallow any claim for deduction unless he is satisfied, on the basis of information which is available in the return and the documents and accounts accompanying it, that such a claim is inadmissible. Otherwise, he cannot disallow such a claim. (See in this connection *Om Trading Co. v. Second ITO* : [1991]188ITR641(KAR) .

28. It is pointed out by the petitioners that, in a case like the present one, the correct procedure would be to issue a notice under section 143(2). If such a notice had been given to the petitioners under section 143(2), they would have been able to produce evidence before the Income-tax Officer in support of their claim. The petitioners have no opportunity to do so under section 143(1)(a). Nor can they produce evidence in the rectification application which they may file from an intimation. Because, under section 154, it is not open to the petitioner to produce new evidence. This is made clear by the circular issued by the department itself, which is referred to earlier. Hence, even if an assessee may be legitimately entitled to various deductions, the Income-tax Officer may disallow these on the ground of absence of evidence. The assessee would not be able to establish his claim in any subsequent application pertaining to the intimation such as a rectification application under section 154 or a revision from it under section 264. Clearly, therefore, such disallowances are not contemplated at the intimation stage.

29. It is also pointed out by the petitioners that it is only under section 143(1)(a) that there is a provision for refund being granted to the assessee, if it is found that the amount paid by the assessee by way of tax and interest is in excess of what is due. Even under section 143(2), there is no provision for refund of any excess tax

or interest paid. It is, therefore, necessary that the Income-tax Officer determines the tax and interest due or refund payable on the basis of the return at the intimation stage and grants it. Refunds cannot be withheld by disallowing deduction not disallowable on the basis of the return. Moreover, there is a provision for levy of additional tax under section 143(1A). In case the intimation shows that certain claims of the assessee have been disallowed and more tax or interest is liable to be paid by the assessee, additional tax of 20% can be levied as per that section. Even if the assessee succeeds in a regular assessment thereafter, there is no provision for refund. If, therefore, the power of the Income-tax Officer, at the stage of intimation, to disallow claims in the manner claimed by the respondents is accepted, the consequences for the assessee would be grave. We have no reason to hold that such was the intention of the Legislature, either from the language of section 143(1)(a) or even from the objects and reasons for the amendment in question, which would indicate the circumstances giving rise to the amendment.

30. On the other hand, if section 143(1)(a) is interpreted as it should be, there is no prejudice to the Department. Because in every case where the Revenue desires to have evidence in support of any claim, a notice can always be issued under section 143(2), a regular assessment made and the excess amount due recovered. Interpreting section 143(1)(a) in the manner suggested by the Revenue would cause serious prejudice to the assessees who may be legitimately due to them without any notice, without any hearing and without any chance being given to him of producing evidence in support of the claim, however legitimate it may be. It would also entail for the assessee a denial of a right of refund, if any, under section 143(1)(a) and would further entail additional tax under section 143(1A). There is no warrant for such an interpretation which is contrary to the express terms of section 143(1)(a).

31. In this light, we would now like to examine the various claims which have been disallowed by the Income-tax Officer in the present case.

32. Investment allowance :

Along with its return, the first petitioner has annexed a statement of its assets for the previous year ending on March 31, 1990. The statement runs into two pages. The first column of this statement deals with 'kinds of assets'. It specifies items such as general plant and machinery, water pollution equipment, buildings, furniture and fixtures, etc. The second column deals with 'written down value of the assets as on April 1, 1989'. The next column deals with additions during the year. The fourth column deals with sales during the year. The next column deals with balance as on March 31, 1990. The next column deals with the rate at which depreciation is claimed. The column after that deals with the written down value as in March 31, 1990. In this table of assets, the petitioners have shown that there was an addition to its general plant and machinery in its various divisions as specified therein, of the value of Rs. 1,25,28,140. On the same assets, the depreciation which is claimed by the petitioners in this very table has been allowed. The last statement in this table is in respect of investment allowance. It states that additions to the plant and machinery are of the value of Rs. 1,25,28,140, 20% thereof comes to Rs. 25,05,628 and this is the amount which is claimed as investment allowance for the year.

33. Under section 32A of the Income-tax Act, in respect of, inter alia, plant or machinery as specified therein investment allowance equal to twenty per cent. of the actual cost of machinery or plant to the assessee is allowed as a deduction in respect of the previous year in which the plant and machinery was installed or first put to use. Under section 32A(4), the deduction shall be allowed only if, inter alia, the following condition is fulfilled, viz., the particulars prescribed in this behalf have been furnished by the assessee in respect of the machinery or plant.

34. It is submitted by Mr. Jetley that, without any particulars as to the plant and machinery so purchase, such as bills or vouchers pertaining to such purchase, the Income-tax Officer was justified in disallowing this claim. He relies, in this connection, on the notes which are attached to Form No. 1 in which a return is required to be filed by companies under rule 12(1)(a) of the Income-tax rules, 1962. Note II of the Notes attached to Form No. 1 is as follows :

'Particulars in respect of investment allowance and investment deposit account :

(a) Details of ship or aircraft or plant or machinery purchased during the year in which investment allowance has been claimed and the rate thereof (also attach supporting evidence of acquiring the asset).'

35. Mr. Jetley submits that, without the supporting evidence, investment allowance cannot be allowed by the Income-tax Officer. This submission is without merit. In the first place, section 32A does not say that investment allowance would be disallowed unless the supporting evidence is attached. The section itself does not refer to any supporting evidence at all. Sub-section (4) of section 32A merely requires that the assessee should furnish particulars relating to the machinery or plant in question. This, the assessee has done in its tabulated statement. Neither the section nor the notes which are attached to the Income-tax Form No. 1 say that, unless these particulars are attached to the return, the claim of the assessee for investment allowance will be disallowed. At the highest, all that can be said is, if the Income-tax Officer was not satisfied with the statement which the assessee had attached to its return, he could have given a notice to the assessee and asked the assessee to produce evidence in support of the claim.

36. Incidentally, it is a little surprising that the same particulars which the Income-tax Officer found sufficient while allowing a claim for depreciation were found by him to be insufficient for the purpose of allowing investment allowance. Anyway, in the absence of any specific provision under which a claim for investment allowance, on the face of it, can be disallowed if the assessee does not furnish evidence in support of the claim, the claim for investment allowance cannot be disallowed by the Income-tax Officer by an intimation under section 143(1)(a). There is nothing *prima facie* on the record before the Income-tax Officer which would permit him to disallow such a claim.

37. It is also submitted by Mr. Jetley that there is no material in the return or the documents annexed to it to show that the plant and machinery is wholly used for the purpose of the business carried on by the assessee. Once again the question is not whether the assessee has established his claim to the investment allowance. The question is whether there is any material before the Income-tax Officer to show that this plant and machinery were not wholly used for the

purposes of the business carried on by the assessee. Only then could he have disallowed the claim at the intimation stage. Disallowance of this claim, is therefore, ultra vires the powers of the Income-tax Officer under section 143(1)(a).

38. Presentation articles :

The next claim of the petitioner which is being disallowed is in respect of presentation articles of the value of Rs. 26,505. Under rule 6B of the Income-tax Rules, 1962, the allowance in respect of expenditure on advertisement in respect of articles intended for presentation shall not exceed Rs. 50 on each such article. The Petitioners, in their annexure to the return, have pointed out that rule 6B does not apply in respect of these articles. This is because these articles do not bear the logo or the name of the company and are not meant for advertisement. In the annexure, the petitioners have also relied upon a judgment of the Gujarat High Court in this connection in CIT v. S. L. M. Maneklal Industries Ltd. : [1977]107ITR133(Guj) as well as various other judgments which are set out therein. The respondents, in their affidavit in reply, have stated that since the presentation of these items carried the 'potential in the nature of advertisement', they come within the ambit of rule 6B. Now, this was clearly an arguable point, especially in view of the judgments which were cited by the petitioners in support of their claim. The Income-tax Officer, therefore, could not have, prima facie, disallowed this claim without giving a hearing to the petitioners and considering the various authorities on this debatable point. He exceeded his jurisdiction in doing so.

39. Ex gratia payment :

The next claim of the petitioners was in respect of a sum of Rs. 75,165 paid ex gratia to their employees. We need not examine this claim any further because, in the rectification application under section 154 in which the order was received after the filing of this petition (Order dated August 21, 1990), this claim has been accepted.

40. Cash purchases above Rs. 10,000 :

The next claim relates to purchases in excess of Rs. 10,000 which have been made by the petitioners in cash. Under section 40A(3), where the assessee incurs any expenditure in a sum exceeding Rs. 10,000 otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft, such expenditure shall not be allowed as a deduction. The proviso, however, permits certain cases and circumstances to be prescribed under which such payment can be allowed as a deduction. Accordingly, under rule 6DD of the Income-tax Rules, such cases and circumstances have been prescribed. Under clause (j) of rule 6DD, in any case other than the ones earlier specified in that rule, where the assessee satisfies the Assessing Officer that the payment could not be made by a crossed cheque or by a crossed bank draft due to exceptional or unavoidable circumstances, or because payment in this manner was not practicable, or would have caused genuine difficulty to the payee, having regard to the nature of the transaction and the necessity for expeditious settlement thereof, and also furnishes evidence to the satisfaction of the Assessing Officer as to the genuineness of the payment and the identity of the payee, a deduction can be allowed. In this annexure to the identity of the payee, a deduction can be allowed. In his annexure to the return, the assessee had stated that these payments were covered by rule 6DD(j). The claim, however, has been disallowed. Once again, there was no material in the return or the documents annexed to it, which would indicate that rule 6DD(j) was not attracted. Therefore, there was no basis for disallowing this claim prima facie, looking to the return and the documents annexed to it.

41. Expenditure of the previous year :

The last item which has been disallowed is a sum of Rs. 83,631 which is shown as expenditure of the previous year. It is the contention of the petitioner that this expenditure has been incurred in the current year inasmuch as the liability of the previous year has crystallised only in the current year. Hence, he is entitled to debit this expenditure in the current year. The petitioner has also shown income of the previous year which has materialised in the current year as income of the current year in the current year has been accepted, his claim for deduction of expenditure of the previous years which has crystallised in the current year, has been disallowed. This is on the ground that the petitioner follows the mercantile system

of accounting. Clearly, if the income could be included, there is no reason why the expenditure should not be allowed. Once again, this was not something which could be disallowed on the face of the return. An examination of the nature of the accounts maintained by the assessee is clearly necessary before any conclusion can be drawn as to whether the expenditure should be allowed or not as a deduction.

42. All these disallowances are, therefore, ultra vires the powers of the Income-tax Officer under section 143(1)(a) of the Income-tax Act.

43. It is, however, strenuously urged by Mr. Jetley, learned counsel for the respondents, that the writ petition of the petitioners should not be entertained by is because the petitioners have an alternative remedy under the Income-tax Act to challenge this order which may be wrong on the face of it. It is submitted first of all that it is open to the petitioners to apply for rectification under section 154 of the Income-tax Act. This may be an adequate remedy if the Income-tax Officer acts within his jurisdiction and allows or disallows the claims on the basis of the return and the material enclosed with the return and the documents annexed to it. In such a case, if there is an error apparent on the record, the same can be corrected under section 154. But, in a case like the present, where the Income-tax Officer has travelled beyond his jurisdiction and gone into the merits of the claim, in order to disallow the claim, section 154 can never be considered as an adequate remedy because the powers under section 154 are insufficient to correct such mistakes. A substantive mistake cannot be so corrected. Section 154 is far more limited in its scope than a right of appeal which is normally considered as an adequate alternate remedy.

44. It is also pointed out by Mr. Jetley that, with effect from October 1, 1991, a revision under section 264 lies from an order made under section 154, in respect of an intimation under section 143(1)(a). This, according to him, is an adequate remedy. He has submitted that, although the order under section 154 is made prior to the coming into force of the amendment, a revision would now lie from that order. He relies on a decision of the Allahabad High Court in *Lala Kailashpat Singhania v. ITO* : [1963]47ITR453(All) , in support of his contention that a revision

is an adequate alternative remedy. In the first place, the revision which is now provided in from an order in a rectification application under section 154. This automatically restricts the scope of such a revision. Moreover, our High Court, in the case of K. Subramanian v. Siemens India Ltd. : [1988]173ITR136(Bom) , has held that the availability of a revision against a provisional assessment under the Companies (Profits) Surtax Act, does not constitute an adequate alternative remedy which would bar a writ. The court has observed that a statutory right of appeal cannot be confused with the power of the Commissioner of Income-tax to revise orders passed by his subordinates. The court has, in particular, pointed out that the exercise of revisional powers is purely discretionary in nature and cannot be termed as an alternative efficacious remedy to a writ petition. If a revision is not an alternative remedy, rectification of mistakes under section 154 also cannot be an adequate efficacious alternative remedy. (vide Collector of Customs and Excise v. A. S. Bava, : 1973ECR18(SC) , where the Supreme Court has held that a revision is not a bar to article 226 of the Constitution).

45. In the present case, when one bears in mind that, by a unilateral act, without giving any hearing to the assessee, the Income-tax Officer has disallowed the claims by going beyond the return and the documents annexed to it, it is a little surprising that a remedy by way of a writ is sought to be challenged on the ground of an alternative remedy, such as a rectification under section 154 which cannot correct substantive errors, or a revision under section 264, being now made available to the aggrieved person. These cannot be considered as efficacious remedies in the present circumstances. Hence the remedy under article 226 of the Constitution is not barred.

46. In the premises, the petitioners are entitled to succeed. Rule is made absolute in terms of prayers (a) and (b). The respondents are directed to deal afresh with the return of income submitted by the petitioners in accordance with law. The respondents to pay to the petitioners costs of this petition.

47. Writ Petition No. 2850 of 1991 :

The first petitioner in this writ petition is a company incorporated under the Companies Act, 1956, and is, inter alia, engaged in the manufacture of textiles. By

an order of the High Court of Punjab and Haryana dated July 19, 1991, the first petitioner company has amalgamated with Kidarnath Kishanchand Pvt. Ltd. (hereinafter referred to as 'KKPL') with effect from April 1, 1990. As a result, all the assets and liabilities of KKPL have, as on April 1, 1990, been transferred to and vested in the first petitioner-company.

48. The present petition is in respect of the return of income filed by KKPL for the assessment year 1990-91. It seems that KKPL had, over a period of time, acquired shares in various companies. By a resolution passed at a meeting of its board of directors on June 27, 1989, KKPL resolved to revalue its investments in shares of other companies at market price as on March 31, 1989, so as to reflect a true and fair market value of these investments. KKPL held, inter alia, 4,86,629 shares in Madura Coats Ltd. The cost of these shares was Rs. 29,25,025. Pursuant to the resolution dated June 27, 1989, these shares were revalued at Rs. 4,58,64,783. The difference between the cost price and the revalued price, viz., Rs. 4,29,39,758 was transferred to the share revaluation reserve account in the books of account of the company as per accounting practice. The shares of Madura Coats Ltd., were sold by KKPL on November 15, 1989, for Rs. 5,74,22,222. Thereafter, KKPL invested a sum of Rs. 4,75,00,000 in the bonds issued by the Industrial Development Bank of India on November 16, 1989, in order to reduce the capital gains tax liability of KKPL.

49. The total profits made on the sale of these shares was Rs. 5,44,97,195. In the accounts for the year ending March 31, 1990, this profit was reflected as under :

Amount of Rs. 1,15,57,439 being the difference between the sale proceeds of Rs. 5,74,22,222 and the revalued figure of Rs. 4,58,64,783 was credited to the profit and loss account of the company. The amount of Rs. 4,29,39,758 was transferred from the share revaluation reserve account to the general reserve account. According to the petitioners, this was in accordance with the provisions of Schedule VI of the Companies Act, 1956, and also in accordance with the accounting principles.

50. Under section 115J of the Income-tax Act, 1961, when the assessee is a company, if the total income of the company as computed under the provisions of

the Income-tax Act is less than 30 per cent. of its book profits, the total income of such assessee chargeable to tax for the relevant previous year shall be deemed to be an amount equal to 30 per cent. of such book profit.

51. In the case of KKPL, the income for the assessment year 1990-91 was nil. Therefore, computation under section 115J was required to be made. The book profits of the company for the relevant previous year, as per its profit and loss account, were, Rs. 24,38,311. Thirty percent of this amount namely, Rs. 7,31,493 was, therefore, deemed to be the total income of KKPL under the provisions of section 115J. The return of income was filed accordingly. After giving credit for advance tax and tax deducted at source, the company claimed a refund of Rs. 10,63,162.

52. KKPL received on June 18, 1991, an intimation under section 143(1)(a) of the Income-tax Act which stated that the total income of the company had been determined under section 115J at Rs. 1,36,13,420. This figure, it seems, has been arrived at by the Income-tax Officer by adding to the book profit of the company as shown in the profit and loss account, the amount of Rs. 4,29,39,758, which is the amount transferred by the company to the share revaluation account when the shares of Madura Coats Limited were revalued by the company. This has been added to the book profit of the company by the Income-tax Officer in order to determine the income of the company under section 115J of the Income-tax Act. Accordingly, the total tax and interest payable on such tax has been determined and, after giving credit for the advance tax paid by the company, a demand has been raised on the company for the payment of Rs. 1,07,96,817.

53. For reasons which we have set out earlier, while dealing with Writ Petition No. 2587 of 1991, under section 143(1)(a) of the Income-tax Act, the Income-tax Officer can only disallow such relief as is prima facie inadmissible on the basis of the information available in such return and the accounts and documents annexed to it. It is contended by Dr. Balasubramanian who appears for the respondents that the amount which is transferred by the petitioner to the share revaluation reserve account is available from the documents which are furnished by the company itself. Hence, it is permissible for the Income-tax Officer to add this amount to the

book profits of the company. This submission is fallacious. What the Income-tax Officer has done is to reject the basis on which the company has filed its accounts and calculated its book profits for the relevant accounting year. The Income-tax Officer has not accepted the transfer of the above amount to the share revaluation reserve account, although, according to the petitioners, it is permissible as per accounting practice and should not be considered as a part of the book profits of the company. This is not the kind of adjustment which is contemplated under section 143(1)(a) of the Income-tax Act. In the guise of adjustment, the Income-tax Officer cannot reject the profit and loss account filed by the company nor can he change the basis of allocation of various amounts made by the company in its various accounts. For this purpose, it is necessary that the Income-tax Officer should issue a notice to the assessee under section 143(2) of the Income-tax Act and, after hearing the submissions of the assessee, decide the question in accordance with law. He cannot, unilaterally, and without any reference to the assessee, sent an intimation rejecting the entire profit and loss account of the assessee-company and substituting his own calculations. This is neither the correction of a clerical error nor is it the correction of an arithmetical error, as is submitted in the alternative by Dr. Balasubramanian. For the reasons which we have set out earlier, the Income-tax Officer has, therefore, acted beyond his jurisdiction in calculating the total income of the company in the manner in which he has done in the present case.

54. In the premises, the petition is allowed and the rule is made absolute in terms of prayers (a) and (b). The Income-tax Officer is directed to deal afresh with the return of the petitioners in accordance with law. The respondent to pay to the petitioners costs of the petition.