

Symonds and Co. Vs. Addl. Cit

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SooperKanoon Citation : sooperkanoon.com/492525

Court : Allahabad

Decided On : Aug-19-2002

Reported in : [2003]86ITD417(NULL)

Appeal No. : IT Appeal No. 381 (All) of 1996 19 August 2002 A.Y. 1994-95

Appellant : Symonds and Co.

Respondent : Addl. Cit

Advocate for Pet/Ap. : Amitava Ray, *for the Assessee* R.N. Gupta, *for the Revenue*

Judgement :

ORDER

P.S. Kalsian, A.M.

Appeal is directed by the assessee against the order of the Commissioner (Appeals) dated 14-12-1995. Ground of appeal No. 3 raised by the assessee is reproduced below :

'3. Because the adjustments made by the assessing officer though not indicated in the intimation under section 143(1)(a) but brought out by the learned Commissioner (Appeals), Allahabad his order dated 14-12-1995 pertain to carried forward of losses of assessment years 1991-92 and 1992-93 (inadvertently referred to as assessment years, 1990-91 and 1991-92) in the order of

Commissioner (Appeals) are will outside the purview of prima facie adjustment permissible under the first proviso to section 143(1)(a) and not sustainable.'

2. The facts of the case are as follows : The assessee filed the return of income for the assessment year 1994-95. The assessee claimed deduction for carry forward loss of Rs. 41,75,074. The assessing officer, however, allowed deduction for carry forward loss of earlier years at Rs. 38,53,011 and, therefore, made adjustment of Rs. 3,22,063 being the difference between the assessee's claim for loss of Rs. 41,75,074 and actual carry forward loss as per earlier years record of the department at Rs. 38,53,011. The assessing officer also demanded additional tax.

3. In first appeal, the Commissioner (Appeals) confirmed the intimation under section 143(1)(a) of the Income Tax Act. It is argued by the learned counsel for the assessee that the information sent by the assessing officer under section 143(1)(a) without giving the details of the adjustment made is contrary to the mandatory requirement of the second proviso to section 143(1). The adjustment of loss of earlier assessment years 1991-92 and 1992-93 are outside the purview of the prima facie adjustment permissible under the first proviso to section 143(1)(a) and not sustainable. It is also stated by the learned counsel that the prima facie adjustments made by the assessing officer are contrary to the Board's Circular No. 549 dated 31-10-1989, in 182 ITR-Statute at page 19. The assessing officer has no power to go beyond or behind the return, accounts or document in allowing or disallowing any such deduction, allowances or relief as mentioned in the case of *Khatau Junkar Ltd. v. K.S. Pathania*, Dy. CIT : [1992]196ITR55(Bom) . The learned Departmental Representative on the other hand, supported the orders of the assessing officer and the Commissioner (Appeals).

4. We have considered the facts of the case, rival submissions and the material on record. Under section 143(1)(a), the assessing officer can make the following adjustment in the intimation sent to the assessee, under the proviso to the said section:

'(ii) Any loss carried forward, deduction, allowance or relief, which, on the basis of the information available in such return, accounts or document is prima facie inadmissible, shall be disallowed.'

The Central Board of Direct Taxes has issued Circular No. 549 dated 31-10-1989 explaining the relevant provisions. In para 5.4 of this circular, it has been clarified by the Board that prima facie adjustment can be made only on the basis of information available in the return or accompanying accounts or documents and not on the basis of the past records of the assessee. Some examples of prima facie adjustment or inadmissible in respect of which adjustment can be made to the return of income or loss are mentioned in para 5.4. Adjustment of loss can be done only in the following three type of cases as mentioned in para 5.4(vi), (vii) and (viii) :

'5.4. (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.'

It is clear from the provisions of law as well as decision of the Bombay High Court in the case of Khatau Junkar Ltd. (supra) and Boards Circular No. 549 dated 31-10-1989 (para 5.4) only, the abovementioned type of losses can be adjusted which are prima facie inadmissible. Neither the assessing officer nor the Commissioner (Appeals) has mentioned that the loss of Rs. 41,75,074 falls under any of the abovementioned heads. In fact, the assessing officer has gone beyond the return of income filed by the assessee and made prima facie adjustment by looking into the past records of the assessee for the assessment years 1991-92 and 1992-93. Though the figure of loss taken by the assessing officer at Rs. 38,53,011 is correct but prima facie adjustment in respect of loss of Rs. 41,75,074 (which may not be a correct figure as per past record of the department) is not admissible because under the proviso to section 143(1)(a) prima facie adjustment is permissible only on the basis of information contained in the return of income or document filed by the assessee along with such return of income and the assessing officer has no power to go beyond the return of income insofar as the prima facie adjustment are

concerned. Since in this case of the assessee prima facie adjustment of loss has been made on the basis of assessment records of earlier years, the same was not permissible according to the provisions of law and Boards Circular No. 549 dated 31-10-1989. Therefore, the assessing officer was not justified in making prima facie adjustment in respect of loss of Rs. 41,75,074 claimed by the assessee and the assessing officer is directed to allow deduction of loss of Rs. 41,75,074, because no information has been pointed out by the assessing officer which was available in the return of income for the assessment year 1994-95 on the basis of which prima facie adjustment has been made by the assessing officer. Since the assessing officer was not justified in making prima facie adjustment, the assessing officer was not justified in charging the additional tax. The order of the Commissioner (Appeals) as well as order of the assessing officer in respect of prima facie adjustment is, therefore, not sustainable in law.

5. In the result, the appeal of the assessee is allowed.