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Court : Income Tax Appellate Tribunal ITAT Hyderabad

Decided On : Mar-31-1995

Reported in : (1997)57TTJ(Hyd.)86

Appellant : Hifco Marwel Ltd.

Respondent : Assistant Commissioner of Income

Judgement :

This appeal by the assessee is directed against the order of the CIT(A)-IV, Hyderabad, dt. 28th Dec., 1993, for the asst. yr. 1992-93.

(a) Assessee is a company having share dealing business. It filed return of income for the asst. yr. 1992-93 on 29th Dec., 1992, declaring a loss of Rs. 1,24,02,822. In the computation of taxable income, the assessee reduced the net profit as per the P&L account by an amount of Rs. 41,24,150 with the remarks "unaccrued and unrealised profit on sale of investments to be offered as income on cash basis".

In the same computation at another place, under the head "Method of accounting" following note was given Change to cash basis for profit on sale of investment, otherwise - mercantile system. The following footnote was given in the same page containing computation of taxable income : "During the year the assessee had sold some investments which are in fact pledged with a bank and a company for debts owed by a third party.

Though the assessee booked profit on sale of these investments it had no legal rights to enforce the payment for sale of shares as sale made on the condition that the pledged share will be released and delivered.

Though the company, on the basis of contract of sale has booked profits on sale of these investments, the sale is not complete as the title to the company on these shares is defective.

For claiming that the income from sale of above investments is not taxable, we rely on the Supreme Court decision in the case of E. D.Sassoon and Co. Ltd. vs. CIT (1954) 26 ITR 27 (SC) where it was held that while considering the question as to whether or not income had accrued to the assessee, it has to be ascertained whether the assessee is vested with a right to claim that amount." (b) Under s. 143(1)(a), the AO disallowed the claim of the assessee in this behalf, and by adjusting the aforesaid amount of Rs. 41,24,150 reduced the returned loss to Rs. 82,78,182. He charged additional tax of Rs. 4,26,850, in the intimation under s. 143(1)(a), dt. 18th June, 1993.

(c) Not satisfied with the above adjustment made to the returned income, the assessee moved a petition under s. 154 before the AO, contending that such an adjustment was not permissible within the purview of s. 143(1)(a). However, since the AO did not pass any order on the said petition of the assessee under s. 154, within three months from the end of the month in which the said petition was made, the assessee filed appeal before the CIT(A), invoking the proviso to s.

154(2)(b) of the IT Act.

(d) Facts relating to the adjusted amount of Rs. 41,24,150 as noted in the order of the CIT(A) are that the assessee entered into an agreement with Teletek India Ltd., Hyderabad, for purchase of certain shares, the details of which are as follows : By its letter dt. 15th June, 1990, M/s Teletek India Ltd. offered to the assessee to sell its shares mentioned at Sl. Nos. 1 and 2 above and this was accepted by the assessee in its letter dt. 22nd June, 1990, whereas the shares mentioned at Sl. No. 3 were offered by the Teletek India Ltd. on 15th Feb., 1991, and the said offer was accepted by the assessee by its letter dt. 19th Feb., 1991. Thereafter, the assessee offered to sell all those shares at Rs. 600 per share of TISCO and at Rs. 510 per share of TELCO to Hyderabad Investment and Financial Consultancy Service (P) Ltd. The said company confirmed the acceptance of the said offer of the assessee, by its letter dt. 31st March, 1992.

In all these letters, it was made clear that the shares in question were placed with City Bank and Godrej Foods Ltd. by Teletek India Ltd. which informed that it was negotiating with City Bank and Godrej Foods Ltd. to release those shares and the share would be delivered as soon as they were received. Thus, knowing the fact that these shares were pledged with the above concerns, assessee in the first instance accepted the offer of Teletek India Ltd. and purchased those shares, and even entered into agreement with Hyderabad Investment and Financial Consultancy Services (P) Ltd. for selling those shares at a particular rate and the said company with the full knowledge about the pledging of those shares, accepted the offer of the assessee. Necessary entries with regard to purchase and sale of these shares were made in the books of account of the assessee, and in this entire transactions, the assessee calculated a profit of Rs. 41,24,150 which was credited to the P&L account of the assessee under the head profit from stock market operation. Though the net profit has been arrived at in the audited P&L account of the assessee, taking the aforesaid profit without any reservation, the net result showing excellent performance in the share business has been highlighted in the Directors Report; and their shareholders also have been informed about the net result which included the profit from the aforesaid share dealings; while filing the return the assessee reduced the net profit on these transactions on the ground that there was no physical transfer of shares to the assessee and, therefore, it had no legal right to enforce payment on sale of shares, and thus no profit accrued on the basis of contract for sale.

(e) On the above background, the CIT(A) noted that the question before him was whether the deduction claimed by the assessee of Rs. 41,24,150, while computing the taxable income was a prima facie allowable item, because as per the proviso to s. 143(1)(a), adjustments to the income or loss declared in the return would be made under certain circumstances and any loss carried forward, deduction, allowance or relief claimed in the return, which, on the basis of the information available in such returned accounts or documents, is prima facie admissible, shall be allowed, and which is prima facie inadmissible, shall be disallowed. Thus, he noted that for the purpose of determining the admissibility or inadmissibility of a particular claim, the AO was to rely not only on the information available in the return, but also the information available in the accounts or documents accompanying the returns. He thereafter, noted that in the case of a company, the Form No. 1 in which the return has to be filed, specifically mentions that in the case of profits and gains of business and profession, copies of certain audited manufacturing account, trading account, P&L account, balance sheet, the auditors report and cost audit report wherever applicable, should be enclosed, and as such according to him, these audited accounts also would constitute information for the purpose of determining whether an item is prima facie allowable or disallowable.

(f) The CIT(A) thereafter noted that in the auditors report in the case of the assessee-company, nowhere it was mentioned that income shown in the P&L account was either overstated or it has not accrued during the relevant year. After extracting Note No. 3 of auditors report, the CIT(A) observed, that excepting this note, there was nothing to indicate that the income from share business as shown in the P&L account was not correct. He noted that the assessee apparently, while filing the return reduced the total income by an amount of Rs. 41,24,150 on the ground that income from the share dealing would be offered on cash basis. According to the CIT(A), this unilateral change of accounting method is not permissible as the assessee was following mercantile system and the accounts of the assessee had been drawn up and audited on that basis, and the assessee cannot exclude any item while filing the return, on the specious plea of change in the method of

accounting. The first appellate authority rejected the other contention of the assessee that it had no right on those shares which were yet to be delivered, observing inter alia that the assessee was dealing in shares and for trading activities, it was not necessary that stock-in-trade should have actually changed the hands, and even a contract to purchase and sale executed both by the buyer and seller would be sufficient for completing the transaction, even without physical delivery of the goods. Since the assessee has taken the shares as stock-in-trade, he rejected the assessee's plea that there was no physical delivery and hence no profit, as irrelevant and unacceptable.

(g) The CIT(A) ultimately concluded that the AO had sufficient material on record to come to the conclusion that the deduction claimed by the assessee while computing the income, was not an admissible item as this claim was not supported by the action of the assessee while preparing the P&L account, and balanced sheet or while submitting the full facts of the financial affairs of the company before the shareholders. He further held that even under the mercantile system of accounting followed by the assessee consistently, the profits accrued in the year of contract and there is no reason to reduce the net profit by making unilateral claim after the finalisation of accounts that certain items shown as income, were not real income. He thus upheld the action of the AO, and rejected the contentions of the assessee in the appeal before him.

(h) Aggrieved by the order of the CIT(A), the assessee preferred this further appeal before us.

3. Reiterating the contentions urged in the grounds of appeal before us and before the lower authorities, the learned counsel for the assessee submitted that whether there is a transfer of shares and whether the alleged profit is taxable during the relevant assessment year, is a debatable question of law, which cannot be adjudicated upon in an intimation passed under s. 143(1)(a) of the IT Act, as the same does not constitute a prima facie adjustment. He submitted that the CIT(A), instead of considering the ground whether the alleged profit could be added to the total income of the assessee in an intimation under s.

143(1)(a) of the Act and whether it constituted a prima facie adjustment which alone could be made in an intimation under s.

143(1)(a), made a detailed discussion on the note appended to the return, the absence of any note that the sum of Rs. 41,24,150 was not shown to the audited balance sheet and P&L account, etc., and made detailed investigation into facts relating to the purchase of shares from Teletek India Ltd. Inviting our attention to the circular of the Board No. 549, dt. 13th Oct., 1980, found reported in (1990) 182 ITR (ST) 20, where the scope of amendment brought about in s. 143 by the Direct Tax Laws (Amendment) Act, 1989 w.e.f. 1st April, 1989, was explained, and the subsequent Circular No. 689, dt. 24th Aug., 1994, reported in (1994) 209 ITR (St) 75 wherein the scope of prima facie disallowances under s. 143(1)(a) of the IT Act, 1961, has been explained, he submitted that the impugned adjustment does not amount to a prima facie adjustment, and as such it could not have been made in an intimation under s. 143(1)(a). He placed reliance on the decision of the Bombay High Court in *Khatau Junkar Ltd. vs. K. S. Pathania* (1992) 196 ITR 55 (Bom), of the Madras Bench of Tribunal in *Amber Electrical Conductors (P) Ltd. vs. Dy. CIT* (1992) 43 ITD 313 (Mad), of the Jaipur Bench of Tribunal in *Badhar Khan Pukhraj & Party vs. Dy. CIT* (1992) 44 TTJ (Jp) 140 : (1992) 42 ITD 589 (Jp), of the Indore Bench of Tribunal in *Eicher Motors Ltd. vs. Dy. CIT* (1989) 40 ITD 595 (Ind), of the Hyderabad Bench of the Tribunal in *Anam Machinery Fabricators Ltd. vs.*

ITO (1994) 49 ITD 617 (Hyd), of the Delhi High Court in *SRF Charitable Trust vs. Union of India* (1992) 193 ITR 95 (Del), of the Madhya Pradesh High Court in *Kamal Textiles vs. ITO* (1991) 189 ITR 339 (MP), and of the Karnataka High Court in *Om Trading Co. vs. Second ITO* (1991) 188 ITR 641 (Kar). Placing reliance on the decision of the Supreme Court in *E. D. Sassoon & Co. Ltd. vs. CIT* (1954) 26 ITR 27 (SC), he submitted that while considering the question whether or not income had accrued to the assessee, it has to be ascertained whether the assessee is vested with a right to claim that amount, and in the case on hand, the assessee was never vested with any right in respect of these shares in question and as such income from the sale of those shares is not taxable. He filed before us a copy of Form 3CD wherein it was mentioned against col. 2 that

"There is change in method of accounting for income-tax : Cash basis for profit on sale of investments and hire charges other - Mercantile".

He also filed Computation of Taxable Income below which Note to Computation of Hifco Marwel Limited extracted in the order of the CIT(A) and also hereinabove in para -2(a), is found. Annual report of the assessee-company for the year 1992 is also placed before us. The learned counsel for the assessee has also filed a note on the point in dispute and has also filed before us a copy of circular of the Board No. 689, dt. 24th Aug., 1994. He also placed reliance on the decision of the Tribunal (Delhi Bench) in *New United Motors vs. Asstt. CIT 74 Taxman (Trib) 288 (Del)*.

4. The learned Departmental Representative on the other hand, strongly relied on the orders of the lower authorities and contended that the statutory audit report filed alongwith the return was looked into by the AO and since the loss claimed by the assessee in the return was not admissible in toto, and the deduction in respect of a sum of Rs. 41,24,150 on account of the share transactions in question is prima facie not allowable, the same was disallowed by the AO, since the AO was bound to take cognisance of the P&L account statutorily prepared and the auditors report which were approved by the annual general body meeting of the share-holders. He submitted that a mere perusal of the P&L account prepared as per the statute clearly shows that the deduction claimed by the assessee need not be allowed, and the loss claimed by the assessee in return cannot be allowed in toto. 5. In reply, the learned counsel for the assessee submitted that considering the fact that there is a specific note below the Computation of Taxable Income annexed to the return, wherein the assessee placing reliance on the decision of the Supreme Court in *E. D. Sassoon & Co. Ltd.* (supra) claimed that the assessee has no right vested in the shares in question and as such that income from the sale of the said shares was not taxable, and also considering the fact that in Form 3CD it has claimed against col. 3 that "There is change in method of accounting for income-tax-....", the adjustment with regard to profit on the sale of shares in question is not a prima facie adjustment which alone could have been done in an intimation under s. 143(1)(a). Since the allowability or otherwise of the assessee's claims in the above two documents are debatable questions of law, they should have been decided only after making proper enquiry and after affording opportunity of being heard to the assessee in the course of regular assessment under s. 143(3), and as such the adjustment with regard to profit in respect of the shares could not have been made in an intimation under s.

143(1). With regard to the emphasis of the departmental authorities on the position in P&L account statutorily prepared in the context of the share transactions in question, and the absence of any note in the audit report with regard to the adjustment with regard to the purchase and/or sale of these shares, warranting the deduction as claimed by the assessee in return, it is the contention of the assessee that in accordance with those agreements for purchase and sale of the shares, the assessee has made entries in its books of accounts, showing profits thereon and accordingly the P&L account was also prepared. However, it became evident only at the time of filing the return and the computation sheet along with it on 29th Dec., 1992, that the unaccrued profit of Rs. 41,24,150 was erroneously taken into account and deducted. In the light of this factual position, he contended that the question whether the add-back of that unaccrued amount on the only ground that it was booked as if accrued, with it has not accrued, cannot be made as a matter of prima facie adjustment in the course of intimation under s. 143(1)(a) of the IT Act.

6. We have considered the rival submissions and perused the decisions relied upon by the learned counsel for the assessee. On a plain reading of s. 143(1)(a) of the Act, 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 adjustment, as set out in that 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 to s.

143(1)(a), however, permits certain adjustments to be made while calculating the tax or interest payable or while granting a refund. The permissible adjustments as per the said proviso 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.

Proviso to s. 143(1)(a) makes it clear that the AO has no power to go beyond or behind the return, accounts or documents, either in allowing or in disallowing any deduction,... allowance or relief. Under cl.

(3) to the proviso noted above 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, and if the ITO was 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 provisions prescribed under s. 143(2) of giving notice to the assessee, and it is not open to him to disallow such a claim under s. 143(1)(a).

7. The circular of the Board No. 549, dt. 31st Oct., 1989, reported in (1990) 182 ITR (St) 20, explains the scope of amendment brought about in s. 143 by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1st April, 1989. In para 5.4 of the said circular, the prima facie adjustments as contemplated under cl. (ii) of proviso to s. 143(1)(a) are illustrated, but those adjustments were clarified to be only illustrative and not exhaustive list of prima facie admissibles or inadmissibles for which adjustments can be made to the returned income or loss. The subsequent circular of the Board, No. 689, dt. 24th Aug., 1994, reported at (1994) 209 ITR (St) 75, states that it has been decided that prima facie disallowances shall be made only in respect of the following types of claims : (a) an incorrect claim, if such incorrect claim is apparent from the existence of other information in the return or the accompanying accounts or documents.

(b) any claim in respect of which there is an omission of information which is required, under the specific provisions of the Act or the Rules, to be furnished alongwith the return to substantiate such claim.

(c) A claim for deduction or rebate of any amount which exceeds the statutory limit imposed, if such limit is expressed either as a specific mandatory amount or as a percentage, ratio or a fraction, and if the information relevant to application of the statutory limits appears in the return or the accompanying accounts or documents.

(d) Any claim which is patently inadmissible in law. Considering the scope of what is prima facie admissible or prima facie inadmissible, in terms of proviso to s. 143(1)(a), the Bombay High Court in the case of *Khatau Junkar Ltd. vs. K. S. Pathania* (supra), observed as follows : "..... 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 s. 143(1)(a). If any further enquiry is necessary, or if the ITO feels that further proof is required in connection with the claim for deduction, he will have to issue a notice under sub-s. (2) of s. 143".

In the case of *SRF Charitable Trust vs. Union of India* (supra), the Honble Delhi High Court held as follows : "Clause (iii) of the first proviso to s. 143(1)(a) of the IT Act, 1961, clearly provides that the AO, in making an intimation deemed to be a notice or demand, can make an adjustment to the income or loss declared in the return, if, on the basis of the information available in the return, accounts or documents accompanying it, the deduction, allowance or relief claimed is prima facie inadmissible. The conclusion that the claim is inadmissible must, in other words, flow from the return as filed. No power is given to the AO to disallow a claim for the reason that there is no proof in support of the claim made by the assessee.

Only where it is evident from the return as filed, along with the documents in support thereof, that a claim of the assessee is inadmissible can an adjustment under cl. (iii) to the first proviso to s. 143(1)(a) be made. If

proof in support of the claim is not furnished by the assessee then, for lack of proof, no disallowance or adjustment can be unilaterally made. The only option which is open to the AO in such a case is to require the assessee to furnish proof. This is also evident from the fact that, except for the documents specified, the assessee is not required to file the entire books of accounts or other documents, and it is not the law that, in support of a claim made in the return for deduction or non-taxability of a receipt, all the proof available and original documents must be filed along with the return.

The state of furnishing of the proof is reached as and when proof is demanded by the AO on a notice under s. 143(2) being issued. If no proof in support of the claim is available with the AO on the return, accounts or documents filed by the assessee, he can issue a notice under s. 143(2); but he cannot unilaterally make a disallowance by seeking to invoke the provisions of the first proviso to s. 143(1)(a)." Dealing with the validity of the provisions of s. 143(1)(a) of the IT Act, the Madhya Pradesh High Court in the case of Kamal Textiles vs.

ITO (supra) held that the said provisions are not opposed to natural justice and are not ultra vires. It says that the intimation under the provisions 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 returns, prima facie inadmissible. The AO, the Court held, is not permitted under the guise of making adjustment to adjudicate upon any debatable issue.

8. In the case of Amber Electrical Conductors (P) Ltd. vs. Dy. CIT (supra), it was held that where a particular matter requires an enquiry for coming to a decision, the said adjustment cannot be termed as a prima facie adjustment, and hence before the adjustment is made, the AO should make a conscious exercise of finding out whether an enquiry is necessary. Similarly, in the case of Badhar Khan Pukhraj & Party vs.

Dy. CIT (supra), it was held that where there is a substantial point of dispute, it ceases to be a prima facie adjustment. Further, in the case of Eicher Motors Ltd. vs. Dy. CIT (supra), the Indore Bench of the Tribunal held that if the allowability or otherwise of any claim is debatable no adjustment in respect thereof could be made. It was also held in that case that AO should be satisfied that the adjustment is ex facie justified. In the case of Anam Machinery Fabricators Ltd. vs. ITO (supra), the Hyderabad Bench of the Tribunal, negating the case of the assessee and refusing to recognise past losses and refusing to set off those losses from the current years income, does not amount to prima facie adjustment made under s. 143(1)(a), and no such power for making such prima facie adjustment vests in the ITO. In that case, the Tribunal also held the intimation in that case as bad for the reason that before passing the intimation dt. 28th Feb., 1990, the assessee was never heard and no reasons were assigned as to why the losses claimed were not considered and why set off of the losses was not ordered.

9. In the case of New United Motors (supra), the AO processed under s.

143(1)(a) the return of income of the assessee for the asst. yr.

1990-91 and made prima facie adjustments by way of addition in respect of amounts aggregating to Rs. 33,82,442 shown as payable in balance sheet on account of bonus, EPF, ESI and sales-tax. The additions were made because there was no proof given in the return of payments of these amounts before the due date of filing the return under s. 139(1).

The ITO made no inquiry about these payments from the assessee before sending the intimation under s. 143(1)(a). Assessee's petition under s.

154 of the Act seeking rectification of intimation on the ground that the amounts shown as payable, had been paid within the due date specified by law, was rejected by the AO, following Board's Circular No.581, dt. 28th Sept., 1990. On appeal, the CIT(A) confirmed the action of the AO. On further appeal, inter alia held as follows : "... The idea of sending the intimation to the assessee is that bulk of the assessment work is eliminated or disposed of by such a method and the Department is able to concentrate on a few selected cases so as to

achieve psychological deterrent results by making correct assessments which can stand the scrutiny of appeals. It is true that the assessee has to reciprocate the trust reposed in them by the Department and if a prima facie disallowance has to be made, nothing prevents the Revenue from making the disallowance, but in an area like the present one, where it could not be said for certain as to what the actual position was, the AO was duty-bound to make an enquiry from the assessee and if the claim made by the assessee was wrong, penal consequence would have followed. Instead of following that course, however, the AO made the disallowance and thereby saddled the assessee with the additional liability of interest under various sections of the Act.

Further, the words, "prima facie" means "on the face of it". In the instant case, it could not be said that the prima facie disallowance could be made simply because there was no evidence or proof of payment before the due date of filing of the return....." 10. Keeping in mind the provisions of s. 143(1)(a), and the scope of the prima facie adjustments that can be made by the AO in an intimation under s. 143(1)(a) in the light of the guidelines of the Board contained in Circular No. 549, dt. 13th Oct., 1989 [printed at 82 CTR (SC) 1] and 689, dt. 24th Aug., 1994 [printed in (1994) 120 CTR (St) 31] referred to above and the decisions of various High Courts and the Tribunal on this point discussed above, we have to examine whether the adjustment made by the AO in the intimation under s. 143(1)(a) with regard to profit on sale of investments amounting to Rs. 41,24,150 can be termed as a prima facie adjustment, so as to entitle the AO to do the same in an intimation under s. 143(1)(a) of the IT Act. Evidently, the assessee in the computation of taxable income, reduced the net profit as per the P&L account by an amount of Rs. 41,24,150 with the remarks "Unaccrued and unrealised profit on sale of investments to be offered as income on cash basis". In the foot note to the said computation, extracted in para 2(a) above, the assessee inter alia, contended that though the assessee booked profit on sale of these investments, it had no legal right to enforce the payment for sale of shares, as sale was made on the condition that the pledged shares will be released and delivered, that though the company, on the basis of contract of sale has booked profits on sale of these investments, the sale is not complete as the title to the company on these shares was defective, and that for claiming that the income from sale of above investments is not taxable, it relied on Supreme Court decision in the case of E. D. Sassoon & Co. Ltd. (supra) wherein it was held that while considering the question as to whether or not income had accrued to the assessee, it had to be ascertained whether the assessee is vested with a right to claim that amount. Thus, the assessee in the footnote to the said computation which is part of the return clarified its position with regard to deduction of this profit of Rs. 41,24,150 from the net profit as per P&L account, and supported its claim for deduction in that behalf by placing reliance on the decision of the Supreme Court in the case of E. D. Sassoon and Co. Ltd. (supra). Thus, even if according to the AO, assessee's claim is patently inadmissible in law and as such the adjustment in that behalf, is a prima facie adjustment, since according to the assessee, its claim for deduction is allowable in view of the decision of the Supreme Court in the case of E. D. Sassoon & Co.

Ltd. (supra), it remains to be a point on which two opinions are possible with regard to its admissibility, and as such, in the light of Circular No. 689, dt. 24th Aug., 1994, of the Board, prima facie disallowance in respect of profit of Rs. 41,24,150 on the sale of these investments could not be made in an intimation under s. 143(1)(a).

Similarly, assessee has also claimed in the computation of taxable income that it changed to cash basis for profit on sale of investments, Others - Mercantile system. The admissibility or otherwise of such a change in the method of accounting claimed by the assessee is again a matter of debate, and the same could not have been adjudicated without making proper enquiry, in an intimation under s. 143(1)(a), in the light of the circulars of the Board and the decisions of the Tribunal discussed in paras 8 and 9 hereinabove. Consequently, the adjustment made by the AO in the intimation under s. 143(1)(a) with regard to profit on sale of investments amounting to Rs. 41,24,150 cannot be termed as a prima facie adjustment and in any event the AO could not have made the same in an intimation under s. 143(1)(a) in the light of the circulars of the Board and the decisions of various High Courts and the Tribunal discussed above, since the admissibility or otherwise of the assessee's claim in that behalf is a debatable one, on which two opinions are possible. In this view of the matter, we set aside the order of the CIT(A), and cancelling the intimation under s. 143(1)(a) of

the IT Act, 1961, sent by the AO on 18th June, 1993, and direct him to complete regular assessment under s. 143(3) after issuing due notice to the assessee under s. 143(2) and after making due enquiries with regard to admissibility or otherwise of the assessee claim for deduction of profit of Rs. 41,24,150 from the net profit as per P&L account.

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