

Abad Enterprises Vs. Cit

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Court : Kerala

Decided On : Oct-18-2001

Reported in : [2001]253ITR319(Ker)

Appeal No. : I.T.R No. 99 of 1998 18 October 2001

Appellant : Abad Enterprises

Respondent : Cit

Advocate for Pet/Ap. : P. Balakrishnan *for the Assessee* P. K. R. Menon, Senior Advocate, George K. George, *for the Revenue*

Judgement :

P. K. Balasubramanyan, J.

At the instance of the assessee, the Income Tax Appellate Tribunal, Cochin Bench, has referred the following questions of law for the opinion of this court under section 256(1) of the Income Tax Act, 1961 :

'(1) Whether, on the facts and circumstances of the case, the Tribunal is correct in law in holding that the assessing officer was justified in rejecting the application for revising the assessment under section 154 of the Income Tax Act ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that the adjustments made by the assessing officer are

within the scope of the provisions of section 143(1)(a) ?

(3) Whether, the Tribunal is right in law in holding that interest on deposits cannot be considered as profits derived from the business for the purpose of deduction under section 80HHC ?

(4) Whether, on the facts and circumstances of the case, the Tribunal is right in law in holding that the adjustments made by the assessing officer are in respect of income not derived from the export of goods and merchandise and that the same comes within the ambit of clause (iii) of the first proviso to section 143(1)(a) ?'

The assessee filed a return of income for the assessment year 1989-90 declaring a total income of Rs. 12,290. The return was processed by the assessing officer under section 143(1)(a) of the Income Tax Act, (hereinafter referred to as 'the Act'), and he determined the total income at Rs. 2,68,000. In processing the return, the assessing officer made a prima facie adjustment of Rs. 2,55,705 in respect of the assessee's claim for deduction under section 80HHC of the Act. An intimation under section 143(1)(a) of the Act was issued to the assessee. The assessee, thereupon, filed a petition for rectification by invoking section 154 of the Act in regard to deduction disallowed under section 80HHC of the Act. The assessee contended that the addition made by the assessing officer was beyond the scope of processing the assessment under section 143(1)(a) of the Act. The assessing officer rejected that application. An appeal filed by the assessee was dismissed by the Commissioner (Appeals), who held that the assessing officer was justified in rejecting the petition for rectification. The assessee, thereupon, filed a further appeal before the Income Tax Appellate Tribunal. The Tribunal affirmed the decision of the Commissioner (Appeals) and dismissed the appeal filed by the assessee. Claiming that questions of law referred to hereinabove arose out of the decision of the Tribunal, the assessee sought a reference of those questions by invoking section 256(1) of the Act. The Tribunal has thereupon referred those questions for the opinion of this court.

In his return under section 139 of the Act, the assessee claimed that he was entitled to deduction under section 80HHC of the Act on the interest received by him on refund of income-tax received in the previous year, the interest received by

him on a fixed deposit in a bank and the interest received by him on a deposit made by him for the purchase of a car. It was while processing this return under section 143(1)(a) of the Act that the assessing officer took the view that the claim for deduction in respect of these amounts under section 80HHC of the Act was prima facie inadmissible. He thus disallowed those claims.

According to learned counsel for the assessee while processing a return under section 143(1)(a) of the Act, the assessing officer has no power to disallow such a claim for deduction and if he wanted to proceed not to accept the return as submitted by the assessee, he had to act in terms of section 143(2) of the Act by issuing notice in that behalf and by proceeding under section 143(1)(a) and disallowing the claim for deduction under section 143(1)(a) of the Act, the assessing officer has committed an apparent error which was liable to be rectified under section 154 of the Act. According to learned counsel, the power available to the assessing officer under the provisos to section 143(1)(a) are limited.

We shall here set out the relevant provision :

'143. Assessment. - (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 :

Provided also that an intimation for any tax or interest due under this clause shall not be sent after the expiry of two years from the end of the assessment year in which the income was first assessable.'

According to learned counsel, the power of the assessing officer under section 143(1)(a) is only for correcting arithmetical errors and mistakes on the basis of the return and the documents accompanying the return, and the jurisdiction of the assessing officer being limited, he could not have considered and decided whether the claims for deduction as in the present case are admissible or not. According to counsel, the disallowance of a claim for deduction would involve an adjudication and such an adjudication cannot be had while proceeding under section 143(1)(a) of the Act, since it will be a clear case of violation of natural justice. Counsel relied on the decision of the High Court of Bombay in *Khatau Junkar Ltd. v. K. S. Pathania* : [1992]196ITR55(Bom) in support of his contention. Learned counsel also pointed out that the Appellate Tribunal had gone into the merits of the contentions raised by the assessee regarding the claim for deduction under section 80HHC of the Act and this was also impermissible. In support of both the propositions, counsel also relied on the decision of this court in *CIT v. Malabar Building Products Ltd.* : [2001]248ITR72(Ker) . Counsel submitted that the assessee bona fide believed that interest earned on his fixed deposit and motor

car deposit and income-tax refund are eligible for exemption under section 80HHC of the Act, and it could not have been disallowed except after issuing notice and by completing a regular assessment.

Learned counsel for the revenue, on the other hand, submitted that the application under section 154 of the Act itself was not maintainable as held by the very Bombay decision relied on by the assessee and that it has been settled law that interest income on deposits is income from other sources and when a claim for deduction of it under section 80HHC of the Act is made by the assessee, the same could be disallowed in terms of clause (iii) to the first proviso to section 143(1)(a) of the Act.

There is no dispute that an assessment under section 143(1)(a) cannot be completed by the assessing officer without hearing the assessee, if the adjustment made in the income and the computation of tax are not within the norms prescribed under the said section. The assessing officer is vested with power under section 143(1)(a) to make adjustments permitted therein which may result in relief not claimed or to deny a claim as prima facie inadmissible. Sub-clause (ii) of section 143(1)(a) says that if any refund is due on the basis of the return filed by the assessee, it shall be granted to the assessee, and clause (ii) of the first proviso to section 143(1)(a) says that 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 by the assessing officer. Correspondingly, clause (iii) says that 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. Therefore, there is a power in the assessing officer either to allow a claim which is not really made or disallow a claim which is really made, provided the officer confines himself to the data furnished in the return or in the documents accompanying the return. In other words, the assessing officer cannot travel outside the information furnished by the assessee in the return and the documents accompanying the return either to act in terms of the second proviso to section 143(1)(a) of the Act or to act in terms of the third proviso to section 143(1)(a) of the Act. To accept the argument of counsel for

the assessee would mean that even claims which are prima facie admissible or inadmissible cannot be either allowed or disallowed by the officer if he acts under section 143(1)(a) of the Act. The acceptance of this argument, in our view, would defeat the very purpose of the enactment of the provisos to section 143(1)(a) of the Act.

The decision in CIT v. Malabar Building Products Ltd. (supra) relied on by learned counsel for the assessee, in our view, is clearly distinguishable. That is a case where the Income Tax Officer practically made an assessment in the guise of making adjustments under section 143(1)(a) of the Act. He even partially disallowed certain claims made by the assessee. It is in that situation that this court held that the assessing officer had travelled outside section 143(1)(a) of the Act. Here, in the case on hand, what the assessing officer did was only to disallow the claims for deductions under section 80HHC of the Act in respect of interest received on income-tax refund, interest received on a bank deposit and interest received on a car deposit. Under clause (iii) to the first proviso to section 143(1)(a) of the Act, it is open to the assessing officer to prima facie see whether the claim made is inadmissible or not. These claims made by the assessee, in our view, were prima facie inadmissible as is clear from the fact that these were not incomes derived from the export business which alone was liable to be deducted under section 80HHC of the Act. It was held by this court as early as in the decision in CIT v. Cochin Refineries Ltd. ILR (1982) Ker 597 that interest received on deposit by an assessee was not the income derived from the business, even if the deposit is made out of the income derived by the assessee from the business. Similarly, as held by the High Court of Madras in B. Seshamma v. CIT (1970) 119 ITR 314 , interest earned from any source is generally income from other sources. If the assessing officer prima facie took the view that these deductions of interest claimed under section 80HHC of the Act were not admissible, which is the settled position in law, and exercised his right under clause (iii) of the first proviso to section 143(1)(a) of the Act to disallow those claims for deduction, it cannot be said that he had acted in excess of his authority under section 143(1)(a) of the Act. Nor can it be said that his decision to disallow, is beyond his power under section 143(1)(a) of the Act. It is in this context and since the assessee invited a decision by the Tribunal on these matters, that the Tribunal embarked upon the

consideration of the sustainability of the claims of the assessee. After having invited the Tribunal to look into those questions, it is not open to the assessee to raise the contention that the Tribunal was not justified in going into the merits of the claims of the assessee.

We may notice here that the assessee sought a rectification of the assessment by invoking section 154 of the Act. While considering whether the order calls for any rectification or not, it is certainly open to the assessing officer to consider whether he has committed any apparent mistake while completing the assessment under section 143(1)(a) of the Act. We find that the action of the assessing officer in disallowing the exemption claimed under section 80HHC of the Act in respect of the three items of interest income by invoking his power under clause (iii) of the first proviso to section 143(1)(a) of the Act is justified because the claim is prima facie inadmissible. The assessee has also no case that interest income qualifies for inclusion in the computation of export profit under section 80HHC of the Act. Therefore, there is no mistake apparent in so far as the disallowance of inadmissible deductions claimed, in the course of proceedings under section 143(1)(a) of the Act. Consequently, the application under section 154 of the Act was rightly rejected by the assessing officer. The assessee's case is that the Tribunal should not have considered the eligibility of the claim on the merits, while considering the jurisdiction of the assessing officer under section 143(1)(a) of the Act. In other words, the assessee canvases for the proposition that the assessing officer had no jurisdiction to make a disallowance in respect of the exemption claimed under section 80HHC of the Act for the three items of interest income described above. We do not find any mistake in the order of the Tribunal in considering the merits of the claim, because the assessee argued the case on the merits. Senior counsel for the revenue pointed out that the decision of the High Court of Bombay in *Khatau Junkar Ltd. v. K. S. Pathania* (supra) relied on by the assessee itself had held that the remedy against an order under section 143(1)(a) of the Act was not a rectification application under section 154 of the Act. We are of the view that we need not go into that question, because we have already held that the assessing officer has jurisdiction under clause (iii) of the first proviso to section 143(1)(a) of the Act to make disallowance of prima facie inadmissible claims. We have further found that the assessee's claim of deduction under

section 80HHC in respect of interest is prima facie inadmissible. In the light of this, we sustain the order of the Tribunal, and answer the questions referred to us, in favour of the revenue and against the assessee.

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