

Cit Vs. M.D. Thomas

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Court : Kerala

Decided On : Oct-27-2003

Reported in : [2004]134TAXMAN502(Ker)

Appeal No. : IT Reference No. 18 1 of 1999 27 October 2003

Appellant : Cit

Respondent : M.D. Thomas

Advocate for Pet/Ap. : P.K.R. Menon and George K. George, *for the Applicant*
Raju K. Mathews, *for the Respondent*

Judgement :

K.S. Radhakrishnan, J.

This is a reference under section 256(1) of the Income Tax Act. The following question is referred for decision of this court.

'Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in holding that additional tax under section 143(1A) was not leviable on the assessee?'

Assessee filed return for the assessment year 1991-92 claiming total loss of Rs. 6,04,043. In arriving at the loss assessee had claimed deduction under sections 80HH and 80J to the extent of Rs. 2,63,130. Assessing Officer processed the

return under section 143(1)(a) of the Income Tax Act and determined the loss at Rs. 3,40,930. Assessee's claim for relief under sections 80HH and 80U was disallowed on the view that the result of the business being loss, deduction was not permissible. In the intimation issued, under section 143(1)(a) on the reduced loss of Rs. 3,40,930. Assessee's claim for relief under sections 80HH and 80J was disallowed on the view that the result of the business being loss, deduction was not permissible. In the intimation under section 143(1)(a) on the reduced loss of Rs. 3,40,930, additional tax of Rs. 24,450 was levied under section 143(1A). Assessee then filed a petition for rectifying the intimation and deleting the additional tax. Assessing Officer rejected the request for rectification. Appeal preferred by the assessee was also dismissed.

2. The assessee took up the matter before the Tribunal. The Tribunal however held that the revenue authorities were not justified in levying additional tax under section 143(1)(a). Assessee raised a contention that at the time when the loss return was filed and also processed under section 143(1)(a), the matter was not free from doubt as to whether there could be levy of additional tax under section 143(1)(a) in a loss return. Further it was also pointed out that in view of the consequence of adjustment made and the insistence upon the assessee for filing a correct return, it would follow that the date of judging the question of the adjustment must be the actual date of the return in the light of the law then prevalent. Tribunal however noticed that whether with the amendment effected in the relevant provisions retrospectively there could be levy of additional tax was not free from doubt and there could be two views on that. We notice that the position has been resolved by the Apex Court in *Asst. CIT v. J. K. Synthetics Ltd.* (2001) 251 ITR 2001. Apex Court reversed the decision of the Delhi High Court in *J.K. Synthetics Ltd. v. Asstt. CIT* : [1993]200ITR584(Delhi) and held that the retrospectively substituted sub-section (1A) made it clear that even where the loss declared by the assessee had been reduced by reason of adjustments made under sub-section (1)(a) the provisions of sub-section (1A) applied and the additional tax could be imposed.

3. Counsel appearing for the assessee however took up the stand, placing reliance of the decision of the Apex Court in *CIT v. Hindustan Electro Graphites*

Ltd. : [2000]243ITR48(SC) that since there is no dishonest intention assessee cannot be held liable. The Legislature has not used the expression 'dishonest intention'. Over and above, the decision in Hindustan Electro Graphites Ltd.'s case (supra), has been distinguished and doubted by the Apex Court in J.K. Synthetics Ltd.'s case (supra). In such circumstances, we answer the question in favour of the revenue and against the assessee.

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