

**Sri V. Uppalaiah Vs. the Dcit, Range 3**

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**Court :** Income Tax Appellate Tribunal ITAT Hyderabad

**Decided On :** Mar-28-2005

**Reported in :** (2005)94ITD178(Hyd.)

**Judge :** D Manmohan

**Appellant :** Sri V. Uppalaiah

**Respondent :** The Dcit, Range 3

**Judgement :**

1. These appeals, filed at the instance of the assessee, pertain to the assessment years 1999-00 and 2000-01. The facts in short are that the assessee claimed deduction of interest payment, which is relatable to income exempt Under Section 10(33) of the Act. The returns filed by the assessee were accepted and intimations were issued Under Section 143(1)(a) of the Act on 26-12-01. Since the returns of income for the assessment years under consideration were filed on 13-10-2000 the AO has time to issue notices under Section 143(2) of the Act up to 31-10-2001. Since there was no intention to convert the case into a scrutiny case, no such notice was issued by the AO and thus the proceedings have reached finality. The only option open to the AO to make any addition or the disallowance to the returned income was to issue a notice under Section 148 of the Act.

2. By the Finance Act, 2001, Section 14A was inserted whereby expenditure which has a direct connection with the exempted income is not allowable as deduction against the taxable income. The legislature intended to bring out amendment

retrospectively w.e.f. 1-4-62 to set at rest the existing controversy on this issue. But in order to avoid harassment to the assessees whose assessments were already completed, proviso was inserted below Section 14A to clarify that the AO should not reopen the cases in exercise of powers Under Section 147 of the Act for any assessment year beginning on or before 1<sup>st</sup> day of April 2001.

The memorandum explaining the Finance Bill also indicated that the amendment shall take effect retrospectively from 11<sup>th</sup> May, 2001 i.e., the date on which the finance Bill, 2001 received the assent of the President of India.

3. However, Section 14A having been inserted in statute book and made operative retrospectively from 1-4-62 the AO was of the opinion that the assessee was allowed excess deduction in respect of the assessment years under consideration and therefore sought to reopen the assessments by issuing a notice under Section 148 of the Act. The notice was issued on 30-3-02.

4. In response to the notice the assessee submitted that the assessments which have attained finality should not be reopened by issuance of notice Under Section 148 of the Act as per the instruction of the CBDT vide Circular No. 11 of 2001 dated 23-7-2001 wherein the Board directed the Officers not to reopen the cases Under Section 147 to disallow the expenditure incurred by invoking the newly inserted Section 14A of the Act if the proceedings pertained to the earlier period.

5. The AO was of the opinion that the proviso to Section 14A and the clarification by the CBDT have no application to the instant case inasmuch as it applies to a case where an assessment was made and reached finality before April, 2001 whereas in the instant case, the return of income was merely processed Under Section 143(1)(a) and thus the assessment did not reach finality before April, 2001. He also observed that the assessments were reopened on 30-3-2002 which date falls before insertion of the proviso to Section 14A and thus the clarificatory amendment does not render ineffective the earlier proceedings initiated before enactment of the proviso. Under these circumstances, the AO completed the reassessment proceedings by disallowing the claim of deduction by invoking Section 14A of the Act.

The first appellate authority affirmed the action of the AO and thus the assessee is in appeal before the Tribunal.

6. I have heard the learned counsel as well as the learned DR in this regard and carefully perused the record. It is well settled proposition of law that an AO is a creature of statute and thus he cannot question the validity of provision inserted in the statute, by giving a different interpretation to the plain language of the statute. The proviso inserted by Finance Act, 2002 was given retrospective effect from 11-5-01 and it was clarified, in specific terms, that the AO should not increase the liability by any method in any assessment year beginning on or before the 1<sup>st</sup> day of April, 2001. Proviso to Section 14A, which is relevant in this context reads as under.

"Provided that nothing contained in this Section still empower the AO either to reassess under Section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under Section 154, for any assessment year beginning on or before the 1<sup>st</sup> day of April, 2001." (Inserted by the Finance Act, 2002 w.e.f. 11-5-2001).

Proviso inserted below Section 14A does not prohibit application of Section 14A to a case pending at various forums such as CIT(A), ITAT etc., as otherwise the very purpose of enacting with retrospective effect from 1-4-62 stands defeated. But the legislature has taken a conscious decision to protect those assessee's whose returns were processed either Under Section 143(1) or Under Section 143(3) of the Act for any assessment year beginning on or before the 1<sup>st</sup> day of April, 2001. The language employed in the proviso does not make a distinction between assessments completed Under Section 143(3) and the returns processed Under Section 143(1) of the Act. It is not the intention of the legislature that the cases reopened by issuing a notice Under Section 148 prior to introduction of the proviso are not attracted by the proviso. The expression "pass an order" indicate that even if the proceedings are validly initiated prior to the coming into effect the proviso to Section 14A of the Act, the AO is not empowered to pass an order enhancing income or reducing refund. In other words, an assessing officer cannot invoke Section 14A of the Act in respect of any assessment year beginning or before 1<sup>st</sup>

day of April, 2001 in respect of cases where income returned by claiming deduction of expenditure mentioned in Section 14A is accepted either by way of processing the return Under Section 143(1) or by passing an order Under Section 154 or 143(3) of the Act.

7. The AO disallowed the claim of the assessee on the ground that the proceedings were already initiated prior to the enactment of the proviso and hence such an amendment will not effect the pending actions. However, the learned CIT(A) has proceeded on a different footing. He observed that processing of return under Section 143(1) does not tantamount to 'assessment' and proviso to Section 14A having used the expressions "reassess" 'enhancing the assessment' etc., the proviso has no application in respect of the assessment years wherein the returns of income were merely 'processed Under Section 143(1) of the Act.

8. In my considered opinion, the tax authorities have committed an error of law in interpreting the proviso. Firstly, the proviso puts an embargo on the AO to reopen any case Under Section 147- whether it is with regard to an assessment made Under Section 143(3) or an intimation Under Section 143(1) - and also puts an embargo on enhancement, reduction of refund or otherwise increasing the liability of the assessee for any assessment year beginning on or before the 1<sup>st</sup> day of April, 2001. Admittedly, the two years under consideration fall within the period specified in the proviso and thus there is a statutory prescription to the AO to accept such cases. The legislature has not made out a distinction between an assessment as made Under Section 143(3) of the Act and a return which is processed Under Section 143(1) of the Act inasmuch as the emphasis is on the finality of the proceedings and not on the completion of assessment. The memorandum explaining the provisions in the Finance Bill, 2002, declared that new Section was introduced not with an intention to unsettle the cases by raising an issue afresh. Such being the intention of the statute makers, I am of the firm view that the technical difference between an assessment and an intimation. should not be taken as a tool to unsettle the cases contrary to the intention of the legislature- particularly when the proviso was on the statute book by the time the assessments were to be completed. An issue can be said to have been settled & reached finality if the AO processes the return and time for converting it into a

scrutiny case expires or if the asst. is completed Under Section 143(3) of the Act. The marginal heading to Section 143 of the Act is "assessment" and once the assessment Under Section 143 is made & it reached finality, by debarring the AO From reconsidering the returned income Under Section 143, taking aid of any other Section in the Act would be considered as an effort to unsettle the case.

9. Under these circumstances, the impugned orders passed by the AO as well as CIT(A) are hereby cancelled and the appeals filed by the assessee are allowed.

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