

**HON'BLE SRI JUSTICE L. NARASIMHA REDDY
AND
HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

I.T.T.A No. 330 OF 2003

12-11-2014

BETWEEN

Commissioner of Income Tax, Central, Hyderabad

...Appellant

And

M/s. Nagarjuna Fertilizers & Chemicals Ltd., Hyderabad

.....Respondent

**HON'BLE SRI JUSTICE L. NARASIMHA REDDY
AND
HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

I.T.T.A No. 330 OF 2003

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JUDGMENT: (per the Hon'ble Sri Justice L. Narasimha Reddy)

The respondent is an assessee under the Income Tax Act, 1961 (for short, 'the Act'). In the returns filed by it for the assessment year 1995-96, it claimed deduction of a sum representing the refund of customs duty. The assessing officer made a prima facie adjustment under Section 143 (1) (a) of the Act by treating it as revenue receipt and thereby disallowed the deduction. The matter was carried in appeal and the Commissioner of Income Tax (Appeals-IV), Hyderabad confirmed

the steps taken by the assessing officer. Therefore, the respondent filed ITA No.148/Hyd/1998 before the Hyderabad Bench 'A' of the Income Tax Appellate Tribunal, Hyderabad (for short, 'the Tribunal'). The appeal was allowed by the Tribunal through order dated 30-08-2002 on the ground that the determination as to the character of the amount could not have been done at the stage of prima facie adjustment. The said order is challenged in this appeal.

Heard Sri S.R. Ashok, learned Senior Standing Counsel for the appellant and Sri S. Ravi, learned Senior Counsel for the respondent.

It is fairly well known that Section 143 of the Act contemplates two methods of assessment being made vis-à-vis a return filed by an assessee. If the assessing officer does not find any serious discrepancy or does not disbelieve any facts and figures mentioned therein, he can simply issue an intimation under Section 143 (1) (a) of the Act by making prima facie adjustments. Unless it is followed by the proceedings under any other provision of law, the intimation virtually constitutes an order of assessment. Where however the assessing officer doubts the correctness or accuracy of the facts and figures mentioned by the assessee, he is conferred with the power under Section 143(2) of the Act to issue a notice requiring the assessee to present his version on the aspects mentioned therein. On receipt of such explanation or remarks, the assessing officer passes order under Section 143(3) of the Act.

From the above it becomes clear that wherever there exists a debatable issue, recourse must be had to Section 143 (2) and (3) of the Act and it is only when the facts are undisputed that the procedure under Section 143 (1) (a) of the Act can be resorted to. In the instant case, the respondent claimed deduction of substantial amount which was in the form of refund of customs duty. A return, wherein such a deduction is claimed, could have been the subject matter of a prima facie adjustment under Section 143 (1) (a) of the Act, if only the assessing officer accepted the version or the contention of the assessee. Once he has decided not to accept that contention, there was no occasion or basis for him to invoke Section 143 (1) (a) of the Act. Therefore, the view taken by the Tribunal is correct.

It is also brought to our notice that an order under Section 143 (3) of the Act has been passed in relation to that very claim and that became the subject matter of I.T.T.A No. 148 of 2002 before this Court.

The appeal is accordingly dismissed. There shall be no order as to costs.

L. NARASIMHA REDDY, J

CHALLA KODANDA RAM, J

12-11-2014

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Note:

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