

**\* THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

**AND**

**THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

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**+ I.T.T.A.No.111 of 2003**

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%Date: 16.09.2014

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#Commissioner of Income Tax – 2, Hyderabad.

...appellant.

and

\$ M/s. Mekins Agro-products Limited, Hyderabad.

...Respondent.

! Counsel for appellant: Sri S.R.Ashok

^ Counsel for Respondent : Sri A.V.Krishna Koundinya

< GIST:

> HEAD NOTE:

? Cases referred

1. 202 ITR 219
2. 253 ITR 319

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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'). It submitted returns for the assessment year

1996-97. One of the deductions claimed by the respondent was the one under Section 80HHC of the Act, namely deduction of profits derived from Export business. The Assessing Officer processed the return under Section 143(1)(a) of the Act. He disallowed part of the claim referable to Section 80HHC of the Act. The respondent filed an application under Section 154 of the Act, before the Assessing Officer, for rectification, and it was rejected. Thereupon, he filed appeal before the Commissioner of Income Tax (Appeals). The same was allowed through order, dated 21.04.1998, placing reliance upon the judgment of the Bombay High Court in **Tanna Exports v.**

**M.G.Kamat**<sup>[1]</sup> and the order of assessment was rectified. Feeling aggrieved by that, the Revenue filed I.T.A.No.647/Hyd/1998 before the Hyderabad Bench of the Income Tax Appellate Tribunal (for short 'the Tribunal'). The appeal was dismissed through order, dated 07.08.2002. Hence, this further appeal under Section 260A of the Act, by the Revenue.

Heard Sri S.R.Ashok, learned Senior Counsel for the appellant, and Sri A.V.Krishna Koundinya, learned Senior Counsel for the respondent.

Section 143 of the Act provides for different modes of disposals that can be given to the returns filed by the assessee. If the Assessing Officer feels that, by and large, the particulars, mentioned in a return, are not debatable, and are acceptable, *prima*

*facie*, he just gives an intimation, in that behalf, under Section 143(1)(a) of the Act. Though such intimation is bereft of any discussion and reasons, it constitutes, for all practical purposes, an order of assessment giving a finality to the returns. Where, however, the Assessing Officer entertains a doubt as to the accuracy of figures, or correctness of the claims of the assessee, he is conferred with power under sub-section (2) of Section 143 of the Act, to issue notice to the assessee, requiring him to explain on these aspects. On receiving such explanation, he can pass an order under Section 143(3) of the Act.

A comparison of the two procedures, referred to above, discloses that the first one can be resorted to only when the Assessing Officer is in agreement with the facts and figures furnished in the returns. Once, he expresses any doubt about them, invariably he has to take recourse to sub-sections (2) and (3) of Section 143 of the Act. It is axiomatic that the procedure under Section 143(1)(a) of the Act cannot be resorted to, once there is any disagreement or controversy, *vis-à-vis* the details of the returns. In other words, the contested aspects cannot be dealt with under that procedure.

In the instant case, the Assessing Officer adopted the procedure under Section 143(1)(a) of the Act. Had it been a case where he totally accepted the facts and figures contained in the returns in their entirety, there would not have been any grievance for the respondent. However, the Assessing Officer disallowed part of the claim referable to Section 80HHC of the Act. The Commissioner found fault with the same and his view was upheld by the Tribunal.

It is true that there is nothing in law, which prohibits an Assessing Officer to take recourse to Section 143(1)(a) of the Act, even where the claims are made under different provisions of the

Act, including Section 80HHC of the Act. However, that would be permissible, if only the claim, in its entirety is accepted. If the Assessing Officer had any doubt about the permissibility of the claim, he is under obligation to issue notice to the assessee. In case the explanation offered by the assessee is not correct, an occasion would certainly arise for passing an order under Section 143(3) of the Act. Once a notice is issued, the matter stands taken away from the purview of Section 143(1)(a) of the Act. Therefore, the procedure adopted by the Assessing Officer cannot be countenanced.

Learned counsel for the appellant placed reliance upon the judgment of the Kerala High Court in **Ambathi Enterprises v. Commissioner of Income Tax**<sup>[2]</sup>. As in the present case, the returns were processed there, under Section 143(1)(a) of the Act, disallowing certain claims, and the assessee's effort to get the order rectified did not fructify. The Kerala High Court took the view that as long as the *prima facie* adjustment and intimation under Section 143(1)(a) of the Act, is within the parameters stipulated therein, including the one contained in the explanation to second proviso to Section 143(1)(a) of the Act, no exception can be taken.

In other words, even where part of the claim made in the returns, is disallowed by taking recourse to Section 143(1)(a) of the Act, no exception can be taken to it, if the disallowed claim is referable to the relevant provision, such as the explanation. For example, if an item claimed as deduction in the returns, is found to be inconsistent with another entry, in the same returns, or the information required to be furnished under the Act was not furnished, or where the deduction claimed exceeds the statutory limit, that part of it can be disallowed, even without taking recourse to the procedure under sub-sections (2) and (3) of Section 143 of the Act.

Therefore, a subtle distinction needs to be maintained, in the context of recourse to one procedure or the other.

Though mere disallowance of a part of the claim made in a return, may not vitiate, the exercise under Section 143(1)(a) of the Act, the Assessing Officer is placed under obligation to ascertain the views of the assessee by issuing a notice under sub-section (2) of Section 143 of the Act, once the claim becomes debatable or doubtful. It is a different matter that the Assessing Officer may or may not agree with the remarks or explanation that may be offered by the assessee in response to the notice. The procedure under law, must be followed, before any part of such claim is disallowed. The Kerala High Court discussed the matter on merits also and held that the law was settled as regards part of claim, which was disallowed by the Assessing Officer in his intimation under Section 143(1)(a) of the Act. In the instant case, it is not so.

By its very nature, a claim under Section 80HHC of the Act is surrounded by several uncertainties and debatable questions of fact and law. Before the Assessing Officer disallowed a part of the claim made under that provision, he ought to have issued notice under sub-section (2) of Section 143 of the Act. It is not even asserted by the Revenue that the disallowance of part of the claim was on the basis of settled principles of law and there was nothing debatable about it. There cannot be any hard and fast rule as to when a particular aspect can be treated as debatable and when not. Much would depend upon the nature of claim and the adjudications that have taken place on the subject.

We, therefore, agree with the view expressed by the Tribunal and dismiss the appeal. There shall be no order as to costs.

The miscellaneous petition filed in this appeal shall also

stand disposed of.

**L.NARASIMHA REDDY, J.**

**CHALLA KODANDA RAM, J.**

Date:16.09.2014  
L.R. copy to be marked.  
GJ

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[\[1\]](#) 202 ITR 219  
[\[2\]](#) 253 ITR 319