AFR

Court No. - 32

Case :- INCOME TAX APPEAL No. - 258 of 2000

Petitioner :- Commissioner Of Income Tax & Another
Respondent :- M/S Anand Duplex Ltd.
Petitioner Counsel :- A.N.Mahajan,R.K. Upadhyaya
Respondent Counsel :- R.R. Agarwal

Hon'ble Sunil Ambwani,J.
Hon'ble Aditya Nath Mittal,J.

1. We have heard Shri R.K. Upadhyay, for the appellants. Shri R.R. Agrawal appears for the respondent- assessee.

2. This appeal has been filed under Section 260A of the Income Tax Act, 1961 by the revenue against the order of the Income Tax Appellate Tribunal dated 29th March, 2000 by which it has allowed the appeal and has set aside the order of the CIT (A) dated 3.8.1999, upholding the A.Os. orders under Section 154 (1) (b) of the Income Tax Act for the A.Y. 1996-97.

3. The respondent assessee has two units. In respect of unit no.I an income of Rs.1,28,69,006/- was declared and in respect of unit no.II it declared loss of Rs.1,14,03,131/-. The respondent-assessee claimed deduction under Section 80IA at 30% on the income of the first unit and thereby inspite of a gross total income of both the units of Rs.14,65,875/-, declared the income to be Nil, and carried loss of Rs.23,94,827/- forward to the A.Y. 1997-98.

4. The return of the income was processed under Section 143 (1) (a) on 'nil' income vide A.O's order dated 16.10.1997. No appeal was filed against the assessment, though the carry forward of the loss of Rs.23,94,827/- was denied.

5. Since the returned income was at a loss of Rs.23,94,830/- and assessed income was 'nil', additional tax under Section 143 (1) (a) was chargeable on the difference of returned and assessed income at Rs.23,94,830/-. The A.O. had failed to do so and consequently a show cause notice was issued under Section 154 (1) (b) to the respondent-assessee for rectifying the mistake.

6. In reply the respondent-assessee submitted that both the units were separate industrial undertaking and hence they were not to be

considered separately. In Unit No.I there was profit and hence deduction under Section 80 IA was rightly claimed. In Unit No.II there was loss and hence no deduction under Section 80IA was claimed and thus the aggregate loss at Rs.23,94,827/- was rightly claimed. The assessee further submitted that since it was debatable issue, the order could not be rectified under Section 154 of the Act.

7. The A.O. was not satisfied with the assessee's reply. The A.O., therefore, charged additional tax under Section 142 (IA) by invoking provisions of Section 154 (I) (b) on the ground that since gross total income was a loss, the deduction under Section 80IA was not allowable.

8. In appeal the CIT (A) observed that Section 80 A (2) shows that "the aggregate amount of the deductions under this chapter shall not in any case, exceed the gross total income of the assessee." The "Gross Total Income' is defined under Section 80B (5) as follows:-

"Gross Total Income' means, the total income computed in accordance with the provisions of this Act, before making any deduction under this chapter."

9. The CIT (A) found that as per the provisions of Section 80A (2) read with Section 80 B (5) computation of income should have been made as follows:-

"(i) Net Profit of Unit-I (+) Rs.1,28,69,006/-

(ii) Net loss of Unit-II (-) Rs.1,14,03,131/-

(iii) Gross Total income of the assessee (+) Rs.14,65,875/-

(iv) Loss: Deduction u/s 80IA computed @ 30% of Rs.1,28,69,006/- i.e. Rs.38,60,702/- but the claim restricted to the gross total income of the assessee at Rs.14,65,875/- only u/s 80A (2) and no carry forward of balance 80IA deduction of Rs.23,94,827/- is permissible."

10. The CIT (A) having considered the net effect of the calculation prima facie found that the assessee had wrongly carried forward the deduction under Section 80IA of Rs.23,94,827/-, whereas there was no provision under the Income Tax Act to carry forward unabsorbed deduction under Section 80IA. The CIT (A), thereafter dismissed the appeal on the conclusions as follows:-

"15. All the submissions made by the learned A.R. and the case laws relied upon by him are on the issue that for computation of deduction u/s 80IA, each Industrial undertaking should be considered separately. But this is not the issue here. The computation of deduction u/s 80IA has been taken @ 30% of net profit of Unit-i of Rs.1,28,69,006/- i.e. Rs.38,66,702/- only. The A.O. has not disturbed this computation. It is not a case that the A.O. had computed deduction u/s 80IA @ 30% of net result of profit and loss of Units I & II viz. Rs.14,15,875/- (Rs.1,28,69,006/- Rs.1,14,03,131/-) amounting to Rs.4,39,762/-.

The case laws relied upon by the learned A.R. were relevant if the A.O. had calculated

deduction u/s 80IA at Rs.4,39,792/- (30% of Rs.14,65,875/-). The point at issue is that after calculating deduction u/s 80IA at Rs.38,66,702/-, it had to be restricted to the gross total income of the assessee at RS.14,65,975/- u/s 80A (2) and the balance foregone. ***Since it has not been done, there was a patent mistake of wrong claim of carry forward of unabsorbed deduction u/s 80IA of Rs.23,94,824/-. This was a prima facie mistake fully covered u/s 143 (1) (a). In fact, the A.O. had rightly computed the income at NIL in his order u/s 143 (1) (a) dated 16.10.97. The appellant has also not filed any appeal against the said order. The only prima facie mistake committed in this order u/s 143 (1) (a) was that additional tax u/s 143 (IA) was not charged.*** *It has been rightly charged u/s 154 (1) (b). Hence the A.O.'s order is confirmed and the appeal dismissed.".*

11. The assessee filed Income Tax Appeal No.3914/Del/99, which has been allowed by the Income Tax Appellate Tribunal following the judgment of the Delhi Bench of the Tribunal in the case of Sybly Spinning Mills Pvt. Ltd., ITA No.2662/Del/99 dated 31.1.2000, in which it was held that prima facie adjustment under Section 143 (1) (a) in respect of deduction under Section 80I was not permissible.

12. Shri R.K. Upadhyay has preferred the appeal on the questions of law as follows:-

"1. Whether the facts as narrated by ITAT are contrary to the material available on record and perverse?

2. Whether on the facts and in the circumstances of the case the Ld. ITAT was legally justified directing the AO to allow deduction under section 80IA which was not an issue before it and the issue was charging of additional income tax under section 143 (1A) of the Income Tax Act?".

13. It is submitted by Shri R.K. Upadhyay that the ITAT has completely misdirected itself and has incorrectly followed its judgment delivered in Sybly Spinning Mills Pvt. Ltd. (Supra) without considering the order of CIT (A) on merits. The ITAT was not justified in directing the A.O. to allow deduction under Section 80IA, which was not an issue before it. The issue was regarding charging of additional income tax under Section 143 (1) (a) of the Act.

14. Shri R.R. Agrawal, learned counsel for the respondent assessee would submit that in the grounds of appeal in the Tribunal there was no ground taken or urged regarding the charging of additional tax. He has relied upon S.P. Kochar v. ITO, 1983 UPTC 861 in which this Court while interpreting the word 'thereon' under Section 254 (I) held that appeal may be heard on the subject matter of appeal. The word 'thereon' would mean subject matter of appeal and not any other plea or ground. Shri R.R. Agrawal has also relied upon the judgment of this Court in Indo-Gulf Fertilizers & Chemicals Corpn. Ltd. v. Union of India, (1992) 195 ITR 485 in which scope of Section 143 IA was discussed. This Court

considering the insertion of the Section as explained in the Circular of CBDT dated 31st October, 1989 held that levy of additional tax under Section 143 IA of the Act may be by way of penalty but the question is as to whether the penalty can be imposed in case of no income in terms of Section 143IA of the Act. While considering the facts of the case in which assessee had not disclosed any income and had only declared loss, it was held that even if losses are reduced, which ultimately result into loss, Section 143 IA, which is by way of penalty would not apply. The reasoning given in the judgment is quoted as below:-

"12. The main question for consideration, as indicated earlier as well, would be whether additional income tax or penalty, or so to say additional tax by way of penalty, could be levied where there is no income but the return originally and after adjustment, shows losses alone. Section 271 of the Act provides for imposition of penalty. Clause (c) of Section 271(1) of the Act quoted above covers cases of concealment of the particulars of "income" or furnishing of inaccurate particulars of "such income". Such conduct, as indicated in Clause (c), can entail imposition of penalty. Explanation 6 to section 271 of the Act provides that, where any adjustment is made in the income or loss declared in the return under Section 143(1)(a) and additional tax is charged under that section, the provisions of Section 271(1) shall not apply in relation to the adjustment so made. From the above provision, it no doubt appears that levy of additional tax under Section 143(1A) of the Act may be by way of penalty but the question which still remains to be considered is as to whether penalty can be imposed in a case of "no income" in terms of Section 143(1A) of the Act.

13. We may now consider the relevant provision contained in Section 143(1A) of the Act. Sub-section (1A)(a) of Section 143 of the Act talks of "exceeds the total income declared in the return". This provision clearly rules out cases relating to "no-income" or where, after adjustment, there still remains losses. By adjustment, the income shown in the return has to exceed so as to attract the above-noted provision. Similarly, we find that Clauses (i) and (ii) of the Explanation to section 143(1A) of the Act also talk of increase in the income side of the return. Clause (i) of the said Explanation provides about cases where the total income is increased, whereas Clause (ii) provides for any other case, where total income is reduced by the amount of adjustment. In none of these provisions, there is anything to indicate that, where losses are reduced, such cases would also be covered under the said provision. Circular No. 549, dated October 31, 1989 (see MANU/TN/0084/1989 : [1990]182ITR1(Mad)), relied upon by the opposite parties is not correct when it says that Clause (i) of the aforesaid Explanation applies in the cases of loss returns only. It may be true that it may apply in a case where a loss return has been filed but on adjustment, the losses have disappeared and there is positive income which can be taxed. But to apply it in cases where after adjustment, the return showing losses still shows' losses, would not be correct."

15. Shri R.R. Agrawal further submits that after the judgment of this Court in Indo-Gulf Fertilizers & Chemicals Corpn. Ltd. (Supra) the CBDT by its Circular No.689 again explained scope of prima facie disallowance under Section 143 (1) (a) of the Act and clarified as follows:-

"Section 143 (1) (a) authorises, with effect from assessment year 1989-90, inter alia, disallowance of any loss carried forward, deduction, allowance or relief claimed which, on the basis of information available in the return or the accompanying accounts or documents, is prima facie inadmissible. The earlier instructions of the Board were to the effect that no disallowance should be made of items on which two opinions are possible. The matter has been further considered by the Board in the light of the recommendations of the Tax Reforms Committee headed by Prof. Raja J. Chelliah and it has been decided that prima facie disallowance shall be made only in respect of the following types of claims:

(a) an incorrect claim, if such incorrect claim is apparent from the existence of other information in the return or the accompanying accounts or documents."

16. We have considered the submissions and find that the reasoning given by the Income Tax Appellate Tribunal cannot be justified. The Tribunal has followed its earlier judgment in M/s Sybly Spg. Mills Pvt. Ltd. without considering the facts of the case. In Sybly Spg. Mills Pvt. Ltd. it was held by the ITAT (Delhi Bench 'E' New Delhi) that the issue whether deduction under Section 80I could be allowed on profit of Unit-I or it was not allowable at all in view of the gross total income in the case being a loss was contentious and debatable issue and the same could be taken up by the A.O. only in regular assessment proceedings under Section 143 (3) of the Act and not in course of proceedings under Section 143 (1) (a) of the Act. The scope of prima facie adjustment under Section 143 (1) (a) of the Act is limited and it could not cover such contentious and legal issue. The CBDT circular on prima facie adjustment under Section 143 (1) (a) of the Act also made the point clear, which the A.O. had to follow.

17. In the present case we find that there was no debatable or contentious issue. The A.O. had wrongly applied the method of computation, by allowing the deduction under Section 80IA in respect of income of the one unit and thereby reducing it from the loss of the other unit. The assessee had on his own disclosed gross total income of Rs.14,65,875/- after adjusting the loss of Unit-II from the income of Unit-I. There was thus no question of loss being reduced, to return the income as Nil. The assessee had wrongly taken the benefit of Section 80IA on the gross total income by reducing the loss of Unit-II from Unit-I and thereby declaring the return at Nil and carried forward the loss of Rs.23,94,827/-, which was not permissible.

18. We are of the view that the judgment in Indo-Gulf Fertilizers & Chemicals Corpn. Ltd. (Supra) was rendered in the facts on its own case in which losses were sought to be reduced by loss and thereby no income was returned. The judgment is not applicable to the facts of the present case.

19. The powers under Section 154 can be used to rectify the mistake. It is true that the mistake should not be such, which may allow debate or where two views are possible. The mistake would also not include the cases, which are contentious and raise legal issues. In the present case there was no contentions issue or any legal issue on which two views are possible. The assessee had adopted a wrong method of calculation for the purposes of

reducing income to 'Nil', and had also carrying the loss forward to next year. The computation was clearly impermissible and was against the provisions of Section 80A (2) of the Act. The gross total income as defined under Section 80B (5) includes total income computed in accordance with the provisions of the Act, before making any deduction under the chapter. The assessee could not have made any deduction, from the gross total income for the purposes of claiming benefit to return the income as Nil, and carry forward the loss. The intention of Section 143 IA was to discourage the misuse by unscrupulous tax payer, who might return lesser income by making obvious examination, or by claiming obvious incorrect deduction and taking a chance that if the same is deducted by the department, they would have to pay correct taxes only. In such cases while correcting the return, additional tax was payable. In the present case the provisions of Section 143 (I) (a) are clearly attracted. The respondent assessee claimed deduction, which were not permissible, and thereby not only tried to reduce the income to Nil, but also to carry forward the loss. The respondent assessee took chance, in which it did not succeed, and thus the A.O. and CIT (A) rightly imposed additional tax on him.

20. Both the questions are thus decided in favour of the revenue and against the assessee. The department will make computation and proceed in accordance with law.

Order Date :- 5.9.2012
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