

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH : KOLKATA

[Before Hon’ble Sri N.V.Vasudevan, JM]

I.T.A No.265/Kol/2015

Assessment Year : 2007-08

M/s. Singha Exim

-vs.-

I.T.O.(System)-IV, ITO,Wd-3

Nadia

Nadia

(PAN:AAMFS0617F)

(Appellant)

(Respondent)

For the Appellant : Shri A.K.Chakraborty and Shri P.S.Gupta,Advocate
For the Respondent : Md.S.S.Alam, JCIT, Sr.DR

Date of Hearing : 03.03.2016.

Date of Pronouncement : 6.4.2016.

ORDER

This is an appeal by the Assessee against the order dated 07.11.2014 of CIT(A)-XXXII, Kolkata, relating to AY 2007-08.

2. The Assessee has filed the following additional grounds of appeal:

“1. For that, the processing order u/s. 143(1) of the LT. Act, 1961 is bad in law and liable to be cancelled/ quashed and CIT(A) has erred in sustaining the same for the reasons that the amendment made w.e.f. 1.4.2008.

2. For that, on the facts and in the circumstances of the case the Id. CIT(A) failed to consider that the Id. ITO (system) - IV, Kolkata has no jurisdiction to make any prima facie adjustment u/s 143(1) for the Assessment year 2007- 08 for which the return was filed on 30.10.2007, amendment being made w.e.f 01.4.2008.

3. For that, having regard to the fact of the case, the Id. ITO has no jurisdiction to disallow any claim in the guise of prima facie adjustment u/s 143(1) as per provisions of law applicable for the Assessment year 2007-08 for which the return was filed on 30.10.2007 and accordingly, the Id. CIT(A) was wrong in sustaining the addition Rs 2,73,198/- made by the Id. A.O.”

3. The additional grounds of appeal arise out of the order of the CIT(A) and can be decided on the basis of facts already available on record. The Hon’ble Supreme Court in the case of NTPC 229 ITR 383 (SC) has laid down that purpose of proceedings before Tribunal being to ascertain the correct tax liability of an Assessee,

additional grounds should be admitted for adjudication if such additional grounds involve application of law on facts for deciding the additional ground being already available on record. The additional grounds are therefore admitted for adjudication.

The facts and circumstances under which the additional ground arises for consideration are that the Assessee is a partnership firm carrying on the business of export of rice and molasses. For AY 2007-08, the Assessee filed return of income on 30.10.2007 declaring total income of Rs.62,120. The computation of total income filed by the Assessee was as follows:

“COMPUTATION OF INCOME FOR THE ASSESSMENT YEAR 2007-08

Book Profit as per Profit & Loss a/c	6,35,322.00
Less : Partners’ Remuneration	<u>3,00,000.00</u>

Net Profit :

Remuneration allowable as per Section 40(b) of the I.T.Act, 1961

90% of 1 st	Rs.75,000.00	i.e. Rs .67,500.00
60% of 2 nd	Rs.75,000.00	i.e. Rs. 45,000.00
40% of balance	Rs.4,85,322.00	i.e. <u>Rs.1,94,128.00</u>
		Rs.3,06,628.00

In this case Partners’ remuneration taken by the partners is Rs.3,00,000.00 **which is fully allowable.**

So Gross Income 3,35,322.00

Less : I.T. deduction claimed u/s 80HHC(3)(b) of I.T.Act.

i) VKUY Received:	19,79,697.00
ii)DFRC Received :	4,31,340.00
iii)DEPB Received :	<u>3,20,939.00</u>
:	<u>27,31,976.00</u> of

Which 90% is to be treated as taxable income & balance 10% is Non-taxable. So 10% of Rs.27,31,976.00 i.e.

	<u>2,73,198.00</u>
Total Income :	62,124.00
R/O	62,120.00”

4. An intimation u/s.143(1) of the Income Tax Act, 1961 (Act) dated 26.09.2008 was issued by the AO wherein the total income of the Assessee was determined at a sum of Rs.3,35,322 . It would be evident from the intimation u/s.143(1) of the Act that the claim of the Assessee for deduction u/s.80HHC(3)(b) of the Act had not been accepted. The return of income was filed electronically by the Assessee and the same was also processed electronically by the ITO (System) IV, Kolkata. The issue raised

in the additional grounds of appeal is as to whether the course of action adopted while issuing an intimation u/s.143(1) of the Act by disallowing claim of deduction u/s.80HHC of the Act was proper or not.

5. The relevant statutory provisions of Sec.143(1) as it existed when the Assessee filed its return of income i.e., on 30.10.2007 i.e., prior to its amendment by the Finance Act, 2008 w.e.f. 1.4.2008:

"Sec.143 (1): Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142,—

(i) if any tax or interest is found due on the basis of such return, after adjustment of any tax deducted at source, any advance tax paid, any tax paid on self assessment and any amount paid otherwise by way of tax or interest, then, without prejudice to the provisions of sub-section (2), an intimation shall be sent to the assessee specifying the sum so payable, and such intimation shall be deemed to be a notice of demand issued under section 156 and all the provisions of this Act shall apply accordingly; and

(ii) if any refund is due on the basis of such return, it shall be granted to the assessee and an intimation to this effect shall be sent to the assessee:

Provided that except as otherwise provided in this sub-section, the acknowledgment of the return shall be deemed to be intimation under this sub-section where either no sum is payable by the assessee or no refund is due to him:

Provided further that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the return is made.

Provided also that where the return made is in respect of the income first assessable in the assessment year commencing on the 1st day of April, 1999, such intimation may be sent at any time up to the 31st day of March, 2002."

6. It is the contention of the learned counsel for the Assessee that if the law as it existed when the Assessee filed its return of income is applied then the AO has no power to disallow claim of the Assessee for deduction u/s.80HHC(3)(b) of the Act, while issuing intimation u/s.143(1) of the Act. In support of his contention that the law as on the date of filing of the return of income will be the law applicable for

processing of return of income u/s.143(1) of the Act, the learned counsel for the Assessee placed reliance on the following judicial pronouncements: Karimtharuvi Tea Estate Ltd. Vs. State of Kerala 60 ITR 262(SC) and Gangadhar Bera Vs. ACIT 267 ITR 422(Cal). The contention of the learned DR was that Sec.143(1) of the Act is procedural in nature and not a substantive law and therefore the law as on the date when the return of income is processed u/s.143(1) of the Act, would apply.

7. Sec.143(1) as it existed when the return filed by the Assessee was processed u/s.143(1) of the Act i.e., on 26.9.2008 after its amendment by the Finance Act, 2008 w.e.f. 1.4.2008:

“Sec.143(1): Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—

(a) the total income or loss shall be computed after making the following adjustments, namely:—

(i) any arithmetical error in the return; or

(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;

(b) the tax and interest, if any, shall be computed on the basis of the total income computed under clause (a);

(c) the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax and interest, if any, computed under clause (b) by any tax deducted at source, any tax collected at source, any advance tax paid, any relief allowable under an agreement under section 90 or section 90A, or any relief allowable under section 91, any rebate allowable under Part A of Chapter VIII, any tax paid on self-assessment and any amount paid otherwise by way of tax or interest;

(d) an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee under clause (c); and

(e) the amount of refund due to the assessee in pursuance of the determination under clause (c) shall be granted to the assessee:

Provided that an intimation shall also be sent to the assessee in a case where the loss declared in the return by the assessee is adjusted but no tax or interest is payable by, or no refund is due to, him:

Provided further that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the return is made.

Explanation : For the purposes of this sub-section,—

(a) "an incorrect claim apparent from any information in the return" shall mean a claim, on the basis of an entry, in the return,—

(i) of an item, which is inconsistent with another entry of the same or some other item in such return;

(ii) in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished; or

(iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction;

(b) the acknowledgment of the return shall be deemed to be the intimation in a case where no sum is payable by, or refundable to, the assessee under clause (c), and where no adjustment has been made under clause (a).”

8. The contention of the learned DR was that the claim for deduction u/s.80HHC(3)(b) of the Act was an incorrect claim as those provisions were no longer in the statute book and were not applicable for AY 2007-08. His contention was that the incorrect claim would fall within the ambit of Explanation (a)(iii) to Sec.143(1) of the Act as amended by Finance Act, 2008 w.e.f. 1-4-2008. The CIT(A) has upheld the correctness of the intimation u/s.143(1) of the Act only on the basis as contended by the learned DR before us.

9. We have considered the rival submissions. Even assuming that the law as on the date of processing of the return of income i.e., as on 26.9.2008 is held to be applicable, the adjustment done in the intimation u/s.143(1) of the Act, in my view would not be proper. It is not the case of the revenue that clause (i) & (ii) of Explanation to Sec.143(1) of the Act would apply. As far as clause (iii) of Explanation to Sec.143(1) of the Act is concerned, the same would apply when a

deduction is permissible and has been claimed in excess of the permissible limits of deduction. The argument of the learned DR was that deduction permissible u/s.80HHC(3)(b) of the Act was “zero” and therefore the claim made by the Assessee in the return of income was in excess of specified statutory limit.

10. While elaborating on a similar provision viz., 143(1)(a) as it existed w.e.f. AY 1989-90, Central Board of Direct Taxes Circular No. 689 dated 24th August 1994 (209 ITR Statute 75) observed 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 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.

Example :

If a deduction has been claimed under the head Capital Gains under section 54 F, and if there is information in the return of income or accompanying accounts or documents to show that the unutilized consideration has not been deposited in an account specified in the scheme as stipulated under [section 54F\(4\)](#), the claim is incorrect and should be disallowed as prima facie adjustment.

(b) any claim in respect of which there is an omission or information which is required, under the specific provisions of the Act or the Rules, to be furnished alongwith the return to substantiate such claim.

Example :

If the audit report specified under section 80 HHC (4), which is required to be filed along with the return of income is not so filed, the deduction claimed under that section can be disallowed asa prima facie adjustment. Some more examples in this regard are non filing of reports or other evidences along with the return of income as required under section 12A(b), 54 F(4), 54G(2), 80HH (5), 80HHA (4), 80 HHB (3), 80HHD (6), 80 HHE (4) 80 1(7), 80 IA (8) and the like. But if evidence is subsequently furnished, rectification under [section 1547](#) will be carried out to the extent permitted by the Board Circular No 669, dated 25th October 1993. No prima facie disallowance shall, however, be made if any evidence, required to be filed along

with the return of income only in pursuance of non statutory guidance notes for filing of return of income, is not so filed.

(c) A claim for deduction or rebate of any amount which exceeds statutory limit imposed, if such limit is expressed either as a specific mandatory amount or as a percentage, ratio or fraction, and if the information relevant to application of the statutory limit appear in the return or the accompanying document or documents.

Example :

(i) If under [section 24\(1\)\(i\)](#) the deduction in respect of repairs and collection charges is claimed in excess of one-fifth of annual value (applicable with effect from the assessment year 1993-94), such excess can be disallowed as a prima facie adjustment.

(ii) If the rebate on contribution eligible under [section 88](#) is claimed in excess of 20% of such contribution, the excess can be disallowed, provided there is indication of the total amount of such contribution in the return or the accompanying document or documents.”

11. I am of the view that clause (iii) of Explanation to Sec.143(1) of the Act would be attracted only when a deduction is permissible and has been claimed in excess and not in a case where the deduction is not permissible under any existing provisions of law when the return of income is processed u/s.143(1) of the Act. The expression “where deduction exceeds specifies statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction” clearly suggests that the said clause will not apply to claim for deduction when such a claim is not permissible under any existing provisions of law at all. The question as to whether the provisions will apply or not is a matter which cannot be decided while issuing intimation u/s.143(1) of the Act. The example given in clause (c) of the CBDT Circular referred to above, clearly supports this conclusion.

12. While issuing intimation u/s.143(1) of the Act, the AO does not afford opportunity of being heard and hence the law makers thought it fit to empower adjustment to the return of income only when things are beyond doubt and not to case where the availability or not of an exemption provision is to be decided. Such act can be done by the AO only by issuing notice u/s.143(2) of the Act and framing a regular assessment u/s.143(3) of the Act. I am therefore of the view that the adjustment made

in the intimation u/s.143(1) of the Act cannot be sustained. Accordingly the addition is directed to be deleted.

13. In view of the above conclusion, the other grounds of appeal raised by the Assessee in its appeal do not require any adjudication.

14. In the result, appeal of the Assessee is allowed.

Order pronounced in the Court on 6.4.2016.

Sd/-

[N.V.Vasudevan]
Judicial Member

Dated : 6.4.2016.

[RG PS]

Copy of the order forwarded to:

1. M/s. Singha Exim, C/o P.S.Gupta (Advocate), 100, Bank Lane, Hatar Para, P.O.Krishnagar, Nadia, Pin-741101.
2. I.T.O.(System)-IV, Kolkata/I.T.O., Ward-3, Nadia.
3. CIT(A)-XXXII, Kolkata 4. CIT-XXI, Kolkata
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Asstt.Registrar, ITAT, Kolkata Benches

