**(2006) 11 P&H CK 0155**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** IT Reference No. 321 of 1995

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| Commissioner of Income Tax | APPELLANT |
| Vs | |
| Swaraj Mazda Ltd. | RESPONDENT |

**Date of Decision:** Nov. 27, 2006

**Acts Referred:**

- Income Tax Act, 1961 - Section 143, 143(1)(a), 143(1A), 143(3), 154

**Hon'ble Judges:** Rajesh Bindal, J; A.K. Goel, J

**Bench:** Division Bench

**Advocate:** S.K. Garg Narwana, for the Appellant; Pankaj Jain, for the Respondent

**Judgement**

1. Following question of law has been referred for the opinion of this Court by the income tax Appellate Tribunal Chandigarh bench, Chandigarh (''the Tribunal'') arising out of its order dated 15.9.1992 in IT Appeal No. 434/Chandi/1992, for the assessment year 1989-90:

Whether, on the facts and in the circumstances of the ease, the Appellate Tribunal was right in law in deleting the prima facie adjustments made u/s 143(1)(a) of the income tax Act, when there was a loss even after the prima facie adjustments?

The assessee filed its return of income for the assessment year in question on 30.12.1989 declaring a loss of Rs. 16,04,27,843/-. The same was processed u/s 143(1)(a) of the Income-lax Act, 1961 (''the Act'') and prima facie adjustments to the tune of Rs. 1,35,37,146/- were made. Later, on an application filed by the assesses u/s 154 of the Act, vide order dated 10.9.1990, the prima facie adjustments were reduced to Rs. 58,37,335/- giving a relief of Rs. 86,99,811/-. As the processing of return u/s 143(1)(a) of the Act resulted in reduction of loss, additional tax u/s 143(1A) of the Act was charged. In appeal against the order, the assessee failed before the Commissioner of income tax (Appeals). However; the Tribunal, in further appeal, accepted the point raised by the assessee relying upon a judgment of Allahabad

High Court in Indo-Gulf Fertilizers and Chemicals Corporation Ltd. Vs. Union of India (UOI) and Another, wherein it was held that additional tax could not be levied where even as a result of adjustment u/s 143(1)(a) of the Act the net result is loss. The same view, at that time, was expressed by Delhi High Court in Modi Cement Ltd. and Another Vs. Union of India and Others,

2. We have heard Mr. S.K. Garg, Advocate for the revenue and Mr. Pankaj Jain, Advocate for the assessee and perused the record.

3. We find that the issue has been gone into by this Court in Haryana Co-operative Sugar Mill Ltd. Vs. Commissioner of Income Tax and Another, wherein following the judgment of the Supreme Court in Assistant Commissioner of Income Tax Vs. J.K. Synthetics Ltd., , it was held as under:

In Assistant Commissioner of Income Tax Vs. J.K. Synthetics Ltd., , their Lordships of the Supreme Court, while reversing two judgments of the Delhi High Court in Modi Cement Ltd. v. Union of India, [1992] 193 ITR 94 and J.K. Synthetics Ltd. Vs. Assistant Commissioner of Income Tax, held that where loss declared by an assessee had been reduced by reason of adjustments made under sub-section (1)(a), the provisions of sub-section (1A) would apply and being a retrospective amendment, additional tax could be legitimately levied on the assessee. The three-judge Bench distinguished the earlier judgment of a two-judge Bench in Commissioner of Income Tax Vs. Hindustan Electro Graphites Ltd., by making the following observations (page 203):

This was a case in which the return that the assessee had filed was correct by reason of the law as it stood when the return was filed. A retrospective amendment of section 28 of the Act rendered that return incorrect. An adjustment in the return was made under sub-section (1) of section 143 and, therefore, the provisions of sub-section (1A) were sought to be invoked.

This was challenged and the High Court upheld the challenge, as did this Court. It look the view, that the additional penalty under sub-section (1A) bore the imprint of a penalty and no -penalty could he levied because the return filed by the assessee was correct when it was filed.

This judgment has no application to the facts of the present case for the reason that it is nobody''s case that a retrospective amendment has rendered a correct return filed by the assessee incorrect. The question here is only whether a loss which is reduced by reason of the application of the provisions of sub-section (1)(a) falls within the ambit of sub-section (1A).

We should add that we have reservations about the correctness of the judgment in Commissioner of Income Tax Vs. Hindustan Electro Graphites Ltd., principally because the assessee in that case had not challenged the provisions of sub-section

(1A). The appeal is allowed. The order under appeal is set aside.

In view of the law laid down by the Supreme Court in the case of Assistant Commissioner of Income Tax Vs. J.K. Synthetics Ltd., it must be held that additional tax can be levied even if the assessee files a return showing net loss in the particular, assessment year.

4. Accordingly, as far as legal question is concerned, the same deserves to he answered in favour of the revenue and against the assessee.

5. However, before parting with the judgment, we deem it appropriate to notice the contention raised on behalf of the assessee to the effect that in terms of circular No. 686 dated 30.8.1992. issued by the Central Board of Direct Taxes, it is clarified that where prima facie adjustments made u/s 143(1)(a) of the Act are not sustained ultimately in the course of regular assessment proceedings u/s 143(3) of the Act, additional income tax levied u/s 143 (1A) of the Act is to he deleted or modified, as the ease may be in the present case. Mr. Pankaj Jain, learned counsel for the assessee submitted that the prima facie adjustments made by the Assessing Officer u/s 143(1(a) of the Act were ultimately not sustained in the regular assessment and therefore, in view of the circular of the Hoard, no additional lax could he sustained. We find merit in the submission and accordingly, direct that in case the contention raised by the assessee is factually found to he correct, he would be entitled to the benefit of circular dated 30.8.1992, referred to above. The reference is disposed of in the manner indicated above.