

(2003) 01 GAU CK 0026

Gauhati High Court

Case No: Civil Rule No's. 526 of 1994 and 971 of 1995

R.K. Gyankishore Singh

APPELLANT

Vs

Assistant Commissioner of
Income Tax and Income Tax
Officer

RESPONDENT

Date of Decision: Jan. 31, 2003

Acts Referred:

- Income Tax Act, 1961 - Section 143, 143(1), 143(2), 43B

Citation: (2003) 183 CTR 278 : (2003) 261 ITR 107 : (2003) 133 TAXMAN 371

Hon'ble Judges: Ranjan Gogoi, J

Bench: Single Bench

Advocate: H.S. Paonam, for the Appellant; B.P. Sahu, for the Respondent

Final Decision: Allowed

Judgement

Ranjan Gogoi, J.

As the question arising for determination in both the cases are identical, they were taken up for consideration together" and are being disposed of by this common judgment and order.

2. The petitioner, in both the cases, who is the proprietor of Manipur Electricals, a small scale industrial unit, submitted returns u/s 139 of the Income Tax Act, 1961, (hereinafter referred to as "the Act") for the assessment years 1991-92, 1992-93, 1993-94 and 1994-95. In each of the returns filed by the petitioner-assessee, deduction of different amounts was claimed on account of the said amounts being interest on the loan secured by the petitioner from the Manipur Industrial Development Corporation (MANIDCO) for setting up the industrial unit in question. In response to the said returns filed, the Assessing Officer sent intimations to the petitioner u/s 143(1)(a) of the Act regarding the total income and interest payable by the petitioner by disallowing the deductions claimed. In the adjustment explanatory

sheets enclosed to the said intimations, the common reason shown for disallowing the deductions claimed by the assessee, is that the interest though payable has not been paid and, therefore, is not allowable u/s 43B(d) of the Act.

3. As the deductions claimed by the petitioner-assessee has been disallowed by invoking the provisions of Section 43B(d) of the Act, the said provisions may be noticed at this stage :

"43B. Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of-- . . .

(d) any sum payable by the assessee as interest on any loan or borrowing from any public financial institution or a State Financial Corporation or State Industrial Investment Corporation in accordance with the terms and conditions of the agreement governing such loan or borrowing,

shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in Section 28 of that previous year in which such sum is actually paid by him."

4. Section 43B(d) of the Act by its very language provides for allowing of deductions claimed, in so far as interest is concerned, on proof of actual payment. The Assessing Officer while disallowing the deductions claimed by the petitioner-assessee came to the finding that as the interest though payable has not been paid, the deductions claimed were not admissible u/s 43B(d) of the Act. The correctness of the aforesaid view as reflected in the intimations sent to the assessee and in the explanatory adjustment sheets furnished along with the said intimations, is the subject matter of the challenge in the present proceeding.

5. I have heard Mr. H.S. Paonam, learned counsel for the petitioner, and B. P. Sahu, learned counsel appearing for the Revenue.

6. Mr. Paonam, learned counsel for the petitioner, in support of the challenge made in the present writ petition, has contended that the return filed by the petitioner-assessee for each of the assessment years in question, was finalised by the Assessing Officer under the provisions of Section 143(1)(a) of the Act. Learned counsel has contended that u/s 143(1)(a), the Assessing Officer would be empowered to finalise the return filed by an assessee on the basis of the facts disclosed in the return and it would not be open for the assessing, authority to go beyond the return to decide any issue which would require an adjudication. Learned counsel has argued that any dispute as to the entitlement of the assessee to the deduction claimed cannot be decided u/s 143(1)(a) of the Act and in such cases, Section 143(2) of the Act must be invoked. Learned counsel has further contended that under the proviso to Section 143(1)(a) of the Act, the power of the Assessing Officer to make an adjustment in case of deduction claimed would come into play

only if the deduction claimed is prima facie inadmissible. "Prima facie", according to learned counsel, would mean that if the return ex facie does not disclose the deduction claimed to be admissible. In the instant case, the deduction claimed by the assessee has been disallowed on the ground that the interest though payable has not been paid. According to learned counsel, in the present case, there was no material either in the returns filed by the assessee or in the documents appended to the said returns to show that interest though payable was not paid. Rather the profit and loss accounts filed along with the returns would go to show that the assessee has shown the interest amounts in question as items of expenditure. It is on the aforesaid basis that learned counsel for the petitioner has questioned the correctness of the view taken by the learned Assessing Officer.

7. No affidavit has been filed on behalf of the Revenue. Mr. Sahu, learned counsel appearing for the Revenue, has, however, contended that as the writ petitioner has an adequate alternative remedy either by way of a rectification application u/s 154 of the Act or by means of an appeal, this court ought not to adjudicate the dispute on merits and instead, require the petitioner-assessee to approach the departmental forum.

8. The submissions advanced by learned counsel for the parties have been duly considered.

9. Under the provisions of the Act, no appeal would lie against the intimations sent to the petitioner by the Assessing Officer u/s 143(1)(a) of the Act except, perhaps, in respect of the assessment year 1994-95. The remedy by way of a rectification application u/s 154 or a revision application u/s 264, in view of the nature of the power to be exercised under the aforesaid two provisions of the Act, cannot be considered to be an efficacious alternative remedy available to the writ petitioner. That apart, the present proceedings having remained pending in this court since the year 1994, I do not consider it proper to require the writ petitioner to go back to the departmental forum at this belated stage. Instead, it would be more appropriate to consider and decide the merits of the controversy raised in the present proceedings.

10. Section 143 of the Act has two limbs. In response to the return filed by an assessee, the Assessing Officer may proceed either u/s 143(1)(a) and proceed to finalise the income of the assessee as returned on the basis of the facts disclosed in the return itself in which case a mere intimation is required to be sent to the assessee, specifying the tax payable. This is the power of summary assessment as normally understood though the expression "assessment" nowhere appears in the language contained in Section 143(1)(a). While finalising the return u/s 143(1)(a) by sending an intimation to the assessee of the tax payable, the Assessing Officer is empowered to correct any arithmetical error in the return filed and in the documents accompanying the return. Similarly, if a disallowance is prima facie admissible but has not been claimed or if such a disallowance though claimed is prima facie not admissible, the Assessing Officer is empowered to make necessary

adjustments in the income or loss declared in the return filed. The second limb of Section 143 is contained in Sub-section (2) which empowers the Assessing Officer to serve on the assessee a notice requiring him to appear before the Assessing Officer and produce such evidence that the assessee relies upon in support of the return filed.

11. In the instant case, the Assessing Officer has disallowed the deductions claimed by the petitioner as not admissible u/s 43B(d) of the Act and has added each such deduction claimed to the total income of the assessee for the assessment years in question by way of adjustment u/s 143(1)(a) of the Act. Admittedly, the petitioner was not heard in the matter. As already noticed, the Assessing Officer while proceeding u/s 143(1)(a) of the Act, would be entitled to disallow the deduction claimed, only in a situation where such deduction is prima facie inadmissible. Such prima facie inadmissibility of the deduction claimed must be apparent on the face of the return or the documents appended to the return. If in deciding the entitlement of an assessee to the deduction claimed, any adjudication or investigation is required, the Assessing Officer would have to take recourse to the powers u/s 143(2) of the Act and decide the matter after giving due opportunity to the assessee. However, in case where the return is being finalised u/s 143(1)(a) of the Act, it will be beyond the power of the Assessing Officer to decide any such debatable question or dispute which would require going beyond the return or the documents filed along with the return.

12. In the instant case, the Assessing Officer held the deduction claimed by the assessee to be not admissible on the ground that interest though payable had not been paid by the assessee. The Assessing Officer, therefore, held that the assessee would not be entitled to the deduction claimed in view of the provisions of Section 43B(d) of the Act. The moot question, therefore, is whether interest as payable had been paid by the assessee or not. According to the petitioner-assessee, there is nothing in the returns filed or the documents appended to the returns to show that the interest which was payable had not been paid. A perusal of the profit and loss account filed along with the return for each of the assessment years in question does not indicate that the interest in question has not been paid by the assessee. No material has been disclosed by the Assessing Officer before this court disputing the contention of the writ petitioner-assessee that there was no material available to the Assessing Officer to hold that the interest was not paid. Whether interest payable was paid or not, was, therefore, a question that needed to be resolved by the Assessing Officer on the basis of the materials to be adduced by the petitioner-assessee. Any determination of the said question could have been made by the Assessing Officer only u/s 143(2) of the Act and not u/s 143(1)(a). It may be that after exhausting the procedure prescribed u/s 143(2) of the Act, the consequences may be the same. However, the possible consequences that may be reached at the end of the exercise u/s 143(2) of the Act, would not justify the conclusion reached by the Assessing Officer in the present case while proceeding

u/s 143(1)(a) of the Act.

13. In view of the foregoing conclusion reached, both the writ petitions have to be allowed and the intimations sent by the Assessing Officer to the assessee along with the explanatory adjustment sheets for each of the assessment years in question, i.e., the assessment years 1991-92, 1992-93, 1993-94 and 1994-95, are hereby set aside. It will now open for the Assessing Officer to reconsider the returns filed by the petitioners for the assessment years in question u/s 143(2) of the Act.

14. The writ petitions shall stand allowed as indicated above.