Commissioner of Income Tax Vs Orbit Travel and Tours Pvt. Ltd., Vinayak Steels Ltd., Shabari Packaging Industries P. Ltd., Super Roller Flour Mills Ltd. and Nizoni Tools Pvt. Ltd.

Court: Andhra Pradesh High Court

Date of Decision: Feb. 26, 1999

Acts Referred: Income Tax Act, 1961 â€" Section 115J, 143(1), 154, 226(2)

Citation: (1999) 238 ITR 931

Hon'ble Judges: P. Venkatarama Reddi, J; A. Hanumanthu, J

Bench: Division Bench

Advocate: S.R. Ashok, for the Appellant; S. Ravi, for the Respondent

Judgement

P. Venkatarama Reddi, J.
In these petitions filed by the Commissioner of Income Tax, A. P.-I, u/s 256(2) of the Income Tax Act, 1961,

the Revenue seeks reference of the following questions :

(1) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that the

adjustment made by the Assessing Officer in determining the income of the assessee u/s 115J is a debatable one, though the issue was settled by

the Andhra Pradesh High Court''s decision in the case of V.V. Trans-investments (P.) Ltd. Vs. Commissioner of Income Tax, ?

(2) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that the decision of

the Andhra Pradesh High Court referred to above is not applicable to the assessee''s case, since the decision was rendered subsequent to

processing the return u/s 143(1)(a) ?

2. However, in I. T. C. No. 94 of 1998, the following question was framed :

Whether, on the facts and in the circumstances of the case, the Income tax Appellate Tribunal was correct in holding that the adjustment made by

the Assessing Officer while processing the return u/s 143(1)(a) was not in accordance with the provisions of Section 115J of the Income Tax Act

?

3. At the outset, we may point out that the question framed in ITC No. 94 of 1998, and the second question framed in the other ITCs do not arise

for consideration at all. Obviously, these questions were framed without proper application of mind. While framing the defective questions, the

petitioner did not raise the questions which really arise out of the Tribunal''s order and which arise for consideration in these ITCs. Learned senior

standing counsel for the Department has, however, addressed us on the following questions which bring out the real controversy :

Whether, the Assessing Officer exceeded his jurisdiction u/s 143(1)(a) of the Income Tax Act by making adjustments in such a way as to exclude

the unabsorbed depreciation in calculating the loss for the purpose of Section 115J ? In other words, whether the adjustments made by the Income

Tax Officer u/s 115J while computing the book profit u/s 115J are of debatable nature, going out of the purview of the Section 143(1)(a) ?

4. The next allied question is ""whether on an application filed by the assessee u/s 154, the Assessing Officer ought to have cancelled the

aforementioned adjustments made while processing the return u/s 143(1)(a) ?

5. The other question argued for the first time before us is ""whether in an appeal against the order rejecting the application u/s 154, the Appellate

Commissioner or Tribunal can declare that the adjustments made u/s 143(1)(a) vis-a-vis Section 115J are unsustainable and thereby delete the

addition/adjustment ?

6. It is in the light of these questions debated before us, we proceed to consider these applications.

7. In the proceedings u/s 143(1)(a) of the Income Tax Act for the years 1988 to 1990, the Assessing Officer computed the loss excluding

unabsorbed depreciation of earlier years, while arriving at the book profit u/s 115J, whereas according to the assessee''s return, loss is calculated

including unabsorbed depreciation thereon. Thereafter, the assessee filed a petition for rectification u/s 154. The assessee contested the method of

computation of business loss as per Section 115J while processing the return u/s 143(1)(a) and that petition was rejected on the ground that there

was no apparent mistake in the ""intimation"" which needs to be rectified u/s 154. On second appeal, either by the assessee or by the Revenue, the

Tribunal held that in view of the debatable nature of the issue involved, the Assessing Officer ought not to have resorted to prima facie adjustment

under the provisions of Section 143(1)(a) as it then stood. It may be stated that by the date of issuing the intimation u/s 143(1)(a) or rectification

order u/s 154, the interpretation and computation of ""loss"" as per Section 115J was the subject-matter of controversy and it is only in March,

1992, that the Hyderabad Bench of the Tribunal resolved the issue in favour of the Revenue.

8. It is not in dispute that in exercise of jurisdiction u/s 143(1)(a) of the Act, as it stood at the relevant point of time, the Assessing Officer cannot

proceed to make such adjustments regarding which there could be scope for doubt or argument in the sense that two views can reasonably be

taken in the matter. The question whether the loss includes depreciation for the purpose of arriving at the income u/s 115J of the Income Tax Act

was admittedly the subject-matter of controversy before various Benches of the Income Tax Appellate Tribunal and there was no unanimity of

view. It was only in March, 1992, that the Hyderabad Bench of the Income Tax Appellate Tribunal resolved the issue in favour of the Revenue

and against the assessee. This view of the Tribunal was confirmed much later by the High Court in V.V. Trans-investments (P.) Ltd. Vs.

Commissioner of Income Tax, . By the time the Assessing Officer completed the assessment u/s 143(1)(a) of the Act by impliedly rejecting the

assessee''s claim and making necessary adjustments on the view taken by him, the legal position was in a state of flux. Learned senior standing

counsel however points out that by the date, the Central Board of Direct Taxes by Circular No. 495 (see [1987] 168 ITR 87), dated September

22, 1987, clarified the legal position and as the same was binding on the Department, in so far as the Assessing Officer is concerned, no doubt

could have been entertained. We have gone through the circular. The only principle of relevance stated in the circular is that : ''''brought forward

losses or unabsorbed depreciation, whichever is less, would be reduced in arriving at the book profits''''. The illustration appended to the circular

only amplifies this principle. It does not necessarily mean that depreciation cannot be included in loss at all for the purpose of Section 115J. In any

case, the circular does not lay down in categorical terms the proposition which the Revenue is contending for. Thus, this is not an appropriate case

where the Assessing Officer should have resorted to the unilateral adjustments by invoking Section 143(1)(a), more so, when the assessee was, at

the relevant point of time, left without the remedy of appeal and the effect of applying Section 143(1)(a) would be to saddle the assessee with the

additional tax liability of 20 per cent.

9. The question then is whether Section 154 could be invoked by the assessee after intimation u/s 143(1)(a) was sent to him. Adverting to this

aspect, learned standing counsel for the Income Tax Department reminds us of the scope of Section 154 whereunder only obvious and patent

errors could be rectified but not such of those errors which are open to debate and argument. Learned standing counsel proceeds to contend that if

for the purpose of Section 143(1)(a) the question as to how the loss has to be computed u/s 115J remained a debatable issue at the relevant point

of time, it would be equally so for the purpose of Section 154. In the case of the rectification petition disposed of after the Tribunal''s decision (for

e.g., in the case of ITC No. 122 of 1998), it would be an ""a fortiori"" case in as much as by that date, the legal position was settled by the Tribunal

leaving no scope to invoke Section 154. The argument, though plausible, does not commend to our acceptance. By resorting to adjustments of

controversial nature in purported exercise of power u/s 143(1)(a), the Assessing Officer, in view of what is stated above, out stepped his

jurisdiction thereby determining the income much higher than what was returned by the assessee. This has obviously introduced an error which is

apparent from the record. When such an error is pointed out to the Assessing Officer, he was by duty bound to amend the intimation sent u/s

143(1)(a). This is a case where the illegality or mistake in the intimation u/s 143(1)(a) arises for the reason that the said provision which ought not

to have been invoked has been invoked and the income was wrongly determined by making unilateral adjustments which do not fall within the

ambit of the said section. Thus, the assessing authority failed to exercise the jurisdiction which he ought to have exercised u/s 154.

10. The legal position as regards the scope of Sections 143(1)(a) and 154 being well settled and the facts being what they are, we do not think

that any useful purpose would be served by calling for reference.

11. Before we part with the case, we would like to advert to the argument advanced by learned standing counsel. He contends that in an appeal

against the order rejecting the assessee"s application u/s 154, the Tribunal should not have adjudicated on the validity of the adjustments made u/s

143(1)(a) and set aside the intimation given under that provision. In answer to this, learned counsel for the respondent submits that the order

passed by the Tribunal is only consequential to the view expressed by it and falls well within the ambit of the appellate jurisdiction. This is a

contention which was not raised before the Tribunal, not even in the reference appllication or even in the petition u/s 256(2) of the Act and no such

question of law has been formulated. We are not, therefore, inclined to deal with this aspect and call for reference on a question which is not even

raised in the petition u/s 256(2). The I. T. Cs. are, therefore, dismissed. No costs.