(2014) 09 CAL CK 0092

Calcutta High Court

Case No: I.T.A. No. 301 of 2005

Tata Metaliks Ltd.	APPELLANT
Vs	
C.I.T. III	RESPONDENT

Date of Decision: Sept. 22, 2014

Acts Referred:

- Income Tax Act, 1961 - Section 139, 139(5), 142, 143, 143(1)

Citation: (2014) 368 ITR 643

Hon'ble Judges: Soumitra Pal, J; Arindam Sinha, J

Bench: Division Bench

Advocate: J.P. Khaitan, Sr. Adv., Sanjoy Bhowmick and C.S. Das, Advocate for the Appellant; A.G. Gutgutia, Advocate for the Respondent

Judgement

1. This appeal was admitted on the following question of law:

"Whether, on a true and proper interpretation of the provisions of Sections 139 and 143 and other relevant provisions of the Income Tax Act, 1961, the Tribunal was justified in law in holding that issue of the intimation u/s 143(1) for the assessment year 1999-2000 on August 08, 2000 amounted to completion of assessment within the meaning of section 139(5) disabling the appellant from filing a revised return and that the revised return filed on March 31, 2001 was belated and invalid?"

2. The order from which the question was formulated for adjudication in appeal was dated 22nd February, 2005 passed by the Tribunal relating to the Assessment Year 1999-2000.

3. Mr. Khaitan, learned Senior Advocate appearing on behalf of the appellant assessee, submitted the return for the relevant assessment year was intimated to have been accepted u/s 143(1) of the Income Tax Act, 1961 on 8th August, 2000. According to him, that was not completion of the assessment in relation to such return filed. The assessee sought to file a revised return on 31st March, 2001 which

was within the time provided u/s 139(5) of the said Act. He submitted intimation issued u/s 143(1) of the said Act cannot be said to be an assessment relying on the decision reported in the case of Assistant Commissioner of Income Tax Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd., in particular paragraph 13 thereof. He submitted by that judgment it had been held assessment could not be said to have been completed on the issuance of intimation u/s 143(1) of the said Act. He also drew our attention to the judgment in Tarsem Kumar Vs. The Income Tax Officer and others, rendered following the aforesaid judgment of the Hon''ble Supreme Court.

4. Ms. Ghutghutia, learned Advocate appearing on behalf of the Revenue, submitted by the intimation dated 8th August, 2000 the assessee was informed that its original return had been accepted. Refund as raised stood already issued as intimated and thereafter the Assessing Officer did not resort to seeking any further particulars or evidence from the assessee in resorting to the provision of Section 143(2) of the said Act. In those circumstances, the assessment stood completed and accepted by the assessee who then had sought to file a revised return on the last day otherwise possible. According to her, the said revised return was not accepted as it could not be in the facts and circumstances of the case. She submitted the order of the Tribunal should not be interfered with.

5. The Revenue relied on the decisions reported in Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, and State of Orissa and Others Vs. Md. Illiyas, to submit on the point of applicability of precedents in seeking to distinguish the judgment relied on by Mr. Khaitan. According to Mrs. Ghutghutia, those judgments were distinguishable on facts. In Rajesh Jhaveri, (Supra), according to her, the interpretation, of assessment, if at all given by the Hon''ble Supreme Court, was in the context of reassessment sought to be made on a change of opinion.

6. We find the Tribunal while adjudicating the first of the three grounds raised before it being that the learned DCIT was not justified, rather, grossly erred in not accepting the revised return, treated it as invalid by relying on the decision rendered in Commissioner of Income Tax Vs. Punjab National Bank, to hold the remedy of the assessee was to have preferred an appeal from the intimation, if it was aggrieved thereby. The Tribunal held,

"The intimation along with the refund was a decision of acceptance of self assessment was to reinforce Assessee''s assessment being final which were to be appealed against or rectified but not revised as per legal interpretation of the statute put forth by the Assessee for consideration of its revised return".

7. The rectification which the Tribunal found was available to be made if felt necessary by the appellant, would be confined to rectification of mistake apparent from the record. Bereft of the revised return the record would show the original return filed without any indication as to any mistake appearing therein.

8. We find it necessary to quote paragraph 13 from Rajesh Jhaveri Stock Brokers (P) Ltd. (supra):

"One thing further to be noticed is that intimation under s. 143(1)(a) is given without prejudice to the provisions of s. 143(2). Though technically the intimation issued was deemed to be a demand notice issued under s. 156, that did not per se preclude the right of the AO to proceed under s. 143(2). That right is preserved and is not taken away. Between the period from 1st April, 1989 to 31st March, 1998, the second proviso to s. 143(1)(a), required that where adjustments were made under the first proviso to s. 143(1)(a), an intimation had to be sent to the assessee notwithstanding that no tax or refund was due from him after making such adjustments. With effect from 1st April, 1998, the second proviso to s. 143(1)(a) was substituted by the Finance Act, 1997, which was operative till 1st June, 1999. The requirement was that an intimation was to be sent to the assessee whether or not any adjustment had been made under the first proviso to s. 143(1) and notwithstanding that no tax or interest was found due from the assessee concerned. Between 1st April, 1998 and 31st May, 1999, sending of an intimation under s. 143(1)(a) was mandatory. Thus, the legislative intent is very clear from the use of the word "intimation" as substituted for "assessment" that two different concepts emerged. While making an assessment, the AO is free to make any addition after grant of opportunity to the assessee. By making adjustments under the first proviso to s. 143(1)(a), no addition which is impermissible by the information given in the return could be made by the AO. The reason is that under s. 143(1)(a) no opportunity is granted to the assessee and the AO proceeds on his opinion on the basis of the return filed by the assessee. The very fact that no opportunity of being heard is given under s. 143(1)(a) indicates that the AO has to proceed accepting the return and making the permissible adjustments only. As a result of insertion of the Explanation to s. 143 by the Finance (No. 2) Act of 1991 w.e.f. 1st Oct., 1991, and subsequently w.e.f. 1st June, 1994, by the Finance Act, 1994, and ultimately omitted w.e.f. 1st June, 1999, by the Explanation as introduced by the Finance (No. 2) Act of 1991 an intimation sent to the assessee under s. 143(1)(a) was deemed to be an order for the purposes of s. 246 between 1st June, 1994, to 31st May, 1999, and under s. 264 between 1st Oct., 1991, and 31st May, 1999. It is to be noted that the expressions "intimation" and "assessment order" have been used at different places. The contextual difference between the two expressions has to be understood in the context the expressions are used. Assessment is used as meaning sometimes "the computation of income", sometimes "the determination of the amount of tax payable" and sometimes "the whole procedure laid down in the Act for imposing liability upon the taxpayer". In the scheme of things, as noted above, the intimation under s. 143(1)(a) cannot be treated to be an order of assessment. The distinction is also well brought out by the statutory provisions as they stood at different points of time. Under s. 143(1)(a) as it stood prior to 1st April, 1989, the AO had to pass an assessment order if he decided to accept the return, but under the amended provision, the requirement of passing

of an assessment order has been dispensed with and instead an intimation is required to be sent. Various circulars sent by the CBDT spell out the intent of the legislature, i.e., to minimize the Departmental work to scrutinize each and every return and to concentrate on selective scrutiny of returns. These aspects were highlighted by one of us (D.K. Jain, J.) in Apogee International Ltd. Vs. Union of India and Another, It may be noted above that under the first proviso to the newly substituted s. 143(1), w.e.f. 1st June, 1999, except as provided in the provision itself, the acknowledgement of the return shall be deemed to be an intimation under s. 143(1) where (a) either no sum is payable by the assessee, or (b) no refund is due to him. It is significant that the acknowledgement is not done by any AO, but mostly by ministerial staff. Can it be said that any "assessment" is done by them? The reply is an emphatic "no". The intimation under s. 143(1)(a) was deemed to be a notice of demand under s. 156, for the apparent purpose of making machinery provisions relating to recovery of tax applicable. By such application only recovery indicated to be payable in the intimation became permissible. And nothing more can be inferred from the deeming provision. Therefore, there being no assessment under s. 143(1)(a), the question of change of opinion, as contended, does not arise."

9. From Rajesh Jhaveri, we find the Hon''ble Supreme Court had considered the effect of Section 143 of the said Act in discussing its sub-sections as it had undergone change from time to time. The Tribunal had relied on the case of CIT vs. Punjab National Bank (supra) in which also we find the discussion is the same regarding assessment as provided for u/s 143(1) of the said Act, that it could not be said to be assessment was complete on intimation issued.

10. Section 143(1)(i) of the said Act as it stood in the material time is set out below:

"143.(1) Where a return has been made u/s 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 noticed of demand issued u/s 156 and all the provisions of this Act shall apply accordingly;"

11. We notice the said provision contemplates an assessment without prejudice to the provisions of sub-section (2) of the said section whereunder the Assessing Officer shall, if he considers it necessary, serve on the assessee a notice requiring him, on a date to be specified therein, to attend his office or to produce or cause to be produced there, any evidence on which the assessee may rely in support of the return and after taking into account all relevant materials the Assessing Officer shall by an order in writing make an assessment. Thus we find, the provision for assessment to be made for the purpose of issuance of an intimation u/s 143(1) of

the said Act reserving the authority of the Assessing Officer to resort to the provisions under sub-section (2) thereof, cannot be said to be completion of assessment and, therefore, limit the time otherwise available to file revised return. We are fortified in our finding by the judgment in Rajesh Jhaveri (supra).

12. In the circumstances and in view of the reasons aforesaid, we answer the question formulated in the negative, in favour of the assessee and against the Revenue. The appeal is allowed.

13. Urgent photostat certified copy of this judgment, if applied for, be given to the parties on usual undertakings.