Karnataka High Court Icds Ltd. vs Deputy Commissioner Of ... on 7 February, 2002 Equivalent citations: (2003) 179 CTR Kar 424, ILR 2002 KAR 5304, 2002 258 ITR 635 KAR, 2002 258 ITR 635 Karn Author: G Bharuka Bench: G Bharuka, K S Rao JUDGMENT G.C. Bharuka, J. 1. The assessee has preferred this appeal under Section 260A of the Income-tax Act, 1961 (in short "the Act"). The substantial question of law involved in this appeal is : "Whether, in the facts and circumstances of the case, the Tribunal was right in holding that the assessee is liable to pay additional income-tax under Section 143(1A)(a) of the Act ?" 2. The appellant is a company incorporated under the Companies Act, 1956. For the assessment year 1993-94, the appellant filed a return showing the total income (before deductions under Chapter VI-A) of Rs. 1,49,14,477. After scrutiny of the said return under Section 143(1A), the Assessing Officer sent an intimation to the appellant under Section 143(1)(a)(i) of the Act intimating levy of additional income-tax being at Rs. 4,15,018. The additional income-tax was levied by the Assessing Officer because of addition of Rs. 33,00,000 which the appellant has claimed as deduction under the head "Interest tax". 3. After receiving the above intimation, the assessee filed an application under Section 154 of the Act, claiming that it was entitled to 100 per cent. depreciation in respect of 150 tonne air-conditioner costing 1.13 crores, which has not been granted by the Assessing Officer while making the adjustment under Section 143(1A). The said application was rejected by the Assessing Officer under his order dated March 21, 1994. The appellant questioned the said order before the Commissioner of Income-tax (Appeals) who, after consideration of the relevant facts and the statutory provisions, held that the assessee was entitled to 100 per cent. depreciation on the above air-conditioner as claimed. Accordingly, by order dated February 26, 1994, he directed the Assessing Officer to allow permissible depreciation while making adjustments under Section 143(1A). The admissible depreciation worked out to Rs. 42,45,271. If this deduction is adjusted against the addition of Rs. 33,00,000 then the income gets reduced to Rs. 42,45,271. Thus, the ultimate adjustment did not result in any increase in the income. 4. Subsequently, the appellant filed a revised return on the basis of which a regular assessment under Section 143(3) was completed. But, curiously, the Assessing Officer without giving effect to the appellate order dated February 26, 1994, directing the Assessing Officer to grant additional depreciation by way of adjustment under Section 143(1)(a), in the demand notice issued under Section 156 of the Act included the amount of additional income-tax as well being for Rs. 4,15,018. Against this demand notice, the appellant preferred an appeal before the Commissioner of Income-tax (Appeals), who, considering the facts noticed above and the provisions contained under Section 143(1A), held that the inclusion of additional income-tax in the demand notice was impermissible in law. 5. The Department, being aggrieved by this order, questioned the same before the Income-tax Appellate Tribunal, which by its impugned order dated June 29, 2001, by wrongly relying on the judgment of the Supreme Court in the case of CIT (Asst.) v. J. K. Synthetics Ltd. has set aside the order of the Commissioner of Income-tax (Appeals) and restored the levy of additional income-tax. 6. In order to appreciate the contentions raised at the Bar and the

reasoning given by the Tribunal, we have to look at Sub-section (1A) of Section 143 as it stood at the material time. It reads thus : "143. Assessment.– .... (1A)(a) Where as a result of the adjustments made under the first proviso to Clause (a) of Sub-section (1),– (i) the income declared by any person in the return is increased ; or (ii) the loss declared by such person in the return is reduced or is converted into income, The Assessing Officer shall,– (A) in a case where the increase in income under Sub-clause (i) of this clause has increased the total income of such person, further increase the amount of tax payable under Sub-section (1) by an additional income-tax calculated at the rate of twenty per cent. on the difference between the tax on the total income so increased and the tax that would have been chargeable had such total income been reduced by the amount of adjustments and specify the additional income-tax in the intimation to be sent under Sub-clause (i) of Clause (a) of Sub-section (1) ; (B) in a case where the loss so declared is reduced under Sub-clause (ii) of this clause or the aforesaid adjustments have the effect of converting that loss into income, calculate a sum (hereinafter referred to as additional income-tax) equal to twenty per cent. of the tax that would have been chargeable on the amount of the adjustments as if it had been the total income of such person and specify the additional income-tax so calculated in the intimation to be sent under Sub-clause (i) of Clause (a) of Sub-section (1) ; (C) where any refund is due under Sub-section (1), reduce the amount of such refund by an amount equivalent to the additional income-tax calculated under Sub-clause (A) or Sub-clause (B) as the case may be. (b) Where as a result of an order under Sub-section (3) of this section or Section 154 or Section 250 or Section 254 or Section 260 or Section 262 or Section 263 or Section 264, the amount on which, additional income-tax is payable under Clause (a) has been increased or reduced, as the case may be, the additional income-tax shall be increased or reduced accordingly, and,– (i) in a case where the additional income-tax is increased, the Assessing Officer shall serve on the assessee a notice of demand under Section 156; (ii) in a case where the additional income-tax is reduced, the excess amount paid, if any, shall be refunded." 7. From the reading of Clause (a) of Sub-section (1A) of Section 143 of the Act as extracted above, it is clear that the Assessing Officer can levy additional income-tax only if pursuant to adjustments made to the return, the income is found to have increased or the loss declared in the return is reduced or is converted into income. This section does not provide that even in a case where after adjustments the income gets reduced then also the Assessing Officer can levy additional income-tax. Further, as provided under Clause (b) of Sub-section (1A) of Section 143, for computation of additional income-tax, the Assessing Officer has to give due credence to any order passed under Section 154 of the Act. Keeping in view these statutory provisions and the interpretational rule of strict construction of charging sections in tax laws, it can unhesitantly be said that the Tribunal has erred in reversing the order of the Commissioner of Income-tax (Appeals). 8. So far as placing of reliance by the Tribunal on the judgment of the Supreme Court in the case of CIT (Asst.) v. J. K. Synthetics Ltd. is concerned, the Tribunal has misdirected itself on this count as well. This is for the simple reason that in this judgment, mere perusal of facts of the case

shows that it was a case where after adjustment, loss declared by the assessee had been reduced. On these facts the Supreme Court by taking note of the amended provisions held that the amended provisions, which were retrospective in nature, cover even cases where the loss is reduced as a result of adjustment made under Sub-section (1)(a) of Section 143. But, this is not the situation here. As we have already indicated, the present case is a case where after adjustment, the returned income has merely reduced. Sub-section (1A) of Section 143 of the Act did not cover such a situation permitting levy of additional income-tax as has been sought to be done in the present case. Therefore, impugned levy of additional income-tax does not have any legal sanction. 9. For the aforesaid reasons, we set aside the order of the Tribunal. Thus, the appeal is allowed.