

Assistant Commissioner Of Income-Tax vs J.K. Synthetics Ltd. on 21 February, 2001

Equivalent citations: AIR2001SC1531, [2001]251ITR200(SC), JT2001(3)SC580, 2004(3)SCALE532, (2003)10SCC623, AIR 2001 SUPREME COURT 1531, 2003 (10) SCC 623, 2001 AIR SCW 1282, 2001 TAX. L. R. 658, (2001) 116 TAXMAN 598, 2001 (10) SRJ 298, (2001) 3 JT 580 (SC), 2004 (3) SCALE 532, (2001) 251 ITR 200, (2001) 162 TAXATION 5, (2001) 4 SUPREME 334, (2004) 3 SCALE 532, (2001) 166 CURTAXREP 498

Bench: S.P. Bharucha, N. Santosh Hegde

ORDER

C.A. No. 1636 of 1994 :

1. This appeal arises from the judgment of a learned single judge of the Delhi High Court (see [1993] 200 ITR 584) on a writ petition. The writ petition was made absolute and the Revenue is in appeal.

2. The writ petitioner assessee had returned a net loss. After adjustments had been made by the taxing authorities under the provision of Section 143(1)(a), the amount of loss stood reduced. The taxing authorities under the provisions of Section 143(1A) sought to levy additional tax upon the assessee in this behalf and this was challenged in the writ petition.

3. Section 143(1)(a) reads thus :

"143. (1)(a) Where a return has been made under Section 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 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 notice of demand issued under Section 156 and all the provisions of this Act shall apply accordingly ; and

(ii) if any refund is due on the basis of such return, it shall be granted to the assessee :

Provided that in computing the tax or interest payable by, or refundable to, the assessee, the following adjustments shall be made in the income or loss declared in

the return, namely :

(i) any arithmetical errors in the return, accounts or documents accompanying it shall be rectified ;

(ii) any loss carried forward, deduction, allowance or relief, which, on the basis of the information available in such return, accounts or documents, is prima facie admissible but which is not claimed in the return, shall be allowed ;

(iii) any loss carried forward, deduction, allowance or relief claimed in the return, which, on the basis of the information available in such return, accounts or documents, is prima facie inadmissible, shall be disallowed :

Provided further that where adjustments are made under the first proviso, an intimation shall be sent to the assessee, notwithstanding that no tax or interest is found due from him after making the said adjustments :

Provided also, that an intimation for any tax or interest due under this clause shall not be sent after the expiry of two years from the end of the assessment year in which the income was first assessable."

4. Sub-section (1A), as it originally read, was thus :

"(1A)(a) Where, in the case of any person, the total income, as a result of the adjustments made under the first proviso to Clause (a) of Sub-section (1), exceeds the total income declared in the return by any amount, the Assessing Officer shall,--

(i) further increase the amount of tax payable under Sub-section (1) by an additional income-tax calculated at the rate of twenty per cent, of the tax payable on such excess amount and specify the additional income-tax in the intimation to be sent under Sub-clause (i) of Clause (a) of Sub-section (1) ;

(ii) 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 (i)."

5. Sub-section (1A) was amended by the Finance Act, 1993, with effect from April 1, 1989, which was the date upon which Sub-section (1A) had been introduced into the Act. The substituted Sub-section (1A) read thus :

"(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."

6. The substituted Sub-section (1A), therefore, made it clear that even where the loss declared by an assessee had been reduced by reason of adjustments made under Sub-section (1)(a), the provisions of Sub-section (1 A) would apply. This being a retrospective amendment, it covers the controversy in this appeal and, therefore, the appeal would have to be decided in favour of the Revenue.

7. Learned counsel for the assessee, however, relied upon the judgment of a Bench of two learned judges of this court in CIT v. Hindustan Electro Graphites Ltd. [2000] 243 ITR 48. 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 took the view that the additional penalty under Sub-section (1A) bore the imprint of a penalty and no penalty could be levied because the return filed by the assessee was correct when it was filed.

8. 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).

9. We should add that we have reservations about the correctness of the judgment in Hindustan Electro Graphite Ltd.'s case 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.

10. There shall be no order as to costs.

C.A No. 3464 of 1992 :

11. Learned counsel for the assessee states that the adjustment which was made under Section 143(1)(a), on the basis of which the provisions of Subsection (1A) were invoked, has since been set aside. Nothing, therefore, survives in this appeal. The appeal is "dismissed. No order as to costs.

C. A No. 1225 of 1993 :

12. Learned counsel for the assessee states that the adjustment which was made under Section 143(1)(a), on the basis of which the provisions of Subsection (1A) were invoked, has since been set aside. Nothing, therefore, survives in this appeal. The appeal is dismissed. No. order as to costs.