

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITR No.1 of 2004
Date of decision: 13.1.2016**

Commissioner of Income Tax, Rohtak

.....Applicant-revenue

Vs.

M/s Cebon India Limited, Gurgaon

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

Present: Mr. Tejinder K.Joshi, Advocate for the applicant-revenue.

Mr. S.K.Mukhi, Advocate for the assessee.

Ajay Kumar Mittal, J.

1. At the instance of the revenue, the following question of law has been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Delhi Bench, Delhi (in short, "the Tribunal") for the assessment year 1995-96 arising out of its order dated 22.5.1998, Annexure 'C' passed in ITA No.5370(Del) of 1987:-

“Whether on the facts and in the circumstances of the case, the Hon'ble ITAT was right in law in disallowing the adjustments of interest payable to IFCI and sales tax penalty made by the Assessing Officer under section 43B of the Income Tax Act, 1961 while processing the case under section 143(1)(a) as not being prima facie adjustments?”

2. A few facts relevant for the decision of the controversy involved as available on the record of the case may be noticed. The assessee company filed its return of income for the assessment year in

question on 30.11.1995 declaring nil income. The total income of the assessee before setting off the unabsorbed depreciation was ₹ 1,16,48,477/-. The unabsorbed depreciation was ₹ 1,43,96,287/-. The total income was set off against the unabsorbed depreciation and accordingly the total income was reduced to nil. The return was processed by the Assessing Officer under Section 143(1)(a) of the Act. The Assessing Officer was of the view that the interest amount and the sales tax recoverable was not allowable as deduction and accordingly, he made prima facie adjustment as under:-

Taxable income before set off of unabsorbed depreciation	₹ 1,16,48,777/-
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Add:

On account of interest to IFCI in the absence of proof under section 43B	₹ 22,04,344/-
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On account of sales tax and penalty recoverable under section 43B	₹ 13,88,741/-
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Less:

Unabsorbed depreciation claimed in the return adjusted	₹ 1,43,96,287/-
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The above adjustments were made in the intimation dated 4.11.1996. The assessee filed appeal against this intimation before the Commissioner of Income Tax (Appeals) [CIT(A)] which was dismissed vide order dated 17.9.1997. On further appeal before the Tribunal by the assessee, it was held that such adjustments were beyond the scope of Section 143(1)(a) of the Act. Accordingly, the adjustments made by the Assessing Officer were deleted and the appeal of the assessee was allowed vide order dated 22.5.1998. The application filed by the revenue for reference under section 256(1) of the Act for the opinion of this Court on the aforesaid question of law arising out of order dated 22.5.1998, was rejected by the Tribunal vide order dated

19.3.1999. Subsequently, this court under section 256(2) of the Act had directed the Tribunal to refer the question of law to it for its opinion. Hence the instant reference at the instance of the revenue.

3. We have heard learned counsel for the parties.

4. It has been categorically recorded by the Tribunal that adjustments could be made only on the basis of the details available on record. For making such disallowances, it was open for the Assessing Officer to follow the procedure laid down in the Act by issuance of notice under Section 143(2) of the Act. There was nothing wrong in issuing the notice under section 143(2) of the Act and the intimation under section 143(1)(a) of the Act on the same date. Thus, notice under section 143(2) of the Act could not be termed as invalid. As the adjustments made by the Assessing Officer could not be said to be prima facie adjustments, therefore, the additions made in the intimation issued under Section 143(1)(a) of the Act were not sustainable. The relevant finding recorded by the Tribunal reads thus:-

“10. The provision of section 143(1)(a) was introduced with a view to enable the administration to speed up the work of assessment in making summary adjustments assessing Officer is within his power, inter alia to disallow any deduction, allowing or relief claimed in the return but which on the basis of the information available in such return could be said to be prima facie inadmissible. A debatable issue does not fall within the ken of prima facie adjustments. Such adjustments could be made only on the basis of the details available on record. It was not the intention of the Act to permit roving enquiries before making such adjustments. For making such disallowances, it was open for the Assessing Officer to follow the procedure laid down in

the Act by the issuance of notice under section 143(2).

11. In the present case, we find that the notice under section 143(2) was issued in pursuant to that notice assessment was computed. Learned counsel for the assessee raised objection before us that the notice under section 143(2) was not valid as because intimation under section 143(1)(a) and notice under section 143(2) were issued on the same date. The date of intimation was given to us. But the date of notice issued under section 143(2) was not provided at the time of hearing. Assuming for a moment that both the notices are issued on the same date, in our opinion, no error crept. There is absolutely nothing on record to suggest that notice under section 143(2) was issued prior to the issuance of intimation under section 143(1)(a). As such, notice under section 143(2) cannot be termed as invalid. Since the aspect connected with the merits of the case is not relevant in the present appeal. We do not express any opinion on the same.

12. Taking into consideration the entire conspectus of the case, we are of the opinion that the adjustment made by the Assessing Officer cannot be termed as prima facie adjustment. Such adjustments are beyond the scope of section 143(1)(a). We therefore quash the additions so made. However, the validity of the claim may be examined in the appeal pending against 144 order.”

5. The view taken by the Tribunal is in accordance with law which has not been shown to be illegal or perverse in any manner. Thus, the question of law referred is answered against the revenue and in favour of the assessee. The reference stands disposed of accordingly.

(Ajay Kumar Mittal)
Judge

January 13, 2016

‘gs’

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I attest to the accuracy and
integrity of this document
High Court Chandigarh

(Raj Rahul Garg)
Judge