

CASE NO.:
Appeal (civil) 3073 of 2008

PETITIONER:
M/s. Kvaverner John Brown Engg.(India)(P) Ltd

RESPONDENT:
Assistant Commissioner of Income Tax, Bangalore

DATE OF JUDGMENT: 29/04/2008

BENCH:
S.H. KAPADIA & B. SUDERSHAN REDDY

JUDGMENT:
JUDGMENT
O R D E R

CIVIL APPEAL NO.3073 OF 2008
(Arising out of S.L.P.(C) No.7082/2007)

W I T H
CIVIL APPEAL NO. 3074 OF 2008
(Arising out of S.L.P.(C) No.7171/2007)

Leave granted.

The short question which arises for determination in these civil appeals is : whether the appellant-assessee was liable to pay additional tax on account of adjustment on its return for the assessment year 1996-97 and 1997-98 under Section 143(1)(a) read with Section 143(1A) of the Income-tax Act, 1961 vide order dated 17.12.1997.

During the relevant assessment years, appellant claimed deduction under Section 80-O of the Income-tax Act, 1961 (for short "1961 Act") in respect of qualifying income brought into India in convertible foreign exchange. In its return, appellant indicated the qualifying income as gross figure. By way of adjustment, under Section 143(1)(a) of the 1961 Act, the ITO restricted the qualifying income to the net figure. In other words, assessee claimed gross income, earned in foreign exchange, as qualifying income whereas the ITO granted deduction by restricting the claim of the assessee to the net income.

On 17.12.1997 the question : as to whether the eligible income should be taken at the gross figure or net figure, was the question of interpretation. There were several conflicting decisions on this point. Therefore, according to appellant, Section 143(1)(a) was not applicable and consequently the appellant is not liable to pay additional tax under Section 143(1A). At this stage, it may be noted that subsequently regular assessment was carried out by the ITO under Section 143(3). We are not concerned in this case with regular assessment under Section 143(3).

The only point raised by the appellant is that it is not liable to pay additional tax as Section 143(1)(a), as it stood during the relevant year, was not applicable to the facts of this case because a moot point had arisen which could not have been a matter of adjustment under that section and which point needed consideration and determination only under regular assessment vide Section 143(3) of the 1961 Act.

We find merit in this civil appeal. As stated above, we are concerned with the assessment years 1996-97 and 1997-98. One of the main conditions stipulated by way of the first proviso to Section 143(1)(a), as it stood during the relevant time, referred to prima facie adjustments. The first proviso permitted the Department to make adjustments in the income or loss declared in the return in cases of arithmetical errors or in cases where any loss carried forward or deduction or disallowance which on the basis of information available in such return was prima facie admissible but which was not claimed in the return or in cases where any loss carried forward, or deduction or allowance claimed in the return which on the basis of information available in such return was prima facie inadmissible. In the present case, therefore, when there were conflicting judgments on interpretation of Section 80-O, in our view, prima facie

adjustments contemplated under Section 143(1)(a) was not applicable and, therefore, consequently appellant was not liable to pay additional tax under Section 143(1A) of the 1961 Act.

Before concluding, we may reiterate that in this case we are not concerned with the order of the assessment passed by the ITO later on under regular assessment under Section 143(3) of the 1961 Act.

For the above reasons, the impugned judgment is set aside and the civil appeals, filed by the assessee, stand allowed with no order as to costs.

