



Issue decided by the jurisdictional High Court does not remain as 'debatable issue' and therefore adjustment under Section 143(1)(a) of the Income-tax Act is permissible in that jurisdiction – Supreme Court

Background

Recently, the Supreme Court in the case of Raghuvir Synthetics Ltd¹ (the taxpayer) held that the issue whether the preliminary expenditure incurred on raising a share capital is a revenue expenditure allowed under Section 37 of the Income-tax Act, 1961 (the Act) or capital expenditure allowed under Section 35D of the Act, has been decided by the jurisdictional High Court. Accordingly, such an issue was not a debatable issue in that jurisdiction and therefore the adjustment made under Section 143(1)(a) of the Act was permissible.

Facts of the case

- The taxpayer is a public limited company and for the Assessment Year (AY) 1994-95, it had filed its return wherein it had claimed revenue expenditure of INR65,47,448/- on advertisement and public issue.
- However, in the return of income, the taxpayer made a claim that if the aforesaid claim cannot be considered as a revenue expenditure then alternatively the said expenditure may be allowed under Section 35D of the Act.

- The Assessing Officer (AO) issued an intimation under Section 143(1)(a) of the Act on 23 February 1995 disallowing a sum of INR58,92,700/- out of the preliminary expenditure incurred on public issue. However, the AO allowed 1/10th of the total expenditure and raised demand on the balance amount.
- The Commissioner of Income-tax (Appeal) [CIT(A)] held that the concept of 'prima facie adjustment' under Section 143(1)(a) of the Act cannot be invoked as there could be more than one opinion on whether public issue expenses were covered by Section 35D or Section 37 of the Act. The Tribunal upheld the order of the CIT(A).
- The Gujarat High Court held that expenditure relating to debatable issue cannot be disallowed while processing return of income under Section 143(1)(a) of the Act.

Supreme Court's decision

- There was a divergence of opinion between the various High Courts. One view was that the preliminary expenses incurred on raising a share capital is a revenue expenditure².

¹ DCIT v. Raghuvir Synthetics Ltd (Civil Appel No. 2315/2007) – Supreme Court – Taxsutra.com

² CIT v. Kisenchand Chellaram (India) (P) Ltd. [1981] 130 ITR 385 (Mad), Warner Hindustan Ltd. v. CIT [1988] 171 ITR 224 (AP), Federal Bank Ltd. v. CIT [1989] 180 ITR 241 (Ker), Hindustan Machine Tools Ltd. v. CIT [1989] 175 ITR 220 (Ker)

- On the other hand, a contrary view was expressed by various courts³ that the said expenses are capital expenditure and cannot be allowed as revenue expenditure.
- Even though it is a debatable issue but as Gujarat High Court in the case of Ahmedabad Mfg. & Calico (P) Ltd. had taken a view that it is capital expenditure which was subsequently followed by Alembic Glass Industries Ltd. and the registered office of the taxpayer being in the State of Gujarat, the law laid down by the Gujarat High Court was binding.
- Therefore, so far as the present case is concerned, it cannot be said that the issue was a debatable one.
- The order passed by the CIT(A), the Tribunal and the Gujarat High Court cannot sustain and are set aside as they have wrongly held that the issue was debatable and could not be considered in the proceedings under Section 143(1) of the Act.

Our comments

It is a settled principle that if the issue is debatable, the AO will not be able to make adjustment relating to such issue under Section 143(1)(a) of the Act. In the present case, the Supreme Court dealt with this issue and laid down an important principle. The Supreme Court held that the issue in this case was decided by the jurisdictional High Court. Accordingly, such an issue was not debatable in that jurisdiction and therefore the adjustment made under Section 143(1)(a) of the Act is permissible.

³ Modi Spg. & Wvg. Mills Co. Ltd. [1973] 89 ITR 304 (All), Ahmedabad Mfg. & Calico (P) Ltd. v. CIT [1986] 162 ITR 800 (Guj), Alembic Glass Industries Ltd. v. CIT [1993] 202 ITR 214 (Guj), Aditya Mills [1990] 181 ITR 195 (Raj), CIT v. Multi Metals Ltd. [1991] 188 ITR 151 (Raj)



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