

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI ABRAHAM P. GEORGE, AM & GEORGE GEORGE K., JM

I.T.A. No. 124/Coch/2016
Assessment Year : 2011-12

M/s. Cochin Shipyard Ltd., Administrative Building, Shipyard Premises, M.G. Road, Perumanoor P.O., Cochin-682 015. [PAN: AAACC 6905B]	Vs.	The Addl. Commissioner of Income-tax, Range-1, Kochi.
(Assessee-Appellant)		(Revenue-Respondent)

Assessee by	Shri V. Sathyanarayanan, CA
Revenue by	Shri Shantham Bose, CIT(DR)

Date of hearing	21/03/2017
Date of pronouncement	23/03/2017

ORDER

Per ABRAHAM P.GEORGE, ACCOUNTANT MEMBER:

This appeal filed by the assessee challenges the order dated 13/01/2016 by Ld. PCIT, Kochi, passed u/s. 263 of the Income Tax Act, 1963 (in short the Act).

2. Facts apropos are that assessee engaged in building and repair of ships, tugs and small crafts, had filed its return for the impugned assessment year declaring income of Rs. 2,33,18,11,800/-. During the course of assessment proceedings, Assessing Officer had issued a notice u/s. 142(1) of the Act on 09/11/2013

calling for certain details. Assessee had replied through a letter dated 29/01/2014. The said letter gave details of services rendered by one M/s. R.S. Platou Asia Pvt. Ltd. for brokerage payments and details of expenses incurred for corporate social responsibility. Assessment was thereafter completed on 26-03-2014, u/s. 143(3) of the Act making certain disallowances, inter alia, including a disallowance of advertisement cost of Rs.61,60,000/-, which formed part of corporate social responsibility (CSR) expenditure for want of deduction of tax at source. Apart from the disallowance of a part of CSR expenses, there were disallowances for additional depreciation, depreciation on computer peripherals, foreign commission payment, revaluation expenses, travelling expenses and disallowance u/s. 14A of the Act.

3. Thereafter, on 16/12/2015, Principal Commissioner of Income-tax, Kochi issued a notice to the assessee requiring it to show cause why revisionary proceedings u/s. 263 of the Act should not be initiated. Two reasons were mentioned in such notice. As per Ld. PCIT, CSR expenditure of Rs.3,25,08,521/- debited by the assessee included a sum of Rs.2,20,50,000/- which was a provision, a sum of Rs.69,31,952/- for advertisement and a sum of Rs.1,12,19,473/- which was expenditure incurred for the benefit of the assessee company and its employees. As per Ld. PCIT, in the computation statement filed by the assessee along with the return, assessee had added back Rs. 1,51,18,048/- only and claimed the balance as business expenditure. According

to Ld. PCIT, main activity of the assessee was ship building and the sum of Rs.1,12,19,473/- claimed by the assessee as incurred for its own benefit and benefit of its employees, did not relate to its business. Secondly, as per Ld. PCIT, assessee had debited a sum of Rs.26,66,81,000/- in its profit and loss account as interest on loans but the balance sheets of the assessee did not reflect any secured or unsecured loans in the preceding two years. As per Ld. PCIT, even in the cash flow statement filed by the assessee, no borrowings or repayment of borrowed funds were shown. Thus, according to Ld. PCIT, Assessing Officer had passed the assessment order without looking into the above aspects and such order was erroneous and prejudicial to the interests of Revenue.

4. Assessee replied to the notice issued by the Ld. PCIT, stating that expenses incurred for corporate social responsibility were for the purpose of its own business. Relying on the judgment of Hon'ble Jurisdictional High Court in the case of CIT vs. Travancore Cochin Chemicals Ltd. (243 ITR 284), assessee contended that expenses which were incurred for the welfare of the employees and their children formed a part of the corporate social responsibility expenses. In so far as interest payments were concerned, reply of the assessee was that such interests were paid to banks and Indian Navy. As per the assessee, loans were taken and squared up during currency of the relevant previous year and this was the reason why there were no loans appearing in the balance sheets.

5. Ld. PCIT after considering the reply of the assessee was of the opinion that expenditure debited by the assessee under the head corporate social responsibility was not fully and exclusively for the purposes of its business. As per Ld. PCIT, such expenditure was incurred on various organizations which included hospitals and other institutions. In any case, as per Ld. PCIT, Assessing Officer had not examined the nature of such expenses before allowing the claim. Similarly, as per Ld. PCIT, Assessing Officer has also not verified the purpose of the loans taken by the assessee during the relevant assessment year before allowing the claim of interest. Thus, as per Ld. PCIT, the order of the Assessing Officer was erroneous and prejudicial to the interests of Revenue. He set aside the order on these two issues and directed Assessing Officer to examine the facts of the case and pass an order as per the provisions of the Act, after giving appropriate opportunity to the assessee.

6. Aggrieved, assessee is in appeal before us. Argument of Ld. Counsel for the assessee with regard to corporate social responsibility is that assessee itself had added back in its computation a sum of Rs.1,51,18,048/- as expenditure not allowable and claimed only the balance sum of Rs.1,73,90,473/-. As per Ld. AR, conclusion of Ld. PCIT is that such expenditure were incurred for activities not relating to the assessee's business, was incorrect. Contention of Ld. AR was that Assessing Officer had asked for the details of corporate social responsibility expenses during the course of original assessment proceedings and assessee had

furnished such details vide its letter dated 29/01/2014. Ld. AR pointed out that in paragraph 7 of the original assessment order, examination done by the Ld. Assessing Officer on such details was clearly indicated. Further as per Ld. AR, the Assessing Officer had made a disallowance of Rs.61,60,000/- for the advertisement expenses forming a part of the claim of CSR expenditure for want of deduction of tax at source. As per the Ld. AR, by virtue of the judgment of Hon'ble Jurisdictional High court in the case of Travancore Cochin Chemicals Ltd. (supra), expenses incurred for the benefit of the employees was allowable, since these were for the smooth functioning of the business of the assessee. Ld. AR submitted that payments made to various organizations like hospitals and institutions were in the nature of corporate social responsibility outgoing. Contention of Ld.AR was that the Assessing Officer had taken a lawful view by allowing the expenses incurred for the benefit of the employees of the assessee-company. Reliance was placed on the judgment of Hon'ble Madras High Court in the case of CIT vs. Madras Refineries Ltd. (266 ITR 170) and the decision of ITAT, Chennai Bench in the case of ITO vs. Velumanickam Lodge (123 ITD 25). For his argument that assessment made in accordance with a judgment of Hon'ble Jurisdictional High Court could not be subjected to revision u/s. 263 of the Act, Ld. AR relied on the judgment of Hon'ble Calcutta High Court in the case of CIT vs. Pradeep KumarTodi (325 ITR 96).

7. With regard to the claim of expenditure on interest, contention of Ld. AR was that no error whatsoever was pointed out by Ld. PCIT in the assessment order. As per Ld. AR, Ld. PCIT had expressed only an apprehension. According to him absence of opening or closing balance of loans, would not mean that the assessee had not taken any loans during the previous year. Ld. AR pointed out that assessee was engaged in building indigenous aircraft for Indian Navy and India Navy had advanced funds for such purpose on which assessee had to pay interest. Relying on the judgment of Hon'ble Delhi High Court in the case of DCIT vs. Jyothi Foundation (357 ITR 388), Ld. AR submitted that without making any enquiry, Ld. PCIT could not come to a conclusion that the interest payment was incorrectly claimed. According to him, the order of the Assessing Officer was not erroneous and prejudicial to the interests of Revenue and had to be quashed.

8. Per contra, Ld. DR strongly supporting the order of the Ld. PCIT, submitted that there was no enquiry whatsoever conducted by the Assessing Officer with regard to the claim of corporate social responsibility expenses. According to him, just because Assessing Officer disallowed a part of such expenses for want of deduction of tax at source, would not, per se, mean that an enquiry was done by the Assessing Officer on the nature of such expenses. According to him, lack of enquiry by itself would render the order erroneous and prejudicial to the interests of Revenue. Relying on the judgment of Apex Court in the case of

Toyota Motor Corporation vs. CIT (306 ITR 52), Ld. DR submitted that the Assessing Officer ought have given reasons before accepting the claim of corporate social responsibility expenses. As per Ld. DR, a cryptic order passed by the Assessing Officer would by itself be erroneous and prejudicial to the interests of Revenue.

9. In so far as the claim of interest expenditure was concerned, submission of Ld. DR was that the Assessing Officer never made any enquiries despite assessee showing no opening or closing balance of loans. Further, according to him, no prejudice would be caused to the assessee since Ld. PCIT had only directed examination of these aspects after giving proper opportunity to the assessee.

10. We have heard the rival submissions and perused the orders. Observation of the Assessing Officer in the original assessment order with regard to claim of corporate social responsibility expenses as it appear at paragraph 7 of that order is reproduced hereunder:-

“7. Disallowance out of Corporate Social Responsibility Expenses

7.1 On verification of details of expenses shown under the head corporate Social Responsibility (CSR), it is seen that the following expenses are of the nature of advertisement and publicity:-

<i>Sl. No,</i>	<i>Name of the Party</i>	<i>Amount(in Rs.)</i>	<i>Remarks</i>
<i>1.</i>	<i>The Secretary, Payipad Jalolsava Samity</i>	<i>70000</i>	
<i>3.</i>	<i>Academy of Magical Sciences</i>	<i>930000</i>	
<i>4.</i>	<i>Kerala State Youth Welfare board</i>	<i>400000</i>	<i>Paid to Kerala Government</i>
<i>5.</i>	<i>Prathyasha Foundation</i>	<i>400000</i>	<i>Paid to Organization of</i>

			<i>Physically Handicapped</i>
6.	<i>Off Shore Sailing Club of India, Naval Base</i>	200000	<i>Paid to Indian Navy</i>
7.	<i>Director, Grand Kerala Shopping Festival</i>	800000	<i>Paid to Kerala Government</i>
8.	<i>Kerala Football Association</i>	800000	<i>Paid to Sports Association</i>
9.	<i>Govt. UP School, Valampoor</i>	900000	<i>Paid to Government School</i>
10.	<i>M/s. Pratasha Foundation</i>	310000	<i>Paid to Organization of Physically Handicapped</i>
11.	<i>Ernakulam Sailing Association</i>	1000000	<i>Paid to Sports Association</i>
12	<i>Cultural Academy for Peace</i>	150000	<i>Paid to Home for Destitute for work</i>
13.	<i>Secretary Dist. Panchayath</i>	200000	<i>Paid to Government of Kerala</i>

TOTAL: Rs.61,60,000/-

7.2 The assessee was required to deduct TDS on the said payments. As the assessee company failed to deduct TDS on the said payments, the claim of the assessee in respect of the aforesaid advertisement expenses of Rs.61,60,000/- is disallowed in terms of Sec. 40(a)(ia) of the Act and added to total income.

(Amount Disallowed:Rs.61,60,000/-)

Disallowance of the above amount was made for a reason that assessee had not deducted tax at source. The nature of payments does indicate its nature as advertisement expenses. It might be true that out of total corporate social responsibility expenses of Rs.3,25,08,521/- debited by the assessee in its books of accounts, it had by itself disallowed Rs.1,51,18,048/- in its computation of income for tax purpose. In other words, the assessee had claimed under corporate social responsibility expenditure only Rs.1,73,90,473/-, out of which the Assessing Officer had disallowed Rs.61,60,000/- for want of deduction of tax at source. Admittedly expenses incurred under corporate social responsibility included payments to various hospitals and institutions, donations to various

organizations and expenses incurred for the employees of the assessee-company. Obviously, verification by the Assessing Officer was only with regard to application of section 40(a)(ia) of the Act. Questionnaire issued by the Assessing Officer during the course of assessment proceedings which has been strongly relied on by Ld. AR is actually nothing but a notice u/s. 142(1) of the Act. What was required from the assessee in such notice dated 09/12/2013 were the following details:-

"1. Details of parties from whom income from work and services" received

<i>S. No.</i>	<i>Name and Address</i>	<i>Amount received during the year</i>

2. Details of the repairs/maintenance above Rs.10lakhs. Please mention the nature of repairs/maintenance.

3. Details of liquidated damages.

4. Details of loss on derivative contracts.

5. Details of expenditure on exchange variation.

6. Note on treatment of expenses claimed under the head 'Depreciation and other losses written off" in computation of total income.

7. Details of corporate social responsibility.

8. Note on treatment of 'position for anticipated losses and expenditure' in computation of total income'.

9. Note on treatment of 'adjustment relating to prior years "in computation of total income.

10. Details of tax deducted at source in respect of payments made on account of various expenses.

11. *Note on capital reserve being restoration of charges received from M/s. IOCL for laying pipeline. Please give explanation on to why the same has not been offered to tax.*

12. *Details of addition to fixed assets.*

13. *Furnish a detailed note in respect of items shown in item no. 7 to 21 deducted from total income under the head "Admissible Deduction" in computation of the total income.*

14. *You have claimed the dividend of Rs.22,35,890/- as exempt income. You are requested to furnish the details of expenses relating to earning of said exempt income as per the provisions of section 14A read with Rule 8D.*

15. *Please furnish a reconciliation statement in respect of income shown in P&L Account and receipts reflected in 26AS."*

Reply of the assessee which is claimed by Ld.AR to be an explanation of the nature of the expenses reads as under:

"2. Details of Expenditure for Corporate Responsibility

Corporate Social Responsibility expenditure mainly comprises of two category of expenses such as:-

- a) Expenditure for the benefit of the company and employees and for general public utility – Details are enclosed.*
- b) Expenditure in the nature of Corporate advertisements – Details are enclosed."*

11. Even if we assume that the Assessing Officer had gone through the above reply, what was highlighted in such reply and annexed details were only categories and nature of expenses incurred under the head corporate social responsibility. Assessee had given two separate categories of the expenses. Any

prudent Assessing Officer would have been prodded to make further enquiries since a part of the expenses was claimed to be for the benefit of the employees and part of the expenses was claimed to be for corporate advertisement.. Whether these expenses would fall in the category of corporate social responsibility, was an issue which should have been looked into by the Assessing Officer before completing the assessment. What he did was only to verify advertisement expenses and make a disallowance u/s. 40(a)(ia) of the Act for want of deduction of tax at source. In our opinion, not making enquiries which was required to be done on the face of the reply given by an assessee, was as good as not making any enquiry. It is trite law that failure to make any enquiry which is required to be done under law by the Assessing Officer in an assessment proceedings, would render the assessment order erroneous and prejudicial to the interests of Revenue.

12. Coming to the judgment of Hon'ble Jurisdictional High Court in the case of Travancore Cochin Chemicals Ltd. (supra) relied on by the Ld. AR, it is true that Their Lordships held expenses incurred exclusively for the welfare of its employees and for carrying on the business more efficiently to be allowable. However, the question that is to be addressed is whether such expenses were indeed incurred for efficiently doing the business of the assessee. This could have been answered only if an enquiry was done by the Assessing Officer, which was not done. It is not a case where the Assessing Officer had taken a lawful

view of the claim of the assessee. Assessing Officer having not examined the claim, he had not taken any view at all. He simply went by what was given by the assessee in reply to his notice u/s. 142(1) of the Act and did not make the enquiries which a prudent man would have done under the circumstances of the case,

13. Coming to the question of interest expenditure, nothing has been asked by the Assessing Officer nor any reply given by the assessee during the original assessment, despite the fact that assessee did not show any secured loans or unsecured loans in its balance sheet for the two preceding years. Such circumstances also would clearly indicate that the claim of interest expenditure requires verification. Assessing Officer failed to do this also.

14. Thus lack of enquiry is pregnant in the assessment order on the two aspects mentioned by Ld. PCIT. As held by Hon'ble Apex Court in the case of Toyota Motor Corporation (supra), a cryptic order given by the Assessing Officer would be erroneous and prejudicial to the interests of Revenue where the issues require clear reasonings for accepting the claims of the assessee. Cases relied on by Ld. AR would not further the cause of the assessee. Considering the absence of enquiry in the assessment proceedings, we are of the opinion that Ld. PCIT was justified in invoking the powers vested in him u/s. 263 of the Act.

Directions given by Ld. PCIT were very fair. We do not find any reason to interfere with the order of the Ld. PCIT.

15. In the result, the appeal of the assessee is dismissed.

Pronounced in the open court on 23-03-2017.

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

sd/-
(ABRAHAM P. GEORGE)
ACCOUNTANT MEMBER

Place: Kochi

Dated: 23rd March, 2017

GJ

Copy to:

1. M/s. Cochin Shipyard Ltd., Administrative Building, Shipyard Premises, M.G. Road, Perumanoor P.O., Cochin-682 015.
2. The Addl. Commissioner of Income-tax, Range-1, Kochi.
3. The Principal Commissioner of Income-tax, Kochi
4. D.R., I.T.A.T., Cochin Bench, Cochin.
5. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin