

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN "SMC" BENCH, COCHIN**

**Before Shri George George K, Judicial Member**

ITA No.306/Coch/2017 : Asst.Year 2005-2006

Sri. M.K.Suneer Prop : ROLEX OIL MILL Beach Road, Vatakara Calicut – 673 101. <b>PAN : AKSPS4876N.</b>	Vs.	The Income Tax Officer Ward 2(2) Kozhikkode.
(Appellant)		(Respondent)

Appellant by : Sri. R.V.Viswanathan  
Respondent by : Sri. A.Dhanaraj, Sr.DR

<b>Date of Hearing : 19.10.2017</b>	<b>Date of Pronouncement : 20.10.2017</b>
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**ORDER**

This appeal at the instance of the assessee is directed against the CIT(A)'s order dated 07.03.2017. The relevant assessment year is 2005-2006.

2. Two issues are raised in this appeal –
- (i) Disallowance of purchase amounting to Rs.3,06,245.
  - (ii) Disallowance of depreciation amounting to Rs.1,11,125.

I shall adjudicate issue-wise as under:-

### 3. Disallowance of purchase (Rs.3,06,245)

3.1 The assessee is an individual, who is operating a proprietary concern. The proprietary concern is running a coconut oil mill. For the assessment year 2005-2006 assessment was completed vide order dated 26.12.2007 u/s 143(3) of the Act. The Assessing Officer had disallowed a sum of Rs.9,25,880 being purchase of copra. The disallowance was made for the reasons that the purchase of copra was by bought notes and there are possibilities of over-invoicing. Therefore an adhoc disallowance at the rate of 10% on purchases of copra was made.

3.2 Aggrieved by the disallowance of purchases amounting to Rs.9,25,880, the issue was taken up in appeal before the first appellate authority. The CIT(A) noticed that direct purchase from agriculturalists on the basis of bought notes is only to the tune of Rs.61,24,903 and balance purchase of copra was from sister-concerns and other dealers. It was further noticed by the CIT(A) that purchases of copra from the agriculturalists was for higher price and therefore there could have been a possibility of inflation of purchase price. The CIT(A) however was of the view that 10% of disallowance was on the higher side and held that 5% disallowance would be sufficient to cover up the possibility of inflation in purchase price. Accordingly, CIT(A) disallowed 5% of Rs.61,24,903

amounting to Rs.3,06,245. The relevant finding of the CIT(A) reads as follow:-

*"9. From these details, it is clear that as per the accounts, the appellant paid maximum rate to the agriculturists which is far more than the rate paid to sister concerns and other dealers. The sister concerns and other dealers also purchase copra from agriculturalists which indicates that the rate shown in the bought notes from the agriculturalists by the appellant is not very reliable. It was explained by the Authorised Representative that the rate of copra varies from season to season and also depends on the quality and type of copra. Even if this argument is accepted, in my opinion, the rates shown in the bought notes from the agriculturalists is high. The Assessing Officer made an addition of 10% which may be on the higher side. In my opinion, a 5% addition will be sufficient to cover the possible inflation in the purchase prices. Therefore, I restrict the addition to 5% of the direct purchase from the agriculturalists i.e., 5% of Rs.61,24,903/- is Rs.3,06,245/-."*

3.3 Aggrieved by the order of the CIT(A), the assessee has raised this issue in appeal before the Tribunal. The learned Counsel for the assessee submitted that the assessee had maintained books of account and same has been statutorily audited. It was submitted that without rejection of books of account, the Assessing Officer cannot conclude that the purchases were not genuine. For the above proposition, the learned AR relied on the judgment of the Hon'ble Gujarat High Court in the case of *Yunus Haji Ibrahim Fazalwala v. ITO* (2016) 240 Taxman 198 (Guj.).

3.4 The learned Departmental Representative, on the other hand, supported the order of the Income tax authorities.

3.5 I have heard the rival submissions and perused the material on record. Undisputedly, the assessee had maintained detailed books of account duly supported by bills and vouchers and the same was subjected to statutory audit. The books of account of the assessee has been also accepted by the Sales tax Authorities and no disallowance of purchase was made in the sales-tax assessment. The rate of copra varies from season to season and also depends on quality and type of copra. The Income-tax authorities have accepted the sales made by the assessee. If the Assessing Officer had any suspicion of the genuineness of the purchases, he could have randomly selected few of the agriculturalists from whom the assessee had made purchases and examined them before making disallowance. Disallowance on mere suspicion without substantiating or corroborative evidence is unsustainable in law. As mentioned earlier, the books of account of the assessee has been statutorily audited. Without rejecting the books of account of the assessee, the Assessing Officer cannot conclude that purchases are not genuine. In taking the above view, I rely on the judgment of the Hon'ble Gujarat High Court in the case of *Yunus Haji Ibrahim Fazalwala (supra)*. For the aforesaid reasons, I am of the view that no addition can be made on account of inflated purchase of copra. Therefore, the addition sustained by the CIT(A) amounting to Rs.3,06,245 is deleted.

#### 4. Disallowance of depreciation (Rs.1,11,125)

4.1 The Assessing Officer had made disallowance of depreciation totaling to Rs.1,11,125, on two pick-up vans and a motor car. The Assessing Officer's observation for disallowance of depreciation for the pick-up vans having registration No.KL11B5778 reads as follow:-

*"The assessee has made addition to fixed assets during the year and has claimed full depreciation. With regard to addition made to van KL 11D 5778, as per the RC Book produced the vehicle is transferred to the assessee only on 16.12.2004 and it was noticed that the asset is not put to use prior to 30.9.2004. The onus of proof lies with the assessee and the assessee was unable to prove that the vehicle was put to use for the full year. Therefore, the assessee is eligible for 50% of allowable depreciation and an amount of Rs.10,625 is disallowed on this ground."*

4.2 On further appeal, the CIT(A) confirmed the disallowance of depreciation made by the Assessing Officer. The relevant finding of the CIT(A) read as follow:-

*"The Authorised Representative was not able to furnish any such purchase bill before me during the appellate proceedings. Therefore, in the absence of any evidence to show that the vehicle was used by the appellant for his business till September, 2004, I hereby confirm the action of the Assessing Officer in disallowing 50% of the depreciation claimed. Therefore, this addition is sustained."*

4.3 The learned AR reiterated the submissions made before the Income-tax authorities. The learned DR supported the order of the Assessing Officer and CIT(A).

4.4 I have heard the rival submissions and perused the records. The assessee has not produced any material to show that the pick-up van having registration no. KL 11D 5778 was used in assessee's business in the months of August and September 2004. In the absence of any evidence to prove that the said pick-up van was used in assessee's business, I am of the view that the CIT(A) is justified in confirming the Assessing Officer's action in disallowing 50% of the depreciation claimed.

4.5 The next issue is regarding disallowance of depreciation of pick-up van KL 11G 8788. The Assessing Officer had disallowed the depreciation by observing as under:-

*"Moreover as per the RC Book of the addition made as Van KL 11 G 8788, the assessee is not the owner of the vehicle. The name of the owner as per the RC book is M.K.Sameer and the assessee did not produce any evidence to prove that this vehicle was put to use for his business purpose. Therefore, the assessee's claim of depreciation amounting to Rs.30,500 is disallowed."*

4.6 The view taken by the Assessing Officer was confirmed by the CIT(A).

4.7 I have heard the rival submissions and perused the records. The RC book of the impugned pick-up van stands in the name of one M.K.Sameer and not that of the assessee.

The assessee has not produced any evidence to show that he has used the vehicle for the purpose of his business. Therefore, I hold that the claim of depreciation amounting to Rs.30,500 has been correctly disallowed.

4.8 The Assessing Officer had disallowed depreciation on car amounting to Rs.70,000. The relevant observation of the Assessing Officer reads as follow:-

*"The assessee failed to produce any evidence to prove that the motor car shown as addition in the fixed asset schedule was owned by him and put to use during the relevant Assessment Year for business purpose. Therefore the assessee's claim of Rs.70,000 as depreciation on motor car is disallowed."*

4.9 The CIT(A) confirmed the disallowance made by the Assessing Officer.

4.10 I have heard the rival submissions and perused the material on records. The assessee has not been able to prove that he is the owner of the car and the same had been put to use during the previous year relevant to the impugned assessment year for the business purpose of the assessee. In the absence of the above proof, the Assessing Officer has correctly disallowed Rs.70,000 as depreciation on motor car. Therefore, I hold that the claim of depreciation amounting to Rs.70,000 has been correctly disallowed.

5. In the result, this appeal filed by the assessee stands partly allowed.

Order pronounced on this 20<sup>th</sup> day of October, 2017.

Sd/-  
**(George George K.)**  
**JUDICIAL MEMBER**

Cochin ; Dated : 20<sup>th</sup> October, 2017.  
Devdas\*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT, Kozhikode.
4. CIT(A), Kozhikode.
5. DR, ITAT, Cochin
6. Guard file.

True copy

BY ORDER,

(Asstt. Registrar)  
**ITAT, Cochin**