

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

Before Shri Abraham P.George, AM & Shri George George K, JM

ITA No.111/Coch/2014 : Asst.Year 2007-2008

ITA No.112/Coch/2014 : Asst.Year 2008-2009

ITA No.113/Coch/2014 : Asst.Year 2009-2010

ITA No.390/Coch/2014 : Asst.Year 2010-2011

ITA No.223/Coch/2016 : Asst.Year 2012-2013

The Dy.Commissioner of Income-tax Kottayam.	Vs.	M/s.Oil Palam India Limited XII/354, Old Star Theatre Road, P.B.NO.1715, Kottayam – 6865 039. PAN : AAACO3695C.
(Appellant)		(Respondent)

Appellant by : Sri. A.Dhanaraj, Sr.DR

Respondent by : Sri. Raja Kannan

Date of Hearing : 23.11.2017	Date of Pronouncement : 01.12. 2017
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ORDER

Per George George K, JM

These five appeals at the instance of the Revenue are directed against various orders of CIT(A). The relevant assessment years are 2007-2008, 2008-2009, 2009-2010, 2010-2011 and 2012-2013. Since common issue is raised in these appeals, they are heard together and are being disposed of by this consolidated order.

2. The solitary issue argued by the learned Departmental Representative is whether the CIT(A) is justified in holding that the agricultural income tax paid by the assessee during

the assessment years concerned can be deducted u/s 43B of the Income-tax Act.

3. Briefly stated the facts of the case are as follow:-

3.1 The assessee-company is a joint venture of Government of Kerala and Government of India. It is engaged in cultivation of oil palm and manufacture of palm oil. For the assessment years 2007-2008, 2008-2009, 2009-2010, 2010-2011 and 2012-2013, the assessee had claimed deduction under the Income-tax Act, the agricultural income tax paid during the concerned assessment years. According to the assessee since the agricultural income tax has been paid during the respective assessment years, same can be claimed as a deduction under the Income-tax Act on payment basis u/s 43B(a) of the Act. The Assessing Officer, however, negatived the claim of the assessee. The Assessing Officer held that since agricultural income is exempt u/s 10(1) of the Income-tax Act, the agricultural income tax paid on the exempted income cannot be allowed as a deduction. Further, the A.O. held that section 43B(a) will not have application since agricultural income tax is not a tax "otherwise allowable" under the Income-tax Act. For ready reference, the reasoning of the A.O. in denying the benefit of deduction of agricultural income-tax paid by assessee for the assessment year 2012-2013 reads as follow:-

"However, in the computation statement, an amount of Rs.92,00,000/- has been deducted towards

“Agricultural Income Tax” paid. The claim does not appear to be in order for the following reasons:

(1) Firstly, agricultural income tax is a tax on agricultural income and is paid out of Agricultural Income earned. Once the agricultural income itself is exempted from the purview of Central Income Tax by virtue of section 10(1) of the Act, there appears no reason why a payment made out of the Agricultural Income (already exempt) should again be deducted from the Central Income.

(2) Assessee’s claim is essentially based on clause (a) of Section 43B which states that any sum payable by way of tax under any law can be allowed on actual payment. Therefore, assessee feels that the tax paid under AIT would qualify as a deduction, provided that the amount is actually paid. The argument is patently incorrect. It is to be noted that section 43B starts with the following clause”

43B Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of –

(a) Any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force.

8. Here it can be seen that section 43B does not provide for deduction of “any” tax or duty on actual payment. Only those deductions otherwise allowable under the Income Tax Act come within the purview of section 43B. That is to say, section 43B is only intended to limit the allowability of certain deductions (otherwise allowable) to be effect that these deductions can be allowed only on actual payment.

9. Admittedly, there is no clause in the IT Act which provides that AIT is an allowable business

expense. That is, AIT does not qualify as a "deduction otherwise allowable under the Act". That is to say, AIT clearly falls outside the purview of section 43B. In the light of above discussion, I am not in a position to entertain the claim of deduction towards AIT paid, amounting to Rs.92,00,000/-."

3.2 Aggrieved by the orders of the A.O., denying the deduction for agricultural income tax paid, the assessee filed appeals before the first appellate authority. The CIT(A) by placing reliance on the orders of the Tribunal in ITA Nos.649, 650 & 651/Coch/2005 dated 30.11.2007 (Asst.Years 1997-98, 1998-99 and 1999-2000) in assessee's own case, directed the Assessing Officer to allow the agricultural income tax paid as an allowable expense.

3.3 The Revenue being aggrieved by the order of the CIT(A), has filed the present appeals before the Tribunal.

3.4 The learned Departmental Representative supported the findings of the Assessing Officer. It was further submitted that the Tribunal order in ITA Nos.649, 650 & 651/Coch/2005 dated 30.11.2017 in assessee's own case relied on by the CIT(A) does not have application in the instant case. It was submitted by the learned DR that the ITAT in ITA Nos.649, 650 & 651/Coch/2005 had only remitted back the issue to the file of the Assessing Officer to re-compute the income based on the order of the CIT(A).

3.5 The learned AR, on the other hand, relied on the findings and conclusions of the CIT(A).

4. We have heard the rival submissions and perused the material on record. Admittedly, the agricultural income is exempt from Central Income tax by virtue of provisions of section 10(1) of the Income-tax Act. When agricultural income itself is exempt from the purview of Central Income tax, there is no reason why a payment made out of agricultural income (already exempt) should be allowed as a deduction in computing the business income under the Central Income-tax Act. Section 43B states that "a deduction otherwise allowable under this Act" shall alone be allowed as a deduction u/s 43B(a). Since the agricultural income tax is not tax "otherwise allowable" under the Income-tax Act, payment of agricultural income tax in the respective assessment years on payment basis cannot be allowed as a deduction u/s 43B(a).

4.1 The order of the ITAT in ITA Nos.649, 650 & 651/Coch/2005 dated 30.11.2007 in assessee's own case does not decide the issue in favour of the assessee. On the contrary, the Tribunal has only remitted back the issue to the files of the Assessing Officer to re-compute the income. The relevant finding of the Tribunal in assessee's own case for Asst.Years 1997-98, 1998-99 and 1999-2000 reads as follow:-

"We have heard the learned Sr.DR for the revenue. On perusal of the order of the CIT(A), it is seen that the CIT(A) has restored the matter to the file of the A.O. for re-consideration with certain directions as per Rule 7 of the I.T.Rules. We fail to understand why the revenue is aggrieved against the order of the CIT(A) as the directions given by the CIT(A) are not

specific or in the nature of any finding on any issue. The entire matter is left open and restored to the AO. In our opinion, the revenue should not have any grievance. We find no merit in the appeal filed by the revenue. We, therefore, confirm the orders of the CIT(A)."

4.2 The DR as well as the AR was unable to enlighten us what has happened subsequent to the remand by the Tribunal in assessee's own case in assessment years 1997-98, 1998-99 and 1999-2000. For our reasoning in aforesaid paragraph (Para 4 and 4.1) we hold that the agricultural income being exempt from taxation under the Central Income-tax, the agricultural income tax paid by the assessee cannot be allowed as a deduction under the Central Income-tax. Therefore, the order of the CIT(A) on this issue is reversed. It is ordered accordingly.

5. In the result, the appeals filed by the Revenue are partly allowed, as indicated above.

Order pronounced on this 01st day of December, 2017.

Sd/-
(Abraham P.George)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin ; Dated : 01st December, 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.

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BY ORDER,

(Asstt. Registrar)
ITAT, Cochin