

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

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.63/Coch/2019 : Asst.Year 2014-2015

M/s.Snocap Icecreams Private Limited 28/3030, Cheruparambath Road, Kadavanthara Cochin – 682 020. PAN : AADCS3365E.	Vs.	The Income Tax Officer Corp. Ward 2(1) Kochi.
(Appellant)		(Respondent)

Appellant by : Sri.P.M.Veeramani
Respondent by : Sri. Sudhanshu Shekhar Jha

Date of Hearing : 20.03.2018	Date of Pronouncement : 21.03.2019
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ORDER

Per George George K, JM

This appeal at the instance of the assessee is directed against the order of the Commissioner of Income-tax dated 30.11.2018, passed u/s 263 of the Income-tax Act. The relevant assessment year is 2014-2015.

2. The solitary effective ground raised reads as follow:-

“The Principal Commissioner of Income Tax is not justified in issuing a notice u/s 263 on the ground that the appellant had land maintenance expenditure which was a capital expenditure and hence needs to be disallowed. After going the reply submitted by the appellant that the land maintenance expense was a revenue expenditure, the Principal Commissioner of

Income Tax passed revision order under section 263 of the Act stating that the assessing officer had failed to enquire into the details of land maintenance expense. Thus the Principal Commissioner of Income Tax has not assumed the jurisdiction correctly and hence is not justified in passing revision order u/s 263."

3. The brief facts of the case are as follows:

The assessee is a company engaged in the business of manufacture and marketing of ice cream and other frozen foods. For the assessment year 2014-2015, the return of income was filed on 27.01.2015 declaring total income of Rs.1,23,63,820. The assessment was taken up for scrutiny and the assessment order u/s 143(3) of the I.T.Act was completed vide order dated 30.08.2016 accepting the total income returned. Subsequently notice u/s 263 of the I.T.Act dated 26.10.2018 was issued by the Principal Commissioner of Income-tax, Cochin proposing to set aside the assessment order on the ground that the assessment order was erroneous insofar as it is prejudicial to the interest of the revenue for the reason that land maintenance expenditure of Rs.7,33,636 debited to the profit and loss account was capital expenditure needs to be disallowed. To the notice proposing revision u/s 263 of the I.T.Act, the assessee filed reply pointing out that the land maintenance expenditure represented labour charges and materials for cleaning, removing waste and landscaping incurred on the factory land as per the directions of the Kerala State Pollution Control Board. Therefore, it was submitted that the above said expenditure was clearly a

revenue expenditure and there is no error in the assessment order and the revisionary proceedings u/s 263 may be dropped. However, the Pr.CIT rejected the objections put forth by the assessee and held that the Assessing Officer had failed to enquire about the expenditure and directed the A.O. for *de novo* examination and pass appropriate order.

4. Aggrieved by the order passed u/s 263 of the I.T.Act, the assessee has filed the present appeal before the Tribunal. The learned Counsel for the assessee submitted that there is no error in the assessment order since the nature of the expenses is nothing but revenue in nature and would not tantamount to capital expenditure. The learned AR submitted that the details of the expenses in the course of assessment proceedings were furnished to the assessee vide letter dated 12.08.2016. Further, the learned Counsel submitted that as per tax audit (under item 21), the auditors did not indicate any capital account debited to the profit and loss account. Therefore, the Assessing Officer had allowed the expenditure since he was convinced that it was a revenue expenditure. The learned Counsel also relied on the order of the Tribunal in the case of Acumen Capital Marketing (I) Ltd. v. ITO [ITA No.555/Coch/2015 – order dated 24th March, 2017] for the contention that the assessment order has to be erroneous and such error has to be prejudicial to the interest of the, for invoking the provisions of section 263 of the I.T.Act.

5. The learned Departmental Representative, on the other hand, strongly supported the order of the CIT.

6. We have heard the rival submissions and perused the material on record. The Assessing Officer, during the course of assessment proceedings, had called the details of various expenses and the assessee had furnished the details of land maintenance expenses vide its letter dated 12.08.2016. Further, the tax audit report did not indicate any capital expenditure debited to the profit and loss account. The details of the land maintenance expenses debited to the profit and loss account are as follows:-

Labour charges incurred for cleaning, removing waste, installing plants at Nellikkunnu factory, Trichur district as per Pollution Control Board directions.	4,80,567	
Labour charges incurred for cleaning, removing waste installing plants at Korattikkara factory, Trichur district as per Pollution Control Board directions.	30,189	
Cost of materials used for the above	18,872	
Sub Total		5,29,628
Labour charges incurred for cleaning, removing waste, landscaping at Childrens Park, Vytilla in which assessee is having its sales outlet	1,88,769	
Cost of materials used for the above	3,222	
Sub Total		1,91,991
Labour charges incurred in land at let out premises		12,017
Total		7,33,636

As regards expenses at factory amounting to Rs.5,29,628, we notice that the assessee has two factories in

Trichur District. The assessee being engaged in food and edible items business, has to obtain periodical permission from Kerala State Pollution Control Board with regard to waste management and effluent treatment. The approval granted by the Board for both factories which were valid till 2012 and later renewed till 30.6.2015. Paragraph 5.1 of the approval letter reads as follows:

"5.1 Trees and curtain plants shall be planted within and along with boundaries of the industry premises and shall be maintained with due care. Area of vegetative cover shall be enhanced."

As regards the expenses at Childrens Park – Vytilla – Rs.1,91,991, we notice that the assessee is running a children park in the land owned by it, beside National Highway at Vytilla in which the assessee has a retail sales counter. Being a childrens park, the area is mainly land with certain toys and equipment for children amusement / entertainment. The assessee has incurred labour charges for cleaning and upkeep of the land and the landscaping of the park.

6.1 It is clear from the above, the expenditure that the assessee has incurred is on account of labour charges at the factory for cleaning, removal of waste and increasing vegetation. The expenditure was incurred wholly and exclusively for carrying on the business of the assessee-company in compliance with the directions of the Kerala State Pollution Control Board. The expenditure is only revenue in nature and hence there is no error in the assessment order.

The claim of expenditure is an allowable expenditure u/s 37 of the I.T.Act Insofar as the expenses incurred for the Childrens Park, we notice that it is a periodic maintenance for the upkeep of the park and not a capital expenditure. The expenditure is revenue in nature and wholly and exclusively for the purpose of the business and hence there is no error in the assessment order.

6.2 The Cochin Bench of the Tribunal in the case of Acumen Capital Marketing (I) Ltd. (supra) had held that in order to invoke the provisions of section 263 of the I.T.Act, the assessment order has to be erroneous and such order has to be prejudice to the interest of the revenue. The relevant portion of the Tribunal order read as follows:-

“6.7 Section 263 is attracted only if order of assessing officer is erroneous in so far as it is prejudicial to the interest of the revenue. Thus, if one of the twin conditions namely; (i) the assessment order is erroneous and (ii) prejudicial to the interest of revenue, is not satisfied, the CIT does not have power to exercise his revisionary powers u/s 263 of the Act. In the instant case, as mentioned earlier, on examination of facts, we find there is no error in the assessment order for the CIT to invoke his powers u/s 263 of the Act, hence, we quash the same. It is ordered accordingly.”

6.3 In view of the aforesaid reasoning, we are of the view that land maintenance expenses incurred and debited to the P & L account is clearly being revenue in nature, the assessment order cannot be stated to be erroneous.

Therefore, the provisions of section 263 of the I.T.Act cannot have application to the facts of the present case. It is ordered accordingly.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 21st day of March, 2019.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Cochin ; Dated : 21st March, 2019.
Devdas*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The Pr.CIT-I, Kochi.
4. The CIT Kochi.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin