

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

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

Ms. Padmavathy S., Accountant Member

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| ITA No. 25/Coch/2022 (Assessment Year: 2009-10) | | |
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| Edathuruthykaran Pavoo George 40/2102, Market Road Ernakulam 682035 PAN – ABZPG4486E | vs | ACIT, Circle - 1(1) Kochi |
| (Appellant) | | (Respondent) |

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| Assessee by: | Smt. Athira Anil, CA |
| Revenue by: | Smt. J.M. Jamuna Devi, Sr. DR |

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| Date of hearing: | 02.03.2023 |
| Date of pronouncement: | 03.03.2023 |

ORDER

Per: George George K., J.M.

This appeal at the instance of the assessee is directed against the order of the CIT(A)/NFAC, Delhi dated 24.11.2021 passed under Section 250 of the Income Tax Act, 1961 (the Act). The relevant assessment year is 2009-10.

2. The brief facts of the case are as follows: -

The assessee is an individual, who is running a proprietary concern in the name of M/s. Novelty Textiles. The proprietary concern is a wholesale dealer in textile products. For AY 2009-10 return of income was filed on 28.09.2009 declaring total income of Rs.2,83,44,875/-. The assessment was completed under Section 143(3) of the Act vide order dated 26.12.2011 by assessing the total income at Rs.2,89,52,150/-. Subsequently notice was issued

to the assessee under Section 148 of the Act on 21.03.2014. The reason for reopening of the assessment was that the assessee had claimed expenditure of Rs.29,40,000/- on advertisement and sale promotion. According to the AO the same is in the nature of donations. The assessment was completed under Section 143(3) r.w.s. 147 of the Act on 11.03.2015 by disallowing the said expenditure of Rs.29,40,000/-.

3. Aggrieved by the order of the AO, the assessee filed appeal before the first appellate authority. The CIT(A), vide the impugned order dated 24.11.2021 dismissed the appeal filed by the assessee.

4. Aggrieved by the order of the CIT(A), the assessee has filed the present appeal before the Tribunal. The learned A.R. submitted that the Tribunal in assessee's own case for the subsequent assessment year, i.e. AY 2010-11 on identical facts has quashed the reassessment order by stating that the same was initiated on mere change of opinion.

5. The learned D.R. was unable to controvert the submissions made by the learned A.R.

6. We have heard the rival contentions and perused the material on record. The original assessment for AY 2009-10 was completed on 28.09.2009 under Section 143(3) of the Act. On the facts of the instant case it is noticed that the AO in the original assessment had verified the said expenditure and allowed the same as an allowable deduction. Therefore, the reassessment was initiated only on a mere change of opinion. On identical facts, the Tribunal in assessee's own case for AY 2010-11 in ITA No. 126/Coch.2021 (order dated 27.12.2022) had quashed the reassessment order passed under Section 143(3) r.w.s. 148 of the Act for AY 2010-11 by stating that it was a mere change of opinion in the light of the judgement of the Hon'ble Apex Court in the case of

CIT vs. Kelvinator India Ltd. (2010) 320 ITR 561 (SC). The relevant findings of the Tribunal in assessee's own case for AY 2010-11 reads as follows: -

“4. Learned DR vehemently argued that the assessee had claimed sales promotion/advertisement expenses which turned out to be mere donations. She further invited our attention to the Assessing Officer's reopening reasons wherein it is noticed that he had merely verified the records already available. This is therefore a clear-cut case of mere change of opinion in light of CIT vs. Kelvinator India Ltd. (2010) 320 ITR 561 (SC). The impugned reopening stands quashed for this precise reason alone. All other pleadings on merit are rendered academic.”

7. In view of the above order of the Tribunal in assessee's own case for AY 2010-11 (supra) which is identical to the facts of the instant case, we quash the reassessment dated 11.03.2015 passed under Section 143(3) r.w.s. 147 of the Act for AY 2009-10 (though mentioned wrongly as passed under Section 143(3) of the Act). Since we have quashed the reassessment order, the issues raised on merits is rendered academic and the same is not adjudicated.

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

Order pronounced in the open Court on 3rd March, 2023.

Sd/-
(Padmavathy S.)
Accountant Member

Sd/-
(George George K.)
Judicial Member

Cochin, Dated: 3rd March, 2023