

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

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER  
AND  
Ms. PADMAVATHY S., ACCOUNTANT MEMBER**

ITA No.842/Coch/2022
Assessment Year : 2012-13

Raju Menon, 2-670A, Madhavam, Karaparamba, Othayamangalam Road, Calicut – 673 010. <b>PAN : ANUPM 0677N</b>	Vs.	The Income Tax Officer, International Taxation, Calicut.
APPELLANT		RESPONDENT

Assessee by	:	Shri M.V. Venugopal, CA
Revenue by	:	Smt. J M Jamuna Devi, Sr. AR

Date of hearing	:	02.03.2023
Date of Pronouncement	:	08.03.2023

**ORDER**

*Per Padmavathy S, Accountant Member:*

This appeal by the assessee is against the order of the CIT(A)-12, Bangalore dated 13.5.2022 for AY 2012-13.

2. The assessee is a non-resident who practised as a Chartered Accountant abroad. The assessee is having rental income from property situated in India. The assessee filed return of income for AY 2012-13 on 30.9.2012 declaring a total income of Rs.7,60,990. The case was selected for scrutiny under CASS and notice u/s. 143(2) was

duly served on the assessee. The assessee in the return of income has declared Rs.22,73,932 as rental receipt against which a TDS of Rs.15,85,314 was claimed. The AO on perusal of 26AS noticed that the assessee did not declare income corresponding to the TDS claimed and called on the assessee to furnish details in this regard. The assessee submitted a letter from the tenant Hilite Foodcourts and Entertainment P. Ltd. in which the director of the company stated that they have paid an amount of Rs.48,28,854 which consist of Rs.13,48,576 towards rent payable for FY 2008-09 and Rs.6,74,288 pertaining to the rent payable for FY 2009-10 and Rs.6,00,000 pertaining to rents payable for FY 2010-11.

3. The assessee submitted that the rental income is offered to tax on accrual basis in the respective assessment year and since the TDS has been deducted on the actual payment of rent by the tenant, the entire TDS of Rs.15,85,314 is claimed in the AY 2012-13. The AO did not accept the submissions of the assessee and accordingly taxed the entire rental receipt as the income of the assessee during the year under consideration. The AO also disallowed a sum of Rs.7,95,514 which is claimed by the assessee as interest on loan against the rental income from the property at Marine Drive for the reason that the assessee did not furnish the details of the tenant from whom the assessee had declared a rental income of Rs.1,20,000. Aggrieved, the assessee preferred an appeal before the CIT(A).

4. The CIT(A) passed an ex parte order stating that the assessee did not appear to substantiate the various contentions and upheld the order of the AO. Before us, the Id AR submitted that it is clear from the letter received from the tenant that the rental income paid relates to various assessment years. The Id. AR also submitted that the income from house property is always taxed on accrual basis and not on actual receipt and accordingly the assessee had been offering the income in the respective assessment years. Therefore, the Id. AR argued that taxing the rental income in the year of receipt would amount to double taxation. The Id AR further submitted that since the tenant has deducted the tax on payment of rental income, the assessee has claimed the credit for the same in the year under consideration.

5. With respect to the disallowances made towards the Marine Drive property, the Id. AR submitted that the assessee had offered an income of Rs.1,20,000 and has claimed the interest on loan against the rental income. The AO has denied the benefit of interest on loan for the reason that the assessee did not file the details with regard to the tenant from whom the rental income is derived. This, according to the Id. AR, is not correct for the reason that the interest deduction cannot be denied for the reason that the income could not be substantiated.

6. The Id. DR relied on the order of the lower authorities.

7. We heard the parties and perused the material on record. We notice that the main reason for making addition based on 26AS by the AO is that the assessee could not reconcile the rent received during the year with the rent declared during the earlier years. The contention of the Id. AR is that the impugned addition made during the year under consideration has already been taxed in the earlier assessment year and therefore cannot be taxed once again on receipt basis. We further notice that there was no representation made by the assessee before the CIT(A) to substantiate the claim and that the CIT(A) has passed ex parte order. In view of this discussion, we deem it fit to remit this issue back to the CIT(A) for consideration afresh. The assessee is directed to submit the reconciliation to support the claim that the rental income received during the year under consideration which pertains to earlier assessment year have already been offered to tax.

8. With regard to the disallowance of interest claimed by the assessee against the rental income of Marine Drive property, we notice that the AO has deleted both the rental receipt and the interest claimed thereon for the reason that the assessee has not submitted the rental income. We further notice that the CIT(A) has not examined the issue on merit for the reason that the assessee did not make any representation before him. We therefore remit this issue also back to the CIT(A) for fresh consideration and the assessee is directed to submit the relevant details and cooperate with the proceedings.

9. In the result, the appeal is allowed for statistical purposes.

Pronounced in the open court on this 8<sup>th</sup> day of March, 2023.

Sd/-

( GEORGE GEORGE K )  
JUDICIAL MEMBER

Sd/-

( PADMAVATHY S )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 8<sup>th</sup> March, 2023.

*/Desai S Murthy/*

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar,  
ITAT, Bangalore/Cochin.