IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

Before Shri Sanjay Arora, AM &Shri Manomohan Das, JM

ITA No.655/Coch/2022: Asst.Year:2017-2018

Cochin Port Authority (Formerly known as Cochin Port Trust), FA&CAO, Cochin Port Authority, Willingdon Island PO, Ernakulam-682009. [PAN: AAALC1134F]	vs.	The Assistant Commissioner of Income-tax, Corporate Circle 2(1), Kochi.
(Appellant)		(Respondent)

Appellant by: Sri.Gopi K, CA
Respondent by: Sri.Sajit Kumar Das, CIT-DR

Date of Hearing : 04.07.2023		Date of Pronouncement: 10.07.2023

O R D E R

Per Sanjay Arora, AM:

This is an Appeal by the Assessee, directed against the order under section 263 of the Income-tax Act, 1961 ('the Act') dated 31.3.2022 by the Principal Commissioner of Income-tax, Cochin-1 [PCIT] in respect of it's assessment u/s.143(3) of the Act dated 26.12.2019 for assessment year (AY) 2017-2018.

2. Opening the arguments for and on behalf of the assessee, it was submitted by Sri.Gopi, the learned counsel for the assessee, that the impugned order raises three issues on which the competent authority found the assessment order erroneous and prejudicial to the interest of the Revenue, liable for revision u/s.263, as under:

(a) Non-disallowance of employees' contribution of Rs.2,59,584 deposited beyond the time allowed for the same under the EPF Act, i.e., in terms of sec.2(24)(x) read with section 36(1)(va) of the Act;

(b) Provision for bad and doubtful debts, at Rs.1,55,57,493 as against the correct amount of Rs.1,70,27,053, resulting in a short disallowance to the extent of the difference of Rs.14.70 lakhs;

(c) Short deduction of tax at source on Rs.4,09,20,538.

3. We shall take up each of the three issues in seriatim, as follows:

A. The assessee's case *qua* the acceptance of it's claim by the Assessing Officer (AO) is decision by the Hon'ble Kerala High Court in *Kerala State Warehousing Corporation v. CIT*(in ITA No.1035 of 2009, dated 02.02.2019), following the decision by the Hon'ble Apex Court in *CIT v. Vinay Cements Ltd.* 213 CTR 268 (SC). The assessee's case only needs to be stated to be rejected. There is, to begin with, nothing to exhibit any consideration of the matter by the AO. Further, the consistent stand by the Hon'ble jurisdictional High Court in the matter is to the contrary. And toward which we may cite some decisions, as in *CIT v. South India Corporation*[2000] 242 ITR 114 (Ker); *CIT v. Merchem*[2015] 378 ITR 443 (Ker) and *Popular Vehicles& Services (P.) Ltd. v. CIT* [2018] 406 ITR 150 (Ker).Coming to the decision in *Kerala State Warehousing Corporation* (supra), the same, as its reading (PB page 29-30) shows, is *qua* sec.43B, which is only in respect of employers' contribution, deductible u/s. 36(1)(iv). Again, even if regarded as falling within the ambit of the *non-obstante* provision of s. 43B, the same being a disabling provision, shall come into play only on the samebeing 'otherwise allowable', i.e., first deductible u/s. 36(1)(va), and which provision stipulates the condition of payment – within a time frame more stringent than s. 43B, for deduction thereunder. In fact, as a perusal of the order by the Hon'ble High Court reveals, no question of law stands admitted, much less answered, by it. It is only on admission of a substantial question of law, that the Hon'ble Court assumes jurisdiction to answer the same u/s. 260A of the Act (refer:*MaharajaAmrinder Singh v. CWT* [2017] 397 ITR 752 (SC); *Santosh Hazari v. Purushottam Tiwari* [2001] 251 ITR 84 (SC)), so that the principle of law laid down therein, and on the basis of which the said question stands answered, constitutes a binding judicial precedent (*Sree Bhagavathi Textiles Ltd. v. CIT*, 244 ITR 496 (Ker)).The Hon'ble Apex Court has since set at rest the controversy per its decision dated 12/10/2022 in *Checkmate Services Pvt. Ltd. v. Pr. CIT*(in Civil Appeal No.2833 of 2016), which itself shows, if it was required to be,

that it's decision in *Vinay Cements Ltd*. (supra) was not on the point. We find no scope for interference.

B. With reference to Schedule-Vto the Balance-Sheet as on 31.03.2017, i.e., 'Sundry Debtors' (PB pg. 36), it was shown by Sri.Gopi that the assessee had in fact claimed an additional provision for the year, i.e., through its profit and loss account,only at Rs.155.57 lakhs, and not at Rs.170.27 lakhs, as stated by the ld. Pr. CIT, which latter figure could not be substantiated by the ld.CIT-DR, much less with any material, during hearing. The assesse succeeds on it's objection.

C. The assessee's plea *qua* the third objection was that the ld. Pr. CIT had in computing the figure of Rs.409.21 lakhs, wrongly adopted a figure of Rs.2177.17 lakh, i.e., on which TDS was to be deducted,in comparison with Rs.1751.39 lakh, on which it was. This was as he had culled the figures from the financial statements which bore classification of the expenditure in two different formats, i.e., account head-wise, as well as function-wise, so that there was a duplication therein. We observe no such contention by the assessee before the ld. Pr. CIT, before whom it was stated that TDS was in fact applicable only on Rs. 1734.81 lacs. In fact, the difference between the two cited figures works to Rs. 425.78 lacs, and not Rs. 409.21 lacs.Again, even if some duplication attended the working by the ld. Pr. CIT, the same would not extend to theentire amount of Rs.409.21 lacs (Rs. 425.78 lacs), andthe Revenue's stand would still be valid, albeit for a lower amount, retaining thus the objection in principle. Further, as stated by the ld. Pr. CIT, the AO has not conducted the said exercise, so that he had only directed verification in the matter. The same, it may be appreciated, would also operate to determine the correct figure, and which rather ought to have been at the revision stage itself. The objection fails.

3. In the result, the assessee's appeal is partly allowed.

Order pronounced on 10th July,2023 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-	Sd/-
(Manomohan Das)	(Sanjay Arora)
Judicial Member	Accountant Member

Cochin; Dated: July10, 2023
Devadas G*

Copy to:
1. The Appellant.
2. The Respondent.
3. The Pr.CIT, Kochi-1.
4. The CIT-DR.
5. Guard File.

Assistant Registrar
ITAT, Cochin.