

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

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

ITA No.648/Coch/2022: Asst. Year:2017-2018

Cochin International Airport Limited, P.O.Nedumbassery Kerala – 683 111. [PAN: AAACC9658B]	vs.	The Deputy Commissioner of Income-tax, Corp.Cir.1(1) Kochi.
(Appellant)		(Respondent)

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

Date of Hearing : 05.07.2023	Date of Pronouncement: 31.07.2023
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ORDER

Per Sanjay Arora, AM:

This is an Appeal by the Assessee, agitating the revision order under section 263 of the Income-tax Act, 1961 ('the Act' hereinafter) dated 30.3.2022 by the Principal Commissioner of Income-tax, Kochi-1 [PCIT] in respect of its assessment u/s.143(3) of the Act dated 30.12.2019 for assessment year (AY) 2017-2018.

2. The only issue arising in the instant appeal is whether the Assessing Officer (AO) has in allowing tax credit u/s.115JAA of the Act at Rs.18.17 crore for the current year, acted in accordance with law, or not. This is as, as per the Id.Pr. CIT, tax credit was not liable to be allowed, rendering the assessment order as erroneous and prejudicial to the interests of the Revenue.

3. It would be relevant to recount the background facts of the case, i.e., which have a bearing on the issue at hand. The assessee, beginning AY 2005-2006, claimed deduction u/s.80-IA as an infrastructure facility for a period of 10 years, i.e., upto AY 2014-2015. Tax was, principally for this reason, determined as payable and paid by it for these years u/s.115JB on book-profit. Deduction u/s.80-IA was however not allowed by all the authorities upto the Tribunal. The matter travelled to the Hon'ble Apex Court which, vide order dated 27.7.2018, declined the Revenue leave to appeal against the decision by the Hon'ble jurisdictional High Court [*Cochin International Airport v. Dy. CIT* [2018] 89 taxmann.com 142 (Ker)] upholding the assessee's claim. This judgement, validating and reinstating the returns filed by the assessee for these years, was rendered on 07.8.2017 (PB pgs. 15-25). As, however, the decision by the Hon'ble Court was not in existence at the time the assessments for AYs. 2013-2014 and 2014-2015 were made, i.e., on 18.03.2016 and 21.12.2016, for the said two years respectively, no deduction u/s.80-IA was allowed by the AO, necessitating, in consequence, payment of tax under the regular provisions of the Act, as was indeed the case for earlier years, i.e., *prior to giving appeal-effect*. No credit against tax paid on book-profit for the earlier years, i.e., AYs. 2004-05 to AY 2012-13, noted as available by the Id. Pr. CIT at Rs. 75.27 cr., was, therefore, allowed by the AO while completing the assessment for these two years. It is this non-allowance that stands assailed by the Id. Pr. CIT, stating that if the tax credit for these years had been allowed by the AO, determined by him at Rs.19.17 and Rs.21.57 for AYs 2013-2014 and 2014-2015 respectively, no tax credit would be available for being allowed to the assessee for the current year. The AO had not caused any inquiry in the matter and, accordingly, the matter was set aside to his file for *de novo* consideration. Aggrieved, the assessee is in appeal before us.

4. We have heard the rival submissions, and perused the material on record.

4.1 The assessee's tax liability, in view of its claim u/s. 80-IA having been accepted – which obtains up to AY 2014-15, with the matter having attained finality, would upto that year be under MAT provisions, while for the subsequent years under the regular provisions of the Act, even as it shall for these years, i.e., AY 2015-16 onwards, be entitled to tax credit u/s. 115JAA in respect of the tax paid u/s. 115-JB for the earlier years. The position is admitted, and stands neatly summed up by the Id. Pr. CIT in tabular form at para 2 (pg. 2) of his order, as under:

Sl. No.	AY	Tax under Normal provision	Tax under MAT provision	MAT Credit available	Utilised	Balance to be carried forward after utilization / if it had been utilized	Relevant order
1	2004-05	0	1,62,11,417	1,62,11,417	0	1,62,11,417	Order u/s 143(3) dt. 31.12.2018
2	2005-06	0	2,78,40,231	2,78,40,231	0	2,78,40,231	Order u/s 260 dt. 31.12.2018
3	2006-07	87,78,918	2,89,42,764	2,01,63,846	0	2,01,63,846	Order u/s 260 dt. 31.12.2018
4	2007-08	2,04,05,250	7,74,61,297	5,70,56,047	0	5,70,56,047	Order u/s 260 dt. 31.12.2018
5	2008-09	2,66,70,855	7,97,07,808	5,30,36,953	0	5,30,36,953	Order u/s 254 dt. 26.06.2020
6	2009-10	5,47,69,537	8,64,97,944	3,17,28,407	0	3,17,28,407	Order u/s 254 dt. 26.06.2020
7	2010-11	2,80,04,075	14,92,55,076	12,12,51,001	0	12,12,51,001	Order u/s 250 dt. 11.04.2017
8	2011-12	3,41,19,096	23,16,27,457	19,75,08,361	0	19,75,08,361	Order u/s 143(3) rws 147 dt. 26.12.2017
9	2012-13	4,30,95,113	27,09,79,707	22,78,84,594	0	22,78,84,594	Order u/s 250 dt. 29.05.2017
Total						75,26,80,857	
10	20013-14	52,24,69,057	33,07,85,690	19,16,83,377	Not given credit	56,09,97,480 (752680857 – 191683377)	Order u/s 143(3) dt. 18.03.2016
11	2014-15	60,42,38,890	38,85,64,786	21,56,74,104	Not given credit	34,53,23,376 (560997480 – 215674104)	Order u/s 143(3) dt. 21.12.2016
12	2005-16	64,65,10,272	42,92,87,256	34,44,51,563	19,17,23,756	15,35,99,620 (345323376 – 191723756)	Order u/s 143(3) dt. 27.12.2017
13	2016-17	93,41,27,680	56,85,89,074	12,72,28,547	21,47,06,642	0	Order u/s 143(3) dt. 31.12.2018
14	2017-18	79,72,10,248	54,78,47,415	0	18,17,06,355	0	Order u/s 143(3) dt. 30.12.2019

The incongruence, as would be noted, is for AYs. 2013-14 & 2014-15, in view of, again admitted, not giving appeal effect for those years as on the date of assessment

for the current year, i.e., 30/12/2019. It is this that gives rise to the controversy aforesaid, in the instant case.

4.2 There has, without doubt, been no inquiry in the matter by the AO, rendering his order as erroneous and prejudicial to the interests of the Revenue inasmuch as the same signifies a lack of application of mind by the assessing authority. There must however be circumstances which would make the enquiry prudent, and the said prescription is not to be read or applied *de hors* the facts and circumstances of the case, even as explained in *CIT v. Gabriel India Ltd.* [1993] 203 ITR 108 (Bom); the same being, rather, an objective fact which must be satisfied on the basis of the material on record. This is in fact captured by the words: '*which should have been made*' occurring in *Explanation 2(a)* to s. 263(1) with reference to any inquiry or verification by the AO.

4.3 The tax credit available for AYs. 2004-05 to 2012-13, save for AYs. 2008-09 & 2009-10, is rs. 6679.15 lakhs, of which Rs.4064.31 lakh stands already utilized upon assessment for AYs. 2015-2016 and 2016-2017, completed on 27.12.2017 and 31.12.2018 respectively. The exclusion for the assessment years 2008-09 and 2009-10 is as the tax credit in respect of these years arose only subsequent to the assessment for the current year, i.e., on 26.6.2020. As such, the tax credit available at the time of assessment for the current year (AY 2017-2018) was at Rs.2614.84 lakh. Of the same, Rs.18.17 cr. stands allowed to the assessee in its assessment, leaving a balance unutilized credit at Rs.7.98 crore. *How, we wonder, is the AO's order erroneous, much less also prejudicial, to the interest of the Revenue?* All the facts and figures, duly tabulated from the record by the Pr. CIT in his order, are undisputed. The AO has only allowed the tax credit as available on record. The AO cannot presume utilization of tax credit for these two earlier years, i.e., where the same has not been actually allowed, and proceed on that basis. That is, he could not take cognizance of sums that had not crystallized upon passing of the requisite orders. *That would be, plainly, presumptuous.* Tax liability, unless admitted, it may

be appreciated, is only as determined by following the due process of law. On the contrary, it is the non-allowance of the tax credit, exigible on the basis of record, that would make the assessment as liable to be questioned in its respect. True, the Id. Pr. CIT stating that no credit would be available if the AO had allowed the tax credit for AYs. 2013-2014 and 2014-2015 is arithmetically correct, as the combined credit liable to be utilized for these years is Rs.40.74 crore, as against the available credit of Rs.26.15 cr. The inclusion of tax credit for AYs. 2008-09 and 2009-10, available since 26.6.2020, would decrease, but not eliminate, this shortfall. That would notwithstanding make the assessment for the current year as erroneous. Rather, as apparent and admitted, it is the assessment for those years that could be said to be so. And as we shall see, erroneous to the prejudice of the assessee, and not the Revenue.

We say so, as giving appeal effect for these two years would result in the assessee's tax liability for these years, as for the earlier years, being determined on the basis of tax under the MAT regime, rather than under the normal provisions of the Act, only in which, latter, case does the occasion to allow tax credit arise. That apart, the entire book-profit would be eligible to be allowed as credit for the subsequent years, including AY 2017-18. That is, rather than being a case of allowance of tax credit for AYs. 2013-14 & 2014-15, the said two years as the earlier years, would yield refund to the assessee. *This explains the non-giving of appeal-effect for these years by the Revenue.* The Id. Pr. CIT has, per the impugned order, capitalized on the 'error' in not allowing appeal-effect to project an assessment, otherwise in order, as not so. A timely appeal-effect would have, on the contrary, led to the assessee being entitled to refund of the entire amount of Rs.40.74 cr., being the excess of tax under the regular provisions, over that under the MAT regime, collected by it. That is, no tax credit would arise for those years. Put differently, the assessee, on account of the appeal effect being not given by the Revenue, has been saddled with additional tax demand, which would stand refundable to it with interest, thus causing prejudice for itself.

And which explains our observing earlier of the assessment being erroneous to the prejudice of the assessee, and not the Revenue.

4.4 In sum, the tax credit being allowed for AYs. 2013-14 & 2014-15, as the Id. Pr. CIT requires, without it being actually allowed by passing the relevant orders, apart from being hypothetical and presumptuous, would be without observing the due process of law, only whereby can tax liability under law arise, and be given cognizance to. Besides, it would be inconsistent with the law as clarified by the Hon'ble jurisdictional High Court in *Cochin International Airport* (supra), as indeed the assessment for the earlier years.

5. In view of the foregoing, we find no merit in the impugned order. The assessee succeeds in it's challenge.

6. In the result, the assessee's appeal is allowed.

Order pronounced on July 31, 2023 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-
(Manomohan Das)
Judicial Member
Cochin; Dated: July 31, 2023
Devadas G*

Sd/-
(Sanjay Arora)
Accountant Member

Copy to:

1. The Appellant.
2. The Respondent.
3. The Pr.CIT, Kochi-1.
4. The Pr. CIT concerned.
5. The Sr. DR, ITAT, Cochin.
6. Guard File.

Assistant Registrar
ITAT, Cochin.