

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

Before Shri Sanjay Arora, Accountant Member and  
Shri Manomohan Das, Judicial Member

**ITA No. 628/Coch/2022**  
(Assessment Year: 2017-18)

Kerala State Financial Enterprises Ltd. Bhadraatha, Museum Road Chembukkavu - 680020 Thrissur [PAN:AABCT3817A]	Vs.	Dy. CIT, Circle - 1(1) & TPS Thrissur
(Appellant)		(Respondent)

Appellant by:	Shri Harikrishnanunny, CA
Respondent by:	Shri Sanjit Kumar Das, CIT-DR

Date of Hearing:	18.10.2023
Date of Pronouncement:	16.01.2024

**ORDER**

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 24.02.2023 by the Principal Commissioner of Income Tax, Kozhikode (Pr. CIT), the revisionary authority under the Act, setting aside it's assessment for Assessment Year (AY) 2017-18 vide order u/s. 143(3) of the Act dated 29.12.2019.

2. The only issue arising in the instant appeal is the maintainability of the revision whereby the assessee's assessment stands set aside for consideration by the Assessing Officer (AO) inasmuch as it was not so earlier *qua* the deductibility of guarantee commission, claimed in the sum of Rs.4493.87 lakhs, in view of section 40(a)(iib) of the Act. Section 40 is a *non obstante* clause, overriding sections 30 to 38 of the Act, enlisting the amounts not deductible in computing income u/c. IV-D of

the Act. Section 40(a)(iib) refers to an amount levied on a state government undertaking, as the assessee, by the state government, or otherwise appropriated by it there-from, directly or indirectly. There is no whisper of the claim for the said sum in the impugned assessment, nor was any query in its respect shown to be raised during assessment proceedings by Shri Harikrishnanunny, the ld. counsel for the assessee; there being in fact no claim to that effect before us. There has clearly been no examination of the same in assessment, even as the said claim is apparently covered by the said provision.

3. It may at this stage be relevant to visit the law in the matter, i.e., insofar as it relates to absence or lack of inquiry in the matter, which at heart is the charge by the revisionary authority in the instant case. Non-application of mind, as explained by the Apex Court in *Malabar Industrial Co. Ltd. v. CIT* [2000] 243 ITR 83 (SC), is one of the ingredients that renders an order as erroneous and prejudicial to the interest of the Revenue. Absence or lack of enquiry is an attribute, a manifestation, of this non-application, so that an order imbued therewith would be liable to revision. This represents trite law, case law on which is legion, since co-opted on the Statute itself vide *Explanation 2(a)* to s. 263(1). As explained therein, where the AO accepts the assessee's version in absence of any supporting material and without making any enquiry, his order would be erroneous and exercise of jurisdiction u/s. 263(1) justified. As an example, it, citing its earlier decisions in *Rampyari Devi Saraogi v. CIT* [1968] 67 ITR 84 (SC) and *Tara Devi Aggarwal v. CIT* [1973] 88 ITR 323 (SC), held that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the AO accepting the same would be subject to sec. 263. The decision by the Hon'ble High Court, reported at [1992] 198 ITR 611 (Ker), holding the assessment as without application of mind, was, accordingly, affirmed. In *Gee Vee Enterprises v. Addl. CIT* [1975] 99 ITR 375 (Del), again with reference to judicial precedents, it stands

explained that the order of the AO becomes erroneous on a failure to make enquiry where the circumstances call for it. This is not because there is anything wrong in the order if all the facts stated therein are assumed to be correct. However, the AO is not only an adjudicator but also an investigator and, therefore, cannot remain passive in the face of a return which is apparently in order but calls for further enquiry. It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an enquiry. In *Toyota Motor Corporation v. CIT* [2008] 306 ITR 52 (SC), confirming the decision by the Hon'ble High Court reported at [2008] 306 ITR 49 (Del), it was explained that the Tribunal could not have substituted its own reasons which were required to be recorded by the AO, and ought to have remanded the matter to the latter. Sure, there must thus be circumstances which would make the enquiry prudent, and not *de hors* the same, even as explained in *CIT v. Gabriel India Ltd.* [1993] 203 ITR 108 (Bom), the same being an objective fact which must be satisfied on the basis of the material on record. This in fact is 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. We find no scope for interference in view of the clear law and the facts of the case and, accordingly, decline to; the revisionary authority having only remitted the matter back for his consideration *qua* the said claim, in accordance with law, to the assessing authority. We decide accordingly.

5. In the result, the assessee's appeal is dismissed.

*Order pronounced on January 16, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963*

Sd/-  
(Manomohan Das)  
Judicial Member

Sd/-  
(Sanjay Arora)  
Accountant Member

Cochin, Dated: January 16, 2024

Copy to:

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

By Order

Assistant Registrar  
ITAT, Cochin

n.p.