

**IN THE INCOME TAX APPELLATE TRIBUNAL COCHIN BENCH, COCHIN**  
**BEFORE SHRI SANJAY ARORA, AM AND MS. KAVITHA RAJAGOPAL, JM**

ITA No. 978/Coch/2022  
(Assessment Year: 2014-15)

P. Surendran Sukanya Bhavan Vadayakkadu, Kunnukuzhy, P.O., Thiruvananthapuram-695 035	Vs.	Asst. CIT-1(2) Thiruvananthapuram
PAN/GIR No. AEMPP 6893 A		
<b>(Assessee)</b>	:	<b>(Respondent)</b>
<b>Assessee by</b>	:	Shri N. S. Rajagopal
<b>Respondent by</b>	:	Smt. J M Jamuna Devi
<b>Date of Hearing</b>	:	14.02.2024
<b>Date of Pronouncement</b>	:	14.05.2024

**ORDER**

**Per Kavitha Rajagopal, J M:**

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) passed u/s.250 of the Income Tax Act, 1961 ('the Act') relevant to the Assessment Year ('A.Y.' for short) 2014-15.

2. The assessee has challenged the appeal on the following grounds:

1. *The order of the Commissioner of Income Tax (Appeals) is against law, facts and circumstances of the case.*
2. *The Commissioner of Income Tax (Appeals) has erred in sustaining an addition of Rs.1582816/- out of the disallowance of sales tax remittance made in the assessment order. The Commissioner of Income Tax (Appeals) erred in upholding the disallowance on the ground that the payments do not relate to the financial year 2014-15.*
3. *The Commissioner of Income Tax (Appeals) has grossly erred in upholding the disallowance u/s. 40A(3) made by the Assessing Officer in respect of the capital expenditure incurred by the appellant. The Commissioner of Income Tax (Appeals) failed to appreciate the fact that section 40A(3) of the Income Tax Act applies only to those payments in respect of any expenditure debited to the Profit and Loss account and claimed as a deduction from income.*
4. *The Commissioner of Income Tax (Appeals) has erred in affirming the disallowance of car depreciation and interest on car loan made by the Assessing Officer on account of personal use. In any case the disallowance is highly excessive and arbitrary.*

5. *The Commissioner of Income Tax (Appeals) ought to have found that the interest paid on account of delayed payment of VAT and TOT is an allowable expenditure.*
6. *The Commissioner of Income Tax (Appeals) has erred in upholding the addition of Rs.156660/- made by the Assessing Officer u/s.36(1)(va) of the Income Tax Act in the facts and circumstances of the case.*
7. *The Commissioner of Income Tax (Appeals) ought to have found that the expenditure of Rs.100000/- was disallowed by the appellant himself and added back to the income in the Income Tax Return filed for the assessment year 2014-15. Such being the case, the further disallowance of Rs.100000/- made by the Assessing Officer u/s. 40a(ia) of the Income Tax Act amounts to duplication of the addition and hence the same is absolutely unjustified and unwarranted.*

3. This appeal has been filed with a delay of one day, for which the assessee attributes to the postal delay. On perusal of the assessee's petition for condonation of the delay, we deem it fit to condone the delay of one day, as being due to sufficient cause. Delay condoned.

4. The brief facts are that the assessee is an individual and had filed his return of income on 30.11.2014, declaring total income at Rs.1,75,34,220/-. The assessee's case was selected for scrutiny and notice u/s. 143(2) and 142(1) of the Act were duly issued and served upon by the assessee. It is observed that a survey action u/s. 133A of the Act was carried out in the assessee's business premises on 08.10.2013 during which discrepancies were noticed in the books of accounts of the assessee for which the assessee had offered additional income of Rs.1 crore in addition to the regular return income of Rs.1,11,620/- but had subsequently filed its revised return of income, declaring only Rs.1,75,34,220/- instead of Rs.2,11,06,320/-. The assessee's case was then selected for scrutiny and the Id. A.O. passed the assessment order u/s. 143(3) of the Act, determining the total income at Rs.2,25,54,266/-.

5. Aggrieved, the assessee was in appeal before the first appellate authority who vide order dated 30.09.2022 had partly allowed the appeal filed by the assessee, thereby confirming the most of the additions made by the Id. Assessing Officer ('A.O.' for short).

6. Further aggrieved, the assessee is in appeal before us, challenging the order of the Id. CIT(A).

7. Ground no. 1 raised by the assessee is general in nature and requires no separate adjudication.

8. Ground no. 2 raised by the assessee pertains to the disallowance on sales tax paid by the assessee. During the assessment proceeding, the assessee was summoned to produce the proof of payment of sales tax which aggregated a payment of sales tax amounting to Rs.2,14,89,344/- which included Rs.10 lacs advance tax payment on sales tax which was debited in the profit and loss account of the assessee. The Id. A.O. added the difference amount of Rs.27,66,203/- along with the advance tax of Rs.10 lacs which according to the Id. A.O. was not related to the sales pertaining to the year under consideration and made an addition of Rs.37,66,203/-.

9. On the other hand, the Id. CIT(A) held that only invoices pertaining to Rs.21,83,00,117/- out of Rs.27,65,203/- is found to be satisfactory and held Rs.5,82,816/- to be not pertaining to the year under consideration. The Id. CIT(A) further held that the payment of Rs.10 lacs towards advance tax was also not substantiated by the assessee that the same related to the year under consideration, thereby restricting the addition to Rs.15,82,816/- after giving relief of the balance amount.

10. Before us, the learned Authorised Representative ('Id. AR' for short) for the assessee contended that the assessee had paid Rs.10 lacs as advance tax on 31.03.2014 for the sales tax which was due for March, 2014 and the balance Rs.5,82,816/- was

alleged to have been paid on 30.04.2014 while filing the monthly sales tax return for March 2014. The ld. AR further contended that the assessee had also furnished certificate dated 12.10.2022 from Director of Sales Tax, Special Circle, Trivandrum undertaking that the impugned amount pertain to A.Y. 2014-15 by way of additional evidence and prayed that the same may be admitted.

11. The learned Departmental Representative ('ld.DR' for short), on the other hand, controverted the said fact and stated that the said amount was disallowed for the reason that it was paid in the month of April which according to the provisions mandate that should be allowed in the year in which the payment was actually made. The ld. DR relied on the order of the lower authorities.

12. We have heard the rival submissions and perused the materials available on record. The only issue that has to be adjudicated in this ground is whether the impugned payment made by the assessee related to the year under consideration, i.e., A.Y. 2014-15 or the subsequent year. As the assessee has filed additional evidence to substantiate his claim, in the interest of justice, we admit the same. It is pertinent to point out that the assessee's claim of deduction relating to the payment of sales tax which is otherwise an allowable deduction, shall be allowed if the same is paid by the assessee on or before the due date for furnishing of the return of income u/s. 139(1) of the Act with regard to the previous year in which the liability to pay the same has incurred, for which the assessee is to furnish evidence of payment along with his return of income. This negates the lower authority's contention that the payment made on 30.04.2014 was not to be allowed during the relevant year under consideration. It is observed that this issue requires factual

verification, hence, we deem it fit to remand it back to the file of the Id. A.O. for verifying the fact that the impugned payments relates to the year under consideration. Therefore, ground no. 2 raised by the assessee is allowed for statistical purpose.

13. Ground no. 3 pertains to the disallowance made u/s. 40A(3) of the Act, amounting to Rs.6,58,585/- where the assessee is said to have incurred expenditure, the payment or the aggregate of the payment made to a person in a day exceeds Rs.20,000/- where the payment is made otherwise than by an account payee cheque. The entries for which the said disallowance is made are tabulated hereunder:

<i>Date of payment</i>	<i>Particulars</i>	<i>Amount</i>
-	<i>Television Set – Sabari Park</i>	<i>29370</i>
-	<i>Furniture &amp; Fittings Hotel Aslya Grande</i>	<i>144165</i>
<i>19.06.2013</i>	<i>Sabari Park</i>	<i>23450</i>
<i>11.11.2013</i>	<i>Hotel Aslya</i>	<i>28400</i>
-	<i>Thyssenkurup Elevators Hotel Aslya Grande</i>	<i>433200</i>
	<b><i>Total</i></b>	<b><i>658585</i></b>

14. The first appellate authority upheld the disallowance made by the Id.AO.

15. We have heard the parties and perused the materials available on record. The assessee has contended that the impugned payments are merely capital receipts for which the assessee has claimed no deduction in his profit and loss account, as the same pertains to acquisition of capital assets.

16. The learned Authorised Representative (Id. AR for short) had referred to the CBDT Circular No. 34 (F.No. 13A/92/69-IT(A-II) dated 05.03.1970) which has made the following clarification which is cited hereunder for ease of reference:

*The provisions of section 40A(3) would apply in computing the income under the head “Profits and gains of business or profession” and “Income from other sources” as per section 58(2). All payments in excess of Rs.2,500 at one time whether for goods or services obtained for cash or*

*credit, which are deductible in computing the income, have to be made by crossed cheque or bank draft. Thus, the price of goods purchased for resale or use in manufacturing process or payments for services will be covered by the provisions of section 40A(3). However, the section will not apply to payment of loans or payment towards the purchase price of capital assets such as plant and machinery not for resale.*

17. It is observed from the above said clarification of the CBDT that if the expenditure pertains to the purchase price of capital assets, such as plant and machineries which are not used for resale but for the assessee's own purpose, then, the same would be excluded from the disallowance u/s.40A(3) of the Act. In the present case in hand, it is observed that the assessee has incurred expenditure in cash in excess of Rs.20,000/- for various items specified in the tabular column. It is pertinent to point out that neither the A.O. nor the Id. CIT(A) has specified whether the said expenditure is capital or revenue in nature. The assessee has also not elaborated as to the nature of the expenses incurred by the assessee. Even otherwise, if the same has not been claimed in the P & L account by the assessee then there arises no disallowance. We, therefore, remit this issue back to the file of the Id. A.O. to verify whether the assessee has claimed the same in his profit and loss account and if not claimed, then the disallowance ought not to be made and if the same has been claimed in the P & L account, then the Id. A.O. is directed to verify whether the same is for acquisition of capital assets or not. The Id. A.O. is directed to delete the disallowance, if in case, the expenditure is of capital in nature in such case, where it has been claimed by the assessee in his P & L account. Ground no. 3 is, therefore, allowed for statistical purpose.

18. Ground no. 4 pertains to the disallowance of interest on car loan and car depreciation, aggregating to Rs.3,18,045/-. It is observed that the assessee has made a disallowance of Rs.94,360/- which is 16.66% of interest on car loan for the personal use

of the assessee. The assessee has made no disallowance towards depreciation and, therefore, the Id. A.O. computed 25% of interest on car loan and 25% of the depreciation claimed, being Rs.2,70,870/- and added the same to the total income of the assessee. The first appellate authority upheld the addition made by the Id.AO on the ground that the assessee has failed to furnish any documentary evidences in support of his claim on interest on car loan and car depreciation.

19. Having heard the rival submissions and perused the materials available on record. It is observed that the assessee has made a disallowance of 16.66% of the interest on car loan and the lower authorities have increased the said disallowance to 25% along with 25% of depreciation which was not made by the assessee. Neither the assessee nor the Revenue has given a finding as to how they have arrived at the rate computed by them. In the absence of any such calculation, we deem it fit to hold that 25% is a reasonable rate of disallowance made by the lower authorities. As we do not find any infirmity in the order of the Id. CIT(A), we hereby dismiss ground no. 4 raised by the assessee.

20. Ground no. 5 pertains to the disallowance of interest paid on VAT and TOT amounting to Rs.20,553/-. It is observed that the assessee has claimed the said amount as deduction towards interest paid on VAT and TOT which the Id. AO has disallowed being penal in nature and the Id. CIT(A) has upheld the addition made by the Id.AO.

21. Having heard the rival submissions and on perusal of the materials available on record, it is observed that the assessee has claimed Rs.20,553/- as deduction towards interest/penalty for late payment, which according to the Revenue is not an allowable

deduction. The Id. AR on the other hand, placed reliance on the decision of the Hon'ble Apex Court in the case of *Lachmandas Mathuradas vs. CIT* [2002] 254 ITR 799 (SC) which has held that payment of interest towards sales tax is compensatory in nature and not penal. As this issue has been dealt with by the higher forums, we deem it fit to hold that the interest paid towards VAT/TOT is an allowable deduction as per the above said decision and, therefore, allow this ground of appeal raised by the assessee.

22. Ground no. 6 pertains to the disallowance of employees contribution to EPF and ESIC amounting to Rs.1,56,660/-. It is observed that the lower authorities have disallowed the contribution made towards PF in ESIC deposited belatedly after the due date prescribed under the relevant act but nevertheless before the filing of the return of income. As this issue has been squarely covered by the decision of the Hon'ble Apex Court in the case of *Checkmate Service Pvt. Ltd. vs. CIT* (in Civil Appeal No. 2833 vide order dated 12.10.2022) and also the decision of the Hon'ble Jurisdictional High Court in the case of *CIT vs. Merchem Ltd.* 378 ITR 443 (Ker.) against the assessee, we deem it fit to dismiss this ground raised by the assessee. Therefore, ground no. 6 raised by the assessee is dismissed.

23. Ground no. 7 is disallowance on non deduction of TDS amounting to Rs.1 lac. The assessee has challenged the grounds of disallowance made by the Id.AO and confirmed by the Id. CIT(A) on the ground that the assessee has failed to deduct TDS as per the auditor's report which details are given below:

i)	<i>Expenses on which TDS not deducted</i>	Rs.24,67,723/-
ii)	<i>Expenses on which TDS deducted but no paid within the due date</i>	<u>Rs.50,000/-</u>
	<i>Total</i>	<u>Rs.25,17,723/-</u>

24. It is observed that the Id. A.O. has held that the assessee has added back only Rs.24,17,723/- in the computation statement instead of Rs.25,17,723/- and made an addition of Rs.1 lac for non deduction of TDS. The assessee contended that the assessee has added back the entire amount of Rs.25,17,723/- in his computation of income while computing the taxable income of Rs.1,75,34,224/-. The assessee has also furnished copy of the computation to substantiate his contention. As this ground requires factual verification, we remand this issue back to the file of the Id. A.O. to verify whether or not the assessee has deducted TDS on the expenses claimed and whether the said TDS has been paid within the due date and the assessee is directed to produced documentary evidence of payment by furnishing the copy of the challan and also to substantiate whether the same has been paid within the due date of filing of return of income. We, therefore, allow ground no. 7 for statistical purpose.

25. In the result, the appeal filed by the assessee is partly allowed for statistical purpose.

*Order pronounced on 14<sup>th</sup> May, 2024 under Rule 24 of the Income Tax (Appellate Tribunal) Rules, 1963.*

Sd/-

(Sanjay Arora)  
Accountant Member

Mumbai; Dated : 14.05.2024  
Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)  
Judicial Member

**Copy of the Order forwarded to :**

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

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Cochin