

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

Before Shri Sanjay Arora, AM & Ms. Kavitha Rajagopal, JM

ITA No.71/Coch/2022 : Asst.Year 2009-2010

Grass Associates Private Limited Kurusupally Road, Ravipuram Kochi – 682 016 [PAN:AACCG3772A]	vs.	The Income Tax Officer Corp.Ward 1(3) Kochi.
(Appellant)		(Respondent)

Appellant by:	Sri. Mathew Joseph, CA
Respondent by:	Smt.J.M. Jamuna Devi, Sr. DR

Date of Hearing:	04.03.2024
Date of Pronouncement:	30.05.2024

ORDER

Per Sanjay Arora, AM:

This Appeal by the Assessee is directed against the Order dated 23.12.2021 by the Commissioner of Income-tax (Appeals), Income Tax Department [CIT(A)], dismissing the assessee's appeal contesting its assessment under section 143(3) of the Income-tax Act, 1961 (the Act) dated 08.12.2011 for assessment year 2009-10.

2. The brief facts leading to the instant appeal are that the Assessing Officer (AO) in assessment proceedings queried the assessee in respect of the expenditure claimed in the sum of Rs.37.43 lakh under the account head 'repossession charges'. The assessee-company, in the business of a collection agent for banks and financial institutions, explained the same to be payments made to various individuals, in cash, engaged by it to repossess the assets given in security to banks by the defaulting borrowers, and who are being pursued by it for recovery of debt. Locals, who have influence over the people of the region are engaged for the purpose, paying them the impugned sums. The list of payees, sought for verification, contained about 400 names, with each payment at less than Rs.20,000, and no proper address. The

assessee also expressed its inability to produce the said persons for an examination on oath. In the view of the AO, it was surprising that there were no repetitive payments. The assessee had furnished a huge number to avoid the TDS and, consequently, disallowance provisions. The expenditure was under the circumstances wholly unverifiable. He, accordingly, effected a disallowance at 50% of the claimed sum, i.e., at Rs.18,71,465. In appeal, it was further explained that the assessee's primary duty was to identify and repossess the assets, only whereupon could be claim could be settled. It engaged influential people of the region, i.e., who are able to handle the matter, using force in case the situation so warrants. However, being persons, who did not have a good social background, were reluctant to provide receipts or disclose their complete address. And which explains the booking of the expenditure per self-made cash vouchers, which are though not verifiable. The Id. CIT(A) again found it hard to believe that such a high number of people were engaged, without repetition, which only indicates the expenditure to be inflated. He, accordingly, confirmed the disallowance. Aggrieved, the assessee is in second appeal.

3. Before us, Sri Joseph, the learned counsel for the assessee, would emphasize that the nature of the expenditure is the reason for the booking thereof in the manner it is, and which ought not to lead to the inference of the same being not genuine or inflated. The expenditure incurred is reasonable in relation to the gross commission income of Rs.362.70 lakh. He was, however, unable to answer the Bench if anyone would agree for a remuneration at Rs.20,000, or even less, for repossessing property worth crores, or even lakhs. Smt. Devi, the Id. Sr. DR, would, relying on the orders by the Revenue Authorities, submit that the expenditure being wholly unproved, they had acted reasonably in restricting the disallowance to 50% of that claimed.

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

4.1 The issue arising for adjudication, as we discern, is the deductibility in law, and in the facts and circumstances of the case, of the assessee's claim for expenditure

on repossession charges. It is only where the same is *per se* deductible, would the aspect of the extent of disallowance, if any, that ought to be made in the given facts and circumstances, arise.

4.2 The assessee receives remuneration by way of commission from banks and financial institutions for repossessing assets pledged with them by the defaulting borrowers, enabling, either by way of disposal of those assets or otherwise, settlement of their dues. The assessee states of engaging ‘influential’ people of the locality, without good social background though, to identify and repossess assets, using force where necessary. The same, understandably, would be with reference to and in pursuance of a contract. The same is not on record, and neither is there anything to suggest of it being furnished before the Revenue Authorities. This assumes relevance as it is only the Agreement that would provide for and exhibit if expenditure of this nature could be incurred by the assessee for identifying and repossessing assets. Rather, it surprises one that Banks, sufficiently empowered by law, particularly after the SARFAESI Act, 2002, should be constrained to take recourse to such extra-legal measures, stated to be on account of long-winded, time consuming and costly legal process. If anything, it is indicative of a systemic failure, of the judicial system becoming dysfunctional, for people to have lost faith therein. Be that as it may, our concern here is not the economic justification for such expenditure, which is for the concerned institution, engaging commission agents at a substantial cost, to see, but the legality thereof. We say so as employing anti-social elements in the Society, or otherwise to, using force, threat or other coercive measures, dispossess people, however just it may otherwise be, of their assets, can hardly be regarded as legal in a civil society, violate as it does several provisions of the IPC, 1860. It is for this reason that it becomes necessary for us to examine if, firstly, such expenditure is sanctioned by the Agreement and, two, even so, if it, being in violation of law, is liable to be disallowed u/s.37(1) r/w *Explanation* thereto. This aspect has received consideration by the Apex Court, as in *Apex Laboratories Ltd. v. Dy. CIT* [2022] 442 ITR 1 (SC),

explaining the words ‘offence’ and ‘prohibited by law’ in the *Explanation*. Again, more recently, in the context of an illegal business, in *CIT v. Prakash Chand Lunia* [2023] 454 ITR 61 (SC), where the claim was of loss suffered on account of confiscation of silver by the Custom Authorities. It stands abundantly clarified that expenditure specified therein is not deductible under *Explanation* to s. 37(1). One could, invoking real income theory, argue of it being necessitated for business reasons. True, but, then, it is the real income, subject to the provisions of the Act, that is taxable (*Poona Electric Supply Co. Ltd. v. CIT* [1965] 57 ITR 521(SC); *Southern Technologies Ltd. v. Jt. CIT* [2010] 320 ITR 577 (SC)). The said theory is thus to be applied consistent with the provisions of the Act and, two, the common law.

4.3 We have, at this stage, two options, i.e., to restore the matter back to the AO for examining the deductibility of the expenditure from the standpoint of *Explanation* to sec.37(1), *qua* which there is no finding; there being no estoppel against law. The second, which we would prefer, is to examine the expenditure from the limited standpoint of the reasonability of the disallowance. The Tribunal is to decide matters based on the material on record. While nothing has been produced before us, it is an admitted fact that the only material furnished is an unverifiable list of about 400 persons, stated to be ‘influential’ persons of the locality, without as much as a proof of their identity. Why, for all one knows, these ‘persons’ may not exist. Further, unless each of the said persons falls in a different locality, a person once identified for the purpose would normally be engaged for another property in the area/locality, while there is no repetition at all. No one goes searching for such persons, found satisfactory, all over again and, further, how many such ‘influential’ people one could find in a locality, being, rather, a few for the entire area. This refrain by the Revenue is understandable and, thus, valid. The detail furnished is sketchy, and its non-verifiability, admitted. It is, as we see it, only a make-believe, with no evidentiary value, given only for the sake of it, presumably to pre-empt disallowance u/ss. 40(a)(ia) & 40A(3). Limiting deduction to 50% of that claimed, is, under the

circumstances, not unreasonable. As regards the charge of it being *ad hoc*, the same misses the point that it is only where not verifiable – *which in the instant case extends to the entire sum claimed*, that that estimated as reasonable is saved, disallowing the balance. As explained in *CIT v. Durga Prasad More* [1971] 82 ITR 540 (SC), science has yet not invented any instrument to measure the reliability of evidence, while here we find it to be not even qualifying as one. Estimation is integral to assessment, of which disallowance of expenditure is a part. Why, we see it all the time, as for personal purposes; again, in the absence of proper record. It is well-settled that it is permissible for the tax authorities to consider disallowing the sum estimated as incurred in excess (*Swadeshi Cotton Mills Co. Ltd. v. CIT* [1967] 63 ITR 57 (SC); *Lakshmiratan Cotton Mills Co. Ltd. v. CIT* [1969] 73 ITR 634 (SC); *Lachminarayan Madan Lal v. CIT* [1972] 86 ITR 439 (SC)). Reference in this context may also be made to *CIT v. Eastern Condiments P. Ltd.* [2010] 325 ITR 251 (Ker); *Pr. CIT v. Rimjhim Ispat Ltd.* [2016] 382 ITR 152 (All). The AO has, in the absence of any material, viz. property-wise details; basis for payment, itself unevidenced, estimated the expenditure liable for disallowance at 50%, which we find as reasonable.

4.5 In view of the fore-going, we decline interference. We decide accordingly.

5. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on May 30, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-
(Kavitha Rajagopal)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin, Dated: May 30, 2024

DDG

Copy to:

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

By Order

Assistant Registrar
ITAT, Cochin