

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

Before Shri Waseem Ahmed, Accountant Member and
Shri Soundararajan K., Judicial Member

ITA No. 375/Coch/2023
(Assessment Year: 2013-14)

Vijayalaxmi Cashew Company Kochupilammoodu Kollam 691001 [PAN: AAGFV8028B]	vs.	ACIT, Circle - 1 Kollam
(Appellant)		(Respondent)

Appellant by:	Shri T.V. Hariharan, CA
Respondent by:	Smt. Girly Albert, Sr. D.R.

Date of Hearing:	24.09.2024
Date of Pronouncement:	27.09.2024

ORDER

Per Bench

This appeal filed by the Revenue is directed against the order of the National Faceless Appeal Centre, Delhi [CIT(A)] dated 21.03.2023 for Assessment Year (AY)2013-14.

2. The only issue raised by the assessee is that the learned CIT(A) erred in confirming the penalty imposed by the Assessing Officer (AO) under the provisions of section 271(1)(c) of the Income Tax Act ("the Act") for an amount of Rs. 1,20,525/- being 100% the amount of tax sought to evaded.
3. The AO during the assessment proceedings found that the assessee is making sales of cashew nuts to its sister concern at a price less than the cost of production. Accordingly, the AO was of the view that the assessee has suppressed the value of

the sale made to the sister concern and made an addition of Rs.3,90,047/- to the total income of the assessee. The AO also initiated penalty proceedings u/s 274 r.w.s. 271(1)(c) of the Act which came to be confirmed by the AO vide order dated 27.09.2016 for an amount of Rs.1,20,525/- being 100% the amount of tax sought to evaded. On appeal, the learned CIT(A) also confirmed the same.

4. Being aggrieved by the order of the learned CIT(A) the assessee is in appeal before us.

5. The learned A.R. before us filed a paper book running from pages 1 to 19 and contended that similar additions were made by the AO in earlier years which came to be deleted by the order of the ITAT. The learned A.R. in support of his contention relied on the order of the Tribunal of the earlier years.

6. On the other hand, the learned Sr. DR supported the orders of the authorities below.

7. We have heard the rival contentions of both the parties and perused the materials available on record. Undeniable, similar additions were made by the Revenue in earlier years in the case of the assessee which came to be deleted by the ITAT. At the time of hearing, it was contended by the learned A.R. that the quantum addition in the present case has not been challenged, though it was covered in favour of the assessee, considering the smallness of the amount involved in dispute. The argument of the learned A.R. has not been disputed by the learned Sr. DR of the Revenue. Therefore, we are of the view that the assessee cannot be subjected to penalty merely on the reasoning that he has accepted the quantum addition which has been set aside by the ITAT in favour of the assessee in earlier years. We also note that under similar facts and circumstances, the ITAT Cochin Bench in the case of

Smt. T.C. Usha v. DCIT in ITA No. 39/Coch/2009 had deleted the penalty levied by the AO vide order dated 21.10.2011. The relevant extract of the order is reproduced as under: -

“4. We have considered rival submissions of either side and also perused the materials available on record. Admittedly, the assessee sold cashew kernels to sister concerns in the course of export. Admittedly the assessee sold 13629 kgs. of cashew kernels to sister concerns who exported the same at Rs.209.1 per kg, which was below the cost of production. The sales made to sister concerns at a lower price than the cost of production was estimated at Rs.1,63,539/-. The contention of the assessee that weighted average price for sales of kernels in the course of exports to sister concerns worked out to Rs.231.35 per kg. was examined and the Assessing Officer found that higher sale price to some of the sister concerns would not justify the lower price to sister concerns. The Assessing Officer accordingly found that there was a concealment to the extent of Rs.1,63,539/-. The fact remains that the cashew kernels is an agricultural produce. The cost of agricultural produce depends upon its quality and grade. The explanation as reproduced in the impugned penalty order passed by the Assessing Officer shows that except the rejected kernels, all grades of kernels were put together and applied the cost of production rate for a uniform valuation. The assessee has also explained that this does not mean that each of the grades sold would fetch at least the production cost. Even though gradewise costing was not done by the assessee the entire costing of the cashew kernels would depend upon the quality and grade. If low grade cashew kernels were mixed with higher grade cashew kernels then the price of the entire grade would be lower than the higher grade. Therefore, unless and until the Assessing Officer determine the quality and grade of cashew kernels, it is very difficult to come to the conclusion that the assessee has under priced the cost of cashew kernels which was sold to the sister concerns. By taking into consideration the over all circumstances and the marketing of agricultural produce, in our opinion, unless and until the Assessing Officer show that there were different grades of cashew kernels which were sold for a lower price, it is very difficult to come to the conclusion that the assessee has concealed any part of her income or furnished inaccurate particulars. Merely because the grading system was not followed in the cashew export market, it does not mean that a uniform price would be applicable for all grade/quality of cashew kernels. The fact remains is that the cost of cashew kernels would always depend upon the quality and grade. Therefore, in our opinion, merely because the assessee has not challenged the quantum addition made in the assessment order, due to the low tax effect, it does not attract automatically for levy of penalty. It is well settled principles of law that assessment proceeding is different and penalty proceeding is different. In the penalty proceedings, the lower authorities are expected to re-appreciate the materials available on record and come to a conclusion that the assessee has furnished inaccurate particulars or concealed any part of its income. In the case before us, since the weighted average price of the cashew kernels worked out to Rs.231.39 per kg. we cannot say that the assessee has furnished inaccurate particulars. Therefore, we are unable to uphold the orders of the lower authorities on this issue. Accordingly, we set aside these orders of the lower authorities and delete the penalty levied u/s.271(1)(c) of the I.T. Act.”

8. In view of the above and respectfully following the order of this tribunal cited above, we set aside the findings of the learned CIT(A) and direct the AO to delete the penalty imposed by him u/s 271(1)(c) of the Act. Hence the ground of appeal of the assessee is hereby allowed.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 27th September, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(Soundararajan K)
Judicial Member

Sd/-
(Waseem Ahmed)
Accountant Member

Cochin, Dated: 27th September, 2024

n.p.

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