

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

**Before Shri Satbeer Singh Godara, Judicial Member &
Shri Amarjit Singh, Accountant Member**

ITA No.441/Coch/2023 : Asst.Year 2011-2012
SA No.171/Coch/2023

Sri.N.Radhakrishnan Nair Flat No.1A2, Four Square Manor Holy Faith Building Opp : Engineering College Thrikkakara, Kochi – 682 021. PAN : ACJPN1259M.	v.	The Income Tax Officer Ward 2(3) Kochi.
(Appellant/Applicant)		(Respondent)

Appellant/Applicant by : Smt.Preetha S.Nair, Advocate
Respondent by : Smt.V.Swarnalatha, Sr.DR

Date of Hearing : 16.08.2024	Date of Pronouncement : 23.10.2024
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ORDER

Per Bench :

This assessee's appeal in ITA No.441/Coch/2023 (alongwith its stay application SA No.171/Coch/2023 therein) for assessment year 2011-2012 arises out of the order of the Commissioner of Income-tax (Appeals) / NFAC vide DIN & Order No.ITBA/NFAC/S/250/2022-23/1050226984(1) dated 28.02.2023 in proceedings u/s.143(3) of the Income-tax Act, 1961; in short "the Act" hereinafter.

Heard both the parties. Case files perused.

2. The assessee's main appeal ITA No.441/Coch/2023 raising the following substantive grounds:-

“1. The order of the Commissioner Income Tax (Appeals) at National Faceless Appeal Centre vide DIN & Order ITBA/NFAC/S/250/2022-23/1050226984(1) dated 28/02/2023 is opposing to facts and against law.

2. The Commissioner Income Tax (Appeals) at National Faceless Appeal Centre is not justified in disallowing Rs. 4,13,664/- on commission payment, Rs. 1,77,429/- being expenses on interest payment to Non-Banking Financial Institutions and Audit fee Rs. 63,788/- for non) deduction of tax since these were for business purposes and the appellant is under the honest belief that the same cannot be subjected to deduction of Tax as there may be double taxation.

3. The Commissioner Income Tax (Appeals) at National Faceless Appeal Centre has erred in disallowing a sum of 1,68,30,482/- towards non existing liability of Sundry Creditors since this addition is without ascertaining the facts and circumstances of the case.

For the above and other grounds that may be advanced at the time of hearing the appellant prays that the appeal be allowed.”

3. The assessee presses for his 3rd substantive ground seeking to reverse both the lower authorities action making sec.41(1) cessation of liability addition of Rs. 1,68,30,482 pertaining to various sundry creditors. There is hardly any dispute between the parties that the Assessing Officer has proceeded to add the foregoing sum on account of assessee's failure in filing the relevant particulars as well as confirmations from the concerned parties than having decided the matter as per the actual cessation; if any; u/s.41(1) of the Act going by the relevant books of account in light of CIT v. Sugauli Sugar Works (P) Ltd. (1999) 236 ITR 518 (SC). Faced with this situation, learned counsel further seeks to highlight the fact that the assessee had not only claimed the impugned sums) of sundry creditors as liability in revenue account but

also the same stood paid; wholly or in part; as the case may be, in succeeding assessment years. We thus deem it a fit case in these facts and circumstances to restore the assessee's instant substantive ground back to the learned Assessing Officer for afresh factual verification in very terms. Ordered accordingly.

4. Suffice to say, it is made clear that the assessee shall plead and prove all the relevant evidence(s) of the impugned revenue expenditure vis-à-vis subsequent payments; at his own risk and responsibility, within three effective opportunities in consequential proceedings. This ground is treated as accepted for statistical purposes.

5. We make it clear before parting that the learned counsel for the assessee has not pressed assessee's second substantive ground subject to a rider that it shall not be treated as a precedent in any other assessment year. Rejected accordingly.

6. The assessee's stay application SA No. 171/Coch/2023 is dismissed as rendered infructuous in very terms.

7. To sum up, this assessee's appeal ITA No.441/Coch/2023 is partly allowed for statistical purposes and his stay application SA No.171/Coch. /2023 is dismissed as rendered infructuous. A copy of the common order be placed in the respective case files.

Order pronounced in the open court on this 23rd Day of
October, 2024.

Sd/-
(Amarjit Singh)
ACCOUNTANT MEMBER

Sd/-
(Satbeer Singh Godara)
JUDICIAL MEMBER

Cochin ; Dated : 23rd October, 2024.
Devadas G*

Copy to :

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

Asst.Registrar/ITAT, Cochin