

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

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA Nos.173 & 174/Coch/2023  
Assessment Year: 2013-14 & 2015-16**

A.K. Santhosh  Arakkathara House, Palluruthy, Kochi, Kerala- 682006.  <b>PAN: AEMPS 1221 D</b>  (Appellant)	Vs.	DCIT, Corporate Circle-1(1), Kochi      (Respondent)
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**Present for:**

Assessee by : Shri Sreenivasan, CA  
Revenue by : Smt. V. Swarnalatha, Sr. DR

Date of Hearing : 20.08.2024

Date of Pronouncement : 18.11.2024

**ORDER**

**PER AMARJIT SINGH, ACCOUNTANT MEMBER:**

Both these appeals filed by the assessee pertaining to A.Y. 2013-14 & 2015-16 are adjudicated together by taking ITA No. 173/Coch/2023 as a lead case and its finding will be applying mutatis mutandis to the other appeal.

**ITA No. 173/Coch/2023**

*“1. The officers below were not justified in confirming the disallowance made u/s 40(a)(ia) of Rs. 12,15,356/- being the finance charges paid to Sundaram BNP Paribas.*

*2. The officer did not appreciate the fact that such finance charges are part of EMI (Equated Monthly Instalments) payable every month on principal amount.*

*3. At any rate the Commissioner of Income-tax (Appeals) should have verified the fact as to whether the recipient company has included such receipt as part of their income.*

4. *The officers were not justified in disallowing excess depreciation charged on Motor Vehicle of Rs. 15,584/-. The officers were also not justified especially when the profit & loss account filed before the Commissioner of Income-tax (Appeals) and the assessing officer contain the details of rent received on vintage cars & others.*

5. *The treatment of lease rent received as income from House property instead of income from other source was not justified as the appellant had an option u/s 57 to show such income under any head of income.*

6. *Your appellant prays that the above grounds may be considered.”*

2. Return of income declaring total loss of Rs. 3,08,256/- was filed on 31.10.2013. The case was subject to scrutiny assessment. During the course of assessment, the AO noticed the assessee has not deducted tax on the interest paid to M/s. Sundaram BNP Paribas of Rs. 12,16,356/-.

3. The Assessing Officer noticed that assessee has paid interest on loan to Sundaram BNP Paribas to the amount of Rs. 12,16,356/- during the year without deducting tax, therefore, disallowed total interest of Rs. 12,16,356/- paid to M/s. Sundaram BNP Paribas u/s 40(a)(ia) and added to the total income of the assessee.

4. During the course of assessment, the AO also noticed that assessee has claimed depreciation on motor cars @ 30% amounting to Rs. 31,168/- however in the profit and loss account the assessee had not shown any income on account of hiring of vehicles. On query, the assessee explained that some of the vehicles were let out to the persons engaged for film production & serial production etc. which were entitled to claim higher depreciation @ 30% as per I.T. Act. Since the assessee could not prove that vehicles were used for hiring purpose therefore, the AO had restricted the claim of depreciation to 15% and added the excess depreciation claim of Rs. 15,584/- to the total income of the assessee.

5. During the course of assessment, the AO also noticed that assessee had declared rental income of Rs. 9,00,000/- under the head income from other sources and claimed depreciation of Rs. 3,45,472/- and interest payment of Rs. 5,55,032/- as deduction against the rental income. The AO was of the view that amount of Rs. 9,00,000/- was assessable under the head income from house property. Therefore, the claim of depreciation of Rs. 3,45,472/- was disallowed, however deduction u/s 24(a) of Rs. 3,00,000/- was granted which resulted in addition of Rs. 45,472/- only.

6. The ld. CIT(A) has dismissed the appeal of the assessee.

7. Heard both the sides and perused the material on record. In respect of addition of Rs. 12,16,356/- of disallowance of interest charges paid to M/s. Sundaram BNP Paribas u/s 40(a)(ia), the assessee vide letter dated 16.03.2016 informed the AO that certificate in Form 26A is awaited from the payee. However, the AO has finalized the assessment order on 31.03.2016. Therefore, we consider that one more opportunity be granted to the assessee to furnish the Form 26A. The AO is also directed to obtain the copy of the Form No. 26A from the payee for deciding the issue on merit. Therefore, this ground of appeal is allowed for statistical purpose.

8. Regarding disallowance of excess depreciation claimed by the assessee @ 30% we find that assessee has not submitted any supporting relevant evidences to demonstrate that vehicles were let on hire during the year under consideration. There is no material before us which substantiate that assessee has actually let out vehicles on hire to claim depreciation @ 30%, therefore we do not find any infirmity in the decision of ld. CIT(A) in restricting the claim of depreciation on car/vehicles to 15% as against 30% claimed. Therefore, this ground of appeal of the assessee is dismissed.

9. Regarding 3<sup>rd</sup> ground of appeal of the assessee on the issue of treatment of lease rent received as income from house property instead of income from other sources. We find that assessee has let out his business along with plant & machinery, furnithier & fixtures and other fittings therefore as per provision of section 56, the assessee has correctly shown such income under the head income from other sources. Therefore, this ground of appeal of the assessee is allowed.

10. In the result, the appeal of the assessee is partly allowed

ITA No. 174/Coch/2023

*“1. The officers below were not justified in confirming the disallowance made u/s 40(a)(ia) of Rs. 11,18,496/- being the finance charges paid to Sundaram BNP Paribas.*

*2. The officer did not appreciate the fact that such finance charges are part of EMI (Equated Monthly Instalments) payable every month on principal amount.*

*3. At any rate the Commissioner of Income-tax (Appeals) should have verified the fact as to whether the recipient company has included such receipt as part of their income.*

*4. The officers were not justified in treating agricultural income as non-agricultural when full details of such holding were filed before the assessing officer and also with regard to the periodical credits in the books with narration.*

*5. The treatment of lease rent received as income from House property instead of income from other source was not justified as the appellant had an option u/s 57 to show such income under any head of income.*

*6. Your appellant prays that the above grounds may be considered.”*

11. Ground no. 1 to 3: On similar issue and identical fact, we have adjudicated the ground no. 1 to 3, the appeal of the assessee vide ITA No. 174/Coch/2023 as discussed supra in this order. Therefore, apply its finding mutatis mutandis this issue is restored to the file of the AO

for the reasons as discussed. Therefore, these grounds of appeal are allowed for statistical purposes.

12. Ground No. 4: Treating agricultural income as non-agricultural income:

During the course of assessment, the AO noticed that assessee has declared agricultural income of Rs. 6,76,100/-. The AO stated that assessee has submitted detail of land holding but not furnished documentary evidences regarding produce, expenses and sales of agricultural items. Therefore, the AO has treated the claim agricultural income of Rs. 6,76,100/- under the head income from other sources. The Id. CIT(A) has sustained the addition made by the AO.

13. Heard both the sides and perused the material on record. The AO has not referred any specific show cause notice issued to the assessee to produce any documentary evidences in support of his claim of earning agricultural income etc. Therefore, we restore the issue to the file of the AO to provide more opportunities to the assessee to produce the evidence regarding production and related expenses incurred and sales of agricultural items etc. for deciding the issue on merit. Therefore, this ground of appeal of the assessee is allowed for statistical purpose.

14. In the result, both the appeals of the assessee are partly allowed.

Order pronounced in the open court on 18.11.2024.

**Sd/-**  
**(SATBEER SINGH GODARA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

Dated: 18.11.2024  
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR

//True Copy//

By Order

Assistant Registrar  
ITAT, Cochin Bench, Cochin