

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

**BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI SOUNDARARAJAN K., JM**

**ITA No. 48/Coch/2023
Assessment Year: 2016-17**

Panichikandy Mohandasani Appellant
Kanhagad, Hosdurg, Kasaragod 671315
[PAN: ADVPM0383N]

vs.

Dy Commissioner of Income Tax Respondent
Kannur

Appellant by: Shri Arun Raj S., Advocate
Respondent by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 10.03.2025
Date of Pronouncement: 20.03.2025

ORDER

Per: Inturi Rama Rao, AM

This appeal filed by the assessee is directed against the order of the National Faceless Appeal Centre, Delhi [CIT(A)], dated 30.11.2022 for Assessment Year (AY) 2016-17.

2. Brief facts of the case are that the assessee is an individual carrying on the business of running a hotel in the name and style of M/s. Hotel Land Mark. The return of income for AY 2016-17 was filed on 22.05.2016 declaring loss of Rs. 46,31,951/-. Against the said return of income, the assessment was completed by the DCIT,

Kannur (hereinafter called "the AO") vide order dated 28.12.2018 passed u/s. 143(3) of the Income Tax Act, 1961 (the Act) at a loss of Rs. 10,36,633/-. While doing so, the AO disallowed interest and bank charges of Rs. 12,17,612/- claimed as revenue expenditure. He also made addition of Rs. 22,97,707/- in respect of borrowed capital. The AO made disallowance on belated payment of PF of Rs. 49,999/- u/s. 36(1)(va) of the Act. He also made disallowance of fine of Rs. 30,000/-.

3. The factual background leading the disallowance of interest expenditure is that during the previous year under consideration the appellant had constructed a multiplex building in the name and style of Vinayak Golden Mall. The appellant also availed loan from KFC for construction of the said mall on which a total interest of Rs. 32,51,305/- was paid out of which an amount of Rs.19,48,720/- was capitalised in the books of account and the balance expense of Rs. 10,83,769/- was claimed as revenue expenditure. The AO was of the opinion that construction of the complex was not complete, therefore, the interest expenditure claimed on the bank charges is not revenue expenditure, hence disallowed. Similarly, the loss claimed under the head 'house property' in respect of the said multiplex of Rs. 22,97,707/- was also disallowed.

4. Being aggrieved, an appeal was filed before the CIT(A), who vide the impugned order disallowed the addition of Rs. 30,000/- by holding that the payment is not penal in nature to compensate and

also deleted the disallowance of bank charges and interest. However, confirmed the disallowance u/s. 36(i)(va) of the Act in respect of belated remittance of PF and also disallowance of loss under the head 'income from house property' of Rs. 22,97,707/- by holding that when the property was under construction the appellant was not justified in claiming loss under the head 'house property'.

5. Being aggrieved, the appellant is in appeal before us in the present appeal.

6. It was submitted before us that the CIT(A) without considering the evidence filed in support of completion of the multiplex building merely concluded that the multiplex building is still under construction. In support of this he has filed acknowledgement ITBA.NFAC/F/APL_1/2022-23/1045544200(1) wherein he had filed he completion certificate, occupancy certificate, etc. Therefore, he prayed that the issue may be remanded back to the file of the CIT(A) for de novo adjudication. Regarding disallowance of employees' PF contribution the learned A.R. fairly conceded that it is covered against the assessee by the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. vs. CIT [2022] 448 ITR 518 (SC).

7. On the other hand, the learned Sr. DR has no serious objection to remand the matter the matter back on the issue of

disallowance respect of loss under house property to the file of the CIT(A).

8. We have heard the rival contentions of both the parties and perused the material available on record. The first ground of appeal relates to the disallowance of loss under house property income. The AO merely disallowed the loss claimed under the head 'house property' by holding that the building was still under construction. During the course of proceedings before the CIT(A), the appellant filed evidence in the form of completion certificate, occupancy certificate, etc. The CIT(A), without adverting to these evidences concluded that the appellant is not entitled to claim loss under the head 'house property'. In the circumstance, we are of the considered opinion that in the interest of justice the matter should be remanded to the file of the CIT(A) for de novo adjudication in accordance with law after affording reasonable opportunity of hearing to the appellant. All the contentions raised before us are kept open before the CIT(A). Thus, ground of appeal No. 1 stands allowed.

9. Ground of appeal No. 2 challenges the disallowance of belated remittance of PF contribution. The issue is now clearly covered against the assessee by the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. (supra). This ground of appeal stands dismissed.

10. In the result, the appeal filed by the assessee stands partly allowed.

Order pronounced in the open court on 20th March, 2025.

Sd/-
(SOUNDARARAJAN K.)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 20th March, 2025

n.p.

Copy to:

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

Assistant Registrar
ITAT, Cochin