

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

**Before Shri Inturi Rama Rao, Accountant Member  
&  
Shri Sandeep Singh Karhail, Judicial Member**

ITA No.81/Coch/2024 : Asst.Year 2020-2021  
ITA No.869/Coch/2023 : Asst.Year 2021-2022

Kerala State Financial Enterprises Limited, Bhadratha Museum Road, Chembukkavu Thrissur – 680 020. <b>PAN : AABCT3817A.</b>	v.	The Deputy Commissioner of Income-tax, Cir 1(1) & TPS Thrissur.
(Appellant)		(Respondent)

ITA No.50/Coch/2024 : Asst.Year 2020-2021  
ITA No.51/Coch/2024 : Asst.Year 2021-2022

The Deputy Commissioner of Income-tax, Cir 1(1) & TPS Thrissur.	v.	Kerala State Financial Enterprises Limited, Bhadratha, Museum Road, Chembukkavu Thrissur – 680 020.
(Appellant)		(Respondent)

Revenue by : Sri.Sanjit Kumar Das, CIT-DR  
Assessee by : Sri.Harikrishnanunny, CA

<b>Date of Hearing : 26.03.2025</b>	<b>Date of Pronouncement : 14.05.2025</b>
-------------------------------------	---

**ORDER**

**Per Inturi Rama Rao, AM :**

These are cross appeals filed by the assessee as well as the Revenue directed against the orders of the National Faceless Appeal Centre / Commissioner of Income-tax, [“the CIT(A)”] dated 05.12.2023 and 09.11.2023 passed u/s.143(3) of the Income-tax Act,

1961 (“the Act”) for the assessment years 2020-2021 and 2021-2022, respectively.

2. Since identical issues are involved in these appeals, they were heard together and are being disposed of by this consolidated order, for the sake of convenience.

First, we take the appeal filed by the assessee and Revenue for assessment year 2020-2021, for adjudication.

**ITA No.81/Coch/2024 : (Assessee’s Appeal)**

**ITA No.50/Coch/2024 : (Revenue’s Appeal)**

3. Briefly, the facts of the case are that the appellant is a company duly incorporated under the provisions of the Companies Act. It is an undertaking of the State Government of Kerala. It is engaged in the business of Chitti Investment Services. The return of income of the assessment year 2020-2021 was filed on 15<sup>th</sup> February, 2021 disclosing an income of Rs.124,46,82,850. The same was revised on 31<sup>st</sup> March, 2021 at a total income of RS.161,76,56,460. Against the said return of income, the assessment was completed by the National Faceless Assessment Centre (“the AO) passed u/s.143(3) r.w.s. 144B of the Act vide order dated 5<sup>th</sup> September, 2022 at a total income of Rs.454,75,49,402. While doing so, the AO made following disallowances.

- |      |   |                  |
|------|---|------------------|
| (i)  | Disallowance of provision for bad and doubtful debts.                                       | Rs.227,48,76,260 |
| (ii) | Disallowance of guarantee commission paid to Government of Kerala u/s.40(a)(iib) of the Act | Rs. 65,39,86,799 |

(iii) Disallowance u/s.40A(3) Rs. 1,60,63,721

4. Being aggrieved by the above disallowances, the appellant filed an appeal before the CIT(A), who vide the impugned order, upheld the addition on account of guarantee commission paid to the State Government of Kerala, by holding that it is a capital expenditure. However, in respect of provision for bad and doubtful debts, the CIT(A) while expressing an agreement with the contention of the appellant that debiting the provision for bad and doubtful debts to profit and loss account and reducing the same from the sundry debtors / advances in the balance sheet constitute “write off”, as held by the Hon’ble Supreme Court in the case of Vijaya Bank v. CIT (2010) 323 ITR 166 (SC). However, proceeded to hold that the same provision cannot be utilized both for the purpose of sections 36(1)(vii) and 36(1)(viia) of the Act. Accordingly, the addition was restricted to the extent of short provision of Rs.51,14,77,320.

5. Being aggrieved by that part of the order of the CIT(A), the Revenue is in appeal before us in ITA No.50/Coch./2024 and the assessee is in appeal before us being aggrieved by that part in ITA No.81/Coch/2024.

**At the first instance, we take assessee’s appeal in ITA No.81/Coch/2024**

6. The appellant corporation filed appeal being aggrieved by the direction of the CIT(A) confirming the disallowance of guarantee commission paid to the State Government of Kerala, u/s.40(a)(iib) of

the Act, and also confirming of disallowance of provision for bad and doubtful debts to the extent of Rs.51,14,77,320.

7. Grounds of appeal No.1 and 4 are general in nature, does not require any specific adjudication.

8. Grounds of appeal No.2 challenges disallowance of guarantee commission paid to the State Government of Kerala, under the provisions of section 40(a)(iib) of the Act. This issue is no longer res integra as it stood covered against the assessee by the decision of the Hon'ble Apex Court in the case of Kerala State Beverages (Manufacturing & Marketing) Corporation Ltd. v. ACIT (2022) 440 ITR 492 (SC), wherein the Hon'ble Apex Court held as under:-

*“13. Section 40 of the Income-tax Act, 1961 is a provision which deals with the amounts which are not deductible while computing the income chargeable under the head 'Profits and gains of business or profession'. Section 40 of the Act is amended in the year 2013, and 40(a)(iib) is inserted by Amending Act 17 of 2013, which has come into force from 1-4-2014. In terms of Article 289 of the Constitution of India, the property and income of a State shall be exempt from Union taxation. Therefore, in terms of Article 289, the Union is prevented from taxing the States on its income and property. It is the constitutional protection granted to the States in terms of the abovesaid Article. This protection has led the States in shifting income/profits from the State Government Undertakings into Consolidated Fund of the respective States to have a protection under Article 289. In the instant case the KSBC, a State Government Undertaking, is a company like any other commercial entity, which is engaged in the business and trade like any other business entity for the purpose of wholesale and retail business in liquor. As much as these kind of undertakings are under the control of the States as the total shareholding or in some cases majority of shareholding, is held by States. As such they exercise control over it and shift the profits by*

*appropriating whole of the surplus or a part of it to the Government by way of fees, taxes or similar such appropriations. From the relevant Memorandum to the Finance Act, 2013 and underlying object for amendment of Income-tax Act by Act 17 of 2013, by which section 40(a)(iib)(A)(B) is inserted, it is clear that the said amendment is made to plug the possible diversion or shifting of profits from these undertakings into State's treasury. In view of section 40(a) (iib) of the Act any amount, as indicated, which is levied exclusively on the State owned undertaking (KSBC in the instant case), cannot be claimed as a deduction in the books of State owned undertaking, thus same is liable to income tax.*

*14. In the instant case the gallonage fee, licence fee, shop rental (kist), surcharge and turnover tax are the amounts of which assessee claims that they are not attracted by section 40(a)(iib) of the Act. On the other case of the respondent/revenue that all the said components the ingredients of section 40(a)(iib)(A) or section 40(a)(iib)(B) as such they are not deductible. Broadly these levies can be divided into three categories. Gallonage fee, licence fee and shop rental (kist) are in the nature of fee imposed under the Abkari Act of 1902. These are the fees payable for the licences issued under FL-9 and FL-1. In the impugned order, the High Court has held that the gallonage fee, licence fee and shop rental (kist) with respect to FL-9 licence are not deductible, as it is an exclusive levy on the Corporation. Further a distinction is drawn from FL-1 licence from FL-9 licence, to apply section 40(a)(iib) only on the ground that, FL-1 licences are issued not only to the appellant/KSBC but also issued to one other Government Undertaking, i.e., Kerala State Co-operatives Consumers' Federation Ltd. High Court has held that as there is no other player holding licences under FL-9 like KSBC as such the word 'exclusivity' used in section 40(a)(iib) attract such amounts. At the same time only on the ground that FL-1 licences are issued not only KSBC but also to Kerala State Co-operatives Consumers' Federation Ltd., High Court has held that exclusivity is lost so as to apply the provision under section 40(a)(iib) If the amended provision under section 40(a) (iib) is to be read in the manner, as interpreted by Court, it will literally defeat the very purpose and intention behind the amendment. The aspect of exclusivity under section 40(a)(iib) is not to be considered with a narrow interpretation, which will*

*defeat the very intention of Legislature, only on the ground that there is yet another player, viz., Kerala State Co-operatives Consumers' Federation Ltd. which is also granted licence under FL-1. The aspect of 'exclusivity' under section 40(a)(iib) has to be viewed from the nature of undertaking on which levy is imposed and not on the number of undertakings on which the levy is imposed. If this aspect of exclusivity is viewed from the nature of undertaking, in this particular case, both KSBC and Kerala State Co- operatives Consumers' Federation Ltd. are undertakings of the State of Kerala, therefore, levy is an exclusive levy on the State Government Undertakings. Therefore, we are of the considered view that any other interpretation would defeat the very object behind the amendment to Income-tax Act, 1961.*

*14.1 It is fairly well settled that the interpretation is to be in the manner which will subserve and promote the object and intention behind the legislation. If it is not interpreted in the manner as aforesaid it would defeat the very intention of the legislation. To defeat the said provision, the State Governments may issue licences to more than one State owned undertakings and may ultimately say it is not an exclusive undertaking and therefore section 40(a)(iib) is not attracted. The submission of Sri Ganesh, learned senior counsel for the appellant is that the gallonage fee, licence fee and the shop rental (kist) are the levies under the Abkari Act on all the licence holders, as such it cannot be said that same is an exclusive levy on the appellant/KSBC. It is submitted that because of the Abkari Policy in particular year, licences are issued in favour of the appellant - State owned Undertaking, as such it cannot be said that the statutory levies under the Abkari Act are on the State Government Undertaking and such levies are only on the licensees but not on the State-owned Undertakings like KSBC. The said submission cannot be accepted for the reason that by virtue of licence which is granted in favour of State-owned Undertaking, the statutory fees etc., viz., gallonage fees, licence fee and shop rental (kist) are payable by the appellant-Undertaking, i.e., KSBC. Once the State Government Undertaking takes licence, the statutory levies referred above are on the Government Undertaking because it is granted licences. Therefore, we are of the view that the finding of the High Court that gallonage fee, licence fee and shop rental (kist) so far as FL-1 licences are concerned, is not attracted by*

*section 40(a)(iib) cannot be accepted and such finding of the High Court runs contrary to object and intention behind legislation.”*

9. Thus, the Hon'ble Apex Court clearly held that having regard to the intention of the Legislature that any fees paid by the State Government Undertaking to the State Government is hit by the provisions of section 40(a)(iib) of the Act. The provisions of section 40(a)(iib) of the Act contemplates disallowance of any amount paid by way of royalty, licence fee, service fee, privilege fee, service charges or any other fee or charge, by whatever name called, which is levied exclusively on, or which is appropriated, directly or indirectly, from a State Government undertaking by the State Government. Undoubtedly, the guarantee commission paid by the appellant company falls within the ambit and scope of the terms “any other fee” and hit by the provisions of section 40(a)(iib) of the Act, and therefore, we do not find any reason to interfere with the orders passed by the lower authorities. This grounds of appeal stands dismissed.

10. The next grounds of appeal No.3 challenges the disallowance of provision for bad and doubtful debts to the extent of Rs.51,14,77,320. From the perusal of the assessment order, it would reveal that the loans and advances claimed for deduction of Rs.227,48,76,260 towards provision for bad and doubtful debts and claimed as deduction u/s.36(1)(vii) of the Act placing reliance on the decision of the Hon'ble Apex Court in the case of Vijaya Bank v. CIT (2010) 323 ITR 166 (SC). However, the AO had disallowed the claim for deduction in respect of provision for bad and doubtful debts by holding that the

appellant had failed to substantiate that this amount was offered to tax in the earlier years and the amounts were written off irrecoverable.

11. On appeal before the CIT(A), the CIT(A) while accepting the contention of the appellant that debiting the provisions for bad and doubtful debts to the profit and loss account and reducing the same from the advances in the balance sheet constitute a “write off”, however, mixed up the issue with the deduction u/s.36(1)(vii) and 36(1)(viia) of the Act, which is patently wrong, as both the deductions stand a different footing and the material on record does not indicate that the appellant made out claim of deduction u/s.36(1)(viia) of the Act. Therefore, we are of the considered opinion that the matter requires remand to the file of the AO to decide the issue of allowability or otherwise of the provisions of bad and doubtful debts in the light of the decision of the Hon’ble Supreme Court in the case of Vijaya Bank (supra), after affording a reasonable opportunity of being heard to the appellant. This grounds of appeal stands partly allowed for statistical purposes.

12. The Revenue is in appeal before us by way of ITA No.50/Coch/2024, being aggrieved by the order of the CIT(A) in partly allowing the provisions for bad and doubtful debts. In the assessee’s appeal in ITA No.81/Coch/2024, the issue of allowability of provision for bad and doubtful debts was restored to the file of the AO for the reasons stated therein, and therefore, the appeal filed by the Revenue also stand disposed of in terms of the order passed by us in the assessee’s appeal. Thus, this grounds of appeal of the Revenue stands partly allowed.

13. In the result, appeal filed by the assessee as well as Revenue stand partly allowed.

Now, we take the appeal filed by the as well as the Revenue for assessment year 2021-2022

**ITA No.869/Coch/2023 (Assessee's appeal)**

**ITA No.51/Coch/2024 (Revenue's appeal)**

14. The only grounds of appeal raised in assessee's appeal in ITA No.869/Coch/2023 for assessment year 2021-2022 challenges the guarantee commission paid to the State Government of Kerala.

15. We have decided similar issue in para 8 of this order for assessment year 2020-2021, wherein we have held that the guarantee commission paid by the appellant company falls within the ambit and scope of the terms "any other fee" and hit by the provisions of section 40(a)(ia), and therefore, respectfully following the decision arrived at therein, we dismiss the grounds of appeal raised by the assessee in this year, as well.

16. The only grounds of appeal raised in Revenue's appeal ITA No.51/Coch/2024 challenges the disallowance of bad and doubtful debts. Similar issue is also dealt with by us in para 11 for assessment year 2020-2021, wherein we have remanded the matter to the file of the A.O. to decide the issue of allowability or otherwise of the provisions of bad and doubtful debts in the light of the decision of the Hon'ble Supreme Court in the case of Vijaya Bank (supra), after affording a

reasonable opportunity of being heard to the appellant. We do so for this year as well. Thus, this grounds of appeal filed by the Revenue stands partly allowed.

17. In the result, all the appeals filed by the assessee as well as Revenue are partly allowed.

Order pronounced on this 14<sup>th</sup> day of May, 2025.

**Sd/-**  
**(Sandeep Singh Karhail)**  
JUDICIAL MEMBER

**Sd/-**  
**(Inturi Rama Rao)**  
ACCOUNTANT MEMBER

Cochin; Dated : 14<sup>th</sup> May, 2025.  
Devadas G\*

Copy to :

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

Asst.Registrar/ITAT, Cochin