

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

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No. 295/Coch/2024
Assessment Year : 2016-17

Shri Gopalakrishnan Pukalakkat Balakrishnan, Pukalakkat Rice and Oil Industries, Elamakkara, Cochin – 682 026. PAN: ACMPB0076D	Vs.	The Assistant Commissioner of Income Tax, Non Corp Circle – 2(1), Kochi.
APPELLANT		RESPONDENT

Assessee by	:	Shri Sherry S Oommen, Advocate
Revenue by	:	Shri Omanakuttan, Snr AR

Date of Hearing	:	02-07-2025
Date of Pronouncement	:	15-07-2025

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

This is an appeal filed by the assessee challenging the order of the NFAC, Delhi dated 08/02/2024 in respect of the A.Y. 2016-17 and raised the following grounds:

CONCISE GROUNDS OF APPEAL

1. The learned AO and the CIT(A) has passed the impugned order in gross violation of principles of natural justice, without application of mind, and against the doctrine of fairness.
2. The impugned order was passed without granting the Appellant an opportunity to personal hearing
3. The Learned AO and the CIT(A) has passed the impugned order mechanically, without application of mind, with a pre-determined conclusion in mind. This is apparent from a plain reading of the Impugned Order.
4. The learned CIT(A) has passed the impugned order without granting the Appellant an opportunity of affording necessary explanation on the grounds stated in the impugned order.
5. The impugned order has been passed in violation of the Tax Payers Charter as stipulated under section 119A of the Act.
6. The disallowance effected in respect of interest having regard to the provisions of Section 57 of the Act amounting to INR 31,53,815 is clearly not justified and bad in law.
7. The disallowance effected with respect to cost of improvement amounting to INR 20,30,508 is unjustified and bad in law.
8. The learned CIT(A) has erred in not considering the alternate claim of the Appellant regarding the consideration of the interest paid towards the cost of purchase of the immoveable property.
9. The learned AO has blindly proceeded to reassess the income of the Appellant in the absence of a jurisdictional fact apart from being procedurally improper.

10. The impugned orders have been passed without issuance of a valid show-cause notice. The notices issued suffer from various procedural infirmities, thereby being bad in law.
11. The Impugned orders have been passed based on mere surmise and conjecture, which cannot form the basis of levy of a tax.
12. The impugned orders have been passed without granting the Appellant an opportunity to prove his credentials.
13. The impugned orders have been passed without following the procedure prescribed in law. It is trite law that when such procedure is not followed, the act of the authority is a nullity in the eyes of the law.
14. The disallowance of cost of improvement whilst determination of short-term capital is clearly unjustified.
15. The impugned order is a product of a colourable exercise of power, apart from being manifestly arbitrary.
16. The impugned order passed is procedurally irregular and not in the prescribed manner as provided under statutory provisions, then such act of the authority is a nullity in the eyes of law.
17. The impugned order is violative of the doctrine of consistency which stands affirmed by the Hon'ble Supreme Court in **Birla Corporation Limited (2005) 186 ELT 266 (SC)**.
18. The Appellant craves leave to submit further grounds, alter/ modify / delete any of the grounds cited above at the time of hearing of the present appeal.

PRAYER

In view of the above, it is respectfully prayed that this Hon'ble Tribunal may be pleased to:

- i. Grant the Appellant an opportunity of personal hearing and an opportunity to submit written submissions and/or furnish additional evidence;
- ii. Set aside the impugned Order issued by the learned CIT(A) dated 08.02.2024 bearing DIN & Order No ITBA/NFAC/S/250/2023-24/1060644654(1);
- iii. Set aside the impugned Order issued by the learned AO dated 30.12.2018;
and
- iv. Pass any such order or orders as may be deemed fit and proper in the facts and circumstances of the case.

2. The brief facts of the case are that the assessee is an individual and he filed his return of income on 05/08/2016. Thereafter, the assessee's case was selected for limited scrutiny for verification of the following issues:

- a) Large deduction claimed u/s. 57 and
- b) Low capital gains with respect to sale consideration

3. The assessee participated in the assessment proceedings and submitted that he obtained various loans from several banks and the said interest expenses were set off against the interest income earned by him through the term deposits made with various banks. The AO sought for the nexus between the interest income earned and the interest paid to the banks. The assessee also submitted the details of the capital gains earned by him. The AO not accepted the explanations and made an assessment u/s. 143(3) of the Act. As against the said order, the assessee filed an appeal before the Ld.CIT(A). The Ld.CIT(A) had elaborately discussed each and every issue and finally dismissed the appeal filed by the assessee.

4. As against the said order, the assessee is in appeal before this Tribunal.

5. At the time of hearing, the Ld.AR submitted that the assessee had incurred expenditure on the various loans which he is entitled to set off as against the interest received from FDRs. The Ld.AR further submitted that the interest income earned by the assessee through the FDR is also an income classified under other sources and therefore the interest payment could be set off as against the said income. Insofar as the computation of the capital gains, the Ld.AR submitted that the cost of improvement and the expenditure were wholly and exclusively incurred in connection with the transfer of the properties and therefore the same are entitled for deduction for the purpose of arriving the capital gains. The Ld.AR also made an alternate argument that if the interest paid on the loan for acquiring the immovable property would not be set off as against the interest income earned through the FDRs, then the said interest income had to be added to the cost of acquisition of the properties. The Ld.AR also made a legal submission that the assessment was selected for limited scrutiny but the AO had made the complete scrutiny without getting any prior approval from the competent authorities and therefore submitted that the entire proceedings are an illegal one.

6. The Ld.AR also filed two paper books enclosing the written submissions and other documents in the first paper book and enclosed the judgments of the Hon'ble High Courts and orders of the Tribunal in the second paper book and prayed to consider the said judgments and orders and to allow the appeal filed by the assessee.

7. The Ld.DR submitted that the legal ground is not maintainable since the AO had made the assessment on the issues raised in the limited scrutiny. Insofar as the grounds on merit, the Ld.DR relied on the orders of the lower authorities.

8. We have heard the arguments of both sides and perused the materials available on record.

9. First we will take up the legal plea raised by the assessee that the limited scrutiny could not be converted into a complete scrutiny without getting any prior approval from the authorities. We have perused the assessment order in which the following reasons were stated for limited scrutiny which reads as follows:

*"1) Large deduction claimed u/s. 57 under the head
Income from Other Sources and*

2) Low Capital gains with respect to sale consideration."

10. The assessment made by the AO is relating to the set off of the interest expenses against the interest income earned by the assessee. Admittedly, the assessee had claimed the interest expenses deduction u/s. 57 of the Act which is one of the reason for selecting the assessee's case for limited scrutiny. Similarly, the capital gains issue was also cited as a reason for limited scrutiny. The AO also made the assessment in respect of the interest expenses as well as the capital gains issue and therefore we do not find that the legal plea raised by the assessee will survive. Therefore the legal submissions made by the assessee is not accepted.

11. Insofar as the merits are concerned, the Ld.CIT(A) had given a chart in para no. 8.1 in which the details of the interest claim and the interest disallowed and allowed are given. Now we will take up the issues one by one about the details given by the Ld.CIT(A) in its order. For the sake of easy understanding, we are extracting the statement given by the Ld.CIT(A) in para no. 8.1.

Sl No.	Bank Name	Interest in Rs.
1	Union Bank of India, Ponnurunni	81381
2	Corporation Bank Elamakkara A/c. No. SDL/01/150009	338176
3	Corporation Bank Elamakkara A/c. No. CRENT/01/150001	1130467
4	State Bank of India, Elamakkara	87914
5	State Bank of India, Elamakkara	207484
6	HDFC Bank Palarivattom	2429009
7	HDFC Bank Palarivattom (Pukalakkat Rice & Oil Industries)	488128
8	HSBC Bank, Ernakulam	272522
TOTAL		5035081

12. The Ld.CIT(A) had considered the loans at Sl.Nos. 1,4,5,7 & 8 which were taken against the FDs obtained by way of overdrafts. The AO had disallowed the interest expenditure because the said expenditure was not made for the purpose of earning income. The Ld.CIT(A) also approved the finding of the AO since the interest expenditure could not be netting off against the interest income earned from the FDs since the expenditure was not incurred for earning the income for which the Ld.CIT(A) also relied on the Hon'ble Supreme Court judgment. The present facts involved in this case is that the assessee is an individual and had made some FDs in various banks and received interest income out of that and therefore the said income is an income from other sources. Similarly, the assessee had obtained loans not for any business purpose or for any of the incomes classified under the various heads and therefore the interest expenses

incurred by the assessee would be set off as against the interest income earned u/s. 56 of the Act. It is not the case of the authorities below that the interest income earned by the assessee through the FDRs could not be set off for the payment of interest on loan amounts since the assessee had earned a particular income and therefore the expenditure incurred by paying the interest on loans could not be set off. When the authorities had not established that the expenses on loan relates to another activity of the assessee, we are of the view that it could be set off. The only finding given by the authorities are that the fixed deposits were made by the assessee before taking loans and the deposits were given as security for the purpose of getting loans and therefore the interest expenditure could not be set off as against the interest income earned through the FDRs. The mere giving of the FDRs as security for obtaining loans would not disentitle the assessee from claiming the set off of the said expenditure as against income earned from the FDRs. If there are any other materials to show that the income earned through the FDR would fall under the different head of incomes and therefore the expenditure incurred on the loans could not be set off, it may be a correct one. But in the present case, there is no such allegation either by the AO or by the Ld.CIT(A). In fact the Ld.CIT(A) had not discussed this issue and the nature of income received by the assessee and the nature of expenditure in order to arrive a correct conclusion. We, therefore, set aside the finding insofar as the loans at S.Nos. 1,4,5,7 & 8 given by the Ld.CIT(A) and remitting it to the file of Ld.CIT(A) for considering the issue afresh.

13. Insofar as the interest expenditure mentioned in Sl.Nos. 2 & 3, it is the case of the assessee that the said loan was taken for the purchase of the immovable property and the said interest was claimed as deduction u/s. 57 of the Act. We have also perused the records and from the records, we found that admittedly the interest mentioned in S.Nos. 2 & 3 are against the loan taken for the purpose of immovable property and therefore the said expenses could not be adjusted as against the income declared u/s. 56 of the Act. At the maximum, the said expenses could be taken into

consideration while computing the capital gains. The AO as well as the Ld.CIT(A) had not accepted the submission that the said interest could be added to the cost of acquisition of the property since the said claim was not made in the return filed by the assessee.

14. The Ld.CIT(A) had not accepted the claim of the assessee only for the reason that the said claim was not made in the return and therefore the appellate authority could not decide the issue at this stage. The said finding of the Ld.CIT(A), in our considered opinion, is not correct. The restrictions to claim a particular income and expenditure, other than the claim made in the returns may be applicable to the assessing officers but not to the appellate authorities. We are considering this issue based on the judgment of the Hon'ble Delhi High Court reported in 435 ITR 85 in which it was held that

"the Commissioner (Appeals) in the exercise of his powers u/s. 254 of the IT Act is entitled to call for production of documents or materials to satisfy himself as to whether or not the deductions claimed were sustainable and viable in law".

15. In the above said judgment, the Hon'ble Delhi High Court had an occasion to consider the claim of the assessee u/s. 80JJAA of the Act which was not a claim in the original returns filed u/s. 139(1) but later on it was claimed in the assessment proceedings which was rejected by the AO for the reason that the said claim was not made in the return of income. The Ld.CIT(A) had allowed the appeal after getting the details of the claim made by the assessee which was reversed and remitted by the Tribunal. In that circumstances, the Hon'ble Delhi High Court has clarified that the appellate authorities has powers to call for the details / documents in order to satisfy himself whether or not the deduction claimed were sustainable and viable in law. On examining the documents, if the Ld.CIT(A) had satisfied himself that the assessee is eligible for the said claim, then naturally the benefit should be given to the assessee. Since in the said case,

the Ld.CIT(A) had completely verified the records and gave a finding that the assessee is entitled to claim deduction u/s. 80JJAA of the Act, the order of the Tribunal setting aside the said finding and remitting the issue to the AO for fresh consideration is not required.

16. In the present case also, the assessee had made a plea that if the interest payment expenditure was not eligible u/s. 57 of the Act, it should be considered for including the same in the cost of acquisition. Admittedly, the assessee had claimed the said interest expenditure in the return of income but made an alternate plea that it can be considered while calculating the capital gains. We do not find that the said claim that too an alternate argument, is barred by any law or by any judgement of the higher authorities. If the assessee is able to prove that the interest expenditure is in respect of the loan borrowed for the purchase of immovable property, at the best it can be taken up for consideration while calculating the capital gains. In order to arrive a correct conclusion, we also remit this issue to the file of Ld.CIT(A).

17. Insofar as the payment of interest in S.No. 6, the AO had disallowed the interest expenditure incurred on the loan amount of Rs. 70 Lakhs since the assessee has not proved that the said amount was used for making FDs with any bank. As already discussed, in respect of the interest expenditure mentioned in S.Nos. 1,4,5,7 & 8 if the loan has been availed for earning any income mentioned under the different heads, the AO can very well disallow the claim made u/s. 57 but in the present case, it was not clear for what purpose the loan has been obtained. If the loan is not obtained for any earning of income under the different heads, then naturally, the assessee can claim the said interest expenditure from the interest earned from the FDRs. From the perusal of the orders of the AO as well as the Ld.CIT(A), we are not able to find out the nature of the loan obtained by the assessee. We, therefore, remit this issue to the Ld.CIT(A) to ascertain the facts on the said loan amount of Rs. 70 Lakhs and if the said loan account is not for the

purpose of earning income from the other heads, then naturally, the assessee is entitled to get benefit u/s. 57 of the Act.

18. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 15th July, 2025.

Sd/-
(INTURI RAMA RAO)
Accountant Member

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Cochin,
Dated, the 15th July, 2025
/MS /

Copy to:

- | | |
|---------------|---------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Cochin |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Cochin