

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI ABRAHAM P. GEORGE, AM & GEORGE GEORGE K., JM

M.P. No. 21/Coch/2017 (Arising out of I.T.A. No.236/ /Coch/2016)
Assessment Year : 2011-12

The Erumely Service Co-operative Bank Ltd., Erumely, Kottayam-686 509. [PAN: AACCT 8991Q]	Vs.	The Income Tax Officer, Ward-4, Kottayam.
(Assessee-Appellant)		(Revenue-Respondent)

I.T.A. No.236 /Coch/2016
Assessment Year : 2011-12

The Income Tax Officer, Ward-4, Erumely, Kottayam-686 509. [PAN: AACCT 8991Q]	Vs.	The Income Tax Officer, Ward-4, Kottayam.
(Assessee -Appellant)		(Revenue-Respondent)

Assessee by	Shri Prasanth Srinivas, CA
Revenue by	Shri A. Dhanaraj, Sr. DR

Date of hearing	19/05/2017
Date of pronouncement	19/05/2017

ORDER

Per ABRAHAM P.GEORGE, ACCOUNTANT MEMBER:

Through this Miscellaneous Petition, assessee seeks restitution of the appeal in I.T.A. No.236/Coch/2015 dated 26/09/2016. Appeal of the assessee is against an order dated 16/03/2016 passed by Pr. CIT, Kottayam u/s. 263 of the Income Tax Act, 1961(in short the 'Act') and seeks its modification.

2. Ld. AR submitted that assessee could not appear on the date of hearing and the appeal was dismissed ex parte. The Ld. DR did not object to restitution of the appeal, or hearing it on merits.

3. We have heard the rival contentions and perused the record. We find the reason cited by the assessee to be fair and hence we recall the appeal. Accordingly, Miscellaneous Petition filed by the assessee is allowed. Appeal is recalled and heard.

4. Ld. Counsel for the assessee submitted that an issue similar to the one raised by it in this appeal had come up for hearing in assessee's own case for the assessment year 2008-09. As per the Ld. AR through an order dated 22/03/2017 in I.T.A. No.08/Coch/2016, this Tribunal had modified the order passed by the Pr. CIT u/s. 263 of the Act and the facts were similar.

5. The Ld. DR fairly submitted that the appeal of the assessee for the impugned assessment year is on a set of facts which are similar to its appeal for AY 2008-09 which has been disposed of by the Tribunal by its order mentioned supra.

6. We have heard the rival contentions and perused the material on record. For the impugned assessment year, revision was done by Pr. CIT for a reason that a portion of the interest received by the assessee during the relevant previous year included interest received from Treasury on deposits of Rs. 12 lakhs made in July 2007(Rs. 7 lakhs) and October, 2007 (Rs. 5 lakhs) which matured in December, 2010 and September, 2010 respectively. The Pr. CIT had held that expenses in the nature of interest paid on funds which were used for making deposits was allowed to the assessee as an expenditure in the earlier years and hence, could not be considered for set off against the interest income. He directed the Assessing Officer to consider the issue afresh and pass an order as per the provisions of the I.T. Act. We find that a similar issue had come up in assessee's own case for the assessment year 2008-09 wherein this Tribunal had held in pages 11 & 12 of its order dated 22/03/2017 as under:

"Thus, when the Id. Assessing Officer allowed claim of expenditure to the assessee, calculating the prorata interest as a ratio of the total interest paid by the assessee during the relevant financial year, he was aware that, that the interest income was for 78 months. We cannot say that it was an erroneous view of law by the Id. Assessing Officer. When interest income was considered by

the Id. Assessing Officer for the whole tenure of the deposits including period prior to the beginning of the previous year, interest expenditure also had to be reckoned for the same period. The view of the Principal Commissioner of Income Tax that interest expenditure alone had to be restricted to the proportionate amount for seven months in the relevant previous year, would be against the matching principles. In other words, it would result in a situation where interest income is reckoned for 78 months but expenditure only for 07 months. We can surely say that Id. Principal Commissioner of Income Tax was trying to substitute a legally permissible view taken by the Id. AO with another view which was not a rational one. Hon'ble Apex Court in the case of Malabar Industrial Co. Ltd (supra) has clearly held that revisionary powers u/s.263 of the Act cannot be invoked for substituting a lawful view taken by the Id. Assessing Officer, with another view. Hence, while upholding the revision order in so far as it concerned allowance u/s.80P(2)(c) (ii) of the Act is concerned, we modify and delete that portion relating to treatment of income and expenditure under the head "income from other sources" on the interest income earned by the assessee from its deposits in Treasury, Kottayam. Order of the Id. CIT stands modified to this extent."

For the impugned assessment year also, we modify the direction of the Pr. CIT and delete that portion relating to treatment of income and expenditure under the head "Income from other Sources" on the interest income earned by the assessee from its deposits in Treasury, Kottayam, in the impugned order of the Pr. CIT. Accordingly, the appeal of the assessee is allowed.

7. In the result, the Miscellaneous Petition filed by the assessee as well as the appeal of the assessee are allowed.

Pronounced in the open court on 19-05-2017.

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

sd/-
(ABRAHAM P. GEORGE)
ACCOUNTANT MEMBER

Place: Kochi

Dated: 19th May, 2017

GJ

Copy to:

1. The Erumely Service Co-operative Bank Ltd., Erumely, Kottayam-686 509.
2. The Income Tax Officer, Ward-4, Kottayam.
3. The Pr. Commissioner of Income-tax, Kottayam.
4. D.R., I.T.A.T., Cochin Bench, Cochin.
5. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin