

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

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.689/Coch/2019 : Asst.Year 2014-2015

Sri.C.V.Jobby Joby's Mall, M/s.Pavizham Jewellery, G.B.Road Palakkad – 678 001. PAN : ACIPJ2065J.	Vs.	The Income Tax Officer Ward 1 Palakkad.
(Appellant)		(Respondent)

Appellant by : Sri.Padmanathan K.V., CA
Respondent by : Sri. Santhom Bose, CIT-DR

Date of Hearing : 10.03.2020	Date of Pronouncement : 10.03.2020
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ORDER

Per George George K, JM :

This appeal at the instance of the assessee is directed against the order of the Commissioner of Income-tax dated 08.11.2019, passed/s 263 of the I.T.Act. The relevant assessment year is 2014-2015.

2. The solitary issue argued by the learned AR is that the assessment order is not prejudicial to the interest of the revenue. According to the learned AR, even assuming that the amount of Rs.40,00,000 declared by the assessee (income from Emu Farm and income from sale of buffaloes) is to be assessed u/s 68 r.w.s. 115BBE of the I.T.Act, there would not be any additional tax liability since assessee is having loss

from "income from house property" amounting to Rs.68,48,754.

3. The brief facts of the case are as follows:

For the assessment year 2014-2015, the return of income was filed on 04.10.2014. The assessment was completed u/s 143(3) of the I.T.Act on 13.12.2016. Subsequently notice u/s 263 of the I.T.Act was issued on 03.09.2019. The reason for issuance of notice u/s 263 of the I.T.Act was to examine the details of net income from Emu Farm (Rs.20 lakh) and net income from sale of buffaloes (Rs.20 lakh) totaling to Rs.40 lakh declared under the head "profits and gains from business or profession". According to the CIT, as per section 68 r.w.s. 115BBE of the I.T.Act, the unexplained cash credit is to be taxed at the rate of 30% without allowing any deduction for the expenditure under any other provisions of the Act.

4. The assessee's AR appeared on 18.09.2019 and also filed a written submission. Against the proposed revision u/s 263 of the I.T.Act, it was submitted that the impugned notice u/s 263 of the I.T.Act lacks jurisdiction and is barred by limitation. Further, it was submitted that during the assessment year 2014-2015, the assessee was having loss from house property amounting to Rs.68,48,754 which can be set off against the addition, if any, made u/s 68 of the I.T.Act. The CIT however rejected the contentions raised by the assessee. The CIT set aside the assessment order with a

direction to the Assessing Officer to redo the assessment *de novo* after obtaining and verifying all the relevant details.

5. Aggrieved by the order of the CIT dated 08.11.2019, passed u/s 263 of the I.T.Act, the assessee has preferred this appeal before the Tribunal. The learned Counsel for the assessee submitted that the issue in question is squarely covered in favour of the assessee by the judgment of the Hon'ble Kerala High Court in the case of *Vijaya Hospitality and Resorts Ltd. v. CIT [(2019) 419 ITR 322 (Ker.)]*. The learned AR of the assessee has not pressed the ground relating to the issue that the revision order passed u/s 263 of the I.T.Act, is barred by limitation. The learned Departmental Representative strongly supported the order passed u/s 263 of the I.T.Act.

6. We have heard the rival submissions and perused the material on record. The Hon'ble Kerala High Court in the case of *Vijaya Hospitality and Resorts Ltd. (supra)* had categorically held that the amendment which prohibits / restricts the set off of losses against income from other sources, was inserted by the Finance Act, 2016 with effect from 01.04.2017 only, i.e. from assessment year 2017-2018 onwards. In the instant case, admittedly, the assessee was having loss from house property to the tune of Rs.68,48,754. Even assuming that the net income from Emu Farm and sale of buffaloes totaling to Rs.40 lakh is to be treated as unexplained credit to be added u/s 68 of the I.T.Act r.w.s. 115BBE of the Act, there would

not be any difference in tax liability, since the loss income from house property could be set off against any addition u/s 68 of the I.T.Act, in view of the judgment of the Hon'ble Kerala High Court in the case of *Vijaya Hospitality and Resorts Ltd. (supra)*. In the instant case, the concerned assessment year is 2014-2015. Therefore, the amendment brought about by the Finance Act, 2016 in view of the judgment of the Hon'ble Kerala High Court in the case of *Vijaya Hospitality and Resorts Ltd. (supra)* does not have application for the assessment year under consideration. Hence, the assessment order dated 20.12.2018, for the assessment year 2014-2015, cannot be stated to be an order, which is prejudicial to the interest of the revenue. Accordingly, we set aside the order passed by the CIT u/s 263 of the I.T.Act in view of the judgment of the Hon'ble Kerala High Court in the case of *Vijaya Hospitality and Resorts Ltd. (supra)*. It is ordered accordingly.

7. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on this 10th day of March, 2020.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Cochin ; Dated : 10th March, 2020.
Devadas G*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT, Thrissur
4. The JCIT, Palakkad Range, Palakkad.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin