

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 30TH JANUARY 2008 / 10TH MAGHA 1929

ITA.No. 128 of 2001()

AGAINST THE ORDER DATED 02/02/2001 IN
ITA.204/COCH/1993 of I.T.A.TRIBUNAL,COCHIN BENCH
.....

APPELLANT:

THE COMMISSIONER OF INCOME-TAX,
COCHIN.

BY ADV. SRI.P.K.R.MENON(SR.),SC FOR IT
SRI.GEORGE K. GEORGE, SC FOR IT

RESPONDENTS:

MAYFLOWER HOTELS(P) LTD.,
PARAMARA ROAD, COCHIN-18.

BY ADV. SRI.T.M.SREEDHARAN

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD
ON 30/01/2008, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

C.N.RAMACHANDRAN NAIR &
T.R.RAMACHANDRAN NAIR, JJ.

.....
I.T. Appeal No.128 of 2001
.....

Dated this the 30th day of January, 2008.

JUDGMENT

C.N.Ramachandran Nair, J.

The appeal is filed against Annexure-C order of the Tribunal whereunder the Tribunal has cancelled the intimation issued under Section 143(1)(a) including the demand of additional tax under Section 143(1A) of the Income Tax Act. In the return filed even though the assessee claimed deduction of Rs.16,60,165/- towards interest payable to KSIDC, it is made clear that the amount was not paid on account of instalment facility granted by KSIDC. Consequently the claim was not allowable by virtue of Section 43B of the Income Tax Act. The assessee does not dispute this position. Since the claim was prima facie inadmissible by virtue of operation of Section 43B, the Assessing Officer issued proceedings under Section 143(1) (a) computing tax liability including additional tax payable under Section 143(1A) of the Act. Even though rectification application was filed against this under Section 154, the same was dismissed by the officer. Appeal filed, however, was allowed by the first appellate authority and the second appeal filed by the department was also dismissed by the Tribunal. It is

against this order of the Tribunal that the department has filed this appeal. We have heard Standing Counsel appearing for the department-appellant and counsel appearing for the respondent-assessee.

2. Counsel for the appellant referred to decision of this court in COMMISSIONER OF INCOME TAX V. SITARAM TEXTILES LTD. (2001) 248 ITR 139 and contended that proceedings initiated under Section 143(1)(a) is perfectly justified. We find that the decision squarely applies to the facts of this case because in the proceedings under Section 143(1)(a) of the Act the Officer has only disallowed expenditure under Section 43B of the Act. Consequently the assessee is liable to pay additional tax under Section 143(1A) of the Act. Counsel for the respondent-assessee submitted that the financial institution involved in this case is covered under Section 43B only with effect from 1.4.1991. According to him, even though the amendment applies for this year also, the assessee was not aware of the provision. Counsel for the assessee also submitted that in the assessee's own statement, part payment made on 25.6.1991 was mentioned and the payment so made qualifies for deduction even under proviso to Section 43B of the Act. We find force in this contention and, therefore, we feel the Assessing Officer should have rectified the proceedings issued under Section 143(1)(a) by limiting the addition to the extent of the amount not

paid till the due date for filing the return. The appeal is therefore partly allowed reversing the order of the Tribunal, but with direction to the officer to allow deduction to the extent of interest paid as on date of filing the return and to rework additional tax liability under Section 143(1A) of the Act.

C.N.RAMACHANDRAN NAIR
Judge

T.R.RAMACHANDRAN NAIR
Judge

pms