

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.M.JOSEPH
&
THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 7TH DAY OF SEPTEMBER 2012/16TH BHADRA 1934

ITA.No. 42 of 2004 ()

(ITA.307/COCH/2000 of I.T.A.TRIBUNAL,COCHIN BENCH)

APPELLANT/APPELLANT:

MUTHOOT FINANCE CORPORATION,
KUMBANAD, REP. BY MANAGING PARTNER, THOMAS JOHN
S/O.MATHEW M.THOMAS (45), MUTHOOT BUILDING
KUMBANAD.

BY ADV. SRI.K.R.SUDHAKARAN PILLAI

RESPONDENT/RESPONDENT:

COMMISSIONER OF INCOME TAX,
LIBRARY BUILDING, KOTTAYAM-1.

R, BY ADV. SRI.JOSE JOSEPH, SC FOR IT

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON
07-09-2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE A: TRUE COPY OF THE ASSESSMENT ORDER NO. FV-5318/CIR-I, TLA DATED 19.2.99 ISSUED BY THE ASSISTANT COMMISSIONER CIRCLE-1, THIRUVALLA.

ANNEXURE B: TRUE COPY OF HIS ORDER IN ITA.1/AC/TVLA/CIT-II/99-2000 DATED 7.7.2000 BY THE COMMISSIONER OF APPEALS.

ANNEXURE C: A TRUE COPY OF THEIR ORDER IN ITA 307/COCH/2000 DATED 15.3.04.

ANNEXURE D: TRUE COPIES OF THE GROUNDS OF APPEAL FILED BY THE APPELLANT BEFORE THE CIT (A)

ANNEXURE E: TRUE COPIES OF THE GROUNDS OF APPEAL FILED BY THE APPELLANT BEFORE THE HONOURABLE INCOME TAX APPELLATE TRIBUNAL.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

PA TO JUDGE

Sci.

C.R.

K.M. JOSEPH & K. HARILAL JJ.

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I.T.A. No. 42 OF 2004

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Dated this the 7th day of September 2012

JUDGMENT

K.M. Joseph, J.

This appeal is preferred by the assessee questioning the order passed by the Tribunal. The appellant is a financial enterprise engaged in accepting fixed deposits as loans for which it pays interest. The appeal relates to the year 1996-97.

2. The assessing officer completed the assessment by enhancing the returned income to Rs.3,93,060/-as against the declared amount of Rs.2,78,070/-. The addition was made in a sum of Rs.1,14,983/- which was claimed as interest paid by the appellant to the depositors. It was disallowed on the basis that the maximum rate of interest payable under the Kerala Money Lenders Act is 14%. The amount which was disallowed represents the amount paid in excess of the legal limit. The appeal carried by the appellant was unsuccessful in regard to the

amount disallowed on account of the excess payment of interest. The Tribunal has affirmed the said view. Accordingly the appellant is before us.

3. We heard the learned counsel for the appellant and the learned counsel for the Revenue.

4. The learned counsel for the appellant would submit that the Tribunal acted illegally in not giving credit to the amount which was paid to the depositors of the appellant. He would rely on the judgment of the Apex Court reported in **Commissioner of Income Tax, Patiala v. Piara Singh 124 (1980)ITR 40**. That was a case which arose under the Income-tax Act, 1922 and under Section 10 thereof. The facts have been set out as follows :

“The respondent, who was carrying on smuggling activity, was apprehended by the Indian police, while crossing the border into Pakistan, and a sum of Rs.65,000/- in currency notes was recovered from his person. On interrogation he stated that he was taking the currency notes to Pakistan to purchase gold there and smuggle it into India. The customs authorities confiscated the currency notes. The income-tax authorities found that the assessee was carrying on the business of smuggling and that he was liable to income-tax on income from that business and such income was assessed to tax. The question was whether the assessee was entitled to deduction under S.10 of the Indian I.T.Act, 1922,

of the loss of Rs.65,000/-, arising by the confiscation of the currency notes”.

The court held as follows:

“ The carriage of the currency notes across the border was an essential part of the smuggling operation and detection by the customs authorities and consequent confiscation was a necessary incident and constituted a normal feature of such an operation. The confiscation of the currency notes was a loss occasioned in pursuing the business of smuggling: it was a loss in much the same way as if the currency notes had been stolen or dropped on the way while carrying on the business. It was a loss which sprang directly from the carrying on of the business and was incidental to it and its deduction had to be allowed under S.10.”

5. On the strength of the said judgment, the learned counsel for the appellant would contend that even where the income was found to be illegal, it was held that loss could be claimed as a deduction. If the income is tainted and he is forced to pay the tax, he poses the question as to how it could be held that the amount which is paid in excess of the legal limit under the Money Lenders Act should not be allowed to be deducted from the income. No doubt, he pointed out Section 37 of the Income Tax Act, 1961 which has been relied on by the Tribunal and also by the authorities. Section 37 in so far as it is material reads as follows:

“37. General (1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 ¹[**] and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

²[Explanation- For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.]

6. He would also submit that the payment of excess interest cannot be treated as an offence in an attempt to get over the taboo against deducting the higher interest paid. He also drew support from the judgment of the Apex Court referred to above to get over the second aspect of the explanation namely any expenditure which is prohibited by law cannot be claimed.

7. Per contra, the learned standing counsel for the Revenue would point out that the Explanation to Section 37 was inserted by the Finance Act No.2/1998 with effect from 01/04/1960. He would point out that there was no similar explanation in regard to Section 10 of the Income-Tax Act, 1922.

He would further contend that this is not a case where the business conducted by the appellant could be said to be illegal as such. What is involved is applying the terms of the explanation to the facts of the case which is what has been done by the Tribunal.

8. We would think that there is no merit in the appeal. The assessment year in question is 1996-97. Therefore, the assessment is to be made under the Income-tax Act, 1961. By virtue of the Finance Act, 1998, Explanation stands inserted in Section 37 with effect from 01/04/1960. This means that a deduction could not be claimed in respect of the year 1996-97, if it is an expenditure incurred by the assessee for a purpose which is an offence or it is prohibited by law. A like provision was not present in Section 10 of the Income Tax Act 1922. Therefore, the decision of the Apex Court relied on by the learned counsel for the appellant turned on facts present in the said case. The Apex Court had no occasion to consider a provision like Section 37 with the Explanation. As far as the Explanation is concerned as stated above if expenditure is laid out for a purpose which constitutes an offence or if it is prohibited by law, it cannot be treated as an expenditure for

which deduction can be claimed.

9. The right of the assessee to claim deduction will depend upon the express provisions of the Act. The terms of the explanation are clear. In the facts of the case, even though the purpose for which the amount was expended may not lead to the commission of an offence, the expenditure by way of payment of interest in excess of the limit imposed under the Kerala Money Lenders Act is prohibited. The grant of interest at the rate an excess of 14% is prohibited. The amount of deduction claimed by the appellant represents money paid as interest in excess of 14%. Therefore, the expenditure is in the teeth of the explanation to Section 37 which is the legal provision applicable. We see, therefore, no merit in the appeal and the questions are answered against the appellant.

The appeal is dismissed.

Sd/-

K.M. JOSEPH, JUDGE

Sd/-

K. HARILAL, JUDGE

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