

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

I.T.A.No. 3 of 2015

AGAINST THE ORDER IN ITA 687/2013 of I.T.A.TRIBUNAL, COCHIN BENCH, DATED 14-03-2014

APPELLANT/RESPONDENT:

MALANKARA PLANTATIONS LTD.
MALANKARA BUILDING, KODIMATHA,
KOTTAYAM - 686 039

BY ADVS.SRI.V.ABRAHAM MARKOS
SRI.BINU MATHEW
SRI.TOM THOMAS (KAKKUZHIYIL)
SRI.ABRAHAM JOSEPH MARKOS
SRI.ISAAC THOMAS

RESPONDENT/APPELLANT:

THE ASSISTANT COMMISSIONER OF INCOME TAX
KOTTAYAM - 686 001.

R BY SRI.JOSE JOSEPH, SC FOR INCOME TAX
SRI.P.KR.MENON, SC FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 21-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A: TRUE COPY OF THE ASSESSMENT ORDER DATED 31.12.2010 PASSED BY THE RESPONDENT FOR THE ASSESSMENT YEAR 2008-2009.

ANNEUXRE B: TRUE COPY OF APPELLATE ORDER DATED 28.8.2013 PASSED BY THE COMMISSIONER OF INCOME TAX (APPEALS) - IV, KOCHI.

ANNEXURE C: TRUE COPY OF ITA NO.697/COCH/2013 DATED 1.11.2013 FILED BY THE RESPONDENT BEFORE THE INCOME TAX APPELLATE TRIBUNAL, KOCHI BENCH.

ANNEXURE D: CERTIFIED COPY OF IMPUGNED ORDER DATED 14.3.2014 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, KOCHI BENCH IN ITA NO.687/COCH/2013.

// TRUE COPY //

P.A.TO JUDGE

ANTONY DOMINIC & SHAJI P. CHALY, JJ.

I.T.A.No.3 of 2015

Dated this the 21st day of July, 2015

JUDGMENT

Antony Dominic, J.

The assessee has filed this appeal aggrieved by the order passed by the Income Tax Appellate Tribunal, Cochin Bench, in ITA 687/13 which was filed by the Revenue.

2. The assessee, is a company which had given certain loans and had leased out its machineries to a subsidiary company. It was entitled to receive interest for the loans and for the machineries leased out it was entitled to rental income. In the returns filed, the accruals of interest and rental income were returned as income from other sources as provided under Section 56 of the Income Tax Act.

3. Since the subsidiary company was incurring huge losses, the assessee had written off interest and lease charges and claimed its deduction in the assessment year 2008-2009. The Assessing Officer considered the said claim under Section 57(iii) of the Act and disallowed the deduction. The appeal filed before the Commissioner was allowed in favour of the assessee.

4. The appellate order was challenged by the Revenue before the Tribunal and the Tribunal restored the order of the Assessing Officer. It is

in this background, this appeal has been filed by the assessee and the question of law framed is mainly whether on the facts of the case, the Appellate Tribunal is right in confirming the disallowance of the claim for interest and lease rentals written off.

5. We heard the senior counsel for the appellant and the senior counsel appearing for the Revenue and considered the submissions made.

6. As we have already stated, the income in question was returned as income from other sources. When an income has been returned as income from other sources, one of the heads of income provided in Section 40, deduction can also be only under the provisions in the same head of income. Therefore, in respect of income from other sources, deduction of income is permissible only under Section 57, sub section (iii) of which provides for deduction of any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly or exclusively for the purpose of making or earning such income. Evidently, this provision is not attracted in the case in question and, therefore, the Assessing Officer has rightly declined the claims of the assessee.

7. Before us, learned counsel contended that the assessee was entitled to claim deduction under Section 36(vii), which enables deduction of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year, subject to the provisions of Section 37(2). In so far as this claim of the appellant is concerned, first of all, such a contention was not raised before any of the lower authorities. Not only that, as rightly pointed out by the learned Senior Counsel for the Revenue deduction under Section 36 is permissible only in so far as the income under the head 'profits and gains of business or profession'. Therefore, this claim of the assessee also cannot be sustained. We do not find anything illegal in the conclusions of the Tribunal.

Therefore, answering the question raised against the appellant, appeal is dismissed.

**ANTONY DOMINIC
JUDGE**

**SHAJI P. CHALY
JUDGE**