IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

ITA.No. 3 of 2013 ()

AGAINST THE ORDER IN ITA 417/2009 of INCOME TAX APPELLATE TRIBUNAL,COCHIN BENCH DATED 22-06-2012

APPELLANT/APPELLANT/ASSESSEE:

THE KERALA STATE CASHEW DEVELOPMENT CORPORATION LTD.,
CASHEW HOUSE, MUNDAKKAL, KOLLAM.

BY ADV. SRI.S.ARUN RAJ

RESPONDENT/RESPONDENT/REVENUE:

COMMISSIONER OF INCOME TAX,
KAWADIAR, THIRUVANANTHAPURAM - 695 003.

BY SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 20-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ITA.No. 3 of 2013

APPENDIX

APPELLANT'S ANNEXURES:

ANNEXURE – A : TRUE COPY OF THE ASSESSMENT ORDER DATED 15.2.2008 PASSED BY THE ASST. COMMISSIONER OF INCOME TAX, CIRCLE – 1, KOLLAM FOR THE AY 2004-05.

ANNEXURE – B : TRUE COPY OF THE ORDER DATED 24.03.2009 PASSED BY THE CIT(A) – 1, TRIVANDRUM FOR THE AY – 2004-05.

ANNEXURE – C : TRUE COPY OF THE ORDER DATED 22.6.2012 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN IN THE CASE OF THE APPELLANT FOR THE A.Y.2004-05.

ANNEXURE – D : TRUE COPY OF SOME OF THE ORDER BASED ON LOAN AGREEMENTS EXECUTED BETWEEN THE APPELLANT AND THE GOVERNMENT OF KERALA.

RESPONDENT'S ANNEXURES: NIL

//TRUE COPY//

P.A TO JUDGE

smv

ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.

I.T.A. No.3 of 2013

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Dated this the 20th day of August, 2015

JUDGMENT

Antony Dominic,J.

This appeal is filed by the Kerala Cashew Development Corporation Ltd. challenging the order passed by the Income Tax Appellate Tribunal, Cochin Bench in ITA No.417/2009 pertaining to the assessment year 2004-2005.

2. Three issues are raised in this appeal. The first issue is with regard to dis-allowance of interest on Government loan to the extent of Rs.11,54,95,137/-. The second issue is regarding the addition of interest on Government loan outstanding as on 31.03.2004 and the third issue pertains to addition of interest on Government loan on which the rate of interest is not fixed. By the impugned order the Tribunal sustained all the three additions. It is this order which is challenged by the assessee and the questions of law raised are essentially regarding the correctness of the said additions.

3. Heard the learned counsel for the assessee and the learned Standing Counsel appearing for the Revenue.

4. In so far as the first issue regarding dis-allowance of interest on Government loan to the extent of Rs.11,54,95,137/- is concerned, in paragraph 5 of its order though the Tribunal states that the Government had not initially specified any terms and conditions of the loan, at a later part of the order the Tribunal says that the Government in their order dated 03.08.1996 specified the rate of interest and penal interest. Proceeding further, the main reason assigned by the Tribunal for sustaining the dis-allowance is that the Government had not taken any action for recovery of the amount. As rightly pointed out by the counsel, in coming to this conclusion the Tribunal or the lower authorities did not make reference to the relevant Government orders on the basis of which the loan was sanctioned and also the orders in which conditions were specified by the Government.

5. Similar is a case that with respect to addition of interest on Government loan outstanding as on 31.03.2004, on which

date, while the assessee contends that the part of the principal amount of loan was converted as share capital and the revenue disputes it by contending that the conversion included the outstanding interest as well. In so far the 3rd item regarding the addition of interest on the Government loan on which rate of interest is not fixed is concerned, though the total amount noticed in the First Appellate Authority's order is Rs.12,61,32,606/-, the Tribunal seems to have proceeded that it is only Rs.4,32,34,476/-. Here again, relevant Government orders are not referred to or discussed.

6. All these in our view calls for re-examination of issue. Though, we were initially inclined to remit the matter to the Tribunal, we notice that the findings of the Tribunal are basically reiteration of the findings of the lower authorities. Considering that factual situation, we deem it appropriate to remit the matter to the Assessing Officer so that the whole issue can be examined with notice to the assessee.

7. Accordingly, we set aside the impugned orders passed by the Tribunal and also that of the lower authorities and remit the

matter to the Assessing Officer with a direction to re-consider aforesaid three issues with notice to the assessee.

Appeal is disposed of accordingly.

Sd/-

ANTONY DOMINIC
JUDGE

Sd/-

SHAJI P. CHALY
JUDGE

smv