



2025:KER:298

ITA NO. 77 OF 2018

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

TUESDAY, THE 7<sup>TH</sup> DAY OF JANUARY 2025 / 17<sup>TH</sup> POUSHA, 1946

ITA NO. 77 OF 2018

AGAINST THE ORDER/JUDGMENT DATED 15.03.2018 IN ITA  
NO.501/COCH/2016 OF I.T.A.TRIBUNAL, COCHIN BENCH

APPELLANT/APPELLANT:

COCHIN INTERNATIONAL AIRPORT LTD.,  
KOCHI AIRPORT P.O.,  
NEDUMBASSERY [PAN : AAACA 9658B]

BY ADVS.  
SRI.JOSEPH MARKOS (SR.)  
SRI.ABRAHAM JOSEPH MARKOS  
SRI.ISAAC THOMAS  
SRI.HARAN THOMAS GEORGE  
SRI.P.G.CHANDAPILLAI ABRAHAM  
SMT.RACHEL ABRAHAM

RESPONDENT (S) /RESPONDENT (S) :

1 THE ASSISTANT COMMISSIONER OF INCOME TAX  
CORPORATE CIRCLE-1(1), KOCHI.



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\*ADDL.R2 THE STATE, REP. BY THE CHIEF SECRETARY,  
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

\*ADDL.R3 THE PRINCIPAL SECRETARY, FINANCE DEPARTMENT,  
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

\*ADDL.R4 THE LAW SECRETARY,  
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

\*ADDL.R5 THE REGISTRAR GENERAL,  
HIGH COURT OF KERALA, ERNAKULAM.

\*ADDL.R2 TO R5 ARE IMPEADED AS PER ORDER DATED 26.11.2018 IN  
UNNUMBERED ITA OF 2018

BY ADVS.

SRI.P.K.R.MENON, SENIOR COUNSEL, GOI (TAXES)

SRI.JOSE JOSEPH, SC, FOR INCOME TAX

SRI.C.E.UNNIKRISHNAN, SPL.GOVERNMENT PLEADER

SRI.MOHAMMED RAFIQ, SPL.GOVERNMENT PLEADER

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON  
16.12.2024, THE COURT ON 07.01.2025 DELIVERED THE FOLLOWING:



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## **J U D G M E N T**

**Easwaran S., J.**

The assessee is before us in this appeal aggrieved by the order of the Income Tax Appellate Tribunal, Kochi bench.

### **Facts of the case**

2. The appellant, a domestic company engaged in operating and maintaining of the Cochin International Airport, is an assessee under the provisions of the Income Tax Act, 1961. For the assessment year 2012-13, the appellant declared a total income of Rs.134,43,40,439/- under Section 115-JB of the Income Tax Act, 1961. Since the tax payable under the regular provisions of the Act was lower and the appellant had claimed deduction under Section 80-IA of the Act in respect of the eligible activity of operating and maintaining the Airport, which is an infrastructure facility, it filed a revised return on 4.12.2013 declaring a taxable income of Rs.11,88,92,410/-. The return was selected for scrutiny under Section 143(3) of the Income Tax Act, 1961 and was completed by order dated 27.3.2015. Since the 1<sup>st</sup> respondent-Department did not accept the claim of deduction under Section 80-IA and also made various other disallowances, the appellant preferred appeal against the order and the same is stated to be pending. During the said financial year, the appellant



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debited to the profit and loss account an amount of Rs.1,00,33,280/- towards the provision for bad and doubtful debts and the said amount was reduced from the amount of trade receivables and short term loans and advances. Since the Provision debited in the profit and loss account is simultaneously obliterated from the value of trade receivables and short term loans and advances, the same was treated by the appellant as a write off in the income tax return. In the assessment proceedings, however, the Department examined this aspect and called for the break up of the provision for bad and doubtful debts vide letter dated 3.2.2015. The appellant replied to the said notice by pointing out the decision of the Hon'ble Supreme Court in **Vijaya Bank v. Commissioner of Income Tax (CIT)** [323 ITR 166]. The appellant contends that it is after considering the said reply that the assessing authority decided to accept the explanation and proceeded to issue the assessment order. However, the Principal Commissioner of Income Tax-1, Kochi found that the said assessment was erroneous and prejudicial to the interest of the Revenue, and decided to invoke the jurisdiction under Section 263 of the Income Tax Act, 1961 and issued a notice proposing to revise the order of assessment. The appellant showed cause by its reply dated 22.9.2016. However, the reply was found to be unsatisfactory and therefore, the Principal Commissioner of Income



Tax-1, Kochi directed the assessing authority to re-examine the issue. Aggrieved by the order, the appellant preferred an appeal before the Income Tax Appellate Tribunal, which was dismissed by order dated 15.3.2018, which is impugned in the present appeal. While the appeal was pending, the assessing authority passed revised orders of assessment under Section 143 of the Income Tax Act, 1961 on 21.2.2017 disallowing the deduction of the claim of doubtful debts amounting to Rs.1,00,33,280/-. It is stated that the order is also under challenge in a separate appeal preferred before the Tribunal. In the appeal before us, the assessee has raised the following questions of law, for our consideration:

- “i. Whether on the facts and in the circumstances of the case the Appellate Tribunal is right in holding that the Commissioner was justified in invoking the revisionary jurisdiction under Section 263 of the Income Tax Act?**
- ii. Whether on the facts and in the circumstances of the case and in the light of Annexure C and D replies by the Appellant there was any evidence or material before Appellate Tribunal to justify its finding that the Assessing Officer has not made any enquiry with respect to the issue in question and therefore the Commissioner was justified in invoking the jurisdiction under Section 263 of the Income Tax Act.”**

3. We have heard Sri. Joseph Marcose, the learned Senior Counsel



appearing on behalf of the appellant, assisted by Ms.Rachel Abraham, and Sri.Jose Joseph, the learned Senior Standing Counsel appearing for the 1<sup>st</sup> respondent-Department.

4. The learned Senior Counsel appearing for the appellant primarily contended that the Principal Commissioner of Income Tax-1, Kochi had no jurisdiction to invoke Section 263 of the Income Tax Act, 1961 because it was basically due to a change of opinion that he decided to revise the order of assessment, which is impermissible under law. He maintained the stand that going by the decision of the Hon'ble Supreme Court in **Vijaya Bank** (supra), the appellant was entitled to claim deduction of the amount of Rs.1,00,33,280/- towards the provision for bad and doubtful debts. Reliance is also placed on the decision of the Hon'ble Supreme Court in **Commissioner of Income Tax (Central), Ludhiana v. Max India Ltd. [(2007) 15 SCC 401]** to contend that when there are two views possible and the income tax officer had taken one view, it cannot be treated as an erroneous order prejudicial to the interest of the Revenue and that the said order cannot be revised by exercising the power under Section 263 of the Income Tax Act, 1961.

5. On the other hand, the learned Senior Standing Counsel appearing for the 1<sup>st</sup> respondent-Department contended that though a



provision for bad debts was made in the profit and loss account, the same is not seen obliterated. He further pointed out that even in the profit and loss account, especially clause 2.15.1, it is specifically stated by the appellant that the Company is hopeful of recovering the aforesaid amount at some point of time.

6. We have considered the rival submissions raised across the bar.

7. The question that falls for our consideration is as to whether the Commissioner can exercise revisional jurisdiction under Section 263 of the Income Tax Act, 1961, if he is satisfied that the order of the assessing officer sought to be revised is erroneous and also prejudicial to the interest of the Revenue? Pertinently, the order of assessment passed under Section 143 is always subject to the power of revision under Section 263 by the Principal Commissioner of Income Tax. Of course, for exercise of the said power, two conditions must be satisfied; (a) the order is erroneous, and (b) it is prejudicial to the interest of the Revenue.

8. It is in this context that we are called upon to decide as to whether the order passed by the Principal Commissioner of Income Tax as affirmed by the appellate tribunal suffers from any material irregularity.

9. An order sought to be revised under Section 263 would become erroneous and fall within the category of errors, if it is based on an



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incorrect assumption of facts or application of law. Admittedly, the appellant claimed deduction of Rs.1,00,33,280/- for which notice under Section 142 of the Income Tax Act was issued by the assessing officer on 26.5.2014 and 24.12.2014. The appellant replied to the said notice. Thereafter on 27.3.2015, the assessment order was passed accepting the stand of the assessee in not including the amount of Rs.1,00,33,280/-. In fact, we must note that in the assessment order, the assessing officer has not stated any reason as to why the claim for deduction of Rs.1,00,33,280/- was accepted. Therefore, the said order was palpably wrong and falls within the meaning of “error”.

10. It is true that all orders, which are erroneous, are not liable to be subjected to proceedings under Section 263 of the Income Tax Act, 1961. To invoke Section 263, the Principal Commissioner of Income Tax must be satisfied that the erroneous order also causes prejudice to the Revenue. The real purport of Section 263 is to remove the prejudice caused to the Revenue by the erroneous order passed by the assessing officer and it empowers the Commissioner to initiate *suo motu* proceedings, when either the assessing officer takes a wrong decision without considering materials available on record or renders a decision without enquiry. The role of the assessing officer under the Income Tax Act, 1961 is not only that of an





adjudicator but also of an investigator and he cannot remain oblivious in the face of a claim without any enquiry. The assessing officer must exercise a dual role of protecting the interest of the Revenue as well as that of the assessee and that is the reason why he is expected to pass orders with utmost diligence. If, on facts, a claim made is assumed to be correct, then the assessing officer must necessarily state reasons as to why he is allowing the claim.

11. In **Malabar Industrial Company Ltd. v. Commissioner of Income Tax [243 ITR 83 (SC)]**, the Hon'ble Supreme Court held as follows:

“There can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer; it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind.”

12. Therefore, in the light of the principle discussed above, we find that Section 263 of the Income Tax Act, 1961 applies in the following cases:

- (a) the order sought to be revised contained error for lack of reasoning;
- (b) the order sought to be revised proceeds on incorrect assumption of



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facts and applies the law incorrectly, and

(c) stereotype orders passed by the assessing officer simply accepting the version of the assessee.

13. Turning to the facts of this case, on a perusal of the order of assessment, it is evident that the assessing officer did not show any application of mind and mechanically accepted the statement of the assessee. When the assessee is found to have claimed deduction for Rs.1,00,33,280/- towards the “provision for doubtful assets” for the purpose of computation of book profit under Section 115-JB of the Income Tax Act, 1961, the assessing officer did not state any reason as to why he decided, if at all, to accept the explanation of the assessee despite the fact that the said amount was not debited for the provision for doubtful account and consequently, the provision of doubtful debts account has not been obliterated. Thus, it is only for disclosure purposes that the amount was shown as a reduction from the trade receivables in the balance sheet. The assessee has not included the said amount as written off debts, but was hopeful of getting it back at some point of time.

14. Viewed in the above perspective, we cannot find fault with the Principal Commissioner of Income Tax for having exercised his jurisdiction under Section 263 of the Income Tax Act, 1961. Consequently, the order



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passed by him after hearing the appellant and directing the assessing officer to re-examine the said issue is perfectly justifiable and legal. The Tribunal, on the other hand, had analysed the position of law as stated by us above and concluded rightly that the order passed by the Commissioner of Income Tax did not suffer from any illegality or perversity. Therefore, we are of the considered view that the order impugned in the appeal does not suffer from any jurisdictional infirmity.

As an upshot of these discussions, we are of the considered view that there is no merit in the appeal and the appeal is liable to be dismissed. Thus, we dismiss the income tax appeal by answering the questions of law against the assessee and in favour of the Revenue. No order as to costs.

Sd/-

**DR.A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

Sd/-

**EASWARAN S.**  
**JUDGE**

jg



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APPENDIX OF ITA 77/2018

PETITIONER ANNEXURES

Annexure A	TRUE COPY OF THE ASSESSMENT ORDER DATED 27/03/2015 PASSED UNDER SECTION 143(3) BY THE RESPONDENT
Annexure B	TRUE COPY OF THE RELEVANT PAGES OF ANNUAL ACCOUNTS
Annexure C	TRUE COPY OF THE REPLY DATED 03/02/2015 FILED BY THE APPELLANT TO QUERIES RAISED DURING THE ASSESSMENT PROCEEDINGS
Annexure D	TRUE COPY OF REPLY DATED 03/03/2015 FILED BY APPELLANT BEFORE THE RESPONDENT
Annexure E	TRUE COPY OF THE NOTICE UNDER SECTION 263 DATED 05/09/2016 ISSUED BY THE PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOCHI TO THE APPELLANT
Annexure F	TRUE COPY OF THE APPELLANT'S DETAILED REPLY DATED 22/09/2016 SUBMITTED BEFORE THE PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOCHI
Annexure G	TRUE COPY OF THE ORDER DATED 26/09/2016 UNDER SECTION 263 ISSUED BY THE COMMISSIONER
Annexure H	TRUE COPY OF THE APPEAL TRIBUNAL DATED 17/11/2016 PREFERRED BEFORE THE INCOME TAX APPELLATE TRIBUNAL
Annexure I	TRUE COPY OF THE IMPUGNED ORDER DATED 15/03/2018 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL



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**Annexure J**                      **TRUE COPY OF THE REVISED ASSESSMENT ORDER  
DATED 21/02/2017 ISSUED BY THE RESPONDENT**

**RESPONDENT'S ANNEXURES**

**ANNEXURE-1**                      **TRUE COPY OF THE TABLE SHOWING THE DETAILS OF  
COLLECTION OF COURT FEE FOR THE YEAR 2015-16,  
2016-17, AND 2017-18 AND ALSO THE AMOUNTS  
SPENT TOWARDS JUDICIAL DEPARTMENT INCLUDING  
COURTS**

