2025:KER:90157

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

TUESDAY, THE 25TH DAY OF NOVEMBER 2025 / 4TH AGRAHAYANA, 1947

ITA NO.5 OF 2021

AGAINST THE ORDER DATED 19.05.2020 IN ITA NO.128 OF 2017 OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH

APPELLANT/APPELLANT IN ITA:

**ASPINWALL AND COMPANY LIMITED
PRESENTLY AT POST BOX NO 560,
SUBRAMANIAN ROAD, WILLINGDON ISLAND,
KOCHI-682 003, REPRESENTED BY ITS CHIEF
FINANCIAL OFFICER. MR. T.R.RADHAKRISHNAN.**

**BY ADVS.
SHRI.M.GOPIKRISHNAN NAMBIAR
SHRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS
SHRI.PAULOSE C. ABRAHAM
SHRI.RAJA KANNAN**

RESPONDENT/RESPONDENT IN ITA:

**THE COMMISSIONER OF INCOME TAX
C.R.BUILDING, I.S PRESS ROAD, COCHIN-682 018.**

BY SRI.JOSE JOSEPH, STANDING COUNSEL

THIS INCOME TAX APPEAL HAVING COME UP FOR ADMISSION ON 20.11.2025, THE COURT ON 25.11.2025 DELIVERED THE FOLLOWING:

2025:KER:90157

JUDGMENT

Harisankar V. Menon, J.

This appeal, at the instance of the assessee, seeks to challenge the order dated 19.05.2020 of the Income Appellate Tribunal, Cochin Bench in I.T.A. No.128/Coch/2017, as regards the assessment year 2012-13.

2. While processing the return of income filed by the assessee under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), the Assessing Officer (AO) noticed that interest was paid by the assessee on Agricultural Income Tax (AIT) dues at Rs.94,00,179/- and disallowed the claim made by the assessee invoking the provisions of Section 40(a)(ii) of the Act, read with Rule 7A of the Income Tax Rules, 1962 (hereinafter referred to as 'the Rules') adding back 35% of the interest paid as above, amounting to Rs.32,90,063/-. The first appellate authority, while disposing of the appeal filed against the afore assessment, took the view that disallowance ought not to have been with reference to Section 40(a)(ii) and it ought to have been with reference to Section 37 of the Act.

The AO was, therefore, directed to verify whether the amount of Rs.94,00,179/- was towards the delayed payment of AIT and if so, to disallow the said amount in its entirety. The assessee filed a further appeal to the Tribunal, and by the impugned order, the Tribunal concurred with the findings of the first appellate authority and dismissed the appeal. It is in the afore circumstances that the appellant has preferred the captioned appeal under Section 260A of the Act.

3. Heard Sri.Raja Kannan, learned counsel for the appellant-assessee and Sri.Jose Joseph, learned Standing counsel for the revenue.

4. The following question of law - as reframed - arises for our consideration:

i. Whether, on the facts and in the circumstances of the case, is not the interest paid on account of the delayed payment of Agricultural Income Tax, an eligible deduction under Section 37 of the Income Tax Act, 1961?

5. Sri.Raja Kannan, the learned counsel for the appellant, would contend that the scheme of the Kerala Agricultural Income Tax Act,1991 (hereinafter referred to as

'AIT Act') was not noticed while passing the impugned order. According to him, on a perusal of the scheme under the AIT Act, the fact that only simple interest is being levied would show that the interest levied is "compensatory in nature" and hence eligible for the deduction under Section 37 of the Act. He would rely on **Pratibha Processors and Others v. Union of India and Others [(1996) 11 SCC 101]**, **M/s. Mahalaxmi Sugar Mills Co. v. C.I.T., Delhi [(1980) 3 SCC 475]**, **Consolidated Coffee Ltd. v. Agricultural Income Tax Officer, Madikeri and Others [(2001) 1 SCC 278]**, **M/s. Prakash Cotton Mills Pvt. Ltd. v. Commissioner of Income Tax (Central), Bombay [(1993) 3 SCC 452]** and **Commissioner of Income Tax v. Dhanalakshmi Bank Ltd. [2003 (2) KLT 1076]**, in support of the above contentions.

6. *Per contra*, Sri.Jose Joseph, learned Standing Counsel for the revenue, would submit that the question as to whether the interest satisfied is "compensatory", or not, need not be considered at all, since what was disallowed was the interest on AIT dues satisfied, which was not an eligible

deduction under the provisions of the Act. Therefore, when the AIT itself was not taxable under the Act, interest paid on AIT also is not deductible.

7. We have considered the rival contentions as well as the connected records.

8. It is not in dispute that the interest which is now disallowed under Section 37 of the Act is with reference to the delayed payment of AIT. With reference to the provisions of Section 10(1) of the Act, the agricultural income of an assessee is not includable in his total income. Such being the position, it cannot be disputed that even the very AIT paid was not an allowable deduction under the Act. The interest paid takes its colour from the tax that was defaulted on account of which interest was demanded. When the tax itself was not an admissible deduction under the provisions of the Statute, it goes without saying that the interest paid on such delayed payment was also not deductible.

9. The provisions of Section 37 of the Act is also to be noticed in this regard. It is the expenditure incurred "for the

purpose of the business or profession" that is prescribed as an eligible deduction. Here, the appellant-assessee admittedly has delayed the payment of AIT on account of which interest was sought to be demanded. The delayed payment of AIT cannot be considered in the business interest of the assessee, and therefore, the interest paid for the delay cannot be considered as expended for the purposes of the business of the assessee. True, the liability to AIT has arisen on account of the business of the assessee. But this cannot be extended to the interest payable on account of the delayed payment of AIT. The Apex Court, in **Bharat Commerce and Industries Ltd. v. Commissioner of Income-Tax [(1998) 230 ITR 7339 (SC)]**, has also held that the delayed payment of income tax can in no way be considered as an expenditure laid out wholly and exclusively for the purpose of business. When that be so, the assessee would not be entitled to any deduction with respect to the provisions of the Act.

10. The reliance placed by the learned counsel on **Pratibha Processors** (*supra)*, does not appear to be apposite,

insofar as it is the concept of tax/interest/penalty, which was explained therein. The question as to whether the interest charged is eligible for the benefit available under Section 37 of the Act did not arise for consideration. The judgment of the Apex Court in **Mahalaxmi Sugar Mills Co.** (*supra),* was with reference to the interest paid on arrears of Cess under the U.P. Sugarcane Cess Act, 1956. True, the Apex Court held that interest so paid would amount to expenditure laid out wholly or exclusively for the purpose of the business. But, it is to be noticed that the very Cess was an eligible deduction under the Act, whereas in the case at hand, as already noticed, AIT was not a permissible deduction. Judgment of the Apex Court in **Consolidated Coffee Ltd.** *(supra)*, true, found that interest under the Agricultural Income Tax Act is compensatory in nature. However, the said judgment was with reference to the provisions of the Karnataka Agricultural Income Tax Act, 1957, and not with reference to the Income Tax Act or the eligibility for deduction under Section 37 of the Act. So also, the dictum in **Prakash Cotton Mills Pvt. Ltd**. *(supra)* is also not apposite,

since the Apex Court, in that case, considered the eligibility for deduction on interest for delayed payments of Cess, which, in turn, was an eligible deduction under the Act thereof.

11. On the whole, we are of the opinion that the appellant-assessee will not be entitled for the benefits flowing out of Section 37 of the Act, and so it is not entitled to succeed.

Resultantly, this appeal would stand dismissed, answering the question of law, framed by us against the appellant-assessee and in favour of the revenue.

Sd/-

A.MUHAMED MUSTAQUE

JUDGE

Sd/-

HARISANKAR V. MENON

JUDGE

Skk

APPENDIX OF ITA NO.5 OF 2021

PETITIONER'S ANNEXURES:

ANNEXURE A	**THE TRUE COPY OF THE ASSESSMENT ORDER DATED 26.3.2015 ISSUED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CORPORATE CIRCLE-1 (1) KOCHI, UNDER SECTION 14(3) O THE IT ACT, 1961.**
ANNEXURE B	**THE TRUE COPY OF THE ORDER DATED 31.1.2017 ISSUED BY THE COMMISSIONER OF INCOME TAX (APPEALS)-1 KOCHI IN APPEAL NO ITA 74/R-1/CIT(A) 2015-16.**
ANNEXURE C	**THE TRUE COPY OF THE APPEAL MEMORANDUM (WITHOUT ANNEXES) DATED 3.4.2017 FILED BY THE APPELLANT BEFORE THE INCOME TAX APPELLATE TRIBUNAL COCHIN BENCH.**
ANNEXURE D	**THE TRUE COPY OF THE ORDER DATED 19.5.2020 ISSUED BY THE ITAT, COCHIN BENCH IN ITA NO 128/COCH/2017**