

High Court critical of ITAT for passing order on basis of docs and evidences not presented before AO or CIT(A)

Summary – The High Court of Kerala in a recent case of Muthoot General Finance., (the Assessee) held that where Tribunal deleted disallowance on account of interest paid to partners, etc., based on documents and evidences which were not presented to Assessing Officer or Commissioner (Appeals), matter was to be remanded

Facts

- The assessee was a partnership concern engaged in the business of money lending.
- The Assessing Officer made additions of (i) interest chargeable on excess drawings effected by partners of firm (ii) interest paid to one of partners disallowed (iii) introduction of money by one partner assessed as income under 'other sources' (iv) premium paid towards keyman insurance.
- On appeal, the Commissioner (Appeals) upheld additions made by Assessing Officer but the Tribunal deleted disallowance.
- On appeal:

Held

- In the light of the Tribunal placing reliance on paper book filed by the assessee in question which never was the subject matter of consideration before the Assessing Officer and the first appellate authority. In the light of absence of these additional documents for consideration before the Assessing Officer and the Commissioner (Appeals), one cannot conclude that the opinion of the Assessing Officer and the Commissioner (Appeals) were erroneous. Similarly, the Tribunal refers to several documents which persuaded reversal of the opinion of the Assessing Officer and the Commissioner (Appeals).
- In the light of above factual situation, in the interest of justice the matter is to be remanded back to the Assessing Officer, who has opportunity of seeking explanation and also the material available with the explanation of the assessee, to consider the entire matter afresh with reference to the documents filed in the form of paper book before the Tribunal. This exercise would bring to light whether the additional documents produced before the Tribunal were part of the records available before the Assessing Officer or not and it would also assist the Assessing Officer to appreciate the stand of the assessee. Thereafter, either accept the explanation or reject the same depending upon the facts and circumstances while considering the matter afresh on the merits.
- With these observations the orders of the Assessing Officer, the Commissioner (Appeals) and the Tribunal is set aside. The Assessing Officer is directed to proceed with the assessment proceedings afresh in the light of the above observations taking into consideration the paper book produced by the respondent-assessee before the Tribunal.