

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri George George K, JM & Shri Manjunatha G, AM

ITA No.381/Coch/2016 : Asst.Year 2002-2003
ITA No.382/Coch/2016 : Asst.Year 2004-2005
ITA No.383/Coch/2016 : Asst.Year 2005-2006
ITA No.384/Coch/2016 : Asst.Year 2006-2007
ITA No.385/Coch/2016 : Asst.Year 2007-2008
ITA No.386/Coch/2016 : Asst.Year 2008-2009

The Asst.Commissioner of Income-tax, Central Circle-1 Ernakulam.	Vs.	Sri. M.A.Muheyiddin Hafil Juma Masjid Road Panayikulam P.O. Paravoor – 683 511. PAN : AELPM5364A.
(Appellant)		(Respondent)

Appellant by : Sri. A.Dhanaraj, Sr.DR
Respondent by : Sri. C.B.M.Warrier, CA

Date of Hearing : 14.12.2017	Date of Pronouncement : 14.12.2017
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ORDER

Per Bench

These six appeals filed by the Revenue are directed against common order passed by the Commissioner of Income-tax (Appeals), Kochi dated 10.06.2016 and they pertain to assessment years 2002-2003, 2004-2005, 2005-2006, 2006-2007, 2007-2008 and 2008-2009. Since facts are identical and issues are common, these appeals were heard together and disposed off by this common order for the sake of convenience.

2. The Revenue has raised common grounds of appeal for all the assessment years. For the sake of brevity, grounds for assessment year 2002-2003 are reproduced below:-

1. *The learned Commissioner of Income Tax (Appeals) erred in deleting the penalty levied u/s.271(l)(c) in respect of assessment completed u/s 153A*

2. *The learned Commissioner of Income Tax (Appeals) ought not have deleted the penalty levied since the Hon 'ble Income Tax Appeal Tribunal has only set aside the assessment made u/s 153 A for fresh consideration by the assessing officer.*

3. *The learned Commissioner of Income Tax (Appeals) ought to have noted that the Hon'ble Income Tax Appeal Tribunal has not cancelled the assessment.*

4. *The learned Commissioner of Income Tax (Appeals) ought to have seen that the assessing officer in giving effect to the Hon'ble Income Tax Appeal Tribunal's order passed fresh assessment order on 31.03.2014 in which the additions made in the original assessment, Rs. 11,38,525 stood to the extent of Rs.8,38,525. Hence the learned Commissioner of Income Tax (Appeals) ought to have modified the quantum of penalty than deleting the whole of penalty imposed.*

5. *The order of Commissioner of Income Tax(Appeals) is a composite order in respect of A.Y's 2002-03 to 2008-09 and since the tax effect in respect of A.Y 2006-07 exceeds the monetary limit prescribed in Board's circular 21/2015 (F.No. 279/Misc 142/2007-ITJ(P)) dated 10/12/2015 appeal is being filed for this year also.*

6. *For these and other grounds that may be urged at the time of hearing, it is prayed that the order of*

the Commissioner of Income tax (Appeals) may be set aside and that of the assessing officer restored."

3. The brief facts of the case are that there was a search action u/s 132 of the Income-tax Act, 1961 on 26.03.2008. Consequent to the search, the assessment was completed u/s 143(3) r.w.s. 153A, making additions towards opening cash balance, income from undisclosed sources and income from agriculture. Thereafter the A.O. initiated penalty proceedings u/s 271(1)(c) for assessment years 2002-2003 to 2007-2008 and u/s 271AAA for the assessment year 2008-2009 and imposed penalty for concealment of particulars of income in respect of additions made in the assessment proceedings. In the meantime, the assessee has filed appeal before the first appellate authority, but could only get partial relief. The assessee preferred further appeal before the ITAT. The ITAT vide its order dated 20th November, 2012 in ITA Nos.281 to 287/Coch/2011 for the assessment years 2002-2003 to 2008-2009, has decided the issues either by deleting the additions made by the A.O. or setting aside the quantum of additions to be considered afresh. The CIT(A) deleted the penalty levied by the Assessing Officer u/s 271(1)(c) and 271AAA on the basis of quantum additions deleted by the ITAT or set aside to the A.O. Aggrieved by the CIT(A)'s order, the Revenue is in appeal before us.

4. The learned Departmental Representative submitted that the learned CIT(A) erred in deleting the penalty levied u/s 271(1)(c) / 271AAA in respect of assessments completed u/s

153A without appreciating the fact that the ITAT has not cancelled the assessment order passed by the A.O., but only allowed partial relief to the assessee and also set aside certain issues to the Assessing Officer for reconsideration. The learned DR further submitted that the learned CIT(A) ought to have seen that the Assessing Officer in giving effect to the ITAT's order, has determined the income finally assessed which resulted in income assessed is more than income returned by the assessee, which warrants levy of penalty u/s 271(1)(c). The CIT(A) however considering this fact has deleted the penalty levied by the A.O. and hence the penalty order passed by the A.O. should be upheld.

5. The learned AR for the assessee, on the other hand, supported the order of the CIT(A).

6. We have heard both the parties and perused relevant material and gone through the orders of the authorities below. The CIT(A) deleted the penalty levied by the Assessing Officer by considering the issues in each of the assessment year in the light of the finding given by the ITAT in its order for the assessment years 2002-2003 to 2008-2009 in ITA Nos.281 to 287/Coch/2011 dated 20th November, 2012. We further noticed that the CIT(A) has discussed the additions made by the A.O. in respect of opening capital, income from undisclosed sources and disallowance of income from agriculture, in its penalty order at page Nos.3 to 5 . The relevant portion of the penalty order is extracted below:-

"On verification it is found that :

Assessment Year 2002-2003

The assessing Officer has made addition of Rs.2,25,000/- out of the opening cash balance shown at Rs.2,50,000/-. However, the ITAT has deleted the addition.

2. For the other additions of Rs.6,10,500/- and Rs.3,00,000/- on account of income from undisclosed sources, the same have been set aside by the ITAT to be treated and assessed afresh.

3. For the addition of Rs.25,000/- on account of agricultural income, the same has been deleted.

Thus, Rs.2,50,000/- addition has been deleted and addition to the extent of Rs.9,10,500/- has been set aside by the ITAT to the assessing officer. Therefore, the penalty levied on the amount of total addition of Rs.11,10,500/- no more remains valid. Accordingly, it is deleted.

Assessment Year 2003-04

Penalty levied is Rs.2,100/-.

The addition on account of concealed income to the extent of Rs.15,000/- and addition on account of agricultural income has been deleted by the ITAT vide para 9 of the said order. Accordingly, the penalty levied is deleted.

Assessment Year 2004-05

The total income on account of concealed income made is Rs.1,25,000/- out of which addition of Rs.25,000/- on account of agricultural income has been deleted by the ITAT vide para 10 of the said order and the addition of Rs.1 lakh has been set aside to assessing officer vide para 12 of the said

order. Accordingly, the penalty levied to the extent of Rs.34,000/- is deleted.

Assessment Year 2005-06

Penalty has been levied in respect of addition of concealment income to the extent of Rs.16,48,680/-. However, Rs.16,23,680/- has been set aside by the ITAT to be assessed afresh to the assessing officer vide para 21 of the order and addition of Rs.25,000/- on agricultural income have been deleted vide para 15 of the said order. Accordingly, penalty levied to the extent of Rs.5,64,292/- is not leviable and hence the same is deleted.

Assessment year 2006-07

Penalty has been levied u/s 271(1)(c) on concealed income of Rs.40,45,000/-. The learned bench of ITAT, Kochi has set aside the addition of Rs.40,00,000/- to the assessing officer vide para 23 of the said order. In respect of Rs.45,000/- of addition on account of agricultural income has been deleted vide para 24 of the ITAT's said order. In view of this, the penalty levied is not sustainable and hence the penalty levied to the extent of Rs.13,29,742/- is deleted.

Assessment Year 2007-08

Penalty has been levied on the concealed income of Rs.60,000/-. Addition was made on account of agricultural income. The ITAT has deleted the addition of agricultural income to the extent of Rs.45,000/- vide para 27 of the above order. It is held that no penalty can be levied on the balance amount of Rs.15,000/- by holding the same as explainable and the smallness of the amount. Accordingly, the penalty levied to the extent of Rs.7140/- is deleted.

Assessment Year 2008-09

Penalty has been levied u/s 271AAA on the concealed income of Rs.70,90,000/-. Addition to the extent of Rs.23,00,000/- has been set aside vide para 35 of the ITAT order and addition to the extent of Rs.47,90,000/- made u/s 2(22)(e) has also been set aside to the assessing officer vide para 39 of the ITT order. Since the issue has been restored back to the assessing officer the penalty is not leviable. Accordingly, the addition made to the extent of Rs.70,90,000/- is deleted."

7. The CIT(A) has considered year-wise additions made by the A.O. in respect of opening capital, income from undisclosed sources and disallowance of agricultural income and gave a categorical finding that in all the years the ITAT has either deleted the additions made by the A.O. or set aside the issue to the file of the A.O. for reconsideration and hence penalty levied by the A.O. cannot be sustained, except for the assessment year wherein the ITAT has confirmed the additions to the extent of Rs.15,000 of total additions made by the A.O. for Rs.60,000 in respect of disallowance of agricultural income. Facts remain unchanged. The Revenue fails to bring on record any evidences to counter the findings of facts recorded by the CIT(A) is incorrect. Therefore, we are of the considered view that the CIT(A) was right in deleting the penalty levied by the A.O. on additions made by the A.O. towards opening capital, income from undisclosed sources and agricultural income, as all the issues have been either deleted or set aside by the ITAT and hence the penalty levied by the A.O. on the issues on which ITAT set aside to the file of

A.O. cannot be sustained. We do not find any error in the order of the CIT(A), hence we are inclined to uphold the finding of the CIT(A) and dismiss the appeals filed by the Revenue in all the assessment years.

8. In the result, all the appeals filed by the Revenue are dismissed.

Order pronounced on this 14th day of December, 2017.

Sd/-
(George George K.)
JUDICIAL MEMBER

Sd/-
(Manjunatha G.)
ACCOUNTANT MEMBER

Cochin ; Dated : 14th December, 2017.
Devdas*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT-IV, Kochi.
4. The CIT(A)-IV, Kochi.
5. DR, ITAT, Cochin
6. Guard file.

By order

(Asstt. Registrar)
ITAT, Cochin