

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

I.T.A. Nos.303/Coch/2014 & 128/ Coch/2016
Assessment Year : 2008-09 & 2010-11

M/s. Janatha Trading Corporation, Market Road, Aluva. [PAN: AABFJ 8478K]	Vs.	The Deputy Commissioner of Income-tax, Circle-1, Aluva.
(Assessee-Appellant)		(Revenue -Respondent)

Assessee by	Shri Sathish John Kanichai, CA
Revenue by	Shri A. Dhanaraj, Sr. DR

Date of Hearing	12/07/2018
Date of pronouncement	20/08/2018

ORDER

Per CHANDRA POOJARI, ACCOUNTANT MEMBER:

These two appeals filed by the assessee are directed against the order of the CIT(A)-II, Kochi dated 03/12/2013. The relevant assessment years are 2008-09 and 2010-11.

2 There was a delay of 145 days in filing the appeal before the Tribunal. The assessee has filed a petition accompanied with affidavit dated 13/08/2014 stating that the delay was due to inadvertent mistake and also on account of assessee's sickness and prayed to condone the delay for which the Ld. DR has not opposed

it. In our opinion, there is good and sufficient reason for condoning the short delay of 145 days. Accordingly, we condone the delay and the appeal is taken up for adjudication.

3. The grounds raised are as follows:

"Janatha Trading Corporation, Aluva is a partnership firm files all income tax returns in time and also for the assessment year 2008-09. The firm maintains books of accounts in true and correct produced before the assessing authority with supportive evidences. The assessee and authorized person produced and talk about the matters before the CIT Appeals, Cochin, wherever they does not give any relief. Aggrieved by this order dated 03/03/2014 we prefer appeal before ITAT, Cochin.

3.1 The crux of the above ground is that the CIT(A) erred in confirming the addition of Rs. 60 lakhs made by the AO.

4. The facts of the case are that the addition in this case was made on account of cash credits of Rs.20,00,518/- in the current account of partners. The AO found that although the assessee had tried to explain the source of these credits but explanation was not found satisfactory by the AO. According to the AO, there were also loans from various parties aggregating to Rs.33,34,500/- from different parties at Rs.19,500/- in cash from each of them, for which also the assessee had no explanation to offer. It was noticed that the assessee had also claimed an interest of Rs.2,66,760/- on these loans and the assessee was not able to explain with documentary evidences the nature of source of these credits, loans in cash and interest paid for an amount aggregating to

Rs.60,56,699/-. According to the AO, during the course of assessment proceedings he himself vide letter dated 28/12/2010 agreed for an addition of Rs.60 lakhs to cover up the deficiencies as pointed by the AO for various entries.

5. On appeal, the CIT(A) observed that during the course of appellate proceedings before him, the assessee was trying to put forward that it had all supporting evidences available and the same should be considered. The CIT(A) held that since the assessee during the course of assessment proceedings had himself agreed to the addition of Rs.60 lakhs, there was no reason why the appeal should be taken up on merits as it was only because that he was not able to explain various entries and agreed to treat the same as his undisclosed income, that the AO did not conduct further enquiries to prove that the entries were not genuine. In view of this, the CIT(A) observed that there was no case for filing the appeal against such addition.

6. Against this the assessee is in appeal before us. The Ld. AR submitted that the assessee is having sufficient evidence to prove the above credits and prayed for an opportunity to prove the same. According to the Ld. AR, the consent given by the assessee cannot be applied as a Doctrine of estoppels against the assessee and the assessee has a legal right to challenge the assessment order before the appellate authority. The Ld. AR submitted that the CIT(A) has not gone into the merits of the assessee's case and dismissed the appeal of the

assessee on the ground that the assessment was framed on the consented addition.

7. On the other hand, the Ld. DR submitted that the assessee itself had agreed for the said addition of Rs. 60 lakhs. Therefore, the CIT(A) was justified in confirming the addition. He submitted that the assessee had not produced any evidence in support of its contentions which also found mention in the assessment order as well as the order of the CIT(A). It was submitted that in the absence of any such material, the contention of the assessee was not to be entertained.

8. We have heard the rival submissions and perused the record. There is no provision in the Income Tax Act whereby the remedy of appeal against the order of the assessment or against the order of the CIT(A) is barred if the impugned order mentioned that they had been passed on the admission of the assessee. The circumstances appearing on the file have to be judged in the light of the material available and if there are sufficient circumstances on the file to come to the conclusion that the admission made by the assessee was not binding on it, in that case, it will be entitled to relief in the appeal. Justice should not be denied on account of lapses in procedural compliances. Sec. 246 does not lay down that an appeal against the addition of a surrendered amount per se would be disentitled. Even if there is an agreed addition, the admission or surrender of

that income cannot operate as a estoppels and the Income Tax authorities are bound to consider and allow whatever relief is permissible under law. Section 246 states that an appeal lies against the order of the Assessing Officer when the assessee is aggrieved by such an order. When an order is passed on a concession given by the assessee before the Assessing Officer, it cannot act as restriction on the right of the assessee to file an appeal. Consequent to changes of circumstances or getting of evidence in support of the assessee's claim, the provisions of section 246(i)(c) of the I.T. Act entitle an assessee to file an appeal against the order of the assessment before the CIT(A) where the assessee is denied his liability to be assessed under the Act. In the present case, the CIT(A) mentioned in his order in para 5.3 that the assessee tried to put forward that it had all supporting evidences available and the same should be considered. Further, he observed that the assessee had agreed for the addition for avoiding penalty and other legal complications and getting peace of mind. The assessee had himself agreed for addition of Rs.60 lakhs, the CIT(A) refused to take up the appeal on merits. Since the assessee was trying to put forward supporting evidences before the CIT(A), in that circumstances, it was appropriate for the CIT(A) to call for remand report from the Assessing Officer and to decide the matter afresh.

8.1 It is pertinent to mention the judgment of the Jurisdictional High Court in the case of CIT vs. K.N. Thankappan Pillai (191 ITR 300), the following question was referred before the Jurisdictional High Court:

“Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the appeal filed by the assessee before the Appellate Assistant Commissioner was maintainable in spite of the fact that the assessee did not file any objections to the draft assessment order under section 144B of the Income-tax Act, 1961?”

The Jurisdictional High Court in that case held that it is clear from the language employed in section 246 of the Income-tax Act, 1961, that, if the assessee is aggrieved by an assessment made under section 143(3), whether the same is made following the procedure prescribed under section 143 or following the procedure prescribed under section 144B, he is entitled to file an appeal against the said assessment. Merely because the assessee failed to file his objections to the variation suggested in the notice under section 144B, it cannot be said that the assessment ceases to be an assessment under section 143(3). Hence, the assessee can file an appeal against the assessment before the Appellate Assistant Commissioner in spite of his failure to file objections to the draft assessment order under section 144B.

8.3 In view of the above discussions, we remit this issue to the file of the AO for fresh consideration which shall be decided in accordance with law. This ground of appeal in ITA No. 303/Coch/2014 is partly allowed for statistical purposes.

ITA No. 128/Coch/2016

9. The assessee has raised the following grounds:

- i) Disallowance of interest paid to loan credits coming to the tune of Rs.2,44,920/-
- ii) Cash credits coming to the tune of Rs.58,33,000/-

9.1 Regarding the first issue, the facts of the case are that in the scrutiny assessment during AY 2008-09, the loan creditors shown in the books of accounts were examined and many of them were found non-existing. The assessee admitted these loan credits as its own during the course of assessment and the same was taxed as assessee's income. The AO found that during the current year also 67 of such loan creditors were still shown in its books of account and interest shown as paid to them. In all Rs.2,44,920/- was debited into the P&L account of the current year as interest paid to such non-existing loaners which was treated by the AO as fictitious and added to the total income.

9.2 On appeal, the CIT(A) observed that the ledger account filed showed interest paid by cash and the details of the amounts of loan, confirmation letters from the parties, their whereabouts etc. had not been disclosed. It was observed that the assessee during the assessment year 2008-09 failed to withstand the scrutiny of such credits and came forward to offer the loan credits to tax. Since the assessee was not able to confront the findings of the AO with

evidence, the CIT(A) held that the disallowance made by the AO was appropriate and upheld the addition made by the AO.

9.3 Against this, the assessee is in appeal before us. The Ld. AR submitted that the assessee had given the names of loan creditors who were very much existing. According to the Ld. AR, these are not unexplained cash credits but interest paid on loans and advances taken from various parties existing in the financial statements for the AY 2009-10.

9.4 On the other hand, the Ld. DR relied on the orders of the lower authorities.

9.5 We have heard the rival submissions and perused the record. In this case, the assessee seeks the allowance of interest paid to the loan creditors of Rs.2,44,920/- on the credits which were found not in existence in the AY 2008-09. The assessee offered the same as income in respect of such 67 creditors in the AY 2008-09 only. However, during the current assessment year, once again the assessee shown the same credits as outstanding in its books of accounts and claimed payment of interest thereon by debiting the same to the P&L account. In our opinion, credits which are already treated as unexplained and offered as income in the earlier assessment years cannot be entitled for payment of interest thereon by the assessee in this AY. Hence, we are in full agreement with the

findings of the CIT(A) in disallowing the claim of the assessee. Accordingly, this ground of appeal is dismissed.

10. Regarding the second issue, the facts of the case are that on verification of the books of accounts, it was observed that the assessee had made various cash credits into its books in the names of its partners as follows:

Date of credit	Amount (Rs.)	Claimed to be the capital introduced by
04/04/2009	19,000/-	Cash gift from Ambish Antony to Golfy Jose
05/04/2009	4,00,000/-	Jogy George
05/04/2009	4,00,000/-	Anthony Vezhaparambil
05/04/2009	4,00,000/-	OK Thomas
05/04/2009	4,00,000/-	KJ Devassy
05/04/2009	4,00,000/-	Hormis Steephen
05/04/2009	4,00,000/-	KJ Antony
10/04/2009	19,000/-	Cash gift from Emily Joseph to Golfy Jose
20/04/2009	19,000/-	Cash gift from Gracy Tony to Golfy Jose
30/04/2009	19,000/-	Cash gift from Jose Jacob to Golfy Jose
11/05/2009	19,000/-	Cash gift from Lily Varghese to Golfy Jose
15/05/2009	19,000/-	Cash gift from Rosily Mani to Golfy Jose
30/05/2009	19,000/-	Cash gift from Varkey PT to Golfy Jose
01/10/2009	3,00,000/-	AA Antony
01/10/2009	3,00,000/-	KJ Antony
01/10/2009	3,00,000/-	Anthony Vezhaparambil
01/10/2009	3,00,000/-	OK Thomas
01/10/2009	3,00,000/-	KJ Devassy
01/10/2009	3,00,000/-	Hormis Steephen
04/11/2009	3,00,000/-	PC Ouseph
04/11/2009	3,00,000/-	Thressiamma Antony
04/11/2009	3,00,000/-	Anish Anthony
04/11/2009	3,00,000/-	Golfy Jose
04/11/2009	3,00,000/-	Jibi Siju
Total	58,33,000/-	

10.1 The assessee was requested to furnish the source of these cash credits and also they were told that if it were borrowing from individuals, then they have to be substantiated by meeting all the following criteria,

- a) The person exists
- b) The transaction is genuine
- c) The person who had given money has credit worthiness to give loan.

However, in spite of several opportunities, the assessee could not substantiate its claims with concrete evidence. Finally, the Managing Director of the assessee-company explained that during the assessment year 2010-11, the partners had brought in additional capital in their current account and the additional capital was brought in for the purpose of payments, at various respective days to various cement companies. It was explained that they were required to make the payments on due date by way of demand draft and the majority of the partners of the assessee-firm were people of creditworthiness and filing their returns before the Department. According to him, they had sourced the additional capital from own internal accruals, agriculture incomes and small borrowings from relatives and friends. These are absolutely short-term advance and the firm has repaid the same either during the year or subsequently. The assessee had also borrowed from various dealers of cement, prospective buyers of cement and also from close family relatives and all these had been below Rs.20,000/-. However, on analysis of the cash credits, the AO observed that there is a pattern in amount brought in and dates on which it was brought in which is summarized as follows:

On 04/04/2009	Rs.19,000/-(single entry)
On 05/04/2009	Rs.20,00,000 (five entries of Rs.4 lakh each)
On 06/04/2009	Rs.4,00,000/- (single entry of Rs. 4 lakhs)
On 10/04/2009	Rs.19,000/- (single entry)
On 20/04/2009	Rs.19,000/- (single entry)
On 30/04/2009	Rs.19,000/- (single entry)
On 11/05/2009	Rs.19,000/- (single entry)
On 15/05/2009	Rs.19,000/- (single entry)
On 30/05/2009	Rs.19,000/- (single entry)
On 01/10/2009	Rs.18,00,000/- (six entries of Rs. 3 lakhs each)
On 04/11/2009	Rs.15,00,000/- (five entries of Rs. 3 lakh each)

From the above statement, the AO found that major credits were of huge sums, split in many names, and brought into the accounts. As the assessee had not made any efforts to substantiate the sources of cash credits into its accounts, even after giving ample opportunities and time, the AO considered that the assessee had no valid source and hence, the total cash credits amounting to Rs.58,33,000/- was treated as assessee's income u/s. 68 of the I.T. Act.

10.1 On appeal, the CIT(A) confirmed the addition made by the AO.

10.2 Against this, the assessee is in appeal before us. The Ld. AR submitted that the above amount was contributed by the partners who were assessed to income tax with the same AO and all the partners confirmed the introduction of capital by them. Moreover, the assessee has placed on record the confirmation letters from various persons as mentioned above. Being so, the addition cannot be made in the hands of the assessee which is a firm.

10.3 On the other hand, the Ld. DR submitted that even the firm is liable to explain the source of funds from where the partners secured the same.

10.4 We have heard the rival contentions and perused the record. The main contention of the Ld. AR is that the all the partners are assessed to income tax with the same Assessing Officer and the identity of the partners were proved and they have also confirmed the transaction by filing the confirmation letters from the following persons:

- i) AA Antony
- ii) Ambish Antony
- iii) Antony Vezhaparambil
- iv) Bennyson Thomas
- v) Golfy Jose
- vi) Hormis Stephen
- vii) Joseph Stephen
- vii) KA Johny
- viii) KJ Devassy
- ix) Mary Poulouse
- x) OK Thomas
- xi) PC Ouseph
- xii) P.O. Jose
- xiii) Threisiamma Antony

10.5 On the other hand, the Ld. DR submitted that even it is considered that the assessee has discharged its onus to prove the identity of the partners, the genuineness of the transaction cannot be verifiable and the creditworthiness of the partners cannot be established. It is not known whether the capital has been introduced by the partners or someone else. The contention of the AR is that the assessee has produced the confirmations from the partners and that being

found insufficient by the AO, the AO ought to have called for more details. In other words, it was the contention of the Ld. AR that on production of confirmation letters, the assessee's burden stands discharged and it was for the AO to prove otherwise. We are unable to agree with the same. It is the primary duty of the assessee to establish the identity of the parties, capacity of the lenders and the genuineness of the transactions. If the assessee files only confirmation letters and offers no explanation regarding the nature and source thereof, the explanation offered by the assessee cannot be considered as satisfactorily explained before the AO. Then the sum so credited is to be treated as unexplained credits. In the present case, though the amount was contributed by the partners as their capital introduction, only confirmation letters from the partners cannot prove all the ingredients of section 68 of the Act and it will only prove the identity of the lenders. In our opinion, the assessee has to place necessary evidence regarding the nature and source of credit by filing corresponding financial statements along with the income tax returns of the concerned partners before the AO. Hence, in the interest of justice, we are inclined to remit the issue to the file of the AO for fresh consideration in accordance with law after giving reasonable opportunity of hearing to the assessee. Hence, this ground of appeal of the assessee is allowed for statistical purposes.

11. In the result, the appeals filed by the assessee are partly allowed for statistical purposes.

Pronounced in the open court on 20th August, 2018

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Place: Kochi

Dated: 20th August, 2018

GJ

Copy to:

1. M/s. Janatha Trading Corporation, Market Road, Aluva.
2. The Deputy Commissioner of Income-tax, Circle-1, Aluva.
3. The Commissioner of Income-tax(Appeals)-II, Kochi
4. The Pr. Commissioner of Income-tax, Kochi.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin

