

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

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.396/Coch/2018 : Asst.Year 2011-2012

Sri.George M George Muthoot House College Road, Kozhencherry Pathanamthitta – 689 641. PAN : ACJPG7312C.	Vs.	The Asst.Commissioner of Income-tax, Circle – 1 Thiruvalla.
(Applicant)		(Respondent)

Appellant by : Sri.R.Sreenivasan
Respondent by : Smt.A.S.Bindhu, Sr.DR

Date of Hearing : 10.10.2018	Date of Pronouncement : 11.10.2018
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ORDER

Per George George K, JM

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 09.07.2018. The relevant assessment year is 2011-2012.

2. The grounds raised read as follows:-

“1. Officers below were not justified in treating the agricultural income as non agricultural income and invoking the provisions of section 68.

2. The officers below failed to appreciate the fact that the income earned by the appellant was agriculture and will tantamount to income by overriding title.

3. The officers below failed to appreciate the fact if the appellant is not entitled to the agriculture income, the same should have been taxed in the hands of the

relevant owners and not in the hands of the appellant under other source.

4. Mainly because the appellant is not the owner of the properties would not enable the officer to tax receipts as non agriculture income."

3. Brief facts of the case are as follows:-

The assessee, an individual, is proprietor of M/s.GMG Associates. For the assessment year 2011-2012, the return of income was filed on 30.09.2011 declaring total income of Rs.1,16,45,200. The assessment u/s 143(3) was completed vide order dated 07.02.2014 assessing the total income of Rs.1,45,46,4870. In the said assessment completed, the Assessing Officer treated the agricultural income of Rs.11,71,000 as income from other sources and taxed the same u/s 68 of the I.T.Act.

4. Aggrieved by the assessment completed, the assessee preferred an appeal to the first appellate authority. The CIT(A) confirmed the addition made u/s 68 of the I.T.Act.

5. Aggrieved by the order of the CIT(A), the assessee has preferred the present appeal before the Tribunal. The learned AR reiterated the submissions made before the Income-tax Authorities. The learned Departmental Representative, on the other hand, supported the assessment order and the CIT(A)'s order.

6. We have heard the rival submissions and perused the material on record. We find an identical issue in assessee's own case was considered by the Tribunal for assessment year

2009-2010 in ITA No.172/Coch/2018. The Tribunal in its order dated 04.10.2018 decided the issue in favour of the Revenue and dismissed the appeal of the assessee. The relevant finding of the Tribunal in assessee's own case, concerning assessment year 2009-2010, having identical facts to that of the instant case is reproduced below:-

"6. We have heard the rival submissions and perused the material on record. The assessee had declared a sum of Rs.12,36,000 as agricultural income. During the course of assessment, the Assessing Officer held that agricultural income offered for rate purpose is in respect of six properties which is claimed to be belonging to the members of Muthoot family. The Assessing Officer after examining the documents of each of these six agricultural properties, held that the said properties did not belong to the assessee, but to the other family members. Further, it was categorically concluded by the Assessing Officer that the assessee has not produced any documentary evidence to show that he was in receipt of agricultural income on account of operation conducted by him on the said family properties. The categorical findings of the Assessing Officer in these regards are reproduced below for ready reference:-

"3. During the course of assessment, the assessee was required to furnish details of agricultural income of Rs.12,36,000/- offered for rate purpose during the year. As per the details furnished by the assessee, the agricultural income offered for rate purposes is in respect of 6 items of properties and total income from agriculture derived at is Rs.2,22,04,000/-- as per the claim. The above income is claimed as belonging to 16 members of the family and assessee's. share is claimed at Rs.12,36,000/-. Among the list of shareholders of family agricultural income, three senior members share is Rs.18,43,000/- each and other 12 family members have shared at Rs.12,36,000/-each. The assessee's claim is that family members are all involved in the agricultural operation of the family properties. The agricultural income can be claimed only to the owners of the property in the absence of the evidences to the contrary of the 7 items of the properties given in the list. The major item is Devagiri Plantations, Tamil Nadu. The title deed of the above Devagiri

Plantation shows that area involved is 200 acres and this deed is executed on 15.12.2006. As per the title deed, the property is purchased by Mr.M.G.George. Mr. George Thomas and Mr.George Alexander only. The income from the above property has to be divided among the above 3 persons only.

4. Another item of the property from which agricultural income has been claimed is from Koodal Rubber Estate, Kerala and the claim is that 48 acres of land has given a net agricultural income of Rs.60,14,400/- which has also been claimed as belonging to different members of family. I have verified the title deeds of the above landed properties. As per the title deeds, Mr.George Thomas, Mr.George Jacob, Mr. George Alexander, George Kurien and Mr.M.G.George owned 3.582 Hectars of land. So the assessee is not having any share in the properties Devagiri in Tamil Nadu and Koodal Rubber Estate in Kerala.

5. The total agricultural income from the remaining 5 items of the property has been worked out at Rs.23,85,300/-. In respect of all the 5 items of the properties, copies of the title deeds have also not been produced. No evidences had been produced substantiating the income claimed. Hence, the assessee's claim cannot be accepted. Whereas in the assessment of Shri George Alexander and 2 others, the Ld. Joint Commissioner of Income Tax, Thiruvalla Range, thiruvalla has limited the claim of Rs.23,85,300/- to half of it viz Rs.11,92,650/- and further divided into 5 and 1/5th of Rs.22,92,650/- viz Rs.2,38,530/- is considered as share of senior members. So the assessee has not in receipt of agricultural income. Accordingly the claim of the assessee cannot be accepted."

6.1 The above categorical findings of the Assessing Officer was never dispelled by the assessee by placing contra evidence. Admittedly, the assessee was never the owner of the agricultural properties from where it is claimed that he was in receipt of agricultural income of Rs.12,36,000. The assessee did not produce any documentary evidence to prove that he was in receipt of any agricultural income on account of any agricultural operation carried out by him. Therefore, we are of the view that the Income-tax Authorities have correctly held that the assessee was not in receipt of Rs.12,36,000 as agricultural income. Having held Rs.12,36,000 as not

agricultural income, the sum that is credited to the book of account has to be necessarily added as income from other sources u/s 68 of the I.T.Act. Therefore, we see no reason to interfere with the order of the CIT(A) and we confirm the same. It is ordered accordingly.

7. In the result, appeal filed by the assessee is dismissed."

7. In view of the above order of the Tribunal in assessee's own case for the assessment year 2009-2010, we hold that the Income-tax Authorities is justified in adding the sum of Rs.11,71,000 as income from other sources by invoking the provisions of section 68 of the I.T.Act. It is ordered accordingly.

8. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on this 11th day of October, 2018.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Cochin ; Dated : 11th October, 2018.
Devdas*

Copy of the Order forwarded to :

1. The Applicant.
2. The Respondent.
3. The CIT (A) Kottayam.
4. The Pr.CIT, Kottayam.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin