

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

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

ITA No.554/Coch/2018 : Asst.Year 2013-2014

Sri.T.Selvaraj Sree Mookambika Lucky Centre, Thirunnakkara Kottayam - 686 001. PAN : ABJPT2940A.	Vs.	The Asst.Commissioner of Income-tax, Circle 1 Kottayam.
(Appellant)		(Respondent)

Appellant by : Sri. P Anil
Respondent by : Smt.A.S.Bindhu, Sr.DR

Date of Hearing : 25.02.2019	Date of Pronouncement : 01.03.2019
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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 09.08.2018. The relevant assessment year is 2013-2014.

2. The solitary ground that was pressed and argued reads as follows:-

"2. Because the following observations of the learned CIT (Appeals) in the order are perverse, arbitrary, baseless and misleading;

a.....

b.....

c. Considering these facts it is held that the unregistered agreement produced to show that the appellant had received cash of Rs.1,13,10,000.00 from P.Subhaiah Pandian is not genuine and therefore rejected."

3. The brief facts of the case are as follows:-

The assessee had introduced capital amounting to Rs.2,59,02,499. Out of Rs.2,590,02,499, the Assessing Officer treated unexplained cash credit u/s 68 amounting to Rs.1,64,63,307. On further appeal, the CIT(A), after giving due enhancement notice, made addition to unexplained cash credit u/s 68 of the I.T.Act amounting to Rs.2,25,65,000 instead of Rs.1,64,63,307 made by the Assessing Officer. In explaining the source of credit into the capital account, the assessee submitted before the CIT(A) that he had received a sum of Rs.1,13,10,000 from one Sri.P.Subhaiah Pandian as advance for sale of property. A copy of the unregistered sale agreement written in Tamil was also produced before the CIT(A). The CIT(A) did not admit the additional evidence because the assessee could not prove that his case falls within the exceptions of Rule 46A of the Income-tax Rules, 1962. The relevant findings of the CIT(A) in this regard reads as follows:-

"The Appellant has claimed that he had received cash advance of Rs.80,00,000 and Rs.33,10,000 from P Subbaiah Pandian on 20.04.2012 and 29.05.2012 respectively as an advance for sale of property. In support of such claim, the learned AR filed an unregistered agreement in Tamil. The said unregistered agreement was not produced during the assessment proceedings before the Assessing Officer to substantiate the sources for the capital introduced. Therefore, the unregistered agreement filed by the learned AR would amount to additional evidence. However, admission of additional evidence during the appeal proceedings is governed by the provisions of rule 46A of the I.T.Rules, 1962. The rule 46A reads as under:

[Production of additional evidence before the [Deputy Commissioner (Appeals)] [and Commissioner (Appeals)].

46A. (1) The appellant shall not be entitled to produce before the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)], any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the [Assessing Officer], except in the following circumstances, namely :—

- (a) where the [Assessing Officer] has refused to admit evidence which ought to have been admitted ; or
- (b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the [Assessing Officer] ; or
- (c) where the appellant was prevented by sufficient cause from producing before the [Assessing Officer] any evidence which is relevant to any ground of appeal ; or
- (d) where the [Assessing Officer] has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

Therefore, before admission of additional evidence, the Appellant has to prove that the additional evidence falls under the four exceptions provided under rule 46A, as above. The learned AR could not make out a case that the unregistered agreement sought to be relied upon falls under one of these exceptions. Hence, the additional evidence in the form of unregistered agreement for sale of property cannot be admitted. Further, the Appellant has not made any claim with regard to cash received from P Subbaiah Pandian in the appeal proceedings attended on 19.03.2018. The said evidence was produced only after enhancement notice was given to the Appellant. Further, the learned AR could not produce any evidence in the form of registered Sale Deed which reflects these payments supposed to have been received by the Appellant. Considering these facts, it is held that the unregistered agreement produced to show that the Appellant had received cash of Rs.1,13,10,000 from P Subbaiah Pandian is not genuine and therefore, rejected."

4. Aggrieved by the order of the CIT(A), the assessee has preferred this appeal before the Tribunal. The learned AR has filed a paper book enclosing the details of credit into the

capital account, copies of bank statement of Punjab National Bank and SBT Kuruchi etc. The learned AR submitted the additional evidence produced before the first appellate authority was misplaced at the time of assessment proceedings and hence the same could not be produced before the Assessing Officer. It was submitted that the CIT(A) has erred in rejecting the additional evidence so produced.

5. The learned Departmental Representative, on the other hand, strongly supported the order of the CIT(A).

6. We have heard the rival submissions and perused the material on record. The assessee claims that he had received cash of Rs.80,00,000 and Rs.33,10,000 from one Sri. P.Subbaiah Pandian on 20.04.2012 and 29.05.2012, respectively, as advance for sale of property. In support of such claim, the assessee had filed an unregistered sale agreement in Tamil. The said unregistered agreement was not produced before the Assessing Officer to substantiate the source of capital introduced. The assessee while placing the unregistered agreement as an additional evidence before the CIT(A), has not been able to prove that his case falls within the exception mentioned under Rule 46A of the I.T.Rules. Therefore, the CIT(A) did not admit the additional evidence in the form of unregistered agreement for sale of property and dismissed the claim of the assessee for the source of Rs.1,13,10,000. Even before the Tribunal, the assessee has not been able to prove that the sale agreement based on which the assessee was in receipt of Rs.1,13,10,000 was

acted upon and had concluded in sale of property. On the contrary, it was admitted by the learned AR that the sale agreement, on the basis of which the assessee had claimed to have received Rs.1,13,10,000, was not acted upon and the advance was returned to Sri.P.Subbaiah Pandian in the subsequent year. When asked by the Bench whether the assessee had written an agreement for cancellation of sale agreement and had received acknowledgement for return of Rs.1,13,10,000, the answer from the learned AR was in the negative. It is quite unbelievable that an amount of Rs.1,13,00,000 was returned in cash to Sri.P.Subbaiah Pandian without any proper acknowledgement. Moreover, confirmation from Sri. P.Subbaiah Pandian was not filed. Therefore, it is clear that the production of additional evidence in the form of unregistered sale agreement is only an afterthought to explain the source introduced to capital and cannot be stated to be a valid document. Hence, we have no hesitation in confirming the order of the CIT(A) as correct and in accordance with law. It is ordered accordingly.

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

Order pronounced on this 01st day of March, 2019.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin ; Dated : 01st March, 2019.
Devdas*

Copy of the Order forwarded to :

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

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin