

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

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

ITA No.562/Coch/2018 : Asst.Year 2011-2012

Sri.Thomas Pulickal Sebastian, C/o.Jacob & Jacob, CAs 2 nd Floor, Municipal Market Complex, Market Road, Pala Kottayam – 686 575. PAN : AJNPS7478L.	Vs.	The Income Tax Officer Ward 4 Kottayam.
(Appellant)		(Respondent)

Appellant by : Sri. Jameskutty Antony, CA
Respondent by : Smt.A.S.Bindhu, Sr.DR

Date of Hearing : 21.02.2019	Date of Pronouncement : 01.03.2019
------------------------------	---------------------------------------

ORDER

Per George George K, JM

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 01.10.2018. The relevant assessment year is 2011-2012.

2. Two issues are raised in this appeal, viz.,
- (i) Unexplained cash deposit of Rs.9,00,000; and
 - (ii) Negative cash balance of Rs.1,33,960.

We shall adjudicate the issues as under:-

Unexplained cash deposit of Rs.9,00,000

3. The assessee is an individual. He had filed his return of income for the assessment year 2011-2012 on 26.07.2011

returning a total income of Rs.5,36,710. In the course of assessment proceedings, the Assessing Officer noticed that the assessee had deposited cash of Rs.9 lakh on 28.12.2010 in his bank account. The assessee was directed to explain the source of cash deposit. In reply, the assessee submitted that there cash withdrawals were cash withdrawals in the past and these were available for making cash deposit on 28.10.2012 amounting to Rs.9 lakh. However, the Assessing Officer rejected the explanation of the assessee and made addition of Rs.9 lakh. The relevant observation of the Assessing Officer reads as follows:-

"9. The assessee could not furnish any reasonable explanation regarding the source of cash deposit of Rs.9,00,000/- made on 28/12/2010. As stated above, the assessee had made as many as 80 ATM withdrawals of amounts like Rs.20,000/-, Rs.10,000/-, Rs.5,000/- etc. during the period from 12/11/2010 to 27/12/2010. The assessee could not explain the reason for withdrawing money almost every day through ATM when there is substantial cash balance as per cash flow statement. Though the assessee retracted from his statement towards the end of the sworn statement, in answer to question number 2, 3 & 4, the assessee stated that the withdrawals made through ATMs at Kottagiri were for the purpose of construction of Kottagiri and for the educational expenses of his son who has been studying at Kottagiri. The frequent withdrawals through ATM (on 80 occasions during the period from 12/11/2010 to 28/12/2010) is a clear indication that the money withdrawn was utilized and not available with the assessee for further deposit and the cash balance shown as per the cash flow statement was not correct. Therefore, the source for the deposit of Rs.9,00,000/- on 28/12/2010 is

treated as unexplained and added to the total income while completing the assessment."

3.1 Aggrieved by the addition of Rs.9 lakh, the assessee preferred an appeal to the first appellate authority. Before the first appellate authority it was submitted that the Assessing Officer did not grant sufficient opportunity to the assessee to explain the source of cash deposits. The CIT(A) vide his letter dated 11.06.2008 directed the A.O. to give one more opportunity to the assessee to explain the source of deposit and submit a report. The Assessing Officer submitted a report on 31.07.2008. The relevant portion of the remand report submitted by the A.O. is extracted at para 4.1.2 of the impugned order of the CIT(A). The CIT(A), after supplying the remand report to the assessee, posted the case for further hearing. The CIT(A) held that when the assessee had withdrawn Rs.10 lakh on 12.11.2010, there was no necessity to make ATM withdrawals from his bank account from 12.11.2010 to 28.12.2010 and in all probability the amount of Rs.10 lakh withdrawn on 12.11.2010 would have been spent. Therefore, it was concluded by the CIT(A) that there was no proper explanation as regards the source of cash deposit made on 28.12.2010 amounting to Rs.9 lakh and conferred the addition made by the A.O.

3.2 The assessee being aggrieved, has raised this issue before the Tribunal. The learned AR has filed a paper book enclosing the bank statement of the assessee in State Bank of India and Axis Bank. The assessee has filed a paper book

enclosing bank statement from SBI and Axis Bank, statement recorded by the Assessing Officer on 10.03.2014, and the cash flow statement. The learned AR reiterated the submissions made before the Income-tax authorities.

3.3 The learned Departmental Representative, on the other hand, strongly supported the assessment order and the CIT(A)'s order.

3.4 We have heard the rival submissions and perused the material on record. The assessee has got saving bank accounts with SBI, Erattupetta and Axis Bank, Pala. There have been substantial cash withdrawals from July 2010 from both these bank accounts. The details of such withdrawals are as follows:-

Cash withdrawal	Withdrawals from	
	SBI	Axis Bank
July, 2010	1,82,000	6,13,000
August, 2010	1,91,000	14,50,000
September, 2010	3,05,000	11,000
October, 2010	3,15,000	15,000
November, 2010	2,45,000	12,47,000
December, 2010	72,000	5,51,000

3.4.1 The claim of the assessee is that withdrawals in the past was available to make the cash deposit of Rs.9 lakh on 28.12.2010. The assessee admittedly has withdrawn a sum of

Rs.10 lakh on 12.11.2010 from his Axis Bank, Pala branch and subsequently there have been number of ATM withdrawals from Kottagiri between 12.11.2010 and 27.12.2010. It is claimed that the withdrawals from ATM are utilized for the assessee's house construction in Kottagiri. The Assessing Officer presumed that Rs.10 lakh withdrawn on 12.11.2010 would have been utilized / expended for some other purpose. This is only a presumption made by the A.O. and nothing has been brought out on record to suggest otherwise. It is true that when Rs.10 lakh is available, there would have been no necessity to make numerous withdrawals from ATM. But at the same time, it cannot be totally ruled out that some amount of cash that is withdrawn in the past was available with the assessee for making deposit on 28.12.2019. Taking into account the overall factual circumstances in this case that there was substantial cash withdrawals from the month of June 2010 till December 2010 from both Bank accounts of the assessee, we are of the view that some portion of the withdrawals would have been available with the assessee for making cash deposit on 28.12.2019. In overall consideration of the case, we are of the opinion, a sum of Rs.5,00,000 can be reasonably estimated as available with the assessee from past cash withdrawals for making the cash deposit on 28.12.2010. Accordingly, we give a credit for a sum of Rs.5 lakh and the balance amount of Rs.4 lakh is sustained as addition u/s 68 of the I.T.Act.

Negative cash balance of Rs.1,33,960

4. The Assessing Officer has made an addition of Rs.1,33,960 on account of negative cash balance with assessee on 28.12.2010. On 28.12.2010 the assessee had paid Rs.2,40,000 to the purchaser of a property being excess payment made by him. In view of the same, there was a negative cash balance and addition was made to the extent of negative cash balance amounting to Rs.1,33,960. The relevant observation of the Assessing Officer in making the addition of Rs.1,33,960 reads as follows:-

"10. The assessee has produced a copy of stamped receipt in proof of payment of Rs.2,40,000/- in cash to the purchaser of the property on 28/12/2010 being excess money received by way of RTGS returned to the purchaser. However, even as per the cash flow statement filed by the assessee the cash balance available as on 28/12/2010 was only Rs.1,06,040/-. Therefore the difference of Rs.1,33,960/- is treated as unexplained and added to the total income while completing the assessment."

4.1 Aggrieved by the addition made by the Assessing Officer, the assessee preferred an appeal to the first appellate authority. During the course of appellate proceedings, the CIT(A) directed the A.O. to furnish a remand report, after verifying the details produced by the assessee. In the remand proceedings, the Assessing Officer submitted as under:-

"5. Addition of Rs.1,33,960: The assessee had paid an amount of Rs.2,40,000 on 05.01.2011 (advance for land work-repaid) as per the cash flow statement but the 'Receipt of the party' shows that the same amount had been received in cash on 28.12.2010. The balance was only Rs.1,06,040 on 28.12.2010 as per cash flow statement. The difference of Rs.1,33,960 was added by the A.O. as unexplained amount. The A.R. agreed the mismatch of the dates of payment and the addition."

4.2 On receipt of the remand report, the CIT(A) after giving an opportunity of hearing to the assessee, confirmed the addition of Rs.1,33,960 made by the Assessing Officer.

4.3 The assessee being aggrieved, raised this issue before the Tribunal. The learned AR reiterated the submissions made before the Income-tax authorities. The learned DR, on the other hand, supported the orders of the Assessing Officer and the CIT(A), on this issue.

4.4 We have heard the rival submissions and perused the material on record. The receipt of the party show that the cash amounting to Rs.2,40,000 was received on 28.12.2010. If the payment was made in cash on 28.12.2010, admittedly, the balance as on 28.12.2010 would be negative since as on the date the cash available was only Rs.1,06,040. Since the assessee was unable to produce any evidence for deletion of the addition, we confirm the order of the CIT(A), on this issue. It is ordered accordingly.

5. In the result, the appeal filed by the assessee is partly allowed.

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