

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

I.T.A. No.508/Coch/2018
Assessment Year : 2013-14-

The Income Tax Officer, Ward-1(1), Non-Corporate, Kochi.	<b>Vs.</b>	Shri P.V. Abraham, Palliparambil House, Irumbanam P.O., Ernakulam, Kochi-682 309. [PAN:BHKPP 5119D]
<b>(Revenue-Appellant)</b>		<b>(Assessee -Respondent)</b>

<b>Revenue by</b>	Smt. A.S. Bindhu, Sr. DR
<b>Assessee by</b>	Shri Jose Kappen, CA

<b>Date of hearing</b>	22/01/2019
<b>Date of pronouncement</b>	06/02/2019

### **ORDER**

Per CHANDRA POOJARI, AM:

This appeal filed by the Revenue is directed against the order of the CIT(A)-II, Kochi dated 08/08/2018 and pertain to the assessment year 2013-14.

2. The Revenue has raised the following grounds:

1. Whether the learned Commissioner of Income Tax (Appeals) was right in allowing the assessee's appeal holding the facts and circumstances of the case as identical to the case of ITO Vs Dr. Koshy George, reported in (2009) 317 ITR (AT) 116 (Cochin) decided by the ITAT, Cochin Bench as in the case the transactions were not through banking channels .

3. The learned CIT(A) erred in granting relief to the assessee without any evidence in support of his claim that the entire cash receipt of Rs.174 lakhs was the sale consideration of agricultural land especially the registered document showed a lesser price .

4. The learned Commissioner of Income Tax (A) erred in treating the entire cash deposits were sale consideration as the assessee has not provided any proof for connection between the money deposited in the bank account and the money received from purchaser. The Ld. CIT(A) while allowing the appeal has not seen considered the decision of the Hon'ble Punjab & Haryana High Court's order in the case of Paramjit Singh vs ITO(2010) 195 Taxman 273 wherein it was mentioned that it is well-known principle that no oral evidence is admissible once the document contains all the terms and conditions. Section 91 and 92 of the Indian Evidence Act, 1872 (for brevity 'the 1972 Act') incorporate the aforesaid principle.

3. The facts of the case are that on verification of details produced, it was found that the assessee had made huge deposits in his bank accounts in SBI Kakkanad, Federal Bank Thrippunithura, Canara Bank Thripunithura and Federal Bank Puthencruz as under:

i. SBI, Kakkanad	Rs. 1,77,02,505/-
ii. Federal Bank, Puthencruz	Rs. 1,78,53,985/-
iii. Federal Bank, Thripunithura	Rs. 14,50,213/-
iv. Canara Bank, Thripunithura	Rs. 1,95,444/-
Total Deposits	Rs. 3,72,02,147/-
Less source available	Rs. 19,35,502/-
Total unexplained Income	Rs. 3,52,66,645/-

3.1 The assessee was asked to explain the source of deposits. In his reply the assessee stated that during April, 2005 the assessee and his wife Leelamma Abraham have entered into an agreement for sale of 11 acres of rubber plantation in Kokkayar Village, Idukki District at the rate of Rs.55,750/- per cent

with Shri K.I. Zakir Hussain and others and they have received a sum of Rs.3,31,70,100/-. However, it was found that as per document, the value of this property sold on 29/11/2012 was as under:

1. P.V.Abraham	Rs.16,07,500/-
2. Leelamma Abraham	Rs. 7,43,600/-
Total sale proceeds as per document	<u>Rs.23,51,100/-</u>

3.2 As per details furnished by the assessee, the source available in the case of the assessee was as under:

1. Sale consideration of property as mentioned above:	Rs.16,07,500/-
2. LIC Receipts	Rs. 54,817/-
3. Agricultural receipts	<u>Rs.23,51,100/-</u>
Total Source available	<u>Rs.19,35,502/-</u>

3.3 Accordingly, the Assessing Officer issued a proposal to the assessee on 23/02/2016 to complete the assessment adding the unexplained income mentioned above. In response to this proposal, the assessee explained the source for the huge deposits in bank as the unaccounted amount received by the assessee during the transaction of agricultural property at Kokkayar. As per the provisions of the IT Act, unaccounted money treated as "black money" cannot be taken as the source for these investments and only the value of sale deed can be taken as the source for the deposits appearing in various banks. If the unaccounted money (black money) is treated as source for other investments as contended by the assessee, the very purpose of the IT Act will become irrelevant. Hence, according to the Assessing Officer, only the sale value of the

property as per the sale deed can be taken as one of the sources for the deposits. The assessee had also explained that some deposits were made after closing the existing fixed deposits.

3.4 On the basis of the reply filed by the assessee and the discussion made above, the assessment is completed as under:-

Deposit with SBI, Kakkanad	Rs. 83,01,000/-	
Deposit with SBI, Kakkanad	Rs. 4,50,000/-	
Deposit with Federal Bank, Puthencruz	Rs. 55,01,000/-	
Deposit with Federal Bank, Puthencruz	<u>Rs. 31,70,100/-</u>	
Total Deposit		<u>Rs.1,74,22,100/-</u>

Less available source

1. Sale consideration of Property	Rs. 16,07,500/-	
2. LIC receipts	Rs. 54,817/-	
3. Agricultural receipts	<u>Rs. 2,73,185/-</u>	
Total source available		<u>Rs. 19,35,502/-</u>
Unexplained Income		<u>Rs.1,54,86,598/-</u>

4. On appeal, the CIT(A) deleted the addition by holding that the facts of the instant case are squarely covered by the decision of the ITAT, Cochin Bench in the case of ITO vs. Abraham Varghese Cheruvil (2017) Taxcorp (A.T.) 55729. The CIT(A) found that the Assessing Officer had not been able to point to any other source of income apart from sale of agricultural land and therefore, the deposits in the bank accounts were to be treated as proceed of sale of agricultural land and therefore, exempt from taxation. Thus, the CIT(A) deleted the addition of Rs.1,54,86,598/-.

5. Against this the Revenue is in appeal before us. The Ld. DR tried to justify the order of the Assessing Officer on the issue and submitted that the onus lies solely on the assessee to establish the source of deposits in the Banks which the assessee has failed to establish and hence, the addition is to be sustained as unexplained income of the assessee.

6. On the other hand, the Ld. AR stated that the assessee had been working in UAE for 36 years and returned to India in the year 2008. It was submitted that since the assessee had become aged, he was unable to manage rubber plantation at a distant location and sold the same for a total sale consideration of Rs. 3,31,70,100/-. In order to prove that receipts were indeed from the sale of rubber plantation, the Ld. AR submitted the following documents before the Assessing Officer.

- i. Copy of the Agreement for sale of Rubber Plantation.
- ii. Affidavit by the purchasers detailing the datewise payment of sale consideration along with Income Tax details of the purchasers.
- iii. Certificate from banks, evidencing that a portion of the sale consideration was received through banking channels.

6.1 The Ld. AR submitted that the assessee also requested the A.O. to summon the purchasers in order to verify the facts narrated by the assessee. It was further contended that the assessee had no other source of Income and the A.O. had also not pointed to any other source through which the assessee could

generate any cash. To support its case, the Ld. AR placed reliance on the decision of ITAT Cochin Bench in the case of 1TO vs. Abraham Varghese Cheruvil[(2017) Taxcorp (A.T.) 55729 (ITAT-Cochin)]. In its order, the tribunal observed that, "the payment of on-money is an unfortunate practice in most part of our country and none can deny this factual situation.... Any surplus money arising to an assessee on sale of agricultural land would partake the character of agricultural income itself..." The consideration stated in the registered sale-deed is very much agricultural income. Likewise, it was submitted that the 'on-money' also should be treated as agricultural income even though that surplus consideration is tainted with the expression "on money." According to the Ld. AR, the genesis of the 'on-money' is definitely the sale of land.

7. We have heard the rival submissions and perused the record. We have gone through the copy of translation of agreement dated 20/04/2012 executed between K.I. Zakir Hussain for sale of rubber plantation @ Rs.55,750/- per cent. We have perused the affidavit filed by Shri Firoz K. Ummar dated 16/12/2015 wherein the purchaser confirmed the receipt of Rs.3,31,70,100/- by the assessee towards the consideration of the property. The assessee also filed these documents before the Assessing Officer. If the Assessing Officer chooses not to cause any enquiry from the parties concerned, he cannot simply reject the sale consideration shown in the sale agreement. Admittedly, in this case the sale deed has been registered at a value which is below the amount actually received

by the assessee and deposited in the Bank account. There was no material whatsoever or any circumstance, which could have suggested that the impugned amount was received by the assessee from any other source. The deposition of the purchaser by way of an affidavit filed with the authorities had shown a higher value which was sufficient to discharge the burden, which the Assessing Officer had doubted the source of deposit. There was a sale agreement which was entered into by the assessee with the purchaser for sale of 11 acres of rubber plantation in Kokkayar Village, Idukki District at the rate of Rs.55,750/- per cent. This was also brought on record by the assessee vide letter dated 29/02/2016. The Assessing Officer in disbelieving the evidence had not given any reasons whatsoever to discard the evidence placed by the assessee so as to explain the deposit of sale consideration into various Bank accounts. It is also brought to our notice that there was no assessment in respect of the payment of the said on-money in the hands of the purchaser by the Department. In such circumstances, in our opinion, these evidences led by the assessee cannot be discarded without any reasons. In view of this, we are inclined to hold that the deposits made by the assessee in the Bank accounts were duly explained by the assessee and it is to be accepted as genuine source of deposits as there was no counter evidence brought on record by the Assessing Officer.

7.1 We find that a similar issue came up before this Tribunal in the case of ITO vs. Shri Abraham Varghese Cheruvil in ITA No. 30/Coch/2017 dated 26/04/2017 wherein it was held as under:

*"7.1 I have heard the rival submissions and perused the material on record. The assessee is a retired person who is aged about 75 years. He had spent major part of his life in the Gulf countries and was unaware of the intricacies of tax laws in India. The admitted fact is that the assessee alongwith his wife had 7.01 acres of agricultural land which was cultivated with Rubber and was having Rubber Board registration. The sale proceeds of the said agricultural land is not a capital asset as per section 2(14) of the I.T. Act, This fact is also accepted by the Assessing Officer, by not taxing the sale consideration of 30,59,500/- disclosed in the sale deed.*

*7.1 According to the assessee, the total sale consideration is 70,79,500/- and because of insistence of the buyer to save stamp duty, the sale consideration was disclosed in the sale deed at 30,59,500/-. It was stated that 30,59,500/ was circle rate fixed by the Kerala Government. It was submitted that the entire sale consideration of 70,79,500/- was deposited in Federal Bank on 16/04/2012 and 17/07/2012. On perusal of the bank accounts with Federal Bank, I notice that there is not much of transaction in the bank account of the assessee either before or after the sale transaction of agricultural land. The assessee is not having any other source of income so as to generate undisclosed income of 39 lakhs. The assessee was an NRI and on his retirement, he was doing agricultural activities. Most importantly, I notice that there is no concealment, because in the income tax return filed before the IT authorities, the assessee and his wife had disclosed the entire value of sale transaction amounting to 70,79,000/- (including the on-money). A copy of the income tax return filed by the assessee and his wife alongwith computation statement for the assessment year 2013-14 are enclosed at pages 7 to 19 of the paper book filed by the assessee. In the peculiar facts and circumstances of the case, I have no hesitation to hold that the receipt of on-money was in no way different from the receipt amount shown in the sale deed. The Assessing Officer has not disputed the source of cash receipts. Her only contention is that balance value of the property not shown in the sale deed can only be considered as unaccounted money/on-money and the same has to be brought to tax as 'income from other sources'.*

7.2 *In this context, it is important to refer to section 68 of the I.T. Act, which reads as follows-*

*"Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year."*

*The above section has application when no explanation is offered or the explanation offered is not satisfactory in the opinion of Id. Assessing Officer. Further, by using the words "may be charged", instead of "shall be charged", it is clear that addition u/s. 68 is not mandatory. On the other hand the Assessing Officer has to apply his mind on facts of each case and decide whether the addition is warranted.*

7.3 *As mentioned earlier, the assessee is an aged person, who had settled down in his native place. He was engaged in agricultural activities on his retirement and there is nothing on record to suggest that the assessee alongwith his wife were in a position to generate unaccounted income of 39 lakhs other than on-money on account of sale of agricultural land.. The payment of on-money is an unfortunate practice in most part of our country, and none can deny this factual situation. It is the case of the assessee that the buyers were insisting on reducing the sale consideration to be disclosed in the sale deed for the purpose of reducing stamp duty payment. This contention of the assessee cannot be totally brushed aside. I also place reliance on the order of the Cochin Bench of the Tribunal in the case of ITO vs. Dr. Koshy George (supra), wherein it was held by the Tribunal that any surplus money arising to an assessee on sale of agricultural land would partake the character of agricultural income itself.*

7.4 *For the aforesaid reasoning, I hold that the order of the CIT(A) is correct and in accordance with law and no interference is called for. It is ordered accordingly.*

8. *In the result, the appeal filed by the Revenue is dismissed."*

7.2 In view of the above, we are inclined to confirm the order of the CIT(A) on this issue.

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on this 6<sup>th</sup> February, 2019.

sd/-  
(GEORGE GEORGE K.)  
JUDICIAL MEMBER

sd/-  
(CHANDRA POOJARI)  
ACCOUNTANT MEMBER

Place: Kochi

Dated: 6<sup>th</sup> February, 2019

GJ

Copy to:

1. Shri P.V. Abraham, Palliparambil House, Irumbanam P.O., Ernakulam, Kochi-682 309.
2. The Income Tax Officer, Ward-1(1), Non-Corporate, Kochi.
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