

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

I.T.A. No.632/Coch/2017
Assessment Year : 2007-08

The Income Tax Officer, Ward-4, Kollam.	Vs.	Shri V. Thampi, Shiju Nivas, Thrikovilvattom, Mukhathala P.O., Kollam. [PAN: ABLPV 5630P]
(Revenue-Appellant)		(Assessee-Respondent)

I.T.A. No.636/Coch/2017
Assessment Year : 2007-08

The Income Tax Officer, Ward-3, Kollam.	Vs.	Smt. R. Sheela Kumari, Shiju Nivas, Thrikovilvattom, Mukhathala P.O., Kollam. [PAN: AFAPK 0512Q]
(Revenue-Appellant)		(Assessee-Respondent)

Revenue by	Smt. A.S. Bindhu, Sr. DR
Assessee by	Smt. K. Krishna

Date of hearing	19/12/2018
Date of pronouncement	27/12/2018

ORDER

Per CHANDRA POOJARI, AM:

These appeals filed by the Revenue in the case of different assesseees are directed against different orders of the CIT(A), Trivandrum and pertain to the assessment year 2007-08.

2. Since the issues involved in these appeals are common in nature, they were clubbed together, heard together and are being disposed of by this common order.

3. The grounds raised in both the appeals are common which read as follows:

1. The CIT(A) erred in deleting the additions made on unexplained investment on construction of building and unexplained investment in bakery based on the facts which are contrary to the materials available on record.

It is respectfully submitted that the present appeals involve substantial question of law:

(i) The jurisdictional High Court order in the case of M/s Hotel Alukkas, on which the CIT(A) relied upon was passed in 2009 whereas the order of Govt. of Kerala directing all its departments to follow the CPWD data and schedule of rates vide G O(P) No. 36/2013/PWD was dated 17.04.2013. Following the latest provisions of law, the assessment was completed based on the valuation report received from the Valuation officer, Income tax Department which was prepared by adopting the plinth area rate of Govt of India approved by CBDT.

(ii) The CIT(A) ought to have noticed on the facts of the case that the quantum of construction and value thereon was adopted from the Valuation report from Valuation officer, Income Tax Department which was obtained u/s 142A of the Income Tax Act, 1961 and not by accepting the report of the Inspector. Further, the assessee was given an opportunity to furnish any explanations/ objections on this valuation, as per the provisions of Income tax Act.

(iii) On the facts of the case, the CIT(A) ought to have found that the order passed has violated Rule 46A. The evidences of confirmations from banks and Valuation report prepared by a Registered Valuer were not produced during the course of assessment. If these documents were produced as additional evidence before the CIT(A), Rule 46A was attracted and the CIT(A) ought to have given chance to the Assessing Officer to present before him and allow to examine the adequacy of the additional evidences.

4. The facts of the case are that the assessee had started construction of a six storied commercial building at Chalai, Trivandrum jointly with his wife, Mrs.Sheela Kumari. During the course of assessment proceedings, the assessee had specifically been requested to furnish the details with regard to the cost of construction and also source for the same. As per the letter dt. 14. 02. 2014 filed by the assessee's authorized representative, the period of construction was between FYs 2006-07 and 2008-09. Since the assessee didn't furnish the actual cost of construction and year wise investment made thereon, a pre assessment notice was issued to the assessee estimating the total cost of construction of the building at Rs.3,00,00,000/- which included Rs.1,44,84,870/- estimated for the year under consideration. Further, during the course of assessment proceedings, the cost of the said building was referred to the District Valuation Officer under section 142A of the Act for valuation. As per the valuation report, the total investment made by the assessee excluding the value of machineries and plants and internal furnishing is Rs.3,36,08,854/-. The assessee had not furnished any details with regard to the year wise completion of the building or the year wise investment made in the construction of the building. Therefore, the investment made by the assessee and his wife jointly in the construction of the building for the year under consideration was taken at Rs.1,62,27,330/-. The said amount according to the Assessing Officer was spent for the construction of ground, first and second floors having plinth area of 780.30 sq.m. In the absence of source explained for the construction of the said three floors, 50% of the value of the

investment amounting to Rs.81,13,665/- was treated as unexplained investment and accordingly, the same was brought to tax under section 69 of the Act.

5. On appeal, the CIT(A) observed that building permit for construction of the said building was obtained from the Trivandrum Municipal Corporation on 10/06/2005. According to the CIT(A), the construction of the said building commenced during April, 2006 and completed during March, 2009. It was informed by the assessee that the total amount spent for the construction was Rs.1,76,15,009/-. The CIT(A) observed that the Assessing Officer should have taken into account the confirmation letter issued by the Federal Bank, Kureepally Branch, Kollam for the loan amount of Rs.50,00,000/- while considering the case of the assessee's wife, and the other confirmation letter dt. 29.06.2008 issued by the IOB, Kuravankonam Branch, Trivandrum for a term loan of Rs.2,00,00,000/- for the construction of the building. According to the CIT(A), in the absence of independent enquiry carried out and without considering the confirmation letters issued by the said banks, the addition cannot be made. The CIT(A) observed that valuation report dated 20/02/2014 obtained from Shri M.M. Khan, Chartered Engineer and approved registered valuer was also submitted to the Assessing Officer but the same was not considered by the Assessing Officer. The CIT(A) was of the considered opinion that where different methods of valuation are possible then the one which is more appropriate and beneficial to the assessee should necessarily be followed. The assessee in the instant case had submitted a

valuation report of a registered valuer who worked out the cost of ground, first and second floors at Rs.80,97,000/- as against the value of Rs.1,62,27,330/- determined by the District Valuation Officer. Agreeing with the assessee's contention, the CIT(A) was of the view that local rates must be preferred to Central PWD rates while evaluating the cost of construction of a building because the Central PWD rates are generally higher and based on rates prevailing in Delhi and in places like Trivandrum, the cost of construction will be much lower than the Central PWD rates. For this proposition, the relied on the judgment of the High Court of Kerala in ITA No.1588 of 2009 dt. 09.09.2009 in the case of CIT vs M/s Hotel Alukkas wherein it was held that PWD valuation which is based on the local conditions is more appropriate for valuation of buildings in Kerala. Hence, the CIT(A) held that addition made to the income returned solely on the basis of Central PWD rates cannot be sustained and accordingly, deleted the addition.

6. Against this, the Revenue is in appeal before us. The Ld. DR relied on the order of the Assessing Officer.

7. The Ld. AR reiterated the arguments raised before the CIT(A).

8. We have heard the rival submissions and perused the record. In the present case, the assessee has not produced any details before the Assessing Officer regarding the year-wise completion of building or yearwise investment made in

the construction of building. Therefore, the investment made by the assessee in construction of the building was ascertained by the Assessing Officer by referring the matter to the DVO u/s. 142A of the Act and apportioned cost of construction between husband and wife, a co-owner which works out at Rs.1,62,27,330/- for the assessment year 2006-07. Since the assessee had failed to establish the source for the investments, the Assessing Officer considered 50% of the value of the investment amounting to Rs.81,13,665/- as unexplained investment u/s. 69 of the Act. Before the CIT(A), the assessee made an argument that the assessee had produced the valuation report dated 20/02/2014 obtained from Shri M.M. Khan, Chartered Engineer and approved registered valuer. On this issue, the CIT(A) observed that the valuation report had also been submitted to the Assessing Officer during the course of assessment proceedings but the same was not considered by the Assessing Officer. We find no evidence of submitting this valuation report before the Assessing Officer. The case was heard by the Assessing Officer on 10/09/2013 and 26/12/2013 and the order was passed by the Assessing Officer on 26/03/2014. The CIT(A) observed that the valuation report dated 20/02/2014 was produced before the Assessing Officer at the time of the assessment but the basis of such conclusion is not spelt out by the CIT(A). Further, the CIT(A) observed that there were two loans of Rs. 50 lakhs from Federal Bank, Kureepally Branch, Kollam and Rs.2 crores from Indian Overseas Bank, Kuravankonam Branch, Trivandrum towards investment in construction of building. The details of loans availed from the Banks were not made available to

the Assessing Officer. Hence, these evidences are required to be considered by the Assessing Officer. Without confronting the same, the CIT(A) took the view in favour of the assessee. Hence, in the interest of justice, we remit the entire issue to the file of the Assessing Officer for fresh consideration after affording opportunity of hearing to the assessee. Thus, this ground of appeals of the assessee are allowed for statistical purposes.

9. With regard to the next issue, the facts of the case are that during the previous year relevant to assessment year 2007-08, the assessee had started a new bakery in the name of his son Shri Shiju. It was found that the assessee jointly with his wife had invested more than Rs.25,00,000/- in the construction of electric borma, furnishing and initial capital. Even though the assessee was required to explain the source of this investment, the assessee did not produce any supporting evidence. In the absence of substantiating evidence, fifty percent of the investment amounting to Rs.12,50,000/- was treated as unexplained investment u/s. 69 of the Act and added to the total income of the assessee.

10. On appeal, the CIT(A) held that the assessee had invested only a sum of Rs.15,00,000/- for the bakery as per the valuation report obtained from the chartered engineer and approved registered valuer and source for the same was explained from the loan availed at Rs.2,50,00,000/- from the Federal Bank and

Indian Overseas Bank. Since the assessee was required to explain the source only for Rs.7,50,000/- which stood explained, the CIT(A) deleted the addition.

11. Against this, the Revenue is in appeal before us. The Ld. DR submitted that the CIT(A) deleted the addition on the basis of the valuation report obtained from the chartered engineer and approved registered valuer and certificates of loans issued by the Banks which were not confronted to the Assessing Officer.

12. On the other hand, the Ld. AR submitted that first appellate authority relied on the confirmation letters from the Federal Bank and IOB having sanctioned a loan of Rs. 2.5 Crores put together and these certificates were accepted by the appellate authority and this was sufficient to cover the source of the assessee. It was submitted that in the subsequent year, the appellate authority had followed the course prescribed under Rule 46A and even thereafter, accepted the certificates from the Banks. Being so, merely on technicality, finding of appellate authority cannot be challenged. Further, it was submitted that the certificates were issued by Nationalized Banks and they cannot be doubted.

13. We have heard the rival submissions and perused the record. As discussed in earlier paras with reference to the earlier issue herein, the CIT(A) placed reliance on the valuation report obtained from the registered valuer and certificates of loans issued by the Banks without confronting the same to the

Assessing Officer. In view of this, we remit this issue also to the file of the Assessing Officer for fresh consideration in accordance with law after affording adequate opportunity of hearing to the assessee. Hence, this ground of appeals of the Revenue is allowed for statistical purposes.

13.1 Regarding placing reliance on subsequent year's proceedings that there was no addition even after following procedure under Rule 46A, in our opinion each assessment is independent and separate and the principle of res judicata cannot be applied to income tax proceedings.

14. In the result, the appeals of the Revenue are allowed for statistical purposes.

Order pronounced in the open Court on this 27th December, 2018.

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Place: Kochi
Dated: 27th December, 2018
GJ

Copy to:

1. Shri V. Thampi, Shiju Nivas, Thrikovilvattom, Mukhathala P.O., Kollam.
2. Smt. R. Sheela Kumari, Shiju Nivas, Thrikovilvattom, Mukhathala P.O., Kollam.
3. The Income Tax Officer, Ward-3, Kollam.
4. The Income Tax Officer, Ward-3, Kollam.

5. The Commissioner of Income-tax(Appeals), Trivandrum.
6. The Pr. Commissioner of Income-tax, Trivandrum.
7. D.R., I.T.A.T., Cochin Bench, Cochin.
8. Guard File.

By Order

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