

<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. Nos. 63 & 64/Coch/2018
Assessment Years : 2009-10 & 2010-11

The Assistant Commissioner of Income-tax, Central Circle, Kollam.	<b>Vs.</b>	M/s. A.R. Bangles, Venga P.O., Sasthamkotta, Kollam. [PAN:AAPFA 4067Q]
<b>(Revenue-Appellant)</b>		<b>(Assessee-Respondent)</b>

C.O. Nos. 39 & 40/Coch/2018 (Arsg. out of I.T.A. Nos. 63 & 64/Coch/2018)
Assessment Years : 2009-10 & 2010-11

M/s. A.R. Bangles, Venga P.O., Sasthamkotta, Kollam. [PAN:AAPFA 4067Q]	<b>Vs.</b>	The Assistant Commissioner of Income-tax, Central Circle, Kollam.
<b>(Assessee-Appellant)</b>		<b>(Revenue-Respondent)</b>

<b>Revenue by</b>	Shri Shantam Bose, CIT(DR)
<b>Assessee by</b>	None

<b>Date of hearing</b>	10/12/2018
<b>Date of pronouncement</b>	13/12/2018

**ORDER**

Per CHANDRA POOJARI, AM:

These appeals by the Revenue are directed against different orders of the CIT(A)-III, Kochi dated 26/10/2014 and pertain to the assessment years 2009-10 and 2010-11.

2. At the time of hearing of the appeals, none appeared on behalf of the assessee nor any adjournment petition was received from the assessee. However, we proceed to decide the appeals and the C.Os after hearing the Ld. DR.

3. With reference to Revenue's appeal in ITA No. 63/Coch/2018, at the time of hearing, the Ld. DR filed a letter dated 27/09/2018 stating that since the tax effect involved in the present appeal was less than Rs. 20 lakhs, which is below the monetary limits prescribed for filing second appeal before ITAT and also, the conditions laid down as per para 10 of CBDT Circular No. 3/2018 were not attracted in this case, it was requested that the appeal filed in the case of the above assessee may be treated as withdrawn.

4. In view of the above submission, we are inclined to dismiss the appeal of the Revenue in ITA No. 63/Coch/2018 as withdrawn. The Cross Objection filed by

the assessee in C.O. No. 39/Coch/2018 which is supportive of the order of the CIT(A) has become infructuous and the same is dismissed as infructuous.

5. The only ground raised by the Revenue in ITA No. 64/coch/2018 is with regard to deletion of addition of Rs.1,10,70,500 being unexplained cash deposits in the cash credit a/c. of the assessee with UCO Bank.

6. The facts of the case are that on verification of bank statement of A/c. No. 12600 and the assessee firm's bank book of that A/c and cash book, it was noticed that the following cash credits were unexplained and not supported by the cash book:

a.	23.04.2009	Rs.46,20,000
b.	28.04.2009	Rs.10,00,000
c.	08.05.2009	Rs.25,00,000
d.	09.05.2009	Rs. 5,00,000
e.	12.05.2009	Rs. 8,35,000
f.	18.05.2009	Rs. 2,00,000
g.	29.05.2009	Rs. 5,50,000
h.	01.06.2009	Rs. 5,00,000
i.	08.06.2009	Rs. 3,65,500

The Assessing Officer treated these cash deposits as unexplained cash credits. According to the Assessing Officer, the assessee firm had objected to the proposal stating that "these are the amounts returned by cash/remitted into our accounts by our staff". The Assessing Officer rejected the contention of the assessee that the amounts figuring at (e), (g), (h) & (i) were deposited by their partner Mr. M. Hussain out of the funds available with him for the reason that

any cash transaction entered into by the assessee whether cash deposit in bank or cash withdrawal from bank should be reflected in the cash book. According to the Assessing Officer, since the cash credits were not reflected in the cash book, the cash transactions in the assessee's bank account were treated as unexplained cash credits and assessed to tax as the business receipts of the assessee.

7. Against this, the assessee went in appeal before the CIT(A). Before the CIT(A), the assessee submitted that the amounts figuring at (a), (b), (c), (d) and (f) were received as return of purchase advance outstanding as on 31/03/2010 in the balance sheet by means of direct remittance into the bank accounts. It was submitted that the amounts figuring at (e), (g), (h) & (i) were remitted by their partner Mr. M. Hussain out of the funds available in the cash flow statement filed before the Assessing Officer. The assessee contended that it does not make any difference even if all these amounts are routed through cash book. According to the assessee, if there are sufficient sources for the funds, then there is no case for Revenue to agitate about the manner of bringing these funds into the books of account of the assessee. The CIT(A) observed that the assessee had furnished explanation for the deposits made in the bank account. Therefore, according to the CIT(A), it cannot be said that these credits were unexplained. The CIT(A) was of the view that the Assessing Officer had not made any effort to prove that any of the explanations given by the assessee

was incorrect. According to the CIT(A), a substantial amount was claimed to have been brought in through partner and the partner was available for examination by the Assessing Officer. In view of the above, the CIT(A) deleted the addition of Rs.1,10,70,500/-.

8. Against this the Revenue is in appeal before us.

9. We have heard the Ld. DR. We find that the order of the CIT(A) is very cryptic. He has not given the finding what is the exact source of deposits of Rs.1,10,70,500/-. The burden is on the assessee to explain the above deposits in the assessee's bank account. The explanation given by the assessee before the Assessing Officer was not satisfactory and hence, the Assessing Officer made the addition. However, the CIT(A) reached the conclusion that it is duly explained on the basis of the oral argument of the assessee without having any corroborative material. Therefore, in the interest of natural justice, we remit this issue to the file of the Assessing Officer for fresh consideration. This ground of appeal of the Revenue is allowed for statistical purposes.

10. In the C.O. No. 40/Coch/2018, the assessee has raised the ground that the CIT(A) erred in dismissing the additional ground that though its premises were searched, warrant was not issued in the name of the assessee, i.e., M/s. A.R. Bangles but in the name of M/s. Arafa Jewellers. The CIT(A) dismissed this

ground by holding that the ground raised was time barred. Before us, no material was placed on record to suggest that warrant was not issued in the name of the assessee but in the name of M/s. Arafa Jewellers. Hence, we are not inclined to interfere with the order of the CIT(A). The cross objection of the assessee in C.O. No. 40/Coch/2018 is dismissed.

11. In the result, the appeals filed by the Revenue are partly allowed for statistical purposes and the Cross Objections filed by the assesseees are dismissed.

Order pronounced in the open Court on this 13<sup>th</sup> December, 2018.

sd/-  
(GEORGE GEORGE K.)  
JUDICIAL MEMBER

sd/-  
(CHANDRA POOJARI)  
ACCOUNTANT MEMBER

Place: Kochi  
Dated: 13<sup>th</sup> December, 2018  
GJ

Copy to:

1. M/s. A.R. Bangles, Venga P.O., Sasthamkotta, Kollam.
2. The Assistant Commissioner of Income-tax, Central Circle, Kollam.
3. The Commissioner of Income-tax(Appeals)-III, Kochi.
4. The Commissioner of Income-tax, Central, Kochi..
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

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

I.T.A. Nos.63&64/Coch/2018  
& C.O. Nos. 39&40/Coch/2018