

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

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

ITA No.292/Coch/2018 : Asst.Year 2007-2008

The Asst.Commissioner of Income-tax, Central Circle 2 Kozhikode.	Vs.	Sri. M.T.Francis Donum Dei Nellikode Housing Colony Chevayoor P.O. Kozhikode – 673 007. PAN : AAEPF0112G.
(Appellant)		(Respondent)

Appellant by : Sri. Alok Mitra, CIT-DR
Respondent by : Sri. C.B.M.Warrier

Date of Hearing : 14.03.2019	Date of Pronouncement : 19.03.2019
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ORDER

Per George George K., JM

This appeal at the instance of the Department is directed against CIT(A)'s order dated 12.03.2018. The relevant assessment year is 2007-2008.

2. The grounds raised read as follows:-

"1. The Commissioner of Income Tax (Appeals) erred in treating the cash deposits in bank accounts (Assessed at Rs. 1,91,42,480) as explained on the ground that total withdrawals from bank accounts exceed total deposits.

2. The CIT(A) has overlooked that the purpose of withdrawals from bank account has not been explained by the assessee. It is not credible that the assessee merely withdraws amounts from bank to deposit the same back.

3. *There are major differences between amounts assessed by the AO with respect to cash deposits in bank accounts and amounts explained by the assessee before the CIT(A). The CIT(A) did not afford an opportunity to the AO to analyze the fresh claims made by the assessee and to verify the fresh facts presented before the CIT(A).*

4. *The CIT(A) erred in allowing cash of Rs.21,98,658, deposited in SBT Main SB 607 A/c as source for expenses. In CIT(A)'s order, page 8, paragraph 13.1, it is stated this amount is cash deposit in SB Ale No.607. Therefore, this amount is an application of income and not a source."*

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

The assessee is a retired Assistant Commissioner of Police. There was a search u/s 132 of the I.T.Act on 27.03.2012 in the residential premises of the assessee. Pursuant to the search, notice u/s 153A of the I.T.Act was issued. The assessee in response to the said notice, filed return of income declaring total income of Rs.35,610 and agricultural income of Rs.1,30,000. The Assessing Officer completed the assessment u/s 153A of the I.T.Act vide order dated 31.03.2014, wherein he made the following additions:-

Sr. No.	Particulars	Amount (Rs.)
1.	Fixed deposits in the name of Sri.M.T.Francis	48,00,000
2.	Fixed deposits in the name of Smt.Leelamma Francis	95,22,000
3.	Educational expenses	1,54,059
4.	Drawings	6,38,455
5.	Interest paid	3,48,265
6.	House construction	5,43,478
7.	Cash credit	1,91,42,480
	Total	3,51,48,737

3.1 Out of the above addition of Rs.3,51,48,787, the A.O. reducing the agricultural income estimated, the receipts on account of sale of land and the income disclosed by both the assessee and his wife and arrived at the total undisclosed income at Rs.3,45,56,020. The Assessing Officer assessed 50% of undisclosed income in the hands of the assessee and the balance 50% in the hands of the wife of the assessee. The only issue agitated in this appeal is the addition of Rs.1,91,42,480. The additions were on account of cash deposits in various banks, the source of which according to the A.O., there was no explanation from the assessee. The details of the cash deposits of Rs.1,91,42,480 are as follows:-

2006-2007	
Name of Bank	Cash credit (Rs.)
SBT Palayam	18,54,500
SBT Palayam	2,69,500
Federal Bank Puthiyara	9,50,000
SBT Clt. Main	5,02,000
CB Chalappuram	1,55,66,480
Total	1,91,42,480

4. Aggrieved by the assessment order, the assessee preferred appeal to the first appellate authority. Before the first appellate authority, the assessee had furnished cash flow statement and explained the source of cash deposits in various banks. The CIT(A) was of the view that only a sum of Rs.29,29,310 out of the total addition made by the A.O. remained unexplained and the balance additions made by the A.O. was deleted by the CIT(A) in his order dated 12.03.2018. Out of the total unexplained addition sustained amounting to

Rs.29,29,310, 50% was assessed in the hands of the assessee and the balance 50% in the hands of the wife of the assessee.

5. Aggrieved by the order of the CIT(A), the Department has preferred this appeal before the Tribunal. The learned Departmental Representative relied on the grounds raised. The learned AR, on the other hand, has filed a brief paper book enclosing the cash flow statement showing the receipt and payments account, also the details of fixed deposits both in the hands of assessee and his wife etc.

6. We have heard the rival submissions and perused the material on record. The addition of Rs.1,91,42,820 was made by the A.O. since the assessee did not explain properly the source of cash deposits made in various banks belonging to the assessee and his wife. It is also an admitted fact that many of these deposits taken as cash deposits by the A.O. are not cash deposits but are bank transfers. However, we noticed from the assessment order that there was no explanation offered by the assessee. Before the CIT(A), the assessee had furnished the cash flow statement and details of various fixed deposits, which were closed and utilized for deposits in various bank accounts. On the explanation submitted before the CIT(A), he deleted substantial portion of the addition made by the A.O. We notice that the assessee had furnished detailed explanation through receipt and payment account / cash flow statement before the CIT(A). The CIT(A) did not grant an opportunity to the Assessing Officer to analyse the fresh evidence produced him. This action of the CIT(A) is in

clear violation of the provisions of Rule 46A of the Income-tax Rules, 1962. Therefore, we are of the view that the matter needs to be restored to the A.O. for *de novo* consideration. Accordingly, we restore the case to the Assessing Officer. The assessee is directed to furnish proper explanation with regard to the source of deposits in various banks amounting to Rs.1,91,42,480. It is ordered accordingly.

7. In the result, the appeal filed by the Department is allowed for statistical purposes.

Order pronounced on this 19th day of March, 2019.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin ; Dated : 19th March, 2019.
Devdas*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT (Central), Kochi
4. The CIT(A)-III, Kochi.
5. The DR, ITAT, Cochin.
6. Guard file.

BY ORDER,

AR-ITAT- Cochin