

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

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

ITA No.385/Coch/2017 : Asst.Year 2012-2013

The Income Tax Officer Ward 2(2) Non-Corporate Range-2 Kochi.	Vs.	Sri. K.J.Joseph Flat No.8A, Trine Pushpamangalam, Sea Port Airport Road, Thrikkakara Kochi – 682 021. PAN : ABLPJ3062D.
(Appellant)		(Respondent)

Appellant by : Smt.A.S.Bindhu, Sr.DR

Respondent by : Smt.Preethi S.Nair

Date of Hearing : 07.05.2019	Date of Pronouncement : 08.05.2019
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ORDER

Per George George K, JM

This appeal at the instance of the Revenue is directed against the Commissioner of Income-tax (Appeals)'s order dated 24.05.2017. The relevant assessment year is 2012-2013.

2. Two issues are raised in this appeal – viz. (i) Addition of cash deposit in various bank amounting to Rs.53,38,000, and (ii) Addition of long term capital gain amounting to Rs.26,41,687.

3. Brief facts in relation to the above two additions are as follows:

There was cash deposits in various bank accounts of the assessee amounting to Rs.53,38,000. In the course of assessment proceedings, the assessee was asked to explain the source of these cash deposits. It was claimed by the assessee that the source of these cash deposits are out of sale proceeds of timber / wood on the land at Thoudupuzha, which was received as a gift from his mother and sale of rubber trees in land purchased by him at Thodupuzha in 1995. Since there was no evidence produced before the Assessing Officer, the cash deposits in various bank accounts was treated as unexplained by the Assessing Officer and added to the total income.

3.1 Further, during the course of scrutiny assessment proceedings, it was noticed by the Assessing Officer that the assessee had disclosed receipt of Rs.30,49,665, which was claimed as sale proceeds of agricultural land acquired by him during the period 1995 to 2009. Photocopy of some of the documents for acquisition of land and sale of same were filed. Since there was no evidence produced to show that the land sold was agricultural land and agricultural operation was carried on in it, the claim of the assessee that it was an agricultural land, was rejected. Therefore, the receipt of amount of Rs.30,49,665 was, taxed as long term capital gain after allowing the deduction u/s 48 of the I.T.Act.

4. Aggrieved by the additions made by the Assessing Officer, the assessee preferred an appeal to the first appellate

authority. The CIT(A) deleted both the additions. The CIT(A) for deleting the above additions, accepted the additional evidence in the form of sale agreement of timber and rubber wood. As regards the addition of long term capital gains, the revenue records stating the impugned land was an agricultural land and situated beyond 8 kms. from the notified Municipal area, was relied on by the CIT(A) for holding that no long term capital gain is exigible on sale of the impugned property.

5. Aggrieved by the order of the CIT(A), the Revenue has filed this appeal before the Tribunal. The learned Departmental Representative submitted that the CIT(A) by accepting the additional evidence, has violated the provisions of Rule 46A of the Income-tax Rules, and hence, the matter needs to be referred back to the Assessing Officer to examine the additional evidence that is produced before the CIT(A). The learned AR strongly relied on the findings / observation of the CIT(A).

6. We have heard the rival submissions and perused the material on record. Admittedly, both the additions have been deleted by the CIT(A) by placing reliance on the additional evidence produced by the assessee before the CIT(A). The CIT(A) on his part has not called for a remand report from the Assessing Officer thereby violating the provisions of Rule 46A of the I.T.Rules. The prescription of Rule 46A of the I.T.Rules is clear. As per Rule 46A of the I.T.Rules, assessee is

ordinarily not entitled to production any additional evidence before the CIT(A) other than that furnished before the Assessing Officer except in the four circumstances enumerated in clause (a) to (d) of sub-rule (1). Sub-rule (2) however provides that no evidence shall be admitted under sub-rule (1) unless the CIT(A) records in writing the reasons for its admission. Sub-rule (3) further stipulates that the CIT(A) shall not take into account any evidence produced under sub-rule (1) unless the A.O. has been allowed a reasonable opportunity to examine the evidence or document or to cross examine the witness produced by the assessee or to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the assessee.

6.1 In the instant case, the CIT(A) had deleted the addition of Rs.52,38,000 by placing reliance on the sale agreement for selling rubber trees and other timber in his land situated in Thodupuzha and Idukki District. Further the CIT(A) has placed reliance on the revenue records to hold that the land is an agricultural land and situated beyond 8 kms. from the notified Municipal area. There is nothing on record to suggest that these evidences relied on by the CIT(A) was placed before the assessing authority. If the CIT(A) wanted to entertain the additional evidence, he ought to have called for the comments of the A.O. Since no comments of the Assessing Officer is called for, in the interest of justice and equity, we set aside the impugned order of the CIT(A) and restore the matter to the A.O. for deciding the above issues afresh as per law after

affording reasonable opportunity of being heard to the assessee. Needless to state the assessee would extend full cooperation to the A.O. to facilitate framing of proper assessment. It is ordered accordingly.

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

Order pronounced on this 08th day of May, 2019.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Cochin ; Dated : 08th May, 2019.
Devdas*

Copy of the Order forwarded to :

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

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin