

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

I.T.A. Nos.45 & 46/Coch/2019
Assessment Years : 2005-06 & 2006-07

M/s. Killi Construction, Killi Tower, Karamana P.O., Trivandrum-695 002. [PAN: AAIFK 7922P]	Vs.	The Deputy Commissioner of Income-tax, Central Circle, Trivandrum.
(Assessee-Appellant)		(Revenue-Respondent)

Assessee by	Shri T.M. Sreedharan, Sr. Adv.
Revenue by	Smt. A.S. Bindhu, Sr. DR

Date of hearing	14//05/2019
Date of pronouncement	16/05/2019

ORDER

Per CHANDRA POOJARI, AM:

These two appeals filed by the assessee are directed against the common order of the CIT(A)-III, Kochi dated 17/12/2018 and pertain to the assessment years 2005-06 and 2006-07.

2. The assessee has raised the following common grounds of appeal.

1) The order of the Commissioner of Income Tax (Appeals)- III, Kochi in ITA No.2/TVM/CIT(A)-III/2018-19 dated 17.12.2018 for the asst. year 2005-06, is opposed to law, facts and circumstances of the case.

2) It is respectfully submitted that the proceedings are barred by limitation' and as a consequence thereof the impugned order is non-est in law.

- 3) It is further respectfully submitted that there are no valid grounds or materials before the assessing officer to discredit the creditworthiness of late Mr.Subair Khan to the extent of the amount invested in the construction.
- 4) Without prejudice, it is further respectfully submitted that the conditions for invoking section 68 are not satisfied.
- 5) It is further submitted that the fact that the assessment order is set aside by the ITAT, Cochin Bench also supported the appellant's case. No material is brought on record to establish that late Mr.Subair Khan had no capacity to make the investments and as such the addition is liable to be set aside.
- 6) The CIT(A) ought to have found that having regard to the fact that the credit for Rs.10 lakhs in the account of late Subair Khan having been found to be satisfactory and properly explained, there is no logic or reason in denying the same consideration with respect to the balance of Rs.5 lakhs.
- 7) The CIT(A) should have adverted to the personal relationship between the Managing Partner of Killi Construction on the one hand and late Subair Khan on the other and their long-standing association in regard to financial matters which is reflected in the transactions.
- 8) The assessing and appellate authorities should not have taken advantage of the untimely death of Late Subair Khan who, however, had admitted and explained the transactions through confirmation letter submitted in the course of earlier enquiry proceedings which could have been verified by the assessing officer effectively at that time but this was not done. It is undisputed fact that late Subair Khan confirmed the transactions through letter dated 10.2.2009 while he died on 8.8.2009. Further confirmation was also submitted by his legal heir through letter dated 27.4.2015. The payment is also supported by the entries in the bank pass book. In such circumstances, the CIT(A) should have accepted the entire credit and allowed the appeal.
- 9) The appellant humbly prays that the grounds of appeal before the CIT(A) as well as before this Hon'ble Tribunal in ITA Nos.369 & 298/C/2016 may also be considered as part of these grounds.
- 10) The appellant craves leave to file additional grounds at the time of hearing.

4. The facts of the case for AY 2005-06 are that as per the balance sheet filed by the assessee, the assessee had an unsecured loan of Rs.15,00,000/- from Mr. Subair Khan who was the brother-in-law of the Mr. Mohanan Nair (Managing partner of Killi Construction). The Assessing Officer vide order u/s.144 r.w.s. 143(3) dated 27/12/2010 added the said amount as unexplained credit u/s. 68 of the Act as the source was unexplained. Out of the total loan of Rs.15,00,000/- the source for Rs.10,00,000/- was explained by the assessee with relevant documents. However, for the remaining Rs.5,00,000/- the source remained unexplained. Mr. Subair Khan had expired on 08/08/2009 and hence no confirmation was possible from the loan creditor. According to the Assessing Officer, the confirmation letters were produced from the brother and mother of Late Subair Khan which cannot be treated as a valid evidence because the confirmation letters are dated 27/04/2015 and 16/08/2018 which are almost 10 years later than the year in which loan was taken. According to the Assessing Officer, the assessee had neither provided any evidence with regard to squaring off of the loan of Rs.5,00,000/- taken from Late Mr. Subair Khan nor have the relatives of Late Mr. Subair Khan confirmed the repayment of the said loan amount. According to the Assessing Officer, the assessee had only provided cash receipts for A.Y. 2005-06 wherein entries with reference to amounts received from Late Mr. Subair Khan were mentioned which were unverifiable. Accordingly, the AO made the additions for both the assessment years.

5. On appeal, the CIT(A) observed that the assessee had taken two different stands stating that in the first round of assessment proceeding it was a loan availed and during the course of appellate proceedings before the CIT(A) that it was an amount paid towards allotments of 1,000 sq. ft. in the Killi Towers to be constructed. Further, the CIT(A) found that the assessee had maintained good relationship with that of the family of Mr. Subair Khan and thus, rejected the contention of repayment of loan of Rs.15,20,000/- as deemed rental income. The assessee had not shown the amount of Rs.15,20,000/- as deemed rental income in the return of income. The CIT(A) found that the assessee had neither provided any confirmation letter regarding the repayment of the loan account from the relatives of Mr. Subair Khan nor any other verifiable evidence in support of the repayment. The CIT(A) found that the signature of Mr. Subair Khan as appended in the deed of agreement dated 06/02/2007 was different from that of the signature appended in the confirmation letter dated 10/02/2004. In such circumstances, the CIT(A) dismissed the appeal of the assessee.

6. Against this, the assessee is in appeal before us.

6.1 The Ld. AR submitted that in the second appeal before the ITAT, Cochin Bench, vide order dated 29.01.2018, in I.T.A. No.369/C/2016, the assessment was set aside and remitted back to the Assessing Officer for fresh examination of the issue regarding the unexplained credit. It was submitted that in the set aside appeal proceedings, the CIT(A) accepted the source for Rs.10 lakhs and the remaining Rs.5 lakhs was treated as unexplained credit. So much so, out of Rs.15 lakhs considered

in the assessment order, Rs.10 lakhs was accepted and the remaining Rs.5 lakhs was treated as unexplained credit. According to the Ld. AR, the assessee had already produced confirmation letter from Late Subair Khan, who had provided Rs.15 lakhs during the Financial year 2004-05 and this is reflected in the Balance Sheet as on 31.03.2005.

6.2 It was submitted that the assessee had also filed return of income for the Assessment Year 2005-06 on 11.06.2010 along with Balance Sheet declaring 'Nil' taxable income. It was submitted that in the appeal before the CIT(A), it was found that Rs.10 lakhs was explained by relevant documents and the same was accepted. It was also found that for the remaining Rs.5 lakhs the source remained unexplained and hence the same was added. In this connection, it was submitted that Late Subair Khan was closely associated with the project M/s Killi Construction and he was a prospective customer of the project, who had intention to own a convenient place in the upcoming project and payment made towards thereof while construction was in progress. According to the Ld. AR, the Financial Year 2004-05 was the first year of commencement of the firm and it was highly improbable that the assessee had unexplained income, even at the time of commencement of the firm. The total credit in his account was Rs.15 lakhs. It was submitted that Late Subair Khan confirmed the transaction through letter dated 10.02.2009 before he died on 08.08.2009. Further, it was submitted that the confirmation was also submitted by the legal heirs of the deceased through letter dated 27.04.2015 and the transaction was also supported by the entries in the Bank pass book. The Ld. AR

drew attention to the copy of the ledger folio of Late Subair Khan in the books of M/s Killi Constructions for the year ended 31.03.2005. In such circumstances, it was prayed that the balance addition of Rs.5 lakhs as unexplained income of the firm for the Assessment Year 2005-06 may be set aside.

AY-2006-07:

6.3 For the Assessment Year 2006-07, the Ld. AR submitted that the addition was Rs.10,20,000/- and for the Assessment Year 2006-07, the Financial Year 2005-06, the construction work of M/s. Killi Construction had commenced and the work was in progress. In response to the notice u/s. 148, the assessee filed return of income on 11.06.2010 declaring 'Nil' income. It was submitted that even though the capital contributions of the co-owners were brought to tax, the same was accepted in appeal by the CIT(A). According to the Id. AR, while the Assessing Officer did not make any addition with respect to the amount credited in the account of Late Subair Khan, amounting to Rs.10,20,000/-, however, the CIT(A) in his order dated 29.04.2016, enhanced the assessment by adding the amount of Rs.10,20,000/- as unexplained income. and on further appeal, the Tribunal directed the Assessing Officer to look into the issue afresh after providing opportunity of hearing to the assessee.

6.4 The Ld. AR submitted that before the fresh assessment proceedings had been taken up, Late Subair Khan had expired on 08.08.2009. Hence, no confirmation was possible from him. It was submitted that the assessee provided confirmation letters from the brother and mother of Late Subair Khan, who were aware of the

transaction. However, the Assessing Officer merely stated that production of confirmation letters from mother and brother cannot be treated as valid evidence. According to the Assessing Officer, the confirmation letters are dated 27.04.2015 and 16.08.2018, which are almost 10 years later than the year in which the loan was taken. Accordingly, the amount was added as unexplained loan.

6.5 The Ld. AR submitted that the CIT(A) repeated what the Assessing Officer stated without taking into consideration several different transactions in the ledger credit folio, of Late Subair Khan which took place long before the search u/s 132 was carried out on 11.10.2007 in the premises of Shri. S. Mohanan Nair, Managing Partner of M/s Killi Constructions. Thus, it was submitted that there was no basis to suspect the genuineness of the transactions and the credit worthiness of Late Subair Khan. It was submitted that that during the life time of Late, Subair Khan, he had confirmed the transactions with M/s Killi Constructions, however, the Assessing Officer never wanted him to be examined or any evidence collected. In the above scenario, it was submitted that the addition of Rs.10,20,000/- for the Assessment Year 2006-07 may be deleted and appeal allowed.

7. The Ld. DR relied on the order of the lower authorities.

8. We have heard the rival submissions and perused the record. For the assessment year 2005-06, the assessee received loan of Rs.15,00,000 from Mr. Subair Khan, brother-in-law of Mr. Mohanan Nair (Managing partner of Killi

Construction). Out of the total amount of Rs.15,00,000/-, the source for Rs.10,00,000/- was explained by the assessee with relevant documents. Regarding the balance amount of Rs.5,00,000/-, the person, i.e. Mr. Subair Khan who had advanced money to the assessee had expired on 08/08/2009. He has confirmed the same by his letter dated 10/02/2009. It was also submitted by the Id. AR that the legal heirs of the deceased had given confirmation letter dated 27/04/2015 wherein the repayment of loan was confirmed. This was supported by the entries in the Bank pass book. This fact has not been disputed by the Department. In such circumstances, the addition cannot be sustained for both the assessment years. The allegation of the Assessing Officer is that the confirmation letters are dated 27/04/2015 and 16/08/2016 which are almost ten years later than the year in which the loan was taken. These confirmation letters were furnished by the brother and mother of Late Mr. Subair Khan and it cannot be doubted without examining these parties. The Assessing Officer has made the addition without providing any evidence contrary to the submissions made by the assessee which is not correct. Further, there is no reason to suspect the bonafides and genuineness of the transactions. There is also no basis to suspect the credit worthiness of Late Subair Khan. To that extent, there are no grounds to suspect the transactions with him. Moreover, the CIT(A) also accepted Rs.10 lakhs assessed for AY 2005-06 as satisfactorily explained. Since the construction of M/s. Killi Tower had just begun and funds were contributed by several contributors, the earning of unexplained income even during the construction period is a clear imaginary situation. During the life time of Late, Subair Khan, he had confirmed the transactions with M/s Killi

Constructions, however, the Assessing Officer never wanted him to be examined or any evidence collected. Accordingly, we are inclined to delete the addition of Rs. 5 lakhs for AY 2005-06 and the addition of Rs. 10,20,000/- for AY 2006-07 and allow the appeals of the assessee for both the assessment years.

9. In the result, the appeals of the assessee are allowed.

Order pronounced in the open Court on this 16th May, 2019

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Place: Kochi

Dated: 16th May, 2019

GJ

Copy to:

1. M/s. Killi Construction, Killi Tower, Karamana P.O., Trivandrum-695 002.
2. The Deputy Commissioner of Income-tax, Central Circle, Trivandrum.
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

