

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

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

ITA No.85/Coch/2018 : Asst.Year 2008-2009  
ITA No.86/Coch/2018 : Asst.Year 2009-2010  
ITA No.87/Coch/2018 : Asst.Year 2010-2011  
ITA No.88/Coch/2018 : Asst.Year 2011-2012  
ITA No.89/Coch/2018 : Asst.Year 2012-2013  
ITA No.167/Coch/2018 : Asst.Year 2013-2014  
ITA No.168/Coch/2018 : Asst.Year 2014-2015

Sri.P.S.Baby Pathinaruparayil House Neendoor P.O. Kottayam – 686 601.	Vs.	The Asst.Commissioner of Income-tax, Cent.Circle Kottayam.
(Appellant)		(Respondent)

ITA No.56/Coch/2019 : Asst.Year 2008-2009  
ITA No.57/Coch/2019 : Asst.Year 2009-2010  
ITA No.58/Coch/2019 : Asst.Year 2010-2011  
ITA No.59/Coch/2019 : Asst.Year 2011-2012  
ITA No.60/Coch/2019 : Asst.Year 2012-2013  
ITA No.61/Coch/2019 : Asst.Year 2013-2014  
ITA No.62/Coch/2019 : Asst.Year 2014-2015

The Asst.Commissioner of Income-tax, Cent.Circle Kottayam.	Vs.	Sri.P.S.Baby Pathinaruparayil House Neendoor P.O. Kottayam – 686 601. <b>PAN : AZAPS0622H.</b>
(Appellant)		(Respondent)

CO No.02/Coch/2019 : Asst.Year 2008-2009  
(Arising out of ITA No.56/Coch/2019)

CO No.03/Coch/2019 : Asst.Year 2009-2010  
(Arising out of ITA No.57/Coch/2019)

CO No.04/Coch/2019 : Asst.Year 2010-2011  
(Arising out of ITA No.58/Coch/2019)

CO No.05/Coch/2019 : Asst.Year 2011-2012  
(Arising out of ITA No.59/Coch/2019)

CO No.06/Coch/2019 : Asst.Year 2012-2013  
(Arising out of ITA No.60/Coch/2019)

CO No.07/Coch/2019 : Asst.Year 2013-2014  
(Arising out of ITA No.61/Coch/2019)

CO No.08/Coch/2019 : Asst.Year 2014-2015  
(Arising out of ITA No.62/Coch/2019)

Sri.P.S.Baby Pathinaruparayil House Neendoor P.O. Kottayam - 686 601.	Vs.	The Asst.Commissioner of Income-tax, Cent.Circle Kottayam.
(Cross Objector)		(Respondent)

Revenue by : Sri.Alok Mitra  
Assessee by : Sri. T.John George, Advocate

Date of Hearing : 02.05.2019	Date of Pronouncement : 09.05.2019
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## ORDER

### Per Bench :

The appeals at the instance of the assessee are directed against the consolidated order of the CIT(Appeals) dated 31.01.2018. The Department's appeals and cross objections by the assessee arise out of the CIT(A)'s order dated 10.10.2018. The relevant assessment years are 2008-2009 to 2014-2015.

2. In these appeals and cross objections, common issues are raised, hence, they were heard together and are being disposed off by this consolidated order.

We shall first adjudicate the assessee's appeals.

**ITA Nos.85 to 89/Coch/2018 and 167 & 168/Coch/2018**

3. There is a delay of 10 days in filing appeal in ITA Nos.167 and 168/Coch/2018 concerning assessment years 2013-2014 and 2014-2015. The assessee has filed petition for condonation of delay. We have perused the reasons stated for filing these appeals belatedly. We find that there is sufficient cause for the delayed filing of the appeal and no laches can be attributed to the assessee. Hence, we condone the delay and proceed to dispose off the same on merits.

3.1 Though several grounds are raised in the above appeals, the only issue that is pressed by the learned AR is regarding the arithmetical mistake in calculation of the gross receipts, viz., loan repayment / loan advances. The Assessing Officer had estimated the income at 10% per month on the gross receipts. This issue with regard to the arithmetical mistake in calculation of gross receipt does not arise for assessment years 2013-2014 and 2014-2015. No other issue is raised in ITA Nos.167 & 168//2018. Hence, the appeals in ITA No.167 & 168/Coch/2018 concerning assessment years 2013-2014 and 2014-2015 are dismissed.

3.2 The facts in regards to the arithmetical mistake in calculation of the gross receipt are as follows:

The assessee is a proprietor of Global Financials, a money lending concern. There was a search in the premises of

the assessee on 25.02.2014. Consequent to the search, assessments u/s 153A r.w.s. 143 (3) of the I.T.Act were completed for assessment years 2008-2009 to 2014-2015. The Assessing Officer completed the assessments by estimating the income from business at 10% of the loan repayment / loan advances.

3.3 Aggrieved by the assessments completed by estimating the income at 10% of the loan repayment / loan advanced, the assessee preferred appeals to the first appellate authority. Before the first appellate authority, it was contended that the income has been estimated at a certain percentage, which itself showed that there was no material on record to arrive at the correct income in the possession of the Department, though it was a search case. Secondly, it was contended that the estimate made by the Assessing Officer of the income of the assessee was very high pitched. The assessee suggested that if at all the estimate of income was necessary, it may be at 2.5% of the collection / loans advanced in place of 10% estimated by the Assessing Officer. The CIT(A) found that the estimate at 10% of collections / loans advanced was very high. The CIT(A) was of the view that the same money could have been rolled in business throughout the year and found that the estimation of interest at 10% virtually amount to interest at 120% per annum. Considering the circumstances of the case, the CIT(A) in his consolidated order dated 31.01.2018 directed the A.O. to estimate the income of the

assessee at 3% of the collections / loan advanced instead of 10% estimated by the Assessing Officer.

3.4 Aggrieved by the order of the CIT(A), the assessee has filed these appeals before the Tribunal. As mentioned earlier, various grounds were taken up before the Tribunal including legal grounds regarding the validity of assessment u/s 153A r.w.s. 143(3) of the I.T.Act. According to the assessee, there was no incriminating material found during the course of search. However, in the course of hearing, the learned Counsel for the assessee had not pressed any of the grounds except arithmetical mistake committed by the Assessing Officer while totaling the collections / loan amounts for the assessment year 2008-2009 to 2012-2013. The learned Departmental Representative was duly heard.

3.5 We have heard the rival submissions and perused the material on record. In the instant case, the Assessing Officer for all the assessment years, had estimated the total business income of the assessee at 10% of the loan repayments / advances, which was reduced to 3% by the CIT(A). The assessee contends that there is certain arithmetical mistake committed by the Assessing Officer while totaling the collections / loans amount for assessment years 2008-2009 to 2012-2013. We find that the CIT(A) has reproduced this mistake at pages 11 and 12 of the impugned order dated 31.01.2018. However, he has omitted to consider this point in the appellate order. For assessment years 2008-2009, the

total collection calculated by the Assessing Officer is Rs.15,87,80,253 on which the Assessing Officer has estimated income at 10% (refer para 62 and 63 of the impugned assessment order). It is the claim of the learned AR that the total collections during the assessment year 2008-2009 is only Rs.15,61,80,253 and not Rs.15,87,80,253. It is submitted by the learned AR that the assessee has got daily collection register and he can prove the same before the Assessing Officer. It was submitted that similar mistakes are made in assessment year 2008-2009 to 2012-2013. We are of the view that since the CIT(A) has not considered this issue, though specifically raised before him, the matter in the interest of justice, needs to be considered by the Assessing Officer. Accordingly, we restore this issue to the A.O. The A.O. shall examine whether there is an arithmetical mistake in calculating the total collections and give due credit, if any to the assessee for the respective assessment years. It is ordered accordingly.

3.6 In the result, the appeals filed by the assessee are partly allowed for statistical purposes as indicated above.

#### **ITA No.56 to 62/Coch/2019 : Department's Appeals**

4. These appeals arise out of the consolidated order of the CIT(A) dated 10.10.2018. The order of the CIT(A) arises out of the Assessing Officer's orders (all dated 13.04.2018) giving effect to the appellate order of the CIT(A) dated 31.01.2018.

#### 4.1 Brief facts of the case are as follows:

As mentioned earlier, the assessee is a money lender. There was a search u/s 132 of the I.T.Act on 25.02.2014. Since the Department did not get any concrete evidence to suggest the correct income of the assessee, the Department had to resort to an estimate on the basis of the slips recording loan collections / DPN Register recording loans advanced. The Assessing Officer adopted a rate of 10% on such collections / loans advanced in respect of all the 7 assessments from 2008-09 to 2014-15. On appeal, the CIT(A) found the rate so applied by the Assessing Officer to be too high. The CIT(A) in his order dated 31.01.2018 held that considering the circumstances of the case and considering the assets acquired / owned by the assessee, a rate of 3% would meet the ends of justice. Against the CIT(A)'s decision as above, the assessee had filed appeals before the Tribunal for reducing the rate of interest from 3% to 2.5% etc. He has taken some legal points also in his appeals. [The assessee's appeals are ITA No.85 to 89/Coch/2018, ITA 168/Coch/2018 and ITA No.169/Coch/2018 and they are being disposed of in this consolidated order].

4.2 Though the CIT(A) had partly allowed the appeals by reducing the estimate of rate of interest from 10% to 3%, while giving effect to the Appellate order dated 31.01.2018, by his orders dated 13.04.2018, the Assessing Officer had enhanced the assessment. The details of which are given below:-

Asst.Year	Total income as per original assessment (Rs.)	Addition made allegedly as per CIT(A)'s order (Rs.)	Total income after giving effect to Appellate order. (Rs.)
2008-09	1,57,78,025	4,12,82,861	5,70,60,891
2009-10	2,87,19,740	7,49,31,320	10,36,51,060
2010-11	3,18,56,000	8,30,85,600	11,49,41,600
2011-12	3,40,62,300	3,88,21,980	12,28,84,280
2012-13	5,16,57,500	13,45,69,505	18,62,27,005
2013-14	1,73,91,450	Nil	1,73,91,450
2014-15	5,12,19,140	Nil	5,12,19,140

4.3 Against the order of the Assessing Officer dated 13.04.2018, giving effect to CIT(A)'s order, the assessee filed a second round of appeals before the CIT(A). The CIT(A) disposed off the appeals in his order dated 10.10.2018. In the order dated 10.10.2018, the CIT(A) clearly stated that he never intended to enhance the assessments, but had partly allowed the appeals by reducing the estimate of interest income from 10% to 3%. In para 9 of the appellate order dated 10.10.2018 (at page 12), the CIT(A) went on to observe as follows:-

*“However, while passing Non-speaking order, giving effect to the appellate order dated 31.01.2018 the AO applied a rate of 36% per month and enhanced the income of the appellant. Total income of all the 7 years before giving effect to the appellate order was Rs.22,57,34,155 which rose to Rs.65,33,75,426 after giving effect. What I am not able to understand is that while the appeal was partly allowed, as to how the AO chose to enhance it.” (emphasis supplied).* The CIT(A) in the penultimate para of his order directed “to correctly give effect to the Appellate

*Order by adopting a rate of 3% in the place of 10% adopted by the Assessing Officer originally."*

4.4 Aggrieved by the order of the CIT(A) dated 10.10.2018, the Department has filed these appeals before the Tribunal. Identical grounds have been raised in these appeals filed by the Department. They read as follows:-

*"1. The Learned CIT(A) order dated 10.10.2018 is in contradiction to the decision rendered in order dated 31.01.2018. In Para 6 of page 14 of the order dated 31.01.2018, the Learned CIT(A) had observed that the rate of 3% per month i.e. 36% per annum if applied on the collections will meet the ends of justice and directed the assessing officer to adopt the rate of 3% accordingly, whereas in the last Para of page 13 of the order dated 10.10.2018, the Assessing Officer is directed to correctly give effect to the Appellate Order by adopting a rate of 3% in place of 10% adopted by the Assessing Officer originally.*

*2. The learned CIT(A) has ignored the fact that the upfront deduction of 10% is attributable to interest alone which is a revenue receipt and the remaining recoveries are against the principal. The assessee would be making further capital advances out of these revenue receipts on which the assessee would be deducting 10% as interest upfront and this 10% would again be revenue receipts which is to be taxed as income. The Assessing Officer has nowhere in his order made an addition based on the interest rate of the loan, in fact, the addition was solely on the interest component with respect to the advances made and receipts received from the individual borrowers.*

*3. Further, the learned CIT(A) has failed to appreciate that the Assessing Officer has not made any addition for deficiency in capital for advancing the loans for any of the years in question, presuming*

*that any such deficiency would be telescoped into the income of the assessee assessed at 10% of the total collections for each of the assessment years.*

*4. The learned CIT(A) has overlooked the modus operandi of the assessee wherein 10% of the loan amount is never issued to the borrower which has been substantiated through the statements of the borrowers themselves. The effective interest rate per annum in such instances will work out to 53.31%. The decision of the CIT(A) in the order dated 31.01.2018, i.e. to calculate interest income @ rate of 3% per month i.e. 36% per annum itself is much below the actual interest rate earned of 53.31 %.*

*5. The order of the learned CIT(A) dated 10-10-2018 is contradictory to the order dated 31.01.2018 and so may be quashed and the order dated 13.04.2018 giving effect to the order of the CIT(A) dated 31.01.2018 may be upheld."*

4.5 The learned Departmental Representative relied on the grounds raised. The learned AR, on the other hand, strongly supported the observations of the CIT(A) in the impugned order dated 10.10.2018.

4.6 We have heard the rival submissions and perused the material on record. In Department appeal's the main plea is that there is contradiction in the appellate orders dated 31.01.2018 and 10.10.2018. There is no contradiction between the orders of the Commissioner of Income tax (Appeals) dated 31.01.2018 and 10.10.2018. In CIT(A)'s order dated 10.10.2018 he has only clarified what he meant by directing to adopt a rate of 3% per month (i.e. 36% per annum) in the place of 10% per month adopted by the

Assessing Officer in the Assessment Order. If the CIT(A) actually intended that the rate of interest to be adopted was 36% in the place of 10% adopted by the Assessing Officer he would have directed to enhance the assessment, whereas in the operative part of the CIT(A)'s order dated 31.01.2018 he has partly allowed the appeal. Moreover, on page 14 of the CIT(A) dated 31.01.2018, in response to the assessee's request to adopt a rate of 2.5% in the place of 10% adopted by the Assessing Officer, the CIT(A) had observed as follows:-

*"Rate of 2.5% per month works out to 30% per annum. The Assessing Officer has calculated the effective rate of interest income earned by the assessee between 28% to 45% per annum. Taking an overall view of the situation, if a rate of 36% per annum is on the collections, it shall meet the ends of justice. Therefore, the Assessing Officer is directed to calculate interest income at the rate of 3% accordingly."*

4.6.1 As regards ground No.2 in Department's appeals are concerned, we find that though this was a search case, the Department did not get any concrete material to arrive at the correct income of the assessee. That is the reason why the Assessing Officer had to resort to estimate of the income. Addition to the returned income has been made by the Assessing Officer presuming that the assessee has been making upfront deductions by way of interest in every case. In fact number of cases had been pointed out to the A.O. and also to the Commissioner of Income tax (Appeals) where no interest was collected at all. In page 7 of the Appellate Order

dated 31-01-2018, a table containing some cases have been extracted, where the loans advanced were too short a period like 2 days, 6 days, 7 days etc. Even for these advances for short period also, the Assessing Officer had assessed interest at 10%. This unscientific method adopted by the A.O. has resulted in charging interest varying from 1825% to 304% for advances for short duration. It was considering the unscientific method of working of interest at 10% on the same amount rolled over throughout the year the Commissioner of Income tax has commented in para 6 of his order that *"the Assessing Officer went on to apply an effective rate of 120% annually on its daily collection which is definitely excessive"* and proceeded to direct to adopt a rate of 3% per month (i.e., 36% per annum) in the place 10% adopted by the Assessing Officer.

4.6.2 The next ground in these appeals of Department is that the Assessing Officer did not make any addition for deficiency in capital for advancing the loans for any of the years presuming that any deficiency would be telescoped into the income of the assessee assessed at 10% of the total collections. The Assessing Officer never mentioned any such "telescoping arrangement" anywhere in his assessment orders. Yet another claim of the Department is that the effective rate of interest will work out at 53.31%. Such an observation has never been made in the assessment orders. On the other hand, in para 4 of the assessment order, the A.O. observed as follows:-

*“..... The effective annual rate of interest charged is in the range of 28% to 45%. Thus the claim that the effective rate of interest is 53.31% is also having no basis.”*

4.6.3 It was because of the above statement that the Commissioner of Income tax (Appeals), who found the rate of interest charged by the Assessing Officer to be excessive and held in para 6 [on page 14 of the Appellate Order] that *“Taking an overall view of the situation, if a rate of 3% per month i.e., 36%per annum is applied on the collections it shall meet the ends of justice”*. This was by striking an average between the rates of 28% to 45% found by the Assessing Officer himself as stated above, the Commissioner of Income tax (Appeals) has directed to adopt a rate of 3% per month or 36% per annum. The most important aspect to be mentioned is that by raising ground 4 in these cases, the Department indirectly wants to challenge the findings of the Commissioner of Income tax (Appeals) in his order dated 31-01-2018. The Department having not filed any appeal against the Order dated 31.01.2018, the finding in that order has become final as far as the Department is concerned. An appeal against the Appellate Order dated 31-01-2018 has also become barred by limitation.

4.6.4 The last prayer in the Departmental appeals for the assessment years 2008-2009 to 2012-2013 to quash the appellate order dated 10.10.2018 and to uphold the order

dated 13.04.2018 of the Assessing Officer on giving effect to the appellate order dated 31.01.2018. To uphold the orders dated 13.04.2018 means that the orders enhancing the assessments are to be upheld. This prayer has the effect of challenging the appellate order dated 31.01.2018 whereas the Department has not filed any appeal against the appellate order dated 31.01.2018. Moreover, the Income-tax Act does not give power to the Tribunal to enhance the assessment. In respect of the last two assessment years (2013-2014 and 2014-2015), the prayer is to quash the appellate order dated 10.10.2018 and to uphold the assessment orders dated 23.03.2016. Here also, since the Department has not challenged the appellate order dated 31.01.2018 reducing the rate of interest income from 10% to 3%, this prayer has the effect of indirectly challenging the appellate order dated 31.01.2018, which is not permissible under law.

4.7 For the aforesaid reasons, these appeals filed by the Department are rejected. It is ordered accordingly.

**C.O.Nos.2 to 8/Coch/2019 : By Assessee :**

5. These cross objections filed by the assessee are only supporting the order of the CIT(A) dated 10.10.2018. Since we have already dismissed the Revenue's appeals, the cross objections filed by the assessee are rendered infructuous and the same are dismissed.

6. In the result, the assessee's appeals are partly allowed for statistical purposes and the Revenue's appeals and assessee's cross objections are dismissed.

Order pronounced on this 09<sup>th</sup> day of May, 2019.

Sd/-  
**(Chandra Poojari)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(George George K)**  
**JUDICIAL MEMBER**

Cochin ; Dated : 09<sup>th</sup> May, 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. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)  
**ITAT, Cochin**