

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

Before Shri George George K, Judicial Member

ITA No.525/Coch/2018 : Asst.Year 2014-2015

Sri.Vijayakumar P.D. Parayil House Nagampadom Kottayam – 686 001. PAN : AFPPD7247E.	Vs.	The Income Tax Officer Ward – 5 Kottayam.
(Appellant)		(Respondent)

Appellant by : Sri.M.S.Rajagopal, Advocate
Respondent by : Smt.A.S.Bindhu, Sr.DR

Date of Hearing : 13.06.2019	Date of Pronouncement : 13.06.2019
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ORDER

This appeal at the instance of the assessee is directed against the Commissioner of Income-tax (Appeals)'s order dated 31.07.2018. The relevant assessment year is 2014-2015.

2. The solitary issue that is raised in this appeal is whether the CIT(A) is justified in confirming the addition of Rs.26,00,000 made by the Assessing Officer as unexplained investment / income u/s 69 of the Income-tax Act, 1961?

3. Brief facts of the case are as follows:-

The assessee is an individual. For the assessment year 2014-2015, the return of income was filed on 10.01.2015 declaring a total income of Rs.14,01,271. The assessee's case

was selected for limited scrutiny for verification of cash deposits in savings bank account and value of sale consideration of property. It was noticed in the course of assessment proceedings that the assessee had made cash deposits of Rs.20 lakh in his State Bank of Travancore account and further a sum of Rs.48 lakh in his South Indian Bank account. The assessee was asked to explain the source of these cash deposits. The assessment was completed u/s 143(3) of the I.T.Act, wherein the A.O. held that the cash deposits amounting to Rs.26 lakh was not genuine and made addition as unexplained investment / income u/s 69 of the I.T.Act. The details of the cash deposit are as follows:-

(i)	Sri.K.A.Sukumaran	Rs.7,00,000
(ii)	Sri.Babu Varthese	Rs.2,00,000
(iii)	Sri. K.S.Shaji	Rs.6,50,000
(iv)	Sri. K.A.Kuriakose	Rs.2,00,000
(v)	Smt.Kesini	Rs.3,50,000
(vi)	Sri.Madhu Damodaran	Rs.5,00,000

		Rs.26,00,000
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4. Aggrieved by the addition of Rs.26 lakh made by the Assessing Officer, the assessee preferred an appeal to the first appellate authority. The CIT(A) confirmed the additions made by the A.O. The relevant finding of the CIT(A) reads as follows:-

"4.3. The facts of the case, the grounds of appeal and the arguments of the Appellant have been considered. The Assessing Officer made addition of Rs.26,00,000 after

examining in detail the explanation of the Appellant regard" the sources for the cash deposits in the Banks. The learned AR has not disputed the findings of the Assessing Officer. The grievance of the learned AR is that the Assessing Officer has failed to examine the transactions other than cash deposits. However, the burden is on the Appellant to prove the source for the cash deposits. The Appellant is free to produce all the evidence which would support his case. However, the Appellant cannot raise a ground that a particular action on the part of the Assessing Officer would have proved the case of the Appellant. Hence, it is held that there is no merit in the claim of the Appellant that the Assessing Officer should have enquired into cheque transactions also.

4.4. Further, the claim of the Appellant that certain sums were borrowed from known people could not be proved before the Assessing Officer as the lenders creditworthiness was not proved. Even in the appeal proceedings also no further evidence was produced to substantiate the sources for the cash deposits. Considering the facts, it is held that the Appellant could not prove the sources for the cash deposit of Rs. 26,00,000 and therefore, the addition made by the Assessing Officer is upheld. Consequently, the grounds raised by the Appellant are dismissed."

5. Aggrieved by the order of the CIT(A), the assessee preferred this appeal before the Tribunal. The learned Counsel for the assessee has submitted a brief written submission regarding each of the creditors disbelieved by the Assessing Officer. The same reads as follows:-

(i) **Sri.M.K.Sukumaran**

Sri.Sukumaran had advanced an amount of Rs.7,00,000 on 09.07.2013 and the amount was returned on 03.02.2014 vide cheque no.811372 of South Indian Bank Account No.6785. In this case, the assessing authority failed to explain the purpose of repayment an amount of Rs.Rs.7,00,000 from this assessee.

(ii) **Sri.Babu Varghese**

Sri.Babu Varghese had advanced an amount of Rs.2,00,000 on 28.01.2014 and the same amount was returned on 03.02.2014. Here said Mr.Babu Varghese submits that he availed loan of Rs.2,00,000 from his friend one Sri.Babu P.S. a retired employee of agricultural university. But the assessing authority illegally rejected submission of said Sri.Babu Varghese by lame claim of genuineness and creditworthiness of said Shri Babu Varghese.

(iii) **Sri.K.S.Shaji**

Sri. K.S.Shaji submits before this authority that he had not given any loan to this assessee on 29.01.2014 or any other dates. The fact that Sri.K.S.Shaji had borrowed total amount of Rs.6,50,000 from this assessee with cheque No.51019 dated 06.01.2014 – South Indian Bank Rs.3,00,000, Cheque No.81 1353 dated 08.01.2014 – South Indian Bank Rs.2,50,000, Cheque No.811364 dated 25.01.2014 – South Indian Bank Rs.1,00,000, and on 29.01.2014 Sri.K.S.Shaji had returned the borrowed loan amount of Rs.6,50,000 to this assessee. In this matter the assessing authority mistakenly mean the loan repayment of Sri.K.S.Shaji treated as loan acquired from Sri.K.S.Shaji. In this matter, the assessing authority failed to clarify the above three banks transactions between Sri.K.S.Shaji with this appellant.

(iv) **Sri. K.A.Kuriakose**

Shri K.A.Kuriakose submits before this authority that, he had advanced an amount of Rs.2,00,000 on 29.01.2014 and same amount was returned on 30.02.2014. He further stated that “sum by availing loan of Rs.1,00,000 from his two – three friends and Rs.1,00,000 available with him at that time”. But assessing authority illegally rejected the submission of said Sri.K.A.Kuriakose as unexplained.

(v) **Smt.Kesini & Sri.Madhu Damodaran**

The assessing authority issued summons to Smt.Kesini and Sri.Madhu to clarify those transactions with assessee. Sri.Madhu received the letter and replied that his mother Smt.Kesini was expired on 17.05.2016 and produced death certificate before the assessing authority and he make assurance to assessing authority that he shall try to collect necessary information and produce before 21.11.2016. But he not appeared before the assessing authority as the assurance made on 21.11.2016. The assessing authority not take any further action against this witness to produce the evidence. The ledger account of Smt.Kesini and Sri.Madhu shows the detailed transactions with the assessee. The assessing authorities are not considering these facts while completing the assessment and first appeal.

6. It was further submitted by the learned Counsel for the assessee that these amounts were received by the respective creditors for purchase of a property jointly. It was further submitted that since the property could not be purchased, the amounts were refunded by cheques. Hence it was prayed that the additions made by the Assessing Officer, which was confirmed by the CIT(A) is uncalled for and the same be deleted.

7. The learned Departmental Representative, on the other hand, supported the orders passed by the Income-tax authorities.

8. I have heard the rival submissions and perused the material on record. It is an admitted fact that all the creditors except Sri.Babu Varghese and Sri.K.A.Kuriakose had denied

having advanced cash to the assessee. Sri M.K.Sukumaran and Sri.K.S.Shaji had appeared before the Assessing Officer. They have totally denied having advanced money to the assessee. Sri.MadhuDamodaran, though appeared before the Assessing Officer, had not confirmed the amounts being advanced to the assessee. The confirmation has been filed only in respect of Sri.Babu Varghese and Sri.K.A.Kuriakose. The case of the assessee is that the amounts were received by the assessee from the respective creditors for purchase of a property jointly. It was further submitted that since the property could not be purchased, the amounts were returned through cheque. However, since most of the creditors have denied or have not confirmed advancing money to the assessee, necessarily, the addition has to be made only in the hands of the assessee. The assessee has made a fatal mistake in accepting cash and depositing the same in his bank accounts. The burden of proof is on the taxpayer to explain the nature and the source of any credit found in the books. If it is not explained to the satisfaction of the Assessing Officer, such credit has to be treated as income. In this case, the confirmation has only been submitted by Sri.Babu Varghese and Sri.K.A.Kuriakose. The confirmation filed by Sri.Babu Varghese and Sri.K.A.Kuriakose is on record. Sri.Babu Varghese had appeared before the Assessing Officer and has stated to have advanced Rs.2 lakh on 28.01.2014. Further Sri.K.A.Kuriakose also had admitted that he had advanced a sum of Rs.2 lakh on 21.01.2014. On a particular facts of this case, I am of the view that the addition of Rs.4 lakh (Rs.2 lakh

from Sri.Babu Varghese and Rs.2 lakh from Sri.K.A. Kuriakose) needs to be deleted. Accordingly, I delete the addition of Rs.4 lakh out of the total addition of Rs.26 lakh and sustain the balance of Rs.22 lakh. It is ordered accordingly.

9. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on this 13th day of June, 2019.

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin ; Dated : 13th June, 2019.
Devdas*

Copy of the Order forwarded to :

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

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin