

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

I.T.A. Nos.559-561/Coch/2018
Assessment Years : 2012-13, 2013-14 & 2014-15

The Assistant Commissioner of Income-tax, Central Circle-2, Kochi.	Vs.	Shri A. Jayakrishnan, Nandanam, Temple Road, Thodupuzha, Idukki-685 584. [PAN: ACOPJ 9505H]
(Revenue-Appellant)		(Assessee-Respondent)

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

Date of hearing	11/07/2019
Date of pronouncement	15/07/2019

ORDER

Per CHANDRA POOJARI, AM:

These appeals filed by the Revenue are directed against the common order of the CIT(A)-III, Kochi dated 17/09/2018 and pertain to the assessment years 2012-13 to 2014-15.

2. The Revenue has raised the following grounds of appeals which are common except for variance in figures:

- 1) The Commissioner of Income Tax (Appeals) while deleting the additions made on account of unexplained cash credits, overlooked the fact that a sum of Rs.3.17 Crores was withdrawn from banks for the purpose of construction of a bar hotel at Thodupuzha out of the total cash withdrawals of Rs. 6.44 Crores. This was evidenced by the copies of the cheques obtained from the banks and placed in file.

2) The Commissioner of Income Tax(Appeals) while deleting the additions made on account of unexplained cash credits, has overlooked the sworn statement dated 7/8/2015 of Shri Rajendra Babu K.V. in whose name the bearer cheques was issued in most of the cases where in it was admitted that the signature on the bearer cheques belongs to him and the money was withdrawn as per the instructions of Shri A. Jayakrishnan, for the purpose of Hotel construction which was going on at Hotel Vysali.

3) The CIT(A) has erred in accepting the copy of the certificate obtained from the Thodupuzha Municipality, issued at a later date, stating that no hotel or commercial building construction was going on at Thodupuzha, during the period from 1/4/2011 to 31/3/2014, without verification of the same.

3. The facts of the case as narrated in ITA No. 559/Coch/2018 are that search revealed large financial dealings between Shri, Sunil Kumar of Kollam and the assessee. The assessee had accepted the following loans from the concerns belonging to Shri Sunil Kumar @ Sunil Swamy.

Date	A.Y	Concern	Amount .
15.09.2011	2012-13	Sabari Quality Foods	Rs. 2,00,00,000/-
03.10.2011	2012-13	Sabari Quality Foods	Rs. 1,44,00,000/-
21.10.2011	2012-13	Sabari Quality Foods	Rs. 6,00,000/-
20.04.2012	2013-14	Sabari Switch Gears(P)Ltd.	Rs. 1,25,00,000/-

3.1. These credits appeared in assessee's bank accounts with Kotak Mahindra Bank, Thodupuzha Branch. A/c No. 15531. It was seen that the assessee had repaid part of the loans in this year itself from the same bank as below:

Date	Repayment	Amount	Cash Deposits prior to repayment	
03.10.2011	Sabari Quality Foods	Rs.10,00,000/-		
03.11.2011	Sabari Quality Foods	Rs. 2,50,000/--	03.11.2011	Rs. 3,50,000/-
08.11.2011	Sabari Quality Foods	Rs, 10,00,000/-	05.11.2011	Rs. 5,45,000/-
01.12.2011	Sabari Quality Foods	Rs. 10,00,000/-	30.11,2011& 01.12.2011	Rs. 12,75,000/-
01.12.2011	Sabari Quality Foods	Rs. 2,50,000/-		
03.02.2012	Sabari Quality Foods	Rs. 2,50,000/-	03.02.2012	Rs. 2,50,000/-
04.02.2012	Sabari Quality Foods	Rs. 10,00,000/-	04.02.2012	Rs. 10,00,000/-
05.03.2012	Sabari Quality Foods	Rs. 2,50,000/-	05.03.2012	Rs. 2,50,000/-
06.03.2012	Sabari Quality Foods	Rs. 10,00,000/-	06.03.2012	Rs. 10,00,000/-
30.03.2012	Sunil Kumar	Rs. 80,00,000/-		
		Rs.1,40,00,000/-		Rs. 46,70,000/-

3.2 In order to explain cash deposits, the assessee prepared a cash book. All the cash deposits in bank accounts were explained as withdrawal from cash book and deposits in cash book were explained as withdrawal from bank accounts. Corresponding to the deposits of Rs. 12,75,000/- on 30.11.2011 and 01.12.2011,

there were cash withdrawals shown in the cash book on these days. Similarly corresponding to cash deposits in the cash book, there were withdrawals from the various banks. Total cash introduced in the cash book is as follows:

Date	Particulars	Amount
20.04.2011	EAP Jewellery	Rs. 30,00,000/-
20.04.2011	EAP Jewellery partners A/c	Rs. 1,20,00,000/-
02.05.2011	Federal Bank A/c 169277	Rs. 1,65,000/-
02.05.2011	Federal Bank A/c 169277	Rs. 14,85,000/-
07.06.2011	Federal Bank A/c 169277	Rs. 10,00,000/-
05.07.2011	Federal Bank A/c 169277	Rs. 20,00,000/-
07.07.2011	Federal Bank A/c 169277	Rs. 30,00,000/-
25.08.2011	Federal Bank A/c 169277	Rs. 22,00,000/-
01.09.2011	Federal Bank A/c 169277	Rs. 5,00,000/-
15.09.2011	Federal Bank A/c 169277	Rs. 6,05,000/-
17.09.2011	ING Vysya A/c 15531	Rs. 25,00,000/-
17.09.2011	ING Vysya A/c 15531	Rs. 25,00,000/-

17.09.2011	ING Vysya A/c 15531	Rs. 25,00,000/-
17.09.2011	ING Vysya A/c 15531	Rs. 25,00,000/-
26.09.2011	ING Vysya A/c 15531	Rs. 50,00,000/-
01.10.2011	ING Vysya A/c 15531	Rs. 25,00,000/-
03.10.2011	ING Vysya A/c 15531	Rs. 20,00,000/-
08.10.2011	ING Vysya A/c 15531	Rs. 24,00,000/-
22.10.2011	ING Vysya A/c 15531	Rs. 6,00,000/-
30.12.2011	Kumaly gate	Rs. 6,00,000/-
23.01.2012	ING Vysya A/c 15531	Rs. 10,00,000/-
25.01.2012	ING Vysya A/c 15531	Rs. 4,00,000/-
26.01.2012	Wingspark Hotel	Rs. 10,00,000/-
14.02.2012	ING Vysya A/c 15531	Rs. 10,00,000/-
14.02.2012	ING Vysya A/c 15531	Rs. 15,00,000/-
01.03.2012	ING Vysya A/c 15531	Rs. 15,00,000/-
01.03.2012	ING Vysya A/c 15531	Rs. 15,00,000/-
01.03.2012	ING Vysya A/c 15531	Rs. 20,00,000/-

30.03.2012	ING Vysya A/c 15531	Rs. 49,00,000/-
31.03.2012	Agricultural income	Rs. 6,00,000/-
	I	Rs.6,44,55,000/-

3.3 The Assessing Officer noticed that whereas the assessee did not have books in fish business and claimed to be earning only commission from the fish business, faced with the situation of having to explain the cash deposits in bank accounts, the assessee prepared a cash book claiming that he was buying and selling fish. It was noticed that through the expedient of the cash book, he claimed to be explaining all the cash deposits in the bank accounts. During post search investigations, the instruments used for withdrawing cash from the bank, were called for and examined and it was found that on the back of certain cheques, the name of the person withdrawing the amount and the purpose for which it was intended was mentioned which is as follows:

Date	Particulars	Amount	Remarks written at the back of the cheque
20.04.2011	EAP Jewellery	Rs. 30,00,000/-	
20.04.2011	EAP Jewellery partners A/c	Rs.1,20,00,000/-	
02.05.2011	Federal Bank A/c 169277	Rs. 1,65,000/-	
02.05.2011	Federal Bank A/c 169277	Rs. 14,85,000/-	

07.06.2011	Federal Bank A/c 169277	Rs. 10,00,000/-	
05.07.2011	Federal Bank A/c 169277	Rs. 20,00,000/-	
07.07.2011	Federal Bank A/c 169277	Rs. 30,00,000/-	
25.08.2011	Federal Bank A/c 169277	Rs. 22,00,000/-	
01.09.2011	Federal Bank A/c 169277	Rs. 5,00,000/-	
15.09.2011	Federal Bank A/c 169277	Rs. 6,05,000/-	
17.09.201 1	ING Vysya 15531	Rs. 25,00,000/-	On-going hotel construction at Thodupuzha
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17.09.2011	ING Vysya 15531	Rs. 25,00,000/-	On-going hotel construction at Thodupuzha
17.09.2011	ING Vysya 15531	Rs. 25,00,000/-	On-going hotel construction at Thodupuzha
26.09.2011	ING Vysya 15531	Rs. 50,00,000/-	On-going hotel construction at Thodupuzha
01.10.2011	ING Vysya 15531	Rs. 25,00,000/-	
03.10.2011	ING Vysya 15531	Rs. 20,00,000/ -	On-going hotel construction at Thodupuzha

08.10.2011	ING Vysya 15531	Rs. 24,00,000/-	Cash drawn for bar construction at Thodupuzha
22.10.2011	ING Vysya 15531	Rs. 6,00,000/-	Withdrawn by Harish
30.12.2011	Kumaly Gate	Rs. 6,00,000/-	
23.01.2012	ING Vysya 15531	Rs. 10,00,000/-	On-going hotel construction at Thodupuzha
25.01.2012	ING Vysya 15531	Rs. 4,00,000/-	Hotel Vysali, Thodupuzha
26.01.2012	Wingspark Hotel	Rs. 4,00,000/-	
14.02.2012	ING Vysya 15531	Rs. 10,00,000/-	For Construction of Bar Hotel
14.02.2012	ING Vysya 15531	Rs. 15,00,000/-	For Construction of Bar Hotel
01.03.2012	ING Vysya 15531	Rs. 15,00,000/-	Amount Drawn for Construction of Bar Hotel
01.03.2012	ING Vysya 15531	Rs. 20,00,000/-	Cash Drawn for Bar Hotel construction
30.03.2012	ING Vysya 15531	Rs. 49,00,000/-	Hotel Vysali Thodupuzha
31.03.2012	Agricultural income	Rs. 6,00,000/-	
		Rs.6,44,55,000/-	

3.4 From the above, the Assessing Officer noticed that out of the cash claimed to have been introduced in the books of the Fish Business by withdrawing from the Bank, Rs. 3,17,00,000/- was withdrawn for the purpose of construction of a bar

hotel at Thodupuzha which was evidenced by the copies of cheques obtained from the Bank and hence, the cash deposits amounting to Rs. 3.17 crores were held to be unexplained and treated as the income of the assessee. The Assessing Officer rejected the contention of the assessee that there was no hotel construction during the year and the staff in the Bank might have recorded the narration in the cheque. The assessee further enclosed a certificate from the Secretary, Thodupuzha Municipality stating that he had not constructed any commercial building during the said period. The assessing officer observed that a case was not brought out that a new commercial building had been constructed but there could always be an extension. The Assessing Officer relied on the sworn statement dated 07.08.2015 from Shri Rajendra Babu K.V. in whose name the bearer cheque was issued in most of the cases. Shri Rajendra Babu admitted that the signature on the bearer cheque belonged to him and the money was withdrawn as per the instructions of Shri Jayakrishnan. Further, he stated that Hotel construction was indeed going on at Hotel Vysali, Thodupuzha and the construction was managed by one Shri Abhilash. From the above, the Assessing Officer found that where the purpose of withdrawal was mentioned in the reverse side of the cheque and also authenticated by the person making the withdrawal, it was apparent that the withdrawal was made for that very purpose. In the circumstances, the Assessing Officer treated the amount of Rs. 3.17 crores being the amount of withdrawals taken for Hotel construction which was shown as source of cash in the cash book as income from "Other Sources" for the year under consideration.

4. Before the CIT(A), the assessee explained that Hotel Vysali at Thodupuzha was a family restaurant and run in association with two more partners. This Hotel Vysali was not owned by his firm and it was taken on rent. He also gave a recent photograph of the hotel, which proved that it was a reasonably small premise and no construction work was carried out at the said hotel. The CIT(A) observed that the source of bank deposits was explained and there was no dispute about withdrawals made. According to the CIT(A), the A.O. had not pointed out to any specific mistakes in the cash-book maintained by the assessee and the A.O. had also not indicated any other source through which cash was being generated which was then deposited in the bank account of the assessee. According to the CIT(A), no incriminating material evidencing generation of unaccounted cash was found during the course of search and cash withdrawals from one's own bank account cannot be treated as income. In view of all these facts discussed above, the CIT(A) was of the view that the A.O. was not justified in making addition of Rs. 3,17,00,000/- on account of cash withdrawal from the Bank and deleted the addition.

4.1 Similarly, for the assessment year 2013-14, on identical reasons, the CIT(A) deleted the addition of Rs. 1.62 crores on account of cash withdrawal from own bank account.

4.2 For the assessment year 2014-15, addition was made for an amount of Rs. 52,25,000/- on account of cash withdrawal from Bank account, The A.O. observed that as per the narration at the back of the withdrawal slip, the cash was withdrawn for paying bar license fee and this was an unexplained expenditure of the assessee. It was contended that the assessee had no bar license in his name and no such fees were paid by him. On identical reasons, the CIT(A) deleted the addition of Rs. 52,25,000/- on account of cash withdrawal from the Bank account.

5. Against this, the Revenue is in appeal before us. The contention of the Ld. DR is that there is evidence to show that the assessee has used the amount withdrawn from Bank for the construction of Hotel Vysali in Thodupuzha which was reflected in the back side of the cheque. However, the CIT(A) solely based on the certificate issued by the Secretary, Thodupuzha Municipality deleted the addition by observing that there was no construction of commercial building or hotel during the period. According to the Ld. DR, the details written on the back side of the cheque is having direct nexus with the purpose for which the money was withdrawn from the Bank account and once money was spent for construction of hotel building, that amount was not available with the assessee for depositing in the Bank account. Hence, she submitted that the order of the Assessing Officer may be confirmed.

6. The Ld. AR submitted that for assessment year 2012-13, the entire amounts were withdrawals from Bank account and utilized for construction of Bar at Thodupuzha which was accepted by the Assessing Officer. However, cash

withdrawals were taken as unexplained and treated as income of the assessee. The Ld. AR submitted that for the assessment year 2013-14, the Assessing Officer considered the Bank withdrawals for the period from 30.04.2012 to 30.03.2013, aggregating to Rs.1,62,00,000/- as unexplained credit and merely from the withdrawals made from the Bank account in ING Vysya Bank. SBT and Federal Bank, the Assessing Officer aggregated the withdrawals at Rs.1,62,00,000/- which was treated as undisclosed income. The CIT(A), after considering the facts and lack of proper verification, deleted the addition. The Ld. AR submitted that for the assessment year 2014-15, the Assessing Officer added Rs.52 lakhs, which represented the withdrawal from the Bank account in ING Vysya Bank on 31.03.2014. It was submitted that two withdrawals of Rs.10,00,000/- and Rs.42,25,000/- were treated as unexplained credit without any verification or enquiry. According to the Ld. AR, Rs.42,25,000/- was withdrawn for renewing Bar licence fee and the above sum was added mechanically as undisclosed income which was rightly deleted by the CIT(A).

6.1 The Ld. AR pointed out that for assessment year 2012-13, the explanation of the assessee that there was no hotel construction made during the year which was certified by the Secretary, Thodupuzha Municipality stating that the assessee had not constructed any commercial building during the said period was not considered by the Assessing Officer. It was submitted that the utilization of the amount withdrawn from the Bank account over the period of one year was truly reflected in the cash book as for business purposes and not for building construction. It was

submitted that the employee who withdrew the cash from the bank account was examined. However, it was submitted that the assessing officer without any verification or without bringing any evidence or material on record mechanically treated the utilization of the cash as unexplained credits and brought the same and assessed the same by invoking section 69 of the Act.

6.2 As regards, the addition of Rs.52,25,000/- for the assessment year 2014-15, the assessee clearly explained that the withdrawal of Rs.52,25,000/- was for payment of Bar License Renewal Fees and the same was utilized for that purpose as per the cash book. It was submitted that the assessing officer had mechanically added the amount by relying upon the copies of cheques obtained from Bank and the addition was misconceived since the expenditure is treated as income when the source is from bank withdrawal.

6.3 It was submitted that the assessing officer also disallowed part of the interest claim for the asst. year 2010-11 and the assessee's appeal against these disallowances were dismissed and additions were sustained by the CIT(A). Against this order, no second appeal has been filed by the assessee.

6.4 Similarly, for the asst. years 2011-12 to 2014-15, the CIT (A) also sustained disallowance of major part of agricultural income claimed by the assessee resulting in treating substantial portion of the agricultural income as business income and the disallowance of the agricultural income was to the extent of Rs.2.25 lakhs for 2011-

12, Rs.5 lakhs for 2012-13 and Rs.6 lakhs for 2014-15. No 2nd appeal was filed by the assessee. It was submitted that all the bank transactions of deposits and withdrawals were also truly reflected in the books of accounts and had been accepted. It was submitted that the allegation that the assessee utilized the amount withdrawn for construction of commercial building was also disproved by the assessee and also substantiated by the certificate issued by Thodupuzha Municipality. The Ld. AR relied on the findings of the CIT(A) for all the assessment years. In addition to the above and on merits of the case, for the asst. year 2014-15, the Ld. AR submitted that the tax effect on Rs.50,25,000/- was below the monetary limit for sustaining the Departmental Appeal and therefore, this ground also may be considered.

7. We have heard the rival submissions and perused the record. Admittedly, the assessee had introduced Rs.6,44,55,000/- into cash book for the assessment year 2012-13 as per the narration written on the back side of the cheque. Out of the above amount, Rs.3,17,00,000/- was withdrawn by the assessee from the Bank account for the purpose of construction of bar/hotel in Thodupuzha. This was evidenced by copies of cheques obtained from the Bank by the Assessing Officer. As such, the Assessing Officer observed that the sum of Rs.3.17 crores which was introduced into the cash book was not at all available with the assessee as it was used for the construction of bar/hotel. To support this, the Assessing Officer relied on the sworn statement recorded from Shri Rajendra Babu K.V. in whose name the bearer cheque was issued in most of the cases. Shri Rajendra Babu admitted that the signature on the back side of the cheque belonged to him and money was

withdrawn as per the instructions of the assessee, Shri Jayakrishnan. The Assessing Officer observed that construction of hotel was going at Hotel Vysali in Thodupuzha and construction was managed by one Shri Abhilash. However, contrary to this, the CIT(A) observed that there was no construction activity with regard to Hotel Vysali in Thodupuzha and the said hotel was owned by the assessee and two more partners and not by the assessee himself. The building was taken on rent and no construction work has been carried out at the said hotel. For this purpose, he relied on the certificate issued by Secretary, Thodupuzha Municipality. However, we find that each entry in the cash book for introduction of cash was not at all explained by the assessee. The assessee made a general statement that there was no construction activity at Hotel Vysali and the amount was available for introduction into the cash book. In our opinion, the assessee has to explain each entry in the cash book. The Assessing Officer has to prove that if there is construction activity, how much amount has been spent for construction activity at the said hotel after providing opportunity of cross-examination of the person whose statement was relied on by the Assessing Officer for making such additions for these assessment years under consideration. With this observation, we remit the entire issue in dispute in all these appeals to the file of the Assessing Officer for fresh consideration. This ground of appeals of the Revenue is partly allowed for statistical purposes.

9. In the result, the appeals of the Revenue are partly allowed for statistical purposes.

Order pronounced in the open Court on this 15th July, 2019

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Place: Kochi

Dated: 15th July, 2019

GJ

Copy to:

1. Shri A. Jayakrishnan, Nandanam, Temple Road, Thodupuzha, Idukki-685 584.
2. The Assistant Commissioner of Income-tax, Central Circle-2, Kochi.
3. The Commissioner of Income-tax(Appeals), 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