

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

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

ITA No.448/Coch/2019 : Asst.Year 2007-2008

The Asst.Commissioner of Income-tax, Central Circle 2 Kozhikode.	Vs.	Smt.Leelamma Francis Donum Dei Nellikode Housing Colony Chevayoor P.O. Kozhikode – 673 007. <b>PAN : AEDPM3478A.</b>
(Appellant)		(Respondent)

Appellant by : Sri. Santham Bose  
Respondent by : Sri. C.B.M.Warrier

Date of Hearing : 05.09.2019	Date of Pronouncement : 05.09.2019
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**ORDER**

**Per George George K., JM**

This appeal at the instance of the Department is directed against CIT(A)'s order dated 20.02.2019. The relevant assessment year is 2007-2008.

2. The grounds raised read as follows:-

*"1. The Commissioner of Income Tax (Appeals) erred in treating the cash deposits in bank accounts (Assessed at Rs. 1,91,42,480) as explained on the ground that total withdrawals from bank accounts exceed total deposits.*

*2. The CIT(A) has overlooked that the purpose of withdrawals from bank account has not been explained by the assessee. It is not credible that the assessee merely withdraws amounts from bank to deposit the same back.*

*3. There are major differences between amounts assessed by the AO with respect to cash deposits in bank accounts and amounts explained by the assessee before the CIT(A). The CIT(A) did not afford an opportunity to the AO to analyze the*

*fresh claims made by the assessee and to verify the fresh facts presented before the CIT(A).*

4. *The CIT(A) erred in allowing cash of Rs.21,98,658, deposited in SBT Main SB 607 A/c as source for expenses. In CIT(A)'s order, page 8, paragraph 13.1, it is stated this amount is cash deposit in SB Ale No.607. Therefore, this amount is an application of income and not a source."*

3. At the very outset, we noticed that an identical issue was considered by the Tribunal in ITA No.292/Coch/2018 vide order dated 19.03.2019, in the hands of assessee's husband Sri.M.T.Francis. The Tribunal in the case of the assessee's husband (supra), had allowed the Department's appeal for statistical purposes. In other words, the issue was restored to the Assessing Officer for *de novo* consideration. The relevant finding of the Tribunal in the case of ACIT v. Sri.M.T.Francis (assessee's husband), reads as follow:-

*"6. We have heard the rival submissions and perused the material on record. The addition of Rs.1,91,42,820 was made by the A.O. since the assessee did not explain properly the source of cash deposits made in various banks belonging to the assessee and his wife. It is also an admitted fact that many of these deposits taken as cash deposits by the A.O. are not cash deposits but are bank transfers. However, we noticed from the assessment order that there was no explanation offered by the assessee. Before the CIT(A), the assessee had furnished the cash flow statement and details of various fixed deposits, which were closed and utilized for deposits in various bank accounts. On the explanation submitted before the CIT(A), he deleted substantial portion of the addition made by the A.O. We notice that the assessee had furnished detailed explanation through receipt and payment account / cash flow statement before the CIT(A). The CIT(A) did not grant an opportunity to the Assessing Officer to analyse the fresh evidence produced him. This action of the CIT(A) is in clear violation of the provisions of Rule 46A of the Income-tax Rules, 1962. Therefore, we are of the view that the matter needs to be restored to the A.O. for *de novo* consideration. Accordingly, we restore the case to the Assessing Officer. The assessee is directed to furnish proper*

*explanation with regard to the source of deposits in various banks amounting to Rs.1,91,42,480. It is ordered accordingly."*

4. Since both the parties have agreed that the issue raised in this appeal is identical to the issue raised in the case of assessee's husband (supra), which was disposed of by the Tribunal, we restore this case also to the Assessing Officer for *de novo* consideration. The assessee is directed to furnish proper explanation with regard to the source of deposits in various bank accounts amounting to Rs.1,91,42,480. It is ordered accordingly.

5. In the result, the appeal filed by the Department is allowed for statistical purposes.

Order pronounced on this 05<sup>th</sup> day of September, 2019.

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

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

Cochin ; Dated : 05<sup>th</sup> September, 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. The DR, ITAT, Cochin.
6. Guard file.

BY ORDER,

AR-ITAT- Cochin