

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

I.T.A. No 291,292 & 293/Coch/2017
Assessment Years : 2006-07, 2007-08 & 2008-09

Smt. Jameela. S M/s. J.S. Cashew Exporters Ayathil, Kollam [PAN:ACUPJ8583H] (Assessee-Appellant)	Vs.	The ACIT, Central Circle, Kollam (Revenue-Respondent)
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Assessee by	Shri. Iype Mathew,CA
Revenue by	Shri.Shanthom Bose, CIT DR

Date of hearing	<i>27/08/2019</i>
Date of pronouncement	<i>29/08/2019</i>

ORDER

Per CHANDRA POOJARI, AM:

These appeals by the assessee are directed against the order of the CIT(A)-IV, Kochi dated 13/04/2017 for the assessment years:- 2006-07, 2007-08 & 2008-09.

First take up appeal in ITA 291/coch/2017 :(ASSESSMENT YEAR:- 2006-07)

2. The grounds of appeal are as follows:

1) The order of the Commissioner of Income tax (Appeals)-IV, Ernakulam, is against law, facts and circumstances of the case.

2) The Commissioner of Income tax Appeals has erred in sustaining the additions made u/s.69 of Rs.2,15,045/- and Rs.30,245/-, purchases of properties from one Mr. Asokan and Mr. Satheeshan by M/s. Pattathil Family Trust of which the Appellant was only a Managing Trustee and the properties were purchased by the Trust out of its own sources.

3) The CIT Appeals has erred in sustaining the addition underground that the transactions related to the Assessee as the documents were found in the possession of the Assessee. Even though the possession of the documents was with the Assessee, it was explicit from the documents that it was purchased by the Trust and not by the Assessee. There was also no recital in the document to the effect that consideration for the property was paid by the Appellant.

4) The CIT also erred in holding that as Managing Trustee, the Appellant was liable to explain the source of acquisition of the property, even in absence of any enquiry to that effect by the A.O. He should have seen that an addition made without any enquiry with the owner of the property regarding source of acquisition thereof was bad in law.

5) The CIT appeals also erred in not accepting the contention of the Appellant that the source of acquisition of the property for Rs.33,605/- was the drawings of the Appellant of Rs.2,28,237/- from her business, which was entirely

available with the Appellant since all her household and personal expenses were met by her husband Sri. A. Abdul Salam, who was a Cashew Exporter.

6) The Appellant craves leave to adduce additional grounds at the time of hearing.

3. These grounds of appeal of the appellant relate to the addition of an amount of Rs.2,78,895/- u/s.69 on the basis of documents seized during the course of search.

4. The AO made the disallowances with the following remarks.

Unexplained investments:

As per the seized documents specified below the Assessee has invested the purchase of the following properties during the relevant to the Assessment Year 2006-07.

Seized Document	Seller	Details of property	Date	Amount (Rs.)
MKG-5-A-3 & MKG-5-A-44	Asokan	532/05, 6, 9	08.03.2006	2,15,045/-
MKG-5-A-3 & MKG-5-A-14	Satheesan	532/1/2	09.03.2006	30,245/-
MKG-5-A-3 & MKG-5-A-44	Madhuri, Sahadevan Pillai and Devaki Pillai	Deed No. 2007/05	18.05.2005	33,605/-

The assessee was required vide notice u/s. 142(1) dated 03.11.2010 to explain the source of the aforesaid investments with supporting documentary evidences. In the written submission filed on 22.11.2010 it is contended that the property purchased from Mr. Asokan on 08.03.2006 was invested in the name of Pattathil Family Trust and hence the transaction was not recorded in the books of accounts of the assessee. However, the assessee could not furnish any documentary evidence to substantiate the claim that the aforesaid investment was shown in the books of accounts of the trust as required vide notice u/s 142(1) dated 03.11.2010.

It is pertinent to note that the relevant sale deed has been executed on 08.03.2006 between Mr. Asokan & Smt. Jameela Beevi in her capacity as the trustee of the Trust. Pattathil Family Trust and was part of the seized documents belonging to the assessee found at the premises of M/s A.S. Cashew Exporters, a related concern of the assessee. When the assessee contends that the investment made belongs to another person, the onus to prove the same vests on the assessee especially in view of the fact that the document has been executed by her in her capacity as the Managing Trustee of the aforesaid Trust. No evidence was furnished by the assessee to show that the aforesaid investment reflected in the books of accounts of the trust. Pattathil Family Trust. As such, the amount of Rs.2,15,045/- is treated as unexplained investment u/s 69 of the IT Act.

Similarly, it is contended in the written submission filed on 22.11.2010 that the property purchased from Mr. Satheesan for Rs. 27,000/- is also a "similar transaction" and that this does not belong to that assessee." However, the assessee could not furnish any documentary evidence to substantiate the claim. For the reasons stated in detail in afore-mentioned paragraph, the investment in landed property for Rs. 27,000/- is also assessed to tax as unexplained investment u/s 69.

Regarding, the purchase of property vide deed executed on 18.05.2005 from Madhuri Sahadevan & Devaki as per the seized document MKG 5-A-48 it is contended that the source of investment was cash available with the assessee through drawings made from business. However, the assessee could not furnish any documentary proof evidencing the date and mode of payment. The assessee also failed to substantiate the claim, that the drawings made from the business were utilized for the aforesaid investments. Hence, the amount of Rs. 30,245/- is also assessed to tax as unexplained investment" u/s 69.

Reliance is placed on the following judicial pronouncements:

(1) When the assessee disputes the liability to tax on the investment made, the source of which remains unexplained, the onus of substantiating the claim made is on the assessee as rightly held by the Hon'ble Supreme Court in the landmark judgment reported in 107 ITR 938 in the case of Roshan Di Hatti Vs. CIT(S C).

(2) Further, the Hon'ble High Court of Kerala in its decision reported in 286 ITR 412 in the case Jayalakshmi Devarajan Vs. CIT held that the burden of proof to show that articles found in possession of person did not belong to him, is on that person.

3) In the decision reported in 302 ITR 75 in the case of Nandita Acharjee Vs. Union of India (Gau) it is held that the presumption that article, found in possession and control of person belong to the person is legally valid.

5. On Appeal, CIT observed that, the details of transactions relating to purchase of property and the related documents were found at the premises of the Assessee. This is a normal presumption that the transactions relate to the Assessee as the documents were found in the possession of the Assessee. The Assessee also admitted that she was the Managing Trustee of Pattathil Family Trust. Obviously, she was the one who was managing the affairs of the Trust and it was her duty to explain the source of investment. Her statement that she was only holding the papers in the capacity of Managing Trustee and the property belonged to someone else, is not sufficient. She did not even say, who was the buyer of the property and what was the source of investment. In view of facts of this case, he was in agreement with the conclusion drawn by the AO. Addition amounting to Rs.2,78,895/- was confirmed by CIT(A).

6. Against this, Assessee is in appeal before us. We have heard both the parties and perused the details on record. The plea of the Assessee is that the present Assessee has not purchased the impugned property which is mentioned in the seized material.

7. According to the Assessee, it is purchased by Pattathil family Trust, Kollam. The Assessee, is only trustee of that Trust which was formed on 16/10/2003. The said Trust was purchased property from the loan given by one Sri. Abdul Salam. The Assessee being the trustee, of the Family Trust, she was in possession of the Sale Deed in her house. According to the Ld AR, having the possession of the said Sale Deed of the property cannot lead to the conclusion that the Assessee had made any investment in said property.

8. However, we find that, before CIT(A) the Assessee took plea, the said property were purchased by the Assessee out of her drawings from business made during the earlier years and also during this Assessment year. However, before us the Assessee taken a new plea that it is purchased by Family Trust out of loan given by her husband Sri. Abdul Salam. This plea was not at all before the lower authorities. This is an afterthought explanation by the Assessee. The copy of balance sheet of Pattathil Family Trust as on 31/03/2006 produced by Assessee is **unsubstantiated** and the loan entry of Rs.2.46 lakh is shown in the Balance Sheet is also not supported by any confirmation from Sri. Abdul Salam. The AR has also stated that the amount of Rs.2.46 lakh is not reflected in the Balance sheet of Sri. Abdul Salam. It was said that out of drawings, made by him, he has lent a sum of Rs.2.46 lakh to the Pattathil Family Trust which is unbelievable as he is also having personal expenses. Accordingly, we do not find any merit in the argument of Ld. AR. and we confirm the orders of lower authorities on this issue.

9. The Assessee's appeal in ITA 291/C/2017 is dismissed.

10. ITA 292/C/2017 : (ASSESSMENT YEAR: 2007-08)

Grounds of appeal:

1) The order of CIT (A)-IV, Ernakulam, is against law, facts and circumstances of the case.

2) The Commissioner of Income tax Appeals has erred in sustaining an addition of Rs.2,25,000/- made u/s.69, out of the total investment of Rs.3,25,000/-. He erred in giving credit only for 1 lakh towards the investment, out of her personal drawings from business of Rs.15,46,593/- during the past 6 years. He admits in his order that the Indian Women are known for making savings. So he should not have sustained any part of the addition especially in the light of the decision of the Supreme Court in the case of CIT Vs. P.K. Noorjahan 237 ITR 570.

11. As per the seized documents specified below the assessee has invested in the purchase of the following properties during the relevant to the Assessment Year 2007-08.

Seized document	Seller	Details of property	Date	Amount (Rs.)
MKG-5-A-3	ANANDAKRISHNAN	601/12-1	02.11.2006	5,19,781/-

12. The assessee was required vide notice u/s.142(1) dated 03.11.2010 by A.O to explain the source of the aforesaid investments with supporting documentary evidences. In the written submission filed on 22.11.2010, it is contended that the property purchased by her daughter Smt. Suhaina for Rs.4,50,000/- and that the assessee has only **life** interest in the said property and hence the same was not accounted in the books of accounts of the Assessee. As per the information

contained in the seized document MKG-5-A-3 the aforesaid property has been jointly purchased by the Assessee and her daughter Smt. Suhaina. Since, the ownership of the said property partly vests with the Assessee, the responsibility to explain the source of aforesaid investment lies with Assessee also. The Assessee also failed to furnish any documentary evidence explaining the source of aforesaid investment in the hands of the daughter either.

13. It is pertinent to note that the Assessee is enjoying a life interest in aforesaid property and the fact that the deed was jointly executed by the Assessee and her daughter has not been disputed. Under such circumstances, onus to prove the source of the said investment lies with the Assessee also since the Assessee failed in discharging the onus to prove the source of the aforesaid investment, the total amount of Rs.5,19,781/- is treated as unexplained investment u/s.69 of the I.T. Act.

14. Reliance is placed on the following judicial pronouncements by
Assessing Officer

1) When the Assessee disputes the liability to tax on the investment made, the source of which remains unexplained, the onus of substantiating the claim made is on the Assessee as rightly held by the Hon'ble Supreme Court in the land mark judgement reported in 107 ITR 938 in the case of Roshan Di Hatti Vs. CIT (SC).

2) Further, the Hon'ble High Court of Kerala in its decision reported in 286 ITR 412 in the case of Jayalakshmi Devarajan Vs. CIT held that the burden of proof to show that articles found in possession of person did not belong to him, is on that person.

3) In the decision reported in 302 ITR 75 in the case of Nandita Acharjee Vs. Union of India (Gau) it is held that the presumption that article, found in possession and control of person belong to the person is legally valid.

15. Before CIT(A), it was submitted by AR as follows:-

Seized document marked as MKG-5-A-3 was purchase of property from Anandkrishnan and Saraswati by the Appellant's married daughter Smt. Suhaina for Rs.4,50,000/- in which the appellant had only a life interest and the amount paid for the life interest was only Rs.3,25000/- by the Appellant.

16. This investment was made out of her drawings from business which were Rs.5,61,949/- during 2003-04 Assessment Year, Rs.3,05,653/- during the Assessment Year 2004-05, Rs.1,63,747/- during the Assessment Year 2005-06 and Rs.2,28,237/- during the Assessment Year 2006-07. The house hold and personal expenses of the Appellant was fully met by her husband, Sri. A. Abdul Salam, a Cashew Exporter and proprietor of M/s. A.S. Cashew Exporters. So the entire amount of drawings of the appellant from the business during the earlier years was available with her for making investment. The facts of the Supreme Court case in CIT Vs. P.K. Noorjahan 237 ITR 570 squarely Applies to the Appellant's case and the addition of Rs.5,19,781/- (which the investment was only Rs.3,25,000/- by the Appellant). Under other sources, should be deleted fully.

17. The CIT(A) observed that there is no dispute about the fact that the property in question was jointly purchased by the appellant and her married daughter and the appellant has a life interest in the property. This is also not in dispute that the property was purchased for a total consideration of Rs.5,19,781/-. The only thing is that the appellant contended that her share of investment in the property was Rs.3,25,000/- for life interest and balance was paid by her married

daughter. This contention of the appellant is understandable. It can be accepted that married daughter of the appellant paid the balance amount for her share in the property. According to A.O, the appellant's liability to explain the source of investment should be restricted to the admitted share of investment amounting Rs.3,25,000/- only.

18. The appellant has tried to prove that this investment has been made through her past withdrawals, starting from AY. 2003-04. However, the appellant has not furnished any cash flow statement, evidencing as to how her withdrawals resulted into savings which were later invested in purchase of property. The CIT(A) observed that normally, no one would withdraw money as long as past withdrawals are not exhausted. Therefore, credit cannot be given for money withdrawn in earlier assessment years. As far withdrawal in AY. 2006-07, is concerned, total withdrawal is Rs.2,28,237/-. The appellant definitely incurs expenses, otherwise, she would not make withdrawals every year. In view of this fact, in absence of any explanation backed by evidence on part of the appellant and the pattern of withdrawal by her, it is clear that the appellant has not withdrawn any specific amount for making investment. This is also a fact that Indian Women are known for making some savings. Therefore, looking a overall circumstances of the case, credit for past savings can be extended upto Rs.1,00,000/-. Thus, an amount of Rs.1,00,000/- is treated to have been sourced out of past savings, and balance Rs.2,25,000/- is treated as unexplained. Consequently, out of total addition of Rs.5,19,781/-, addition of Rs.2,25,000/- is confirmed and balance is deleted by CIT(A).Against this, Assessee is before us.

19. We have heard both the parties. The total consideration of purchase of property was Rs.5,19,781/- out of this Assessee invested Rs.3.25 lakh. The Balance

Amount was met by her daughter. The Assessee explained that this amount was invested out of her past withdrawal from her business. However, it was observed by the CIT(A) that, the withdrawal for the AY. 2006-07 was only Rs.2,28,237/-. The Assessee has not filed her cash flow statement showing the details of availability offered to make investment in the property in the year under consideration. It was observed by the CIT(A), the withdrawals made by the Assessee in the earlier years was for specific purposes and it was not kept idle so as to make it available in subsequent Assessment Years. In other words, the Assessee would not made withdrawals every year when she is having earlier withdrawals in her hand. We find merit in the observations made by CIT(A). In our opinion CIT(A) is very reasonable in giving benefit of Rs.1,00,000/- with the Assessee to make investments in the property for the Assessment Year under consideration out of the earlier years withdrawals.

20. Accordingly, we reject the ground of the appeal of the Assessee for this year also . Thus appeal in ITA No.292/C/2017 is dismissed.

21. .ITA 293/Coch/2017 (AY.2008-09)

Grounds of appeal:

1) The order of CIT (A)-IV, Ernakulam, is against law, facts and circumstances of the case.

2) The Commissioner of Income tax Appeals has erred in sustaining the additions made u/s.69 of Rs.95,205/-, purchase of property from one Mr. Anirudhan by M/s. Pattathil Family Trust of which the Appellant was only a Managing Trustee and the property was purchased by the Trust out of its own sources.

3) The CIT Appeals has erred in sustaining an addition under the ground that the transaction relate to the Assessee as the documents were found in the possession of the Assessee. Even though the possession of the documents was with the Assessee, it was explicit from the document that it was purchased by the Trust and not by the Assessee. There was also no recital in the document to the effect that the consideration for the property was paid by the Appellant.

4) The CIT also erred in holding that as Managing Trustee, the Appellant was liable to explain the source of acquisition of the property, even in the absence of any enquiry to that effect by the A.O. He should have seen that an addition made without any enquiry with the owner of the property regarding source of acquisition thereof was bad in law.

22. The Assessing Officer made the addition with the following remarks:

In the written submission filed on 22.11.2010 it is contended that the property purchased from Sri. Anirudhan for an amount of Rs.95,205/- was invested in the name of Pattathil Family Trust and that the name of the Assessee appears in the document as the Trustee thereof and hence it was not accounted in the books of accounts of the Assessee.

23. It is pertinent to note that the relevant sale deed has been executed on 08.03.2006 between Mr. Asokan & Smt. Jameela Beevi in her capacity as the Trustee of the Trust. Pattathil Family Trust and was the part of the seized documents belonging to the Assessee found at the premises of M/s. A.S. Cashew Exporters, a related concern of the Assessee. When the Assessee contends that the investment made belongs to another person, the onus to prove the same vest on the Assessee especially in view of the fact that the document has been executed by her

in her capacity as the Managing Trustee of the aforesaid Trust. No evidence was furnished by the Assessee to show that the aforesaid investment reflected in the books of accounts of the Trust, Pattathil Family Trust. As such the amount of Rs.95,205/- is treated as unexplained investment u/s.69 of the I.T.Act.

24. During the course of First appellate proceedings also, the appellant has not given any explanation on this addition. Since, the appellant was the Managing Trustee of the Pattathil Family Trust and she is the one who entered into the transaction, it was her responsibility to explain the source of investment. In view of the above, addition of Rs.95,205/- was confirmed by CIT(A).

25. Against this the Assessee is before us. We heard both the parties. As decided in ITA 291/Coch/2019 this ground of appeal is also dismissed on similar reasons. The appeal of the Assessee is dismissed in ITA 293/Coch/2017.

26. In the result, all the three appeals of the Assessee are dismissed.

Order pronounced in the open court on 29th August, 2019.

sd/-

(GEORGE GEORGE K.)
JUDICIAL MEMBER

sd/-

(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Place: Kochi

Dated: 29th August, 2019

Copy to:

1. Smt. Jameela S, M/s.J.S.Cashew Exporters, Ayathil, Kollam

2. The ACIT, Central Circle, Kollam
3. The Commissioner of Income-tax(Appeals)-IV 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