

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

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

ITA No.515/Coch/2019 : Asst.Year 2006-2007

Sri.P.S.Sreenivasan Yasoda, Kongad Palakkad 678 631. <b>PAN : DGEPS9797B.</b>	Vs.	The Income Tax Officer Ward 1 Palakkad.
(Appellant)		(Respondent)

Appellant by : Sri.Samuel Thomas, Advocate  
Respondent by : Smt.A.S.Bindhu, Sr.DR

<b>Date of Hearing : 13.11.2019</b>	<b>Date of Pronouncement : 14.11.2019</b>
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**ORDER**

**Per George George K, JM**

This appeal at the instance of the assessee is directed against the order of the Commissioner of Income-tax (Appeals)'s dated 24.06.2019. The relevant assessment year is 2006-2007.

2. The grounds raised read as follows:-

*"1. The order of the learned Commissioner of Income (Appeals) Thrissur, sustaining the addition of Rs.4,00,000/- out of the total addition of 5,00,000/- made in the assessment order, rejecting the explanation given in respect of the opening credit balance in the Capital Account compiled for the period ending on 31.03.2006, is contrary to law and the facts of the case;*

2. *The learned Commissioner (Appeals) failed to appreciate the fact that the Survey under section 133A on 07.01.2011 yielded no results, as no incriminating material or unexplained asset was found;*

3. *There is no denial of the fact that the 'Kalyanamandaparn' known as YESODA was run by the assessee for the last so many years. The opening credit balance shown in the compiled accounts in the absence of regular accounts was the past savings over so many years. It was not correct on the part of the learned CIT(A) to confirm the addition merely on the ground of non-filing of returns after A.Y. 1991-92;.*

4. *The learned ITAT, Chennai Bench held in the case of ACIT v. N.Sasikala (2005) 92 TTJ 119 that current year income cannot be disturbed on account of difference in opening balance, doubting the availability of cash balance. A saving up to Rs.5,00,000/- over such a long period was reasonable. The learned CIT(A) erred in confirming the addition, holding that a sum of Rs.1,00,000/- only was reasonable as savings in the capital account in the intervening period between the year in which last return was filed, i.e. 1991-92 and A.Y. 2006-07.*

5. *The appellant craves leave to add or to amend the aforesaid grounds before disposal of the appeal."*

3. Brief facts of the case are as follows:

The assessee is an individual. He is owner of a Kalyanamandapam. There was a survey conducted u/s 133A of the I.T.Act in the business premises of the assessee on 07.01.2011. During the course of survey, sworn statement was recorded from the assessee. Since the assessee did not file any return of income for the Asst.Year 2006-2007, notice

u/s 148 of the I.T.Act was issued to the assessee. During the course of assessment proceedings, the assessee was directed to file the cash flow statement. In the cash flow statement for the year ending 31.03.2006, the assessee had introduced a sum of Rs.5,00,000 being the past years savings. The assessment was completed u/s 143(3) r.w.s. 147 of the I.T.Act, vide order dated 30.03.2014. In the said assessment order, the Assessing Officer did not accept the claim of credit balance of Rs.5 lakh being past years savings. The Assessing Officer held that there was no regular books of account maintained by the assessee and income tax returns for the earlier years since assessment year 1992-93 were never filed. Therefore, the claim of the assessee that assessee was having accumulated saving for the past years was rejected and the A.O. made an addition of Rs.5 lakh to the returned income of the assessee.

4. Aggrieved by the said addition, the assessee preferred an appeal to the first appellate authority. The CIT(A) partly allowed the appeal of the assessee by granting adhoc relief of Rs.1,00,000 out of the total addition of Rs.5 lakh made by the Assessing Officer. The relevant finding of the CIT(A) reads as follow:-

*6. I have considered the submissions of the appellant. The appellant did not file any return since 1991-92 and the return of income for A.Y.2006-07 was only filed after a survey was conducted in 2011 at his business premises and in pursuance of a notice u/s.148 issued by the Assessing Officer. The appellant does not maintain any books of accounts and has no evidence of income earned during these 20 years. Even if the income is there, it remains below*

*threshold limit as no return has been filed by the appellant. It is hard to believe that any savings would have been made out of this meager income by the appellant. As per his own admission, the income is below threshold limit and even here the appellant is not able to substantiate as to how much was his income during all these years. Further, no return has been filed. In fact, the admission by the appellant that his income was below threshold limit rules out possibility of any significant savings in his hand in absence of any record, figures or evidence. The estimation by him in crediting his capital account by Rs.5,00,000/- on 01.04.2005 appears to be on a very high side. Therefore, I am inclined to accept the action of the Assessing Officer. However, taking into account the possibility of minor savings by appellant, I restrict the addition to Rs.4,00,000/-. The appellant gets relief of Rs.4,00,000/- on this account."*

5. Aggrieved by the order of the CIT(A), the assessee has filed the present appeal before the Tribunal. The learned AR relied on the grounds raised before the Tribunal. The learned Departmental Representative, on the other hand, strongly supported the orders of the Income-tax authorities.

6. We have heard the rival submissions and perused the material on record. The case law relied on by the assessee in the grounds of appeal would not be of any assistance to the assessee. The Chennai Bench of the Tribunal in the case of *ACIT v. Smt.N.Sasikala* [(2005) 92 TTJ Chennai 1196] had deleted the addition, since the assessee in that case had filed return of income for immediately preceding the assessment year, therefore, ITAT confirmed the CIT(A)'s order, holding that the A.O. ought to have considered the taxability of the amount introduced in A.Y.1991-1992 as an addition in the immediately preceding assessment year, namely, A.Y. 1990-1991 (since the assessee had filed return of income in

Asst.Year 1990-1991). In the instant case, a sum of Rs.5 lakh was introduced in the current assessment year in the credit side of the cash flow statement stating that Rs.5 lakh was past years savings which was available in hand. This contention was never proved with any evidence, since assessee did not file return of income after assessment year 1991-92. The learned AR vehemently pleaded that assessee was carrying on money lending business in a small way in the village and the amount of Rs.5 lakh introduced was out of such money lending business. The assessee produced bank statement to prove that there was frequent deposits and withdrawals of amount, which according to the learned AR, clearly point out that the assessee was in the business of money lending. It was submitted that the return of income was not filed in the past years since the assessee was having taxable income below the threshold limit. It was further submitted that for a small family living in a small town with simple lifestyle needed not much amount for running the household and it was not difficult to make an average savings of Rs.4,000 to Rs.5,000 per month. Therefore, it was pleaded that accumulation of savings in past ten years upto Rs.5 lakh was very reasonable.

6.1 The CIT(A) had restricted the addition made by the Assessing Officer to Rs.4 lakh and has granted an adhoc relief of Rs.1 lakh. The adhoc relief granted by the CIT(A), we are of the view is on the lower side. Since the assessee had produced bank account statement which points out that there

were frequent cash withdrawals and cash deposits, we can be reasonably assume that the assessee in the past years was engaged in the money lending business and in all probabilities would be having some amount of saving in the past years for introduction of capital in the cash flow statement for the relevant assessment year. Therefore, we hold that the assessee is entitled a further relief of Rs.2 lakh on account of capital introduction. Hence, we sustain the disallowance of Rs.2 lakh. It is ordered accordingly.

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

Order pronounced on this 14<sup>th</sup> day of November, 2019.

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

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

Cochin ; Dated : 14<sup>th</sup> November, 2019.  
Devadas G\*

**Copy of the Order forwarded to :**

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

BY ORDER,

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