

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

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

ITA No.141/Coch/2019 : Asst.Year 2007-2008

Sri.C.Shanmughan Ambika Sadanam, Iritty Kerala – 670 703. PAN : AFSPS9240K.	Vs.	The Dy.Commissioner of Income-tax Central Circle – 2 Kozhikode.
(Appellant)		(Respondent)

ITA No.174/Coch/2019 : Asst.Year 2007-2008

Sri.K.K.Premkumar Kolanthara House Melmuringodi, Peravoor Kannur – 670 673. PAN : ACMPP4766G.	Vs.	The Dy.Commissioner of Income-tax Central Circle – 2 Kozhikode.
(Appellant)		(Respondent)

Appellants by : Sri.Pavan Ved, Advocate
Respondent by : Smt.A.S.Bindhu, Sr.DR

Date of Hearing : 20.11.2019	Date of Pronouncement : 21.11.2019
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ORDER

Per Chandra Poojari, AM :

These appeals filed by two different assesseees arise out of two separate orders of the CIT(A). The relevant assessment year is 2007-2008. Appeal in ITA No.141/Coch/2019 in the case of Sri.C.Shanmughan, is directed against the order of the CIT(A) passed u/s 143(3) r.w.s. 153A of the I.T.Act, dated 12.10.2018, whereas appeal in ITA No.174/Coch/2019 in the case of Sri.K.K.Premkumar, is directed against the order of the CIT(A) passed u/s 153C r.w.s. 153A(a) of the I.T.Act, dated 01.02.2019.

2. There was a delay of 58 days in filing appeal in ITA No.141/Coch/2019 before the Tribunal. The assessee has filed a petition for condonation of delay accompanied an affidavit, stating that the delay was caused because the assessee had filed rectification petition u/s 154 of the I.T.Act before the CIT(A). However, the CIT(A) has not passed any rectification order and the assessee was under bonafides belief that once the rectification application is filed before the CIT(A), there is no need for filing second appeal. Thus the delay of 58 days was caused. In our opinion, the assessee has reasonably explained that there is sufficient cause for filing the appeal belatedly before the Tribunal. Therefore, we condone the delay of 58 days and admit the appeal for hearing.

3. Since common issues are involved in these appeals, they were clubbed together and are being disposed of by this consolidate order.

4. The grounds raised in both the appeals read as under :-

ITA No.141/Coch/2019

(i) In the absence of any incriminating materials found, applying the ratio of judgment rendered by Hon.Supreme Court of India in the case of CIT(III) Pune vs. Singhad Technical Edu. Society, 84 Taxmann.com 290, the proceedings u/s 153C is null and void ab initio.

(ii) The proceedings u/s 153C is null and void ab initio satisfaction recorded as shown in assessment order does not meet the requirement of sec.153C.

(iii) The Id.CIT(A) did not decide the issue that Id.JCIT approved the order without application of mind.

(iv) The CIT(A) erred in confirming addition of Rs.1,00,000.00 towards personal expenditures without considering the actual facts of the case. Addition on merits made by LAO was without giving the appellant opportunity of being heard hence is liable to be deleted.

ITA No.174/Coch/2019

(i) The Id.CIT(A) erred in confirming assessment order u/s 153C, despite the fact that no proper satisfaction was recorded by LAO of searched person as is clear from the assessment order itself. The Id.CIT(A) did not at all decide this issue. There was no search warrant in the name of appellant.

(ii) The Id.CIT(A) erred in confirming assessment without deciding the Grounds of Appeal of the assessee that approval given by Id.JCIT u/s 153D of I.T.Act was without application of mind hence was non est and therefore the assessment was without jurisdiction and null and void. The Id.CIT(A) did not at all decide this issue.

(iii) The Id.CIT(A) erred in confirming the addition for low household expenses on the basis of material which was not found in course of search and therefore was beyond the scope of sec. 153C. Id.CIT(A) ignored this argument totally despite SC decision in favour of appellant in the case of Singhad Technical Institute.

(iv) The Id.CIT(A) erred in confirming the addition for low household expenses which was sufficient in view of the fact of the case.

5. The common ground in both the appeals is with regard to issue of initiation of proceedings u/s 153C of the I.T.Act without recording the satisfaction by the Assessing Officer of such parties.

6. Briefly stated the facts in the case, in respect of ITA No.174/Coch/ 2019 (Sri.K.K.Premkumar), are that a search

u/s 132 of LT. Act was conducted at the residential premise of the assessee on 26-09-2012, in the case of K.K. Builders, K.K. Tourist Home, R C Park Kunnamkulam on the strength of warrant of authorization issued by the Director of Income Tax (Inv) on 19-09-2012. The assessee is a partner of all the concerns of K K Builders group. The search operations u/s 132 of I.T.Act at different premises of K.K.Builders group revealed that the group has earned huge unaccounted income from its business of sale and purchase of Indian made foreign Liquor (IMFL), sale of tenancy rights of BOT Bus stand constructed by the group. After the search action the jurisdiction of the assessee was assigned to DCIT, Central Circle - 2, Kozhikode by the Commissioner of Income Tax, Kozhikode vide notification C No. 127/CIT /CLT'/JURSDN/ 2012-13 dated 29.01.2013 for the coordinated enquiry and administrative convenience. The assessee belongs to the K K Builders Group based in Kannur. Therefore, the income of the assessee was to be assessed u/s. 153C r.w.s. 153 A of the I.T. Act, 1961. Notice u/s. 153C r.w.s. 153A(a) was issued for the A.Y. 2007-08 to 2012-13 on 21-06-2013. The assessee filed the return of income for this assessment year declaring total income of Rs. Nil and agricultural income of Rs.Nil on 05.08.2013. Notice u/s. 143(2) was issued on 30.09.2013. The assessee was asked for details u/s 142(1) pertaining to the return filed by it through a detailed questionnaire issued on 01-08-2014. The assessee was given time till 13/08/2014 to submit such details. On 13-08-2014 the assessee had filed a letter seeking more time to furnish details. It was seen that the assessee did not submit any

details till 30-09-2014. On 01-10-2014 the assessee was issued another letter calling forth the details called for on 01-08-2014. On 16-10-2014 assessee submitted details as called for on 12-08-2014. Further, the assessee was also asked to submit his cash flow statement vide letter dated 01.08.2014 and vide order sheet noting dated 16.10.2014, 01.11.2014, 12.12.2014, 12.02.2015, 25.02.2015, 09.03.2015, 09.03.2015. Despite such repeated reminders through the authorized representative of the assessee, the assessee had submitted the cash flow statement only on 24.03.2015. While going through the cash flow statement submitted by the assessee, the Assessing Officer noted that there can be no cogent reason why the assessee had taken so much time to submit the cash flow statement. The inflow of cash to the assessee is mainly out of cash and bank withdrawals from the partnerships concerns in which assessee is partner. Likewise the outflow of cash of the assessee is mainly to the partnerships concerns in which assessee is partner. That being so the delay in submitting cash flow statement can only be considered as a delaying tactic and an attempt to subvert the assessment proceedings. The A.O. further seen that while the return of income u/s 153C r.w.s. 153A for this assessment year, the assessee had filed a return of income showing nil income. In reality the assessee had income of Rs.2,93,524 and agricultural income of Rs.1,26,439 in the financial year relevant to this assessment year. The assessee had earlier to the search had filed a return of income u/s 139 on 26.10.2007 showing total income of Rs.2,93,520 and agricultural income of

Rs.1,26,349/-. Hence the Assessing Officer added the income of the assessee as per the return filed on 26.10.2007 to the total income of Rs.Nil filed by the assessee in the present proceedings. The Assessing Officer further noted that the assessee had shown only Rs.1,00,000 as his personal expenses which is grossly inadequate considering the social status and affluence of the assessee. Even as per assessee's own deposition on 30.10.2012 assessee's personal expenses were to the tune of Rs.30,000 per month. Hence the amount of Rs.1,00,000 shown by the assessee as personal expenses is considered inadequate. Hence the Assessing Officer estimated the personal expenses of the assessee at Rs.3,60,000 and Rs.2,60,000 and added to the total income of the assessee.

7. Similar additions were made by the Assessing Officer in respect of ITA No.141/Coch/2019 (Sr.C.Shanmughan), on identical reasoning.

8. We have heard the rival submissions and perused the material on record. Admittedly, the assessee has raised this issue before the CIT(A), however, there was no whisper in the order of the CIT(A) regarding the recording of satisfaction. In our opinion, the CIT(A) ought to have decided the legal issue first and thereafter he could have travelled to adjudicate the issue on merits on the addition made by the Assessing Officer. Since the CIT(A) not at all decided the legal issue on merits, hence, we remit the issue to the file of the CIT(A) to decide the legal issue first. Accordingly, we direct the CIT(A) to decide the legal issue first and thereafter decide the issue on

merits of the addition made by the Assessing Officer, on both the cases.

9. In the result, both the appeals are allowed for statistical purposes.

Order pronounced on this 21st day of November, 2019.

Sd/-
(George George K)
JUDICIAL MEMBER

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Cochin ; Dated : 21st November, 2019.
Devadas G*

Copy of the Order forwarded to :

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

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin