

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

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

ITA No.492/Coch/2019 : Asst.Year 2006-2007
ITA No.493/Coch/2019 : Asst.Year 2007-2008
ITA No.494/Coch/2019 : Asst.Year 2008-2009
ITA No.495/Coch/2019 : Asst.Year 2009-2010
ITA No.496/Coch/2019 : Asst.Year 2010-2011
ITA No.497/Coch/2019 : Asst.Year 2011-2012
ITA No.498/Coch/2019 : Asst.Year 2012-2013

Dr.K.Moidu 28/1454D Hazel House Vazhipok Road Nellikode Post Kozhikode – 673 016. PAN : ADTPM0490N.	Vs.	The Dy.Commissioner of Income-tax, Central Circle 2 Kozhikode.
(Appellant)		(Respondent)

Appellant by : Sri.Surendranath Rao
Respondent by : Smt.A.S.Bindhu, Sr.DR

Date of Hearing : 14.11.2019	Date of Pronouncement : 26.11.2019
-------------------------------------	---

ORDER

Per Bench :

These appeals at the instance of the assessee are directed against the consolidated order of the CIT(A) dated 06.06.2019. The relevant assessment years are 2006-2007 to 2012-2013.

2. Common issues are raised in these appeals, hence, they were heard together and are being disposed of by this consolidated order.

3. Brief facts of the case are as follows:-

The assessee, an individual, is Doctor by profession. He is also Managing Director of Moidu's Medicare Private Limited. There was a search u/s 132 of the I.T.Act conducted in the premises of KMCT Trust in which the assessee is a trustee. Subsequent to the search operation, assessments u/s 153A r.w.s. 153C of the I.T.Act were completed for assessment years 2006-2007 to 2012-2013. The assessee had declared agricultural income in the return filed by him for Asst.Years 2006-2007 to 2012-2013. The A.O. while completing the assessments u/s 153C of the I.T.Act for Asst.Years 2006-2007 to 2012-2013, disbelieved 50% of agricultural income declared by the assessee in respective assessment years and added back the same as "income from other sources". The relevant finding of the Assessing Officer concerning assessment year 2006-2007 reads as follow:-

"Assessee has declared the income from agriculture to the tune of Rs 27,88,000/- from midland coffee estate, Madikkeri, Karnataka for the A Y 2006-07. In order to find out the actual agricultural income from the above estate enquiries were conducted by the inspectors attached to Deputy Director of Income Tax (Inv), Kozhikode. As per the report submitted by the inspectors proved that the assessee has not maintained correct and true accounts regarding the expenses and income arise out of agricultural activities in estate. As per availed information by the inspectors, the expenses were mostly suppressed and income earned shown as huge amount. Assessee also do not submitted any details to prove the agricultural income returned is actually from agricultural activities. Therefore I have no other way

but depend on the report of the inspectors of the Income Tax attached to the Deputy Director of Income Tax (Inv), Kozhikode and limit the agricultural income to 50% of the total agricultural income declared. For the assessment year 2006-07 assessee has declared agricultural income to the tune of Rs.27,88,000/-. Therefore 50% of the declared income accepted and balance 50% treated as assesses income from other source i.e. Rs.13,94,000/-."

4. Aggrieved by the assessments completed for assessment year 2006-2007 to 2012-2013, the assessee filed appeals before the first appellate authority. It was submitted before the first appellate authority that the assessee is the owner of more than 75 acres of agricultural lands at Kodakkal village, Madikeri, Kudagu, Karnataka. It was submitted that the above said land was planted with cardamom, pepper etc. It was stated that the assessee was also having agricultural land in Kozhikode District, wherein coconut trees were planted. It was submitted that the fact of ownership of land and agricultural operation on the same is never in dispute. It was contended that the A.O. had estimated only 50% of the income returned by the assessee was agricultural income and erred in treating the other 50% as income from other sources. It was also contended that in the absence of incriminating material / evidence regarding introduction of unaccounted income in the guise of agricultural income, the addition u/s 153A r.w.s. 153C of the I.T.Act cannot be made on conjuncture and suspicious. The assessee had also filed a

certificate from Village Officer, in support of his agricultural income.

5. The CIT(A) held that the agricultural income needs to be re-worked out based on the certificate issued by the Village Officer. The CIT(A), on the basis of the Village Officer's certificate, estimated the agricultural income for the year 2018 at Rs.35 lakh and directed the A.O. to determine the agricultural income for assessment years 2006-2007 to 2012-2013 by reversed indexation method. The relevant finding of the CIT(A) in this regard reads as follow:-

"Keeping in view the documents furnished by the appellant including some of the sale bills, demand drafts received and the certificate from the village office in Kedakal, it would be a fair estimate to presume that the agricultural income of the appellant can at best be estimated as Rs.35,00,000/- per year for the calendar year 2018. The AO is directed to estimate the agricultural income of the appellant by reverse indexing the value of Rs.35,00,000/- for 2018 to the CII of the relevant AY, to arrive at the net agricultural income of the concerned AYs and the difference in any can be treated as income from other sources."

6. The assessee being aggrieved by the order of the CIT(A), has filed these appeals before the Tribunal. Identical grounds are raised in all the appeals, except for assessment year 2012-2013. For the assessment year 2012-2013, only two issues are raised, namely, (i) the assessment order is barred by limitation; and (ii) on merits, whether the CIT(A) is justified in confirming the addition of 50% of agricultural income

returned by the assessee as "income from other sources". The learned AR did not press ground no.2 & 3 for Asst.Years 2006-2007 to 2011-2012 and confined his submissions for all the assessment years only on the above two issues. The assessee has also filed a petition for admission of grounds relating to the issue of assessment being time barred, since this issue was not raised before the lower authorities. The additional grounds raised read as follow:-

(i) Assessment was completed under section 153C read with section 153A, as a person other than the person searched and there was no seizure of any money, bullion, Jewellery or valuable article or thing of books of account or document and the estimated addition made by treating a portion of the agricultural income as income from other sources is hence invalid.

(ii) The time limit set for completion of assessment under section 153C as per section 153B as it stood at the time of search on 31.10.11 was a period of twenty one months from the end of the financial year in which the last of the authorisation for search was executed or nine months from the end of the financial year in which the books of account, documents or seized assets are requisitioned are handed over under section 153C to the AO having jurisdiction over such connected person. As the AO of the searched person and the appellant was the same person, no transfer of documents etc was involved and hence the assessment should have been completed within twenty one months from the end of the financial year ended 31.03.2012 as the search was carried out on 31.10.2011. The assessment was completed only on 31.03.2014."

7. It was submitted that the issue raised in the above grounds are pure legal issue and facts relating to adjudication of the same are already on record. It was stated that the above grounds were omitted to be raised before the lower authorities and the omission was not intentional. Therefore, it was submitted that in view of the judgment of the Hon'ble Apex Court in the case of *National Thermal Power Company Ltd. Vs. CIT [(1998) 229 ITR 383 (SC)]*, the additional grounds now raised need to be admitted on record and adjudicated. The assessee has also filed a paper book enclosing notice issued u/s 153A r.w.s. 153C of the I.T.Act for all the assessment years, the CBDT Circular No.24/2015 dated 31.12.2015 regarding recording of satisfaction, details of land holding along with the English translation, specimen of agricultural produce, sales invoices, certificate from the Village Officer regarding estimation of agricultural income etc. The case laws relied on by the assessee is also enclosed in the paper book filed.

8. The learned Departmental Representative, on the other hand, strongly supported the orders of the Income-tax Authorities.

9. We have heard the rival submissions and perused the material on record. In all the assessment years concerned, only two issues arise for our consideration, namely, (i) whether the assessment orders are barred by limitation, and (ii) on merits, whether the CIT(A) erred in confirming the

addition of 50% of agricultural income returned by the assessee as "income from other sources".

9.1 As regards the assessment orders being time barred, the assessee has filed a petition for admission of additional grounds since these grounds were not raised before the lower authorities. The issue of assessment order being time barred is a pure legal issue which does not require any investigation of new facts. Therefore, in view of the judgment of the Hon'ble Apex Court in the case of *National Thermal Power Company Ltd. (supra)*, we admit the grounds relating to the assessment orders being time barred by limitation and proceed to adjudicate the same.

9.2 Section 153B of the I.T.Act provides for period of limitation for completion of assessment or reassessment u/s 153A / 153C of the I.T.Act. Section 153B of the I.T.Act was introduced by the Finance Act, 2003 w.e.f. 01.06.2003. As per sub-clause (ii) to second proviso to section 153B(1) as it stood at the time of search in October 2011, the period of limitation for making the assessment or reassessment of the connected person, was the period of twenty one months from the end of the financial year in which the last of authorizations for search u/s 132 was executed or nine months from the end of the financial year in which the books of account of documents or assets seized or requisitioned are handed over u/s 153C of the I.T.Act to the Assessing Officer having jurisdiction over the connected persons. In the instant

case, it is clear from the assessment order that no transfer of document is required since the Assessing Officer in the case of searched person and the assessee is same. The search was conducted on 31.10.2011 and hence the last date for completion of assessment was 21 months from 31.03.2012, being the end of the financial year in which the search was carried out. Therefore, the assessment orders ought to have been passed on or before 31.12.2013. However, in these cases, the assessment orders were passed only 31.03.2014. Hence, these assessment orders are prima facie barred by limitation.

9.3 On merits we find that the assessee is the owner of more than 75 acres of land in Madikeri. In Madikeri, the assessee's land is cultivated with coffee, cardamom, pepper etc. The assessee is also having land in Kozhikode, where coconut trees are planted. Copies of the record rights, crop information, sale invoices etc. are placed on record to prove that the land in Kudagu was owned by the assessee as well as agricultural operations were carried out regularly. The CIT(A), in the impugned order, directed the Assessing Officer to estimate the agricultural income on reversed indexation method. The CIT(A) arrived at a figure of Rs.35 lakh for the calendar year 2018 and accordingly directed the Assessing Officer to arrive at the agricultural income for the respective assessment years on the basis of reversed indexation method. The concept of cost of inflation indexation has been stipulated only for the purpose of neutralizing the impact of inflation on

the cost incurred for the purchase of a capital asset for computation of long term capital gains. The cost of asset remains fixed and the inflation index only reckons the indexed cost for the same asset based on the index which is notified by the Central Government. The concept of reverse indexation is not prescribed in the Income-tax Act. This method is wholly unsuitable when the yield for a particular year for each type of crop cultivated and its unit price varies from season to season in a year based on many uncertain and unpredictable variables like weather, market demand and supply etc. Therefore, we are of the view that the CIT(A) was not justified in directing that the agricultural income for all assessment years has to be determined on the basis of reverse indexation of income estimated for the calendar year 2018.

9.4 Moreover, the Assessing Officer to assume jurisdiction u/s 153C of the I.T.Act, he has to be satisfied that the documents or material found during the course of search belong to a person other than the searched person. In this case, there is no mention in the assessment order as to what document or valuable were found in the premises of the searched person that belonged to the assessee. In other words, there is no material belonging to the assessee which were unearthed during the search. This is clear from the fact that additions were made to the income returned in the respective assessment orders u/s 153C of the I.T.Act, by disbelieving 50% of agricultural income returned by the assessee and treating it as income from other sources (which

was done on estimate basis) and the addition u/s 2(22)(e) of the I.T.Act. It is now well settled position of law that proceedings u/s 153C of the I.T.Act against the person who is not searched cannot be initiated unless incriminating documents or valuables belonging to such person were detected during the search. In this context, we rely on the judgment of the Hon'ble Delhi High Court in the case of *Pepsico India Holdings Private Limited. v. ACIT (370 ITR 295)*. In the instant case, the assessments were completed u/s 153A r.w.s. 153C of the I.T.Act. Therefore, in the absence of any incriminating evidence regarding details or documents, showing introduction of unaccounted income in the guise of agricultural income, the addition of a portion of agricultural income as income from other sources cannot be justified. Such an assessment is clearly unsustainable as the assessing authority has wrongly assumed jurisdiction u/s 153C of the I.T.Act as it was held by the Hon'ble Supreme Court in the case of *Sinhgad Technical Education Society v. CIT (397 ITR 344)*. Recently the Cochin Bench of the Tribunal in the case of *Pentagon Builder v. DCIT (ITA No.78 to 81/Coch/2016 – order dated 11.12.2017)* had followed the judgment of the Hon'ble Apex Court in the case of *Sinhgad Technical Education Society v. CIT (supra)*.

9.5 For the aforesaid reasoning, we are of the view that the additions made as income from other sources by disbelieving 50% of agricultural income returned by the assessee in the

respective assessment years is uncalled for and we delete the same. It is ordered accordingly.

10. In the result, the appeals filed by the assessee are allowed.

Order pronounced on this 26th day of November, 2019.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Cochin ; Dated : 26th 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