

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER

I.T.A. Nos.456 & 457 /Coch/2019
Assessment Years : 2003-04 & 2004-05

Shri Anwar Sadath, Anwar Palace, Chandiroor, Alappuzha-688 524. [PAN: AGBPA 1703D]	Vs.	The Income Tax Officer, Ward-1, Alappuzha.
(Assessee-Appellant)		(Revenue-Respondent)

Assessee by	Shri R. Krishnan, CA
Revenue by	Shri Mritunjaya, Sr. DR

Date of hearing	22 /01/2020
Date of pronouncement	27 th /01/2020

ORDER

Per GEORGE GEORGE K., JUDICIAL MEMBER:

These appeals at the instance of the assessee are directed against two orders of the CIT(A), both dated 30/04/2015. The relevant assessment years are 2003-04 and 2004-05.

2. Common issues are raised in these appeals, hence, they were heard together and are being disposed of by this consolidated order. The grounds raised in both the appeals are identical except for variance in figures. The grounds relating to assessment year 2003-04 read as follows:

1. The reopening of assessment u/s. 147 is bad in law. The ingredients of section 147 are not satisfied, so much so, the re-opening is bad.

2. The learned Commissioner of Income Tax(Appeals) ought to have decided the appeal on merits, instead of merely going by the remand report.

3. The learned officers erred in concluding that the submissions during the remand proceedings are an afterthought, without really going into the merits of the case.

4. The learned Commissioner of Income Tax(Appeals) erred in confirming the additions of Rs.1,98,242/- and Rs.1,16,617/- on account of unexplained credits in capital account and unexplained chitty payments respectively without entering into an independent finding with regard to the source available in the hands of the appellant.

Appellant prays that the assessment u/s. 147 be held to be bad in law or in the alternative, the additions on both counts be deleted.

3. No arguments were raised with regard to re-opening of assessments for both the assessment years. Hence, the grounds relating to re-opening of assessments for the assessment years 2003-04 and 2004-05 are dismissed.

4. The brief facts are as follows:

During the assessment year 2003-04, the Assessing Officer made addition of Rs.3,14,859/- on account of unexplained credits in the capital and chitty installments. The relevant finding of the Assessing Officer for assessment year 2003-04 reads as follows:

"4. As regards to the source of capital introduced during the year over and above the income of Rs. 1,03,500 and agricultural income of Rs.

1,70,000 disclosed in the return, a sum of Rs. 1,50,000 was explained as the consideration received on sale of agricultural property during the year and the balance of Rs. 3,70,000 as maturity proceeds of KSFE chitties being maintained by the assessee.

5. On detailed verification of the information received from the Branch Manager, KSFE, Mattancherry Branch, Thoppumpady, during the period from 25-10-1999 regarding the chitty remittances and payments of the assessee, the assessee's receipts through chitties were found to be as follows:

"The chitty prize money of Rs. 3,14,600 received consequent to the auction of chitty No. 14/99-A 24 on 05-09-2000 was transferred to an Fixed Deposit on 06-11-2000 in KSFE itself, The said FD was prematurely closed on 24-03-2001 and partly reinvested as a fresh FD of Rs.2,30,000 towards the future liability of chitty, (No evidence was brought on record to explain that the balance of the maturity proceeds were reinvested anywhere in any manner). The said F'D was again prematurely closed on 13-06-2002 transferring the entire maturity proceeds towards pending liabilities of the chitty.

As for another chitty No. 12/2000-A 9 commenced on 31-10-2000, the assessee availed a chitty loan on 14-02-2002 against the security of the said chitty and consequent to the auction of the chitty on 22-10-2002, a payment of Rs. 1,71,758 was effected to the assessee on 26-11-2002 after setting of the loan availed."

6. As such it was concluded that the assessee was left with no money other than the aforesaid sum of Rs, 1,71,758 during the period relevant to AY 2003-04 to be introduced as capital in the firm as claimed.

7. As requested by the assessee during the course of hearing of the case on 03-11-2008, he was granted time till 15-11-2008 to offer further explanations on the matter. However, the assessee neither turned up thereafter nor filed any explanations otherwise till date. As the assessee offered no explanation regarding the nature and source for the amount of Rs.3,70,000 introduced in the firm as his capital as reduced by the sum of Rs. 1,71,758 computed as maturity proceeds of chitty as discussed above, the difference amounting to Rs. 1,98,242 is treated as unexplained credits liable to be taxed in the hands of the assessee under section 68 of the Act and is so assessed.

8. On examination of the case, it was further observed that the assessee had made remittances towards instalments of chitty No. 12/2000-A 9

totalling Rs. 1,16,617 during the period relevant to AY 2003-04. As the assessee offered no explanation regarding the nature and source of the said credits, the same is treated as unexplained credits liable to be taxed in the hands of the assessee under section 68 of the Act and is so assessed."

4.1 Similarly, for the assessment year 2004-05, the Assessing Officer made addition of Rs.5,90,709/- on account of unexplained credits in the capital and chitty installments. The relevant finding of the Assessing Officer reads as follows:

"4. As regards to the source of capital introduced during the year over and above the income of Rs. 1,28,000 and agricultural income of Rs. 1,00,000 disclosed in the return, a sum of Rs. 4,90,000 was explained as money received as hand loans from one Shri Nathmal Jasram, Chennai. A letter from the said person stating that he had given Rs. 5,00,000 in several instalments to Shri Anwar Sadath during the FY 2003-04 as hand loan, was also furnished by the assessee along with a xerox copy of the PAN card of Shri Nathmal Jasrarn.

5. The assessee was required to explain the dates and amounts received from the said person on each occasion. He could not furnish any evidence substantiating the receipt of money from the said person or any reason for not receiving the money through bank accounts and in lump-sum as the amount required was not in any instalments to be introduced as capital of the assessee in the firm which was constituted on 20-09-2002 or the date of repayment of the alleged loans, if any, made by the assessee later.

6. As for the genuineness of the loan, the assessee was asked to furnish the address of the assessee and as furnished by the assessee, a summons under section 131 of the Act was issued on 15-10-2008 to Shri Nathmal Jasram, C/o Rahul Finance, Sowcarpet, Chennai 600 079 requiring him to give evidence and to furnish the relevant documents. The summons was returned unserved with the endorsement "insufficient address". Later it was ascertained through the computer cell of the Income-tax Department that the PAN furnished by the assessee falls within the jurisdiction of Income-tax Officer, Business Ward XI(2), of Chennai. In pursuance of the enquiries made in this regard, it was observed that the alleged creditor has filed returns of income for AY 2002-03 & 2003-04 and declaring total income of Rs.46,928 and Rs. 48,250 respectively and the closing balance of the capital account of

the said person as on 31-03-2002 & 31-03-2003 were only Rs.3,60,154 & Rs. 3,83,554 respectively and there existed no transactions in his capital account during the FY 2002-03 other than crediting net profit and debiting drawings of Rs.19,850 only. As such the chances of advancing a sum of Rs. 4,90,000 against the above closing balances are observed to be not maintainable, Though another summons under section 131 of the Act was issued to the alleged creditor in the address as furnished in the latest available return which was different from that furnished by the assessee, the same was also returned unserved with the endorsement "Not Known".

7. As requested by the assessee during the course of hearing of the case on 03-11-2008, he was granted time till 15-11-2008 to offer further explanations on the matter and to produce the alleged creditor as assured by the assessee. However, the assessee neither turned up thereafter nor filed any explanations or evidence otherwise till date. As the explanation offered by the assessee regarding the nature and source for the amount of Rs. 4,90,000 introduced in the firm as his capital was not found to be satisfactory and not substantiated with documentary evidences and as the genuineness of the alleged credit was not established beyond doubts, in view of the facts and circumstances discussed above, the said credit is treated as bogus and the corresponding part of the credit in capital is therefore treated as unexplained credits liable to be taxed in the hands of the assessee under section 68 of the Act and is so assessed."

5. Aggrieved by the orders passed by the Assessing Officer for assessment years 2003-04 and 2004-05, the assessee preferred the appeals before the first appellate authority. The CIT(A) confirmed the view taken by the Assessing Officer and dismissed the appeals filed by the assessee. The relevant finding of the CIT(A) for assessment year 2003-04 reads as follows:

"4.1 The facts of the case, the grounds of appeal and the arguments of the appellant have been considered. The Assessing Officer made an addition of Rs.3,14,859/- on account of unexplained credits in the capital and chitty instalments. During the appeal proceedings, the learned AR has filed additional evidence in the form of sale bills of jewellery explaining the source of capital introduced. Considering the same, vide letter dated 16.12.2016, a remand report was called from the Assessing Officer. The Assessing Officer submitted the remand report vide letter dated 25.06.2018. In the remand report, the

Assessing Officer submitted that the additional evidence submitted by the Appellant is only afterthought and the same does not prove the source of the capital introduced by the Appellant.

4.2 During the appeal proceedings on 29.04.2019 the learned AR submitted that the appeal may be decided on the basis of the remand report submitted by the Assessing Officer. Considering the submission of the learned AR, the additions made by the Assessing Officer on account of unexplained capital and chit instalment are upheld and the ground raised by the Appellant are dismissed."

5.1 Similarly, for the assessment year 2004-05, the relevant finding of the CIT(A) reads as follows:

"4.1 The facts of the case, the grounds of appeal and the arguments of the appellant have been considered. The Assessing Officer made an addition of Rs.5,90,709/- on account of unexplained credits in the capital and chitty instalments. During the appeal proceedings, the learned AR has filed additional evidence in the form of sale bills of jewellery explaining the source of capital introduced. Considering the same, vide letter dated 16.12.2016, a remand report was called from the Assessing Officer. The Assessing Officer submitted the remand report vide letter dated 25.06.2018. In the remand report, the Assessing Officer submitted that the additional evidence submitted by the Appellant is only afterthought and the same does not prove the source of the capital introduced by the Appellant.

4.2 During the appeal proceedings on 29.04.2019 the learned AR submitted that the appeal may be decided on the basis of the remand report submitted by the Assessing Officer. Considering the submission of the learned AR, the additions made by the Assessing Officer on account of unexplained capital and chit instalment are upheld and the ground raised by the Appellant are dismissed."

6. Aggrieved by the orders passed by the CIT(A), the assessee has filed these appeals before the Tribunal for the assessment years 2003-04 and 2004-05. The Ld. AR reiterated the submissions made before the Income Tax authorities.

The Ld. DR on the other hand strongly supported the orders passed by the Assessing Officer as well as by the CIT(A).

7. I have heard the rival submissions and perused the material on record. During the course of first appellate proceedings, the assessee filed additional evidence in the form of sale bills of jewellery explaining the source of capital introduced. Since the additional evidence was filed before the first appellate authority, the remand report was called from the Assessing Officer by the CIT(A). The remand report was submitted by the Assessing Officer wherein it was stated that additional evidence submitted by the assessee was only an afterthought and the same does not prove the capital introduced. Further, in the remand report, the Assessing Officer stated that the assessee comes from an affluent family and has been conducting flourishing large scale export business of marine products which was established by his father many years ago. It was further submitted by the Assessing Officer that the assessee need not prove the source of introduction of capital by selling gold. Therefore, the Assessing Officer submitted in the remand report that the sale invoice produced before the CIT(A) is not genuine. In the facts and circumstances of the case, it cannot be discounted that assessee would be having some cash available with him for introducing capital and payment of chitty installments. The Assessing Officer himself states in the remand report that assessee is from an affluent family and is conducting flourishing business of

marine products for long time. In the facts and circumstances of the case, I am of the view that in order to meet the ends of justice, the assessee is to be given further relief of 50% of addition made by the Assessing Officer and sustained by the CIT(A). Accordingly, the assessee will get a relief of 50% of Rs.3,14,859/- i.e., Rs.1,57,429/- for the assessment year 2003-04 and for the assessment year 2004-05, the assessee gets relief of 50% of Rs.5,90,709/-, i.e., Rs. 2,95,354/-. In other words, out of the total additions sustained by the Assessing Officer for the assessment years 2003-04 and 2004-05, I confirm the addition of Rs.1,57,429/- for assessment year 2003-04 and Rs. 2,95,354/-for the assessment year 2004-05. It is ordered accordingly. Thus, the grounds of appeal are partly allowed.

8. In the result, the appeals of the assessee are partly allowed.

Pronounced in the open court on 27th -01-2020.

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

Place: Kochi
Dated: 27th January, 2020
GJ

Copy to:

1. Shri Anwar Sadath, Anwar Palace, Chandiroor, Alappuzha-688 524.
2. The Income Tax Officer, Ward-1, Alappuzha.
3. The Commissioner of Income-tax(Appeals), Kottayam.
4. The Pr. Commissioner of Income-tax, Kottayam.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard **File**

By Order

(Assistant Registrar)
ITAT, Cochin

		Date	
1.	Draft Order dictated on	23.01.2020	Sr.PS
2.	Draft Order placed before author	27.01.2020	AM
3.	Approved draft comes back		Sr. PS
4.	Fair order placed before the author.		AM
5.	Fair order placed before the Second Member for signature		JM
6.	Pronouncement on		
7.	File sent to the Bench Clerk		
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		