

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

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

ITA No.459/Coch/2019 : Asst.Year 2006-2007

M/s.Puthukai Vainingad Vairajathan Easwarante Kshethra Committee C/o.T.M.Sreedharan & Associates Advocates, 2 nd Floor, Kalyan Chambers, Chittoor Road, Near South Jn. Cochi - 682 016 PAN : AAAP5603R.	Vs.	The Income Tax Officer Ward 2 Kasargod.
(Appellant)		(Respondent)

Appellant by : Sri.T.M.Sreedharan, Advocate

Respondent by : Sri.B.Sajjive, Sr.DR

Date of Hearing : 07.10.2020	Date of Pronouncement : 07.10.2020
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ORDER

Per Bench :

This is an appeal filed by the assessee, M/s.Puthukai Vainingad Vairajathan Easwarante Kshethra Committee, Nileswar, Kasargod, against the order of the learned CIT(Appeals), Kozhikode in ITA No.13/R3/KSD/CIT/CLT/2007-08 dated 12.03.2019. The relevant assessment year is 2006-2007.

2. Sri. T.M.Sreedharan, Advocate represented on behalf of the assessee and Sri.B.Sajjive, Senior Departmental Representative represented on behalf of the Revenue.

3. It was submitted by the learned AR that the appeal has been filed by Sri.Ranjith P.V. son of Sri.C.V.Krishnan, the Treasurer of the assessee. The learned AR has placed the copy of the Power of Attorney granted to Sri.Ranjith P.V. by

Sri.C.V.Krishnan. It was submitted that there was a survey on the premises of the assessee-AOP on 20.10.2005. As the assessee had not filed return for the assessment year 2006-2007, notice u/s 142(1) of the Act was issued. The notice was returned unserved with the remarks "assessee left". Subsequently, notice was served by the Inspector by affixture. Still there was no response. It was then known to the A.O. that the said Sri. C.V.Krishnan, who was the Treasurer of the assessee-AOP was in judicial custody and consequently notice was served on Sri.C.V.Krishnan on 16.10.2007 in the presence of Superintendent, Sub Jail, Hosdurg. It was the submission that the A.O. records that there was no cooperation from the assessee and consequently completed the assessment u/s 144 of the Act. It was the submission that the A.O. had treated the fixed deposits in the various cooperative banks and estimated interest income thereon, as the income of the assessee. It was the submission that at the outset no show cause notice as provided u/s 144 of the Act had been provided to the assessee. It was the further submission that it was well-known to the A.O. that the assessee is in jail and obviously the assessee would be unable to make any representative before the A.O. much less an effective representation in the absence of details available to the assessee in jail. It was the submission that the assessee is an AOP and it is bound by its bye-laws. As Sri.C.V.Krishnan was the only person the A.O. could lay hands on, on account of the fact that he was in jail, the assessment has been done by serving notice on him. It was the submission that in view of the decisions of the Hon'ble

Jurisdictional High Court in the case of T.C.N.Menon v. ITO reported in 96 ITR 148, wherein it has been held that any quasi judicial proceedings requires an opportunity of being heard before decision, the assessment is liable to be set aside. It was the further submission that even the estimate has been done in an absolute arbitrary manner without considering the interest outgoings or the expenses though the learned AO recognizes the fact that there are office expenses and that there are interest outgoings. He places reliance on the decision of the Hon'ble Supreme Court in the case of Dhakeswari Cotton Mills Ltd. v. CIT reported in 26 ITR 775 and in the case of Brij Bhushan Lal Parduman Kumar v. CIT reported in 115 ITR 524.

4. In reply, the learned Departmental Representative submitted that substantial opportunities had been given to the assessee in the form of notice having been served. It was the submission that in response to the issue of the non-issuance of the show cause notice, as required before completion of an assessment u/s 144 of the Act, it was the submission that the notice u/s 142(1) had been issued to the assessee. It was the further submission that he had no objection in view of the decision of Hon'ble High Court of Kerala in respect of the issue of granting of opportunity and recognizing the fact that Sri.C.V.Krishnan is in judicial custody, for the issues to be restored to the file of A.O. for re-adjudication, insofar as it may be considered as an irregularity and it would not make the assessment an illegality.

5. We have considered the rival submissions. Admittedly, the notice u/s 142(1) has been issued to the assessee. It is also an accepted fact that Sri.C.V.Krishnan is in judicial custody even today. When a person is in judicial custody, obviously, he will not be able to make an effective representation in respect of the tax matters, which requires assistance of Chartered Accountants and the books, which are obviously not available to the detainee. Thus, there is admittedly violation of principles of natural justice in the present case. In these circumstances, we are of the view that the issues in the appeal must be restored to the file of A.O. for re-adjudication after granting the assessee adequate and effective opportunity of being heard, and we do so.

6. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on this 07th day of October, 2020.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George Mathan)
JUDICIAL MEMBER

Cochin, dated 07th October, 2020
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent
3. The CIT(A) Kozhikode
4. The Pr.CIT, Kozhikode.
5. The DR, ITAT, Kochi
6. Guard File.

Asst.Registrar/ITAT/Kochi