

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

Before Shri George Mathan, JM & Shri B.R. Baskaran, AM

ITA No. 113/Coch/2020
(Assessment Year: 2015-16)

M/s. Nirmithi Kendra Nirmithi Campus Bazar P.O. Alappuzha 688012,	Vs.	A C I T (OSD) Arattukulangara Complex A.N. Puram Alappuzha 688011
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PAN – AAATN3676P

Appellant

Respondent

Appellant by: Shri R. Krishnan, CA
Respondent by: Shri V. Roy Jose, CIT-DR

Date of Hearing: 08.02.2022
Date of Pronouncement: 08.02.2022

ORDER

Per: George Mathan, JM

This is an appeal filed by the assessee against the order of the learned CIT(A), Kottayam in appeal No. ITA.10141/CIT(A)/KTM/2017-18 dated 23.01.2020 for AY 2015-16.

2. Shri R. Krishnan, CA appeared on behalf of the assessee and Shri V. Roy Jose, CIT-DR appeared on behalf of Revenue.

3. Assessee has raised the following grounds: -

- "1. The Officers below were not justified in denying the appellant Sec. 11 r.w.s. 12A status and confirming the assessment made as an AOP.*
- 2. So long as the exemption u/s. 12AA has not been withdrawn the assessment in the status as an AOP was not in order.*
- 3. Atleast the status should have been directed to be assessed as Individual.*
- 4. The estimation of Income without rejecting Books of Accounts was not in order.*
- 5. The appellant having been consistently following a particular*

system of Accounting receipts and payments and arriving at the net result, a deviation from such consistent system for this year alone lacks prudence and fair play.

6. *The Officers below also failed to appreciate the fact that the accounts have been audited u/s. 12(A)b of the I.T. Act and report in Form 10(B) filed.*
7. *For the above grounds and other grounds as may be raised at the time of hearing. Your appellant prays that the assessment made may be modified/reduced."*

4. In respect of Ground Nos. 1, 2 & 3 it was fairly agreed by the learned A.R. that the issues were held against the assessee by the Coordinate Bench of this Tribunal in ITA No. 111/Coch/2018 dated 26.10.2018. Consequently grounds Nos. 1 to 3 of the assessee's appeal stand dismissed.

5. In respect of Ground Nos. 4, 5 & 6 it was submitted by the learned A.R. that the issue was against the action of the learned CIT(A) in confirming estimation of 12 percentage of the gross receipts before meeting administrative expenditure. It was submitted by the learned A.R. that a scrutiny assessment has been done for ay 2009-10 on 15.12.2011 wherein the AO had adopted the net income as per Income & Expenditure Account as being liable to be brought to tax under the head income from other sources. It was the submission that for the relevant assessment year the AO changed the method of taxing the income of the assessee by adopting an average 12 percentage of the gross receipts to be the actual income before meeting the administrative expenditure accounted for in the Income & Expenditure Account. It was also the submission that the books of account of the assessee have not been rejected and the estimation has been done. It was the submission that such estimation is not permissible without rejection of books of account.

6. In reply the learned D.R. vehemently supported the order of the learned CIT(A). It was the submission that income varies from year to year and consequently the estimation done was correct.

7. We have considered the rival submissions. A perusal of the assessment order in paras 4 & 5 clearly shows that the books of account of

the assessee have not been found to be defective and the books of account have not been rejected. Without rejecting assessee's books of account estimation of income of the assessee is not permissible. Consequently estimation as done by the AO and as confirmed by the CIT(A) stand deleted. Grounds 4 to 6 are allowed.

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

Dictated and pronounced in the open Court on 8th February, 2022.

Sd/-
(B.R. Baskaran)
Accountant Member

Sd/-
(George Mathan)
Judicial Member

Cochin, Dated: 8th February, 2022

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -Kottayam*
4. *The CIT - (Exemption), Kochi*
5. *The DR, ITAT, Cochin*
6. *Guard File*

By Order

//True Copy//

Assistant Registrar
ITAT, Cochin

n.p.