

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

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

**ITA Nos. 25 to 30/Coch/2021**

(Assessment Years: 2009-10 to 2012-13, 2014-15 & 2015-16)

**ITA Nos. 88 & 89/Coch/2021**

(Assessment Years: 2012-13 & 2014-15)

M/s.Al Zarafa Travel & Manpower  
Consultants (P) Ltd.  
C/o Elias Geroge & Co, Cas  
EGC House, HIG Avenue,  
Gandhi Nagar, Kochi 682020

ACIT, Central Circle -2  
5th Floor, Kandamkulathy  
Tower, M.G. Road  
Kochi 682011

PAN – AAFCA4935N

**Appellant**

**Respondent**

Appellant by: Shri Thomson Thomas, CA

Respondent by: Shri V. Roy Jose, CIT-DR

Date of Hearing: 10.02.2022

Date of Pronouncement: 10.02.2022

**ORDER**

**Per: George Mathan, JM**

These are appeals filed by the assessee against the orders of the learned CIT(A)- 3, Cochin dated in Appeal No. ITA 2 to 7/E/CIT(A)-III/2018-19 dated 25.01.2021 & No. ITA 8 to 13/E/CIT(A)-III/2018-19 dated 12.07.2021 for assessment years 2009-10 to 2012-13, 2014-15 & 2015-16.

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

3. The assessee was in the business of manpower recruitment. There was a search on assessee's premises on 27.03.2015. After the search the business of the assessee was shut down. The assessment originally the assessment concluded under Section 153C r.w.s. 144 of the Income Tax Act, 1961. On account of closure of the business the Director of the company had sought employment abroad. It was the submission that on

account of delay in filing of appeal against the assessment order the same came to be dismissed by the learned CIT(A), originally against which an appeal had been filed to the Tribunal and the Tribunal had vide its order dated 04.12.2019 in ITA Nos 518 to 523/Coc/2018 dated 04.02.2019 restored the issue back to the file of the CIT(A) and has directed as follows: -

*"8.9.2 In view of the above, we condone the delay in filing the appeals before the CIT(A) and remit the issue to the file of the CIT(A) to decide the issue on the merit of the additions made by the Assessing Officer. Since the assessment order was passed ex parte u/s, 144 of the Act, the CIT(A), if required, may call for the remand report from the Assessing Officer and confront the same to the assessee before the deciding the appeal. We also make it clear that if the CIT(A) or the Assessing Officer relied on any statement of the third parties so as to frame the impugned assessment on an earlier occasion, the same is to be confronted to the assessee and if the assessee requires any cross examination of the parties concerned, the same is to be provided. With these observations, we remit the issue to the file of the CIT(A) to decide the issue afresh regarding the merit of the additions."*

It was submitted by the learned A.R. pending the appeal proceedings before the learned CIT(A) remand report has been called from the AO, who had done the same without giving opportunity to the assessee to cross examine the witnesses. It was the submission that the assessee being abroad, the authorised counsel represented before the AO to cross examine the persons provided by the AO. It was the submission that when the assessee's representative had gone to the AO's office for cross examination the AO denied opportunity of cross examination on the ground that no person from the assessee company in the capacity of Director/Managing Director appeared and that the authorised representative is not permitted to cross examination the witnesses. The learned A.R. drew our attention to the remand report given by the AO on 25.11.2019 which is extraced as below:-

*"3. As per the directions of the ITAT, Kochi, in ITA Nos.518 to 523/Coch/2018 dated 04.02.2019 and that of the CIT(A)-III, Kochi, vide letter cited under reference, the assessee was given an opportunity to represent its case. The assessee's Authorised Representative (A.R.) Shri. Thomson Thomas, appeared before the undersigned, in connection with remand proceedings. As per the request of the assessee, the A.R. was provided with copies of the*

*sworn statements of (i) Jossi John, (ii) V. S. Sreejith and (iii) K.S. Pradeep. The assessee was also provided an opportunity to cross examine the aforesaid three persons. Accordingly, Shri. V.S. Sreejith and Shri. Jossi John appeared along with the AR on 14.11.2019. However, no person from the assessee company, in the capacity of Director/ Managing Director, appeared. On A.R.'s representation that he be permitted to cross examine Shri. Jossi John and Shri. V. S. Sreejith, the A.R was informed that any person from the company in the capacity of Director/Managing Director. could cross-examine Shri. V.S. Sreejith and Shri. Jossi John and not the A.R. In this connection, it may be pertinent to note that Shri. Thomson Thomas, FCA, appeared only in the present remand proceedings and did not represent the case, at the stage of assessment. The AR. sought a week's time from 14.11.2019 to cause any responsible person from the assessee company to cross-examine Shri. Jossi John & Shri. V. S. Pradeep. However, none appeared from the assessee company to cross-examine Shri. Jossi John and Shri. V. S. Pradeep."*

4. It was the submission that the assessee is a company. Its Director has practically abandoned the company as she does not have any livelihood and has been forced to seek employment abroad. It was the prayer that the issues in the appeals may be restored to the AO and the assessee's authorised representative may be permitted to cross examine the witnesses. It was the submission that nowhere in the Act nor in the statute there provision that only the assessee is permitted to cross examine the witnesses. It was submitted that the assessee company's Director had specifically authorised the representative to cross examine the witnesses.

5. In reply the learned D.R. vehemently supported the order of the learned CIT(A). It was submitted that right from the time of assessment there was non-cooperation from assessee's side. It was submitted that retractions given by the persons whose statements have been taken are also of identical format. It was the submission that the assessee has only attempted to delay the proceedings.

6. We have considered the rival contentions. The basic principle of natural justice demands that if any evidence is being used against the assessee the same must be put to the assessee for rebuttal. In the present case admittedly it is an ex-parte assessment. Even before the Tribunal in the original proceedings it is fairly admitted that the Director of the

company is no more operating the company and on account of losses suffered she has gone abroad for employment. It is also an admitted fact that it is not necessary that the assessee should cross examine or the Director of the company should cross examine the witnesses. Assessee can fully authorise a representative to do cross examination. To that extent the AO's view that the authorised representative cannot cross examine the witnesses is admittedly erroneous. In these circumstances, in the interest of natural justice, the issues in these appeals are restored to the file of the AO for readjudication after granting adequate opportunity of being heard to the assessee. All issues are left open. In the event of any evidence is proposed to be used against the assessee the same must be put to the assessee for its rebuttal. The AO shall permit the authorised representative to do the cross examination of the witnesses.

7. In the result, the appeals filed by the assessee are partly allowed for statistical purposes.

Dictated and pronounced in the open Court on 10<sup>th</sup> February, 2022.

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

Sd/-  
**(George Mathan)**  
Judicial Member

Cochin, Dated: 10<sup>th</sup> February, 2022

Copy to:

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

By Order

//True Copy//

Assistant Registrar  
ITAT, Cochin

n.p.