

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

Before Shri George George K, JM & Shri Laxmi Prasad Sahu, AM

ITA No.180/Coch/2021 : Asst.Year 2007-2008

M/s.V.S.Timbers Private Limited Puthupady, Muvattupuzha Ernakulam – 686 673. PAN : AABCV2145H.	v.	The Assistant Commissioner of Income-tax, Central Circle - 1 Kochi.
(Appellant)		(Respondent)

Appellant by : Sri.Mathew Joseph, CA
Respondent by : Smt.J.M.Jamuna Devi, Sr.DR

Date of Hearing : 30.06.2022	Date of Pronouncement : 30.06.2022
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ORDER

Per George George K, JM :

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 27.09.2021. The relevant assessment year is 2007-2008.

2. The grounds raised read as follows:

“1. The Commissioner of Income-tax (Appeals) went wrong in upholding the addition of Rs.15,00,000 as unexplained cash credit without appreciating the submission that the credit is genuine.

He ought to have found that the aforesaid credit formed part of the amounts advanced by M K Hamza from his NRE account to the sister concerns V.U.Siddique (Rs.20,00,000) and K M Sainaba (Rs.15,00,000) and to the appellant (Rs.15,00,000), totaling to Rs.50,00,000 and that the similar additions made in the case V.U.Siddique and K M Sainaba had been deleted by the Hon'ble Tribunal by order in ITA No.384/2010 dated 09/03/2012 and ITA No.366/2010 dated 30/12/2011 respectively.”

3. The brief facts of the case are as follows:

The assessee is a closely held company engaged in the trading of timbers. For the assessment year 2007-2008, the return of income was filed on 17.03.2008 declaring total income of Rs.5,16,530. The assessment was selected for scrutiny and the assessment u/s 143(3) of the I.T.Act was completed vide order dated 29.12.2008. In the said assessment order, the A.O. had made addition of Rs.15,00,000 as unexplained cash credits. On further appeal, the CIT(A) deleted the addition. On second appeal by the Revenue, the Tribunal set aside the order of the CIT(A) and remitted the issue back to the Assessing Officer and directed to make assessment afresh after proper verification of the credit.

4. Pursuant to the Tribunal order, the assessment was completed vide order dated 31.12.2012 by disallowing credit of Rs.15 lakh and assessing the same as unexplained cash credit.

5. Aggrieved by the order of the Assessing Officer, the assessee filed appeal before the first appellate authority. The CIT(A) confirmed the view taken by the A.O. The relevant finding of the CIT(A) reads as follows:-

“1. The submissions made are carefully considered. In the present case, the appellant made an entry of credit in the books of account. When asked to prove the credit, a certificate from M.M.Abdul Kareem was produced. When the certificate was found to be false, the appellant stated that wrong name is entered in the books of account. The appellant has not denied that the appellant had no direct contact with the creditor M.K.Hamza. The loan was not repaid and no interest was paid by the appellant. The appellant failed to produce the original letter of confirmation from M.K.Hamza. The appellant

has not proved the capacity, the creditworthiness of the creditor and genuineness of the transaction. The appellant is silent on the observations made by the Assessing Officer regarding the decision of the CIT(A) in the case of V.U.Siddque, where similar addition was upheld in respect of credit from M.K.Hamza. In view of the above factual matrix, the grounds taken by the appellant are rejected and the addition of Rs.15,00,000/- made by the Assessing Officer is upheld.”

6. Aggrieved by the order of the CIT(A), the assessee has filed the present appeal before the Tribunal. The assessee has filed a paper book comprising of 26 pages enclosing therein copy of orders of the Cochin Bench of the Tribunal in the case of V.U.Siddque and Smt.K.M.Sainaba, wherein the said assessee had received loans from the same creditor and the Tribunal had accepted the creditworthiness of the creditors for the relevant assessment year. The assessee has submitted a brief written submission and the relevant portion of the same reads as follows:-

“The credit of Rs 15,00,000/- appeared in the books of the appellant in the name of M M Abdul Kareem who is a friend and neighbor of the Managing Director of the appellant company' The amount was received through cheque drawn by one K M Hamsa from his NRE Account' Since the cheque was given to the appellant by M M Abdul Kareem, credit entry was made in his name in the books of the appellant by the accounting staff. More over M M Abdul Kareem had advanced funds to other sister concerns also during this period and the accounting work of all concerns of the group was done by same accounting staff. These facts were confirmed by M M Abdul Kareem and a certificate to that effect was issued by him. M M Abdul Kareem had also stated these facts in the statement recorded u/s 131 as evidenced by the discussion in paragraphs (4) &t5) of the assessment order' It was also stated by him that MK Hamsa is a relative of his wife.

The assessing officer also acknowledge that the assessee has produced the copy of the cheque issued by Sri.M.K.Hamza to the assessee on 16/08/2005 which was credited to the bank account of the assessee on 18/08 /2006.

The above mentioned facts were not disputed as per the assessment order. The error, if any, committed by the appellant was in respect of the name of the creditor. As stated above such error can only be treated as a clerical error. A clerical error does not affect the genuineness of a transaction and making the credit as unexplained. More over since the cheque was given by M M Abdul Kareem, there is no mistake to pass the credit entry in his name.

It is undisputed that the amount was received through cheque drawn from NRE Account in South Indian Bank Vytala branch. According to the assessing officer, the said account was maintained for the sole purpose of advancing funds to the appellant and sister concerns. Hence the amount received of Rs.15,00,000/- through NRE cheque was treated as income of the appellant. In this context it is submitted that the maintenance of a bank account is the choice of the account holder for which the appellant had no control and also that Sri Hamsa is having another NRE Account in SBI Ottappalam as noted in para (6) of the assessment order.

It may please be noted that the assessee's group concerns VUS Timbers and VS Export & Import has also received unsecured loans of Rs.15 lakhs and 20 lakhs respectively from M.K.Hamza during the same financial year. The Hon.ITAT has after a detailed discussion allowed both the credits.

Copy of the ITAT order in ITA No.356/COCH/2010 and in ITA No.384/Coch/2010 enclosed herewith.

M.K.Hamza was in KSA for the past 25 years and is working with the renowned Multinational DOKA GMPH as Deputy General Manager.

In the light of the above it is submitted that the addition of Rs.15,00,000/- made in the assessment order passed on 31/12/2012 is not justifiable.”

7. Apart from the above written submission, the learned AR submitted that the loan has been repaid and the same is evidenced through bank statement. The learned AR stated that the matter may be remanded to the A.O. in light of the ITAT

orders, referred supra, and the claim of assessee that the loan amount was repaid.

8. The learned Departmental Representative, relied on the orders of the Income Tax Authorities. The DR did not have serious objection for remitting the matter to the A.O. to consider the impact of the orders of the Tribunal in the case of V.U.Siddque and Smt.K.M.Sainaba.

9. We have heard rival submissions and perused the material on record. The creditors of the assessee had also advanced a sum of Rs.20 lakh to V.U.Siddque and Rs.15 lakh to Smt.K.M.Sainaba during the relevant assessment year itself. Just like the assessee in this case, additions were made disbelieving the creditworthiness of the creditors in the hands of V.U.Siddque and Smt.K.M.Sainaba. The additions in the hands of V.U.Siddque and Smt.K.M.Sainaba was deleted by the Tribunal in ITA No.366/Coch/2010 (order dated 30.12.2011) and ITA No.384/Coch/2010 (order dated 09.03.2012) by holding that the assessee in the respective cases had explained the source of the credits.

9.1 Further, the learned AR had contended during the course of hearing that an amount of Rs.15 lakh received by the assessee during the relevant assessment year was repaid in the subsequent year through banking channel to the creditor of the assessee. Therefore, taking into account the ITAT's order, cited supra, and the claim of the assessee that it has repaid loan, we are of the view that the matter needs fresh

examination by the A.O. Accordingly, the issue is restored to the files of the A.O. The A.O. is directed to examine the creditworthiness of the alleged creditor and also see whether the loans have been repaid by the assessee to the creditor. It is ordered accordingly.

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

Order pronounced on this 30th day of June, 2022.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Kochi ; Dated : 30th June, 2022.
Devadas G*

Copy to :

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

Asst.Registrar/ITAT, Cochin