

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

**BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 97/Coch/2022 & S.P. No. 12/Coch/2022 (in ITA No. 97/Coch/2022) Assessment Year : 2012-13

Shri V.M. Ansari, Thavakkal Tubber Traders, Kanjirapally, K.K. Road, Kottayam – 686 507. PAN: ADIPM6209Q	Vs.	The Assistant Commissioner of Income Tax, Central Circle, Kottayam.
APPELLANT		RESPONDENT

Assessee by	:	Shri T.M. Sreedharan, Adv
Revenue by	:	Smt. J.M. Jamuna Devi, Sr. AR

Date of Hearing	:	14-09-2022
Date of Pronouncement	:	14-09-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal is filed by the assessee against order dated 19/01/2022 passed by Ld.CIT(A)-3, Kochi for A.Y. 2012-13 on following grounds of appeal:

- “1. The Order of the Commissioner of Income Tax (Appeals)-3, Kochi dismissing the appeal filed by the appellant and confirming the additions for the Assessment Year 2012-13 is arbitrary, illegal and unsustainable.*
- 2. It is submitted that the Commissioner of Income Tax (Appeals)-3, Kochi failed to examine and adjudicate the issues raised before him fairly and judiciously and*

dismissed the appeal arbitrarily and in violation of principles of natural justice.

3. A perusal of the Assessment Order would show that various additions made in the declared income and merely on presumptions and without examining the facts of the case and the evidence adduced. There is denial of natural justice.

4. Additions made in the Assessment Order are the following:

i) Disallowed the claim of Rs.1,23,143/- being the withdrawal to M/s Thavakkal Rubber Traders.

ii) Disallowed the credit of Rs.5,00,000/- into Kanjirappally Service Co-operative Bank Ltd. A/c No.77.

iii) Disallowed the claim of Rs.23,00,000/- being the receipt from Mrs.Shakeela Ansari

iv) An addition of Rs.57,89,000/- was made as unaccounted investment u/s 69B.

The above additions are on estimate basis.

5. It is submitted that none of these additions are sustainable in as much as these additions are unsupported by any supporting material, but are based on hypothetical grounds.

6. The Assessing Officer completed the assessment without affording reasonable opportunity for hearing and representation. The Assessing and Appellate Authorities failed to issue any proposal notice affording opportunity to the appellant to explain the details. This has resulted in miscarriage of justice.

7. It is submitted that no pre-assessment notice was issued before passing the final order thereby denying opportunity to the petitioner to put forward his case.

8. The appellant humbly prays that the Grounds of Appeal before the first appellate authority may kindly be treated as part of these grounds.

For these and other grounds that may be urged at the time of hearing, it is humbly prayed that this Hon'ble Appellate Tribunal may kindly be pleased to set aside the additions made in the Assessment Order and confirmed in the first Appellate Order and render justice."

2. At the outset, the Ld.AR submitted that the impugned order is an ex-parte order and due opportunity of being heard has not been granted to the assessee. The Ld.CIT(A) passed the impugned order based on the record, without granting

opportunity of being heard and therefore there is a gross violation of the principles of natural justice.

The Ld.DR relied on the orders passed by authorities below.

We have perused the submissions advanced by both sides in the light of records placed before us.

3. We note that assessee has not been issued notice of hearing in accordance with law, and the Ld.CIT(A) has passed the impugned order based on the records available before him. In the interest of justice, we remand this issue to the Ld.CIT(A) with a direction to pass detailed order on merits, by granting proper opportunity of being heard to the assessee in accordance with law.

4. Assessee is directed to co-operate during the appellate proceedings, before the Ld.CIT(A), by filing relevant evidences / submissions to support its claim as called for from time to time.

Accordingly, the grounds raised by assessee stands allowed for statistical purposes.

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

As we have already remanded the impugned order, the stay petition filed by assessee becomes infructuous.

Order pronounced in open court on 14th September, 2022.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Cochin,
Dated, the 14th September, 2022.
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Cochin
6. Guard file

By order

Assistant Registrar,
ITAT, Cochin