

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

**Before Shri George George K., Judicial Member
and**

Ms. Padmavathy S., Accountant Member

ITA No. 861/Coch/2022 (Assessment Year: 2017-18) & SA.No.58/Coch/2022 (Arising out of ITA No.861/Coch/2022) (Assessment Year: 2017-18)		
Rafeek Kochukaleeckal Krishnapuram Kappilmekku Alappuzha-690 533 PAN – AKJPR2342F (Appellant)	vs	ITO, Ward-3 A.N.Puram Alappuzha Kerala-688 011 (Respondent)
Assessee by: Sri Suresh Varma, CA		
Revenue by: Smt. J.M. Jamuna Devi, Sr. AR		
Date of hearing: 02.03.2023		
Date of pronouncement: 08 .03.2023		

ORDER

Per: George George K., J.M.

This appeal at the instance of the assessee is directed against the order of the CIT(A)/NFAC, Delhi dated 13.09.2021. The relevant assessment year is 2017-18. The assessee also filed a Stay Application seeking to stay the recovery of outstanding tax arrears.

2. There is delay of '81' days in filing this appeal. The assessee has filed a condonation petition and also an affidavit stating, therein, the reasons for

belated filing of this appeal. On perusal of reasons stated for late filing of this appeal, we are convinced that there is 'sufficient cause' for belated filing of this appeal and no latches can be attributable to the assessee. Hence, we condon the delay of '81' days in filing this appeal and proceed to dispose of the appeal on merits.

3. The grounds raised read as follows:-

1. The grounds u/s. 250 of the Commissioner of Income Tax (Appeals), National Faceless Appeals Centre (NFAC), Delhi vide DIN ITBA/NFAC/S/250/2021-22/1035496469(1)] dated 13.09.2021 for AY 2017-18 is opposed to law, facts and circumstances of the case.

2. The Commissioner of Income tax (Appeals) went wrong in sustaining the order of the assessing officer without giving the appellant an opportunity to file a detailed submission and personal hearing in this regard

3. The Commissioner of Income tax (Appeals) ought to have noted that the deposit of five instances SBN amounting to Rs.23,48,500/- truly reflect the business transactions of the appellant which is accounted and audited u/s. 44AB of the Income tax Act, 1961 and therefore, not to be assessed u/s. 69 as unexplained investment of the appellant.

4. The Commissioner of Income tax (Appeals) ought to have noted that the capital account credits amounting to Rs.4,65,306/- by way of deposits in the appellants' Bank OD originate out of sales of the its' own business and the withdrawal from its' business account over the years and further re-deposit into bank account and therefore not to be assessed u/s. 68 as unexplained cash credit.

5. The First Appellate Authority went wrong in concluding with the assessing officers finding that KYC of buyers, identity of such third party, the third party account and the end beneficiary were not satisfactorily explained with evidences with respect to deposit of Rs.23,48,500/-

6. It is humbly prayed that the Grounds of appeal pertaining to the first appeal may kindly be considered as part of these grounds of appeal.

For these and other grounds that may be urged at the time of hearing, the appellant humbly prays that the Hon'ble Income Tax Appellate Tribunal, Cochin Bench, may kindly be pleased to allow the claim of deposits in the bank account of the appellant as genuine and explained which is disallowed u/s. 69 and u/s. 68 of the I.T.Act, 1961 as unexplained investment and unexplained cash credit respectively as per the assessment order and sustained in this appellate order u/s. 250 and allow the appeal and render justice.

4. The brief facts of the case are as under: -

The assessee is a Wholesale Dealer of Fruits. For the AY 2017-18, the return of income was filed on 15.03.2018 disclosing total income of Rs.18,55,790/-. The assessment u/s. 143(3) of the Act was completed on 29.12.2019 by adding Rs.23,48,500/- u/s. 69 of the I.T.Act and Rs.4,65,306 u/s. 68 of the I.T.Act. The relevant finding of the AO in making the above two additions reads as follows

2d. The assessee could not provide any satisfactory explanation with material evidence as per the Gazette Notification and therefore, such SBN of Rs.23,48,500/- deposited at The Federal Bank Ltd., as described in para 2c above, is held as unexplained investment within the purview of sec. 69 and it is taxed u/s. 115BBE of the Income tax Act, 1961.

Addition:

Rs.23,48,500/-

3. Further to the above, the assessee had credited a sum of Rs.4,65,306 to the capital during the year under consideration. The credits were examined and found that the assessee had made cash deposits into the Over Draft Account No.1396560002280 on various dates during the year under consideration. When the source of such cash credits was asked for, the A.R. did not properly explain. Hence, the cash credits of Rs.4,65,306/- in aggregate is assessed to tax u/s. 68 of the Act.

Addition :Rs.4,65,306/-

5. Aggrieved, the assessee filed appeal before the first appellate authority. The Id.CIT(A) confirmed the two additions made by the AO and dismissed appeal of the assessee.

6. Aggrieved by the order of the Id.CIT(A), the assessee filed present appeal before the Tribunal. The Id. AR by referring to para '4' of the affidavit of the assessee filed for condoning the delay, submitted that in appellate proceedings, the assessee nor his authorized representative did not receive any communication for fixing the case for hearing. It was submitted due to continuous COVID-19 pandemic, the assessee could not file any written

submission or request for an opportunity for hearing in this regard. The ld. AR submitted this was inadvertent omission and in the interest of justice and equity, the matter may be remanded to the ld.CIT(A) for considering the issues on merits after giving reasonable opportunity of hearing to the assessee.

7. The ld. DR supported the order of the AO and ld.CIT(A).

8. We have heard the rival submissions and perused the material on record. The first hearing of case was on 09.01.2021 (before the first appellate authority). On the said date, assessee had sought for an adjournment. The subsequent notice for hearing, it is claimed by the assessee, he had neither received the same nor the I.T.portal could be accessed by the assessee/AR during the COVID-19 pandemic. Therefore, in such situation, the assessee was prevented from submitting the written submissions nor he had sought for personal hearing in the matter. In the interest of justice and equity, we are of the view one more opportunity should be provided to the assessee for a proper representation of his case. For the aforesaid purpose, the matter is restored to the file of the ld.CIT(A). The assessee is directed to co-operate with the revenue and shall not seek unnecessary adjournment. The ld.CIT(A) is directed to afford a reasonable opportunity to the assessee to furnish his written submission in support of his case. With the above observation, we dispose of the appeal filed by the assessee.

9. Since we have already disposed of the appeal, the stay petition is rendered infructuous and same is dismissed.

10. In the result, the appeal filed by the assessee is allowed for statistical purposes and the Stay Application is dismissed.

Order pronounced in the open Court on 08th March, 2023.

Sd/-

**(Padmavathy S.)
Accountant Member**

Sd/-

**(George George K.)
Judicial Member**

Bengaluru, Dated: 08th March, 2023

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The NFAC, Delhi*
4. *The DR, ITAT, Cochin*
5. *Guard File*

By Order

//True Copy//

*Assistant Registrar
ITAT, Cochin*

Thirumalesh, Sr.PS.