

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

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER
AND
Ms. PADMAVATHY S., ACCOUNTANT MEMBER**

ITA No.843/Coch/2022
Assessment Year : 2008-09

Muttamthottil Paulose Joy, Muttamthottil House, Angamaly – 683 572. PAN : ABIPJ 6776D	Vs.	The Income Tax Officer, Ward II, Aluva.
APPELLANT		RESPONDENT

Assessee by	:	Shri Abraham Joseph Markos, Advocate
Revenue by	:	Smt. J M Jamuna Devi, Sr. AR

Date of hearing	:	01.03.2023
Date of Pronouncement	:	08.03.2023

ORDER

Per Padmavathy S, Accountant Member:

This appeal is against the order of the CIT(A), National Faceless Assessment Centre (NFAC), dated 25.05.2022 for AY 2016-17

2. The assessee raised the following grounds of appeal –

“A. The authorities below clearly erred in confirming the addition of Rs.14,16,110/- as unexplained cash deposits. They failed to appreciate that the said amount represents cash deposits from the cash book of Emjay Builders Account of which the Appellant is the Managing Partner. Having accepted similar explanation with respect to 80% of the proposed addition, the authorities failed to consider the cash book entries also. It is

pertinent to note that the Appellant had produced cash book and extracts but the same was ignored by the Assessing Officer.

B. The Commissioner (Appeals) rejected the Appeal without affording a reasonable opportunity. It is respectfully submitted that the Appellant's business has affected because of corona virus and accordingly many of the notices could not be attended to. The CIT (A) ought to have granted proper opportunity

For these and other grounds to be urged at the time of hearing it is prayed that the Orders of the Assessing Officer and Commissioner of Income Tax (Appeals) be set aside.”

3. Brief facts are that the assessee is an individual and Managing Partner of M/s. Emjay Builders, Angamaly. He filed return of income for AY 2007-08 on 27.11.2008 at an income of Rs.1,36,000. Assessment is completed making addition of cash deposit of Rs.14,16,110/-. During the course of assessment, the assessee had submitted a copy of the Bank Statement with respect to ICICI Bank where there is cash deposits. The cash deposits were out of cash withdrawals from Syndicate Bank Account of the firm as well as cash available in the books of Emjay Builders. The assessee submitted this was required since certain creditors did not prefer outstation cheques. The assessee had produced the cash book of Emjay Builders. However, the AO added an amount of Rs.14,16,110/- as unexplained cash deposits. According to the assessee, it is important to note that the AO himself has accepted more than 80% of the addition originally proposed as relating to the partnership firm and the balance addition arose only because he has not considered the cash book balances.

4. On appeal, the Commissioner of Income Tax (Appeals) has confirmed the Order without granting an opportunity of hearing. Aggrieved, the assessee is in appeal before the Tribunal.

5. Aggrieved, the assessee is in appeal before the Tribunal. There is a delay of 64 days in filing the appeal before the Tribunal. The assessee filed a condonation petition in this regard. Having heard both the parties and perused the material on record, we are of the view that there is a reasonable and sufficient cause for the delay in filing the appeal before the Tribunal. Therefore following the Hon'ble Supreme Court decision in the case of *Collector, Land Acquisition v. Mst. Katiji & Ors., 167 ITR 471 (SC)*, we condone the delay of 64 days in filing the appeal and admit the appeal for adjudication.

6. The Id AR submitted that various notices said to have been issued were not noticed by the assessee or the authorized representative. In any view of the matter, the Commissioner of Income Tax (Appeals) erred in observing that they were similar deposits in other years also which is clearly not a ground to dismiss the appeal. He further submitted that the source for the cash deposit is the withdrawals from Syndicate bank of M/s.Emjay Builders in which the assessee is a partner. The Id AR in this regard drew our attention to the Bank statement of Syndicate Bank and the ICICI Bank in which the withdrawal and the deposit of cash are reflected. The Id AR submitted that each line of the impugned addition due to the cash deposits on various dates as listed in para 6 page 3 of AO's order are supported by

the similar withdrawals from the Syndicate Bank. The Id AR submitted prayed for an opportunity to submit these details before the CIT(A) before whom the assessee could not submit any details during the appellate proceedings.

7. The Id DR relied on the order of the CIT(A).

8. We heard the parties and perused the material on record. We notice that the CIT(A) has confirmed the addition made by the AO for the reason that the assessee has not responded to the notices issued and has not filed any details to substantiate the claim that the source for cash deposited into ICICI Bank is the withdrawals from Syndicate Bank. The CIT(A) has stated that the assessee ought to have submitted the entire cash book and that by not submitting any details before him, the assessee did not cooperate with the proceedings.

9. Before us the Id AR submitted that the sample record as was furnished before the AO proves the claim of the assessee and prayed that if an opportunity is given, the assessee would produce the entire details pertaining to the impugned addition. Accordingly in the interest of justice, we are of the view that one more opportunity is to be provided to the assessee and therefore, remit the issue back to the CIT(A) for fresh consideration of the issue and decide in accordance with law based on the evidences submitted by the assessee. The assessee is directed to furnish the necessary details to substantiate his claim and cooperate with the proceedings. It is ordered accordingly.

10. In result the appeal is allowed for statistical purposes.

Pronounced in the open court on this 8th day of March, 2023.

Sd/-

Sd/-

(GEORGE GEORGE K)
JUDICIAL MEMBER

(PADMAVATHY S)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 8th March, 2023.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar,
ITAT, Bangalore/Cochin.