

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

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

ITA No.863/Coch/2022
Assessment Year :2012-13

James Kudakuthiyil Chacko, KBC Enclaves, Laikadu, Perunna P.O. Changanacherry, Kerala – 686 102. <b>PAN :AJBPC 2186 R</b>	Vs.	DCIT, International Taxation Circle, Trivandrum.
ASSESSEE		RESPONDENT

Assessee by	:	Shri. R. Krishnan,CA
Revenue by	:	Smt. J M Jamuna Devi, Sr. AR.

Date of hearing	:	28.02.2023
Date of Pronouncement	:	08.03.2023

**ORDER**

*Per Padmavathy S, Accountant Member*

This appeal by the assessee is against the order passed by the Commissioner of Income Tax (Appeals)-12, Bengaluru, dated 22.06.2022 for Assessment Year 2012-13.

2. The assessee raised the following grounds:

1. Learned CIT(A) fell in error in confirming the addition of Rs 5,11,65,000/- received from Shri T J George u/s 69 of the Act, overlooking, the confirmation given by Shri. T J George that it was a loan.

2. Learned CIT(A) erred in rejecting the contention of the assessee that both the assessee as well as Shri. T J George were non -resident Indians having business activities and earnings abroad and well known to each other.
3. Learned CIT(A) erred in not considering the contention of the assessee that statement of Shri. T J George was never made available to the assessee nor the assessee allowed to cross examine Shri. T J George. Especially so since Shri T J George as per the Learned Assessing Officer, had denied the loan.
4. The amounts received having been transferred from the NRE account of the lender to the NRE account of assessee, and not through NRO accounts, Learned CIT(A) erred in ignoring the submission of the assessee that there could not be any credit of any income arising or accruing in India in an NRE account vide clause 3 of Schedule 1 to Section 5(1) of the Foreign Exchange Management (Deposit) Regulations 2016, issued by RBI on first April 2016 [FEMA 5(R)/2016-RB].
5. Learned CIT(A) erred in confirming the view taken by Assessing Officer that there was no relationship between the assessee and Shri T J George for giving such a loan.
6. The Learned Assessing Officer as well as Learned CIT(A) erred in considering the credit in the account of the assessee which came from a clear source and through banking channels as unexplained investment falling u/s 69 of the Act.
7. Alternatively, the Learned Assessing Officer, having found that the amount of Rs 5,11,65,000/- received from Shri. T I George was nothing but in relation to the sale of the property by the assessee to him on 19.07.2011, ought to have considered such sum as part of the sale consideration and ought have considered the amount only under Long-term Capital Gains.
8. For these and other grounds to be adduced at the time of hearing it is prayed that the honorable Tribunal may be pleased to delete the addition of Rs. 5,11,65,000/- made u/s 69 of the Act or in the alternative direct consideration of such sums only as part of sale consideration received on the sale of the property, under the head Long-term Capital Gains.

3. The assessee is an individual. Assessee filed the return of income for the Assessment Year 2012-13 declaring the following income:

i.	Income from salary	-	Rs.1,80,000/-
ii.	Income from house property	-	Rs.28,000/-
iii.	Business loss	-	Rs.35,52,891/-
iv.	Long term capital loss	-	Rs.22,14,862/-
v.	Short term capital gain	-	Rs.7,87,187/-
vi.	Income from other sources	-	Rs.2,60,601/-.

3. During the course of Assessment, the AO noticed that the assessee has sold 1.66 acres of land for a consideration of Rs.2 Crores to one Shri. T. J. George who is a non-resident businessman abroad. The assessee had claimed the cost of land to be Rs.1,81,04,853/- and accordingly arrived at the long term capital loss. The AO noticed that the assessee had received the following amount from the purchaser Shri. T. J. George apart from the sale consideration received:

SI No	Date	Source	Amount
1	25.04.2011	Indusind Bank NRE — A/c No 5941	1,00,00,000.00
2	25.04.2011	HDFC Bank NRE -A/c No 7405	1,00,00,000.00
3	25.04.2011	IDBI Bank NRE -A/c No 0908	1,00,00,000.00
4	19.07.2011	IDBI Bank NRE -A/c No 0908	1,00,00,000.00
5	23.07.2011	Indusind Bank NRE — A/c No 9571	1,11,65,000.00
		Total	<b>5,11,65,000.00</b>

4. The assessee submitted before the AO that the above receipts are towards loan from the buyer for the Hotel Project at Payyannur. The AO did not accept the submissions of the assessee for the reason that

- (i) There was no loan agreement,
- (ii) There is no payment of interest and that there is no repayment happened till the time of assessment,
- (iii) The dates of receipt of loan coincide with the date of sale of land,
- (iv) The financials of the assessee does not reflect any loan and
- (v) The buyer Shri T J George in response to summons u/s.131 has vide statement dated 12.01.2015 & 18.02.2015 has denied giving any loan to the assessee.
- (vi) In spite of giving several opportunities, the assessee has not submitted anything to substantiate the claim that the amount given by the buyer is towards loan.

5. The AO therefore treated the above sum of Rs.5,11,65,000/- as unexplained investment taxable under section 69 of the Income Tax Act, 1961 (hereinafter called 'the Act'). Alternatively, the AO held that if the said sum received could be construed as part of the consideration for the sale of land then the same should be considered for the purpose of computing the capital gains in the hands of the assessee as per below working

Sale consideration	Rs.7,11,65,000
Less : Indexed cost of acquisition	Rs.2,57,93,665
Capital Gains	Rs.4,53,71,335

6. Aggrieved, the assessee preferred appeal before the CIT(A). The assessee submitted before the CIT(A) that the amount cannot be added u/s.69 since the amounts are received through banking channels and that the assessee has submitted the details explaining the source from where the amounts are received i.e. from the buyer T J George. The assessee also submitted that the addition cannot be made merely

based on the statement of Shri T J George without cross examination. Without prejudice, the assessee submitted that if the amount is to be treated as income the same should be added to the sale consideration and accordingly should be taxed as Long Term Capital Gains. The CIT(A) upheld the addition made under section 69 of the Act by holding that:

“8. The plea of the assessee is considered. The IT Act and provisions cannot be used to condone violation of any State's Stamp Duty and Registration Act. The assessee ought to have insisted on declaring the entire amount of sale consideration in the final sale deed. This has not been done. The assessee has abetted evasion of stamp duty and registration charges. Any amount received outside the sale deed can only be considered as income from other sources. Considering the same, the action of the AO in bringing the amount of Rs.5,11,65,000 as unexplained credit/investment is upheld. The grounds of appeal are rejected.”

7. Before us, the learned AR submitted that the amount of Rs.5,11,65,000/- that is received from Shri. T. J. George is part of sale consideration and therefore should be included for the purpose of computation of capital gains. The learned AR also submitted that the addition made under section 69 of the Act cannot be sustained for the reason that the assessee has provided the details with regard to the source from where the amount is received and the identity of the payer also has been established. The ld AR further submitted that the assessee was not allowed access to the statement taken from Shri T J George nor was he allowed to be cross examined

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

8. We heard the rival submissions and perused the material on record. We will first look at the provisions of section 69 read as under

“Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year”.

9. From the plain reading of the above it is clear that the addition u/s.69 can be made provided the assessee is unable to an explanation about the nature of the investment to the satisfaction of the AO. In the given case though the lower authorities are not convinced about the nature of receipt, it is an undisputed fact that the assessee has clearly established the source from where the amount is received and the assessee has also provided the identity of the person from whom the amount is received. We notice that the AO has recorded a finding that in the letter dated 12.01.2015 Shri. T. J. George has denied having given any loan to the assessee and that has been considered as only reason for making the addition u/s.69. This action of the lower authorities in our view is not correct more so when the amounts are received through the NRE account of Shri George which fact is substantiated and not disputed. Therefore we hold that the amount of Rs.5,11,65,000 cannot be taxed u/s.69.

10. Now coming to the plea of the assessee that the amount alternatively should be considered as sale consideration for the purpose of capital gains notice that the assessee had made this

alternate submission before the CIT(A) also which has not been considered. The CIT(A) has confirmed the addition on the ground that the assessee has violated the state's Stamp Duty and Registration Act without going into the merits of the case and whether there is a nexus between the receipts as listed above and the sale of land. Further the value for which the property is registered i.e.Rs.2,00,00,000 is equal to or more than the guideline as claimed by the assessee needs to be examined based on evidences. In view of this discussion, we consider it fit to remand the issue back to the CIT(A) to examine the receipts based on the sale documents, statements recorded from Shri. T. J. George and other relevant documents and decide the head under which the said receipts are taxable in accordance with law. Needless to say that the assessee should be given reasonable opportunity of being heard. It is ordered accordingly.

11. In the result, appeal is allowed for statistical purposes.

*Pronounced in the open court on the date mentioned on the caption page.*

Sd/-

**(GEORGE GEORGE K)**  
**Judicial Member**

Sd/-

**(PADMAVATHY S)**  
**Accountant Member**

Bangalore,  
Dated: 08.03.2023.  
/NS/\*/f:Desai S Murthy/

Copy to:

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|-------------|---------------|
| 1. Assessee | 2. Respondent |
| 3. CIT      | 4. CIT(A)     |
| 5. DR       | 6. Guard file |

By order

Assistant Registrar,  
ITAT, Bangalore.