

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

Before Shri Sanjay Arora, AM & Shri Aby T. Varkey, JM

ITA No.391/Coch/2020: Asst. Year:2010-2011

Thomas George Kondody Kondodickkal House Manganam Kottayam – 686 004. [PAN: ALIPK1276G]	vs.	The Income Tax Officer Ward 4, Kottayam.
(Appellant)		(Respondent)

Appellant by: Sri.M.S.Rajagopal, Advocate
Respondent by: Smt.J.M.Jamuna Devi, Sr. DR

Date of Hearing : 18.05.2023	Date of Pronouncement: 16.06.2023
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ORDER

Per Sanjay Arora, AM:

This is an Appeal by the Assessee directed against the Order dated 26.02.2020 by the Commissioner of Income-tax (Appeals) [‘CIT(A)’ for short] dismissing the assessee’s appeal contesting his assessment under section 143(3) of the Income-tax Act, 1961 (‘the Act’ hereinafter) dated 14.03.2013 for assessment year 2010-2011.

2. The appeal, filed on 07/12/2020, is delayed by a period of 213 days which, however, is covered by the blanket extension in limitation ordered by the Hon’ble Apex Court per Suo Motu Writ Petition (C) No. 3 of 2020 dated 10/1/2022.

3. The facts, to the extent relevant, being *qua* the sole addition made in assessment, are that the assessee was during the assessment proceedings required to explain the nature and source of the cash deposited in his bank account during the relevant year, as under:

Date	Amount (Rs.)
25.11.2009	1,01,000

17.12.2009	25,00,000
18.12.2009	26,00,000

The amounts received on 17.12.2009 and 18.12.2009 were paid by the assessee to one, Sri.Abdul Razack, Kasaragode, toward purchase of land at Mangalore vide two cheques dated 19.12.2009 and 28.01.2010 for Rs.25 lacs each. However, while the assessee could satisfactorily explain the source of the cash receipt on 25.11.2009 (Rs.1.01 lakh) and 18.12.2009 (Rs.26 lacs), he could not *qua* the credit of Rs.25 lacs on 17.12.2009, which was accordingly deemed as his income by way of unexplained money u/s. 69A. In appeal, the Id.CIT(A), at the assessee's instance, sought remand report from the Assessing Officer (AO) upon examining Sri.K.U.Joseph, the person who was stated by him to have advanced cash of Rs.25 lakhs to the assessee vide unregistered agreement dated 14.12.2009. No satisfactory answers were, however, forthcoming from Sri.Joseph per his sworn statement on examination on 05/7/2018. For instance, why, when the agreement was only entered into only by him, was the cash, as stated, given by 5 persons at the rate of Rs.5 lakhs each, the particulars of whom were again not forthcoming. How, again, the property, being subject to an advance of Rs.25 lakhs, could be sold to a third party on 16.12.2009 for Rs.26 lacs? He could not also prove either the source of funds with him or of receipt back of any sum paid by him. The impugned addition was accordingly confirmed. Aggrieved, the assessee is in second appeal.

3. We have heard the parties, and perused the material on record. We find no merit whatsoever in the assessee's case, wherein, no improvement, again, could be made before us. Rather, in our view, Sri.K.U.Joseph, being the assessee's witness, his examination was not required in the absence of any substantiation of, or corroborative facts being led *qua*, the assessee's explanation of he having received advanced moneys against land (2 acres, 63 cents). The said land was in fact admittedly sold to another (Sri.Kurian Abraham) vide document No.1961, dated

16.12.2009, receiving the entire consideration of Rs. 26 lacs in cash, and which forms the explanation for the cash in the said sum deposited in assessee's bank account on 18.12.2009. In fact, the earlier explanation was of advance against a different land, measuring 3 acres, from a different set of persons, again, wholly unsubstantiated. The same was subsequently abandoned, and the advance claimed as received from Sri.K.U.Joseph, Kottayam, against the sale of 2.63 acres of land, sold to another on 16.12.2009, and duly registered in the name of the purchaser vide deed No.1961. *Would that mean that the assessee played a fraud on Sh. Joseph?* Why, it is the assessee who in fact insists on the examination of Sh. Joseph. Even so, the least the assessee would be required to, to give a quietus to the matter, was to pay the sum advanced (Rs. 25 lacs), if not some compensation as well, to Sh. Joseph, *qua* which there is no claim, much less shown. To complete the ludicrous story advanced, Sh. Joseph himself is a witness to the execution of the document dated 16/12/2009. The assessee's entire case is paradoxical and a make-believe, with no basis in facts and, accordingly, stands rightly rejected.

4. In the result, the assessee's appeal is dismissed.

Order pronounced on June 16, 2023 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-
(AbyT.Varkey)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin; Dated: June 16, 2023
Devadas G*

Copy to:

1. The Appellant.
2. The Respondent.
3. The CIT(Appeals), Kottayam.
4. The Pr. CIT concerned.
5. The Sr. DR, ITAT, Cochin.
6. Guard File.ITAT, Cochin

Asst. Registrar