

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

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

ITA No.468/Coch/2022: Asst. Year: 2016-2017

Parackal Krishnankutty Prasad, Parackal House North Mazhuvanoor Ernakulam – 686 689. [PAN: AFGPP5338B]	vs.	The Principal Commissioner of Income-tax-1, Cochin.
(Appellant)		(Respondent)

Appellant by: Sri. Kuriachan, CA

Respondent by: Sri. Prasanth V.K., CIT-DR

Date of Hearing : 18.05.2023	Date of Pronouncement: 16.06.2023
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ORDER

Per Sanjay Arora, AM:

The instant Appeal by the Assessee is directed against the Order under section 263 of the Income-tax Act, 1961 (the Act' hereinafter) dated 03.03.2021 by the Principal Commissioner of Income-tax, Kochi-1 (Pr.CIT), partially setting aside, for fresh adjudication, the assessee's assessment u/s. 143(3) dated 24.12.2018 for assessment year (AY) 2016-2017.

2. At the outset, it was, adverting to a tabular chart adduced by him, submitted by Sri. Kuriachan, the Id. counsel for the assessee, that the Assessing Officer (AO) had duly examined each of the 13 points on which the Id. Pr.CIT had invoked sec.263, stating that the AO had not properly examined the matter, so that there was incorrect assumption of facts or non/lack of application of mind, warranting revision, further stating that he shall demonstrate to the contrary with reference to the said chart. We regard this as fair, as the issue of an absence or otherwise of due application of mind or incorrect assumption of facts by the assessing authority would have to be necessarily examined by us, issuing a finding *qua* each of the 13 issues

impugned per the revision order for lack of verification in assessment. Non-discussion or even non-mention thereof in the assessment order may not be by itself determinative of the matter. The hearing was accordingly proceeded with thus, and concluded after hearing both the sides.

3. We have heard the parties, and perused the material on record. We shall proceed in seriatim, adopting the said chart as the basis, which stands confirmed for its completeness w.r.t. the impugned order.

A. Issue # 1

There was a decline in the net profit for the current year (CY) vis-à-vis the immediately preceding year (IPY), which the AO had failed to inquire into and ascertain reasons therefor.

Much less an inquiry, followed by verification, there is nothing on record to exhibit even a query in the matter by the AO in assessment. This is particularly so in view of the sharp decline in the net profit rate, i.e., from 13.03% for IPY to 2.23% for the CY as reported by the Auditor (PB pgs. 58-66, at pg. 65). Merely calling for the audited accounts for the preceding year, which Sri.Kuriachan would show us with reference to para 1 of notice u/s.142(1) dated 03.9.2018, would not by itself exhibit the said verification by the AO, particularly considering a complete absence of any inquiry with reference to the decline in profit and reasons therefor by the AO and, consequently, non-reply by the assessee, followed by the assessment order being *sub silentio* in its respect. That is, calling of record is by itself of no consequence unless subject to inquiry and verification as warranted under the circumstances. Sri.Kuriachan arguing that the said inquiry as well as its reply, was made orally, only needs to be stated to be rejected, for reasons more than one, even as citing of it being unsubstantiated & presumptuous would suffice. The matter is fact-intensive, requiring, at the minimum, being explained with reference to the behavior of different sets of figures over the two years.

B.Issue # 2

The AO had not examined the genuineness and correctness of the capital addition with supporting documents. The proprietor's capital account of the assessee's stone crushing business revealed accretion of Rs.389.42 lakh for the relevant year, which had been omitted to be examined by the AO for its genuineness and correctness of the claims made by the assessee, who had, on being called upon to, furnished the basic details.

There has been, without doubt, no, much less proper, verification by the AO in the matter. There is, for instance, nothing on record to substantiate the loan repayment of Rs.152.05 lacs by M/s.Aceller Steels Private Limited (ASPL) to the assessee during the year, and which had been accounted as capital addition in the books of his proprietary business. Why, the amount is stated variously, i.e., at Rs.152.05 lacs and Rs.143.60 lacs per the assessee's replies dated 12.12.2018 (PB pgs. 45-47) and dated 24.12.2018 (PB pgs. 51-52), respectively. The least the AO was expected to call for and examine, in order to satisfy himself, is the ledger extracts of the assessee's loan account, as appearing in the audited accounts of ASPL for the preceding and the relevant year, which he could do so even independently. Further still, the very fact of advancing a huge sum, on an unsecured and interest-free basis, to a firm in which he worked for a remuneration, and left, due to, as stated, it being in continued losses, is queer in the least, and calls for inquiry. The ability to repay, in face of financial crises being admittedly faced by ASPL, itself becomes a ground therefor.

Likewise, the agricultural loan from Federal Bank Ltd. (FBL), also stated variously – at Rs.35 lacs and Rs.25 lacs, vide the two replies afore-referred respectively. The same were unaccompanied by the assessee's loan ledger account in the books of the Bank, in which case, there could be, apart from substantiation, no variation in the same. Further still, how could agricultural loan availed in the past and, therefore, presumably deployed for agricultural purposes, one wonders, be brought into the books of the assessee's stone crushing business, which, as it appears, has nothing to do with agriculture. The assessee's computation of income for the year, which was again placed on record during hearing by Sri.Kuriachan,

reflects an agricultural income of Rs.22.10 lacs, clearly indicative of agricultural activities being undertaken, suggesting utilization of borrowed as well as own capital for the same. Rather, cooption of the agricultural loan in the books of the business would give rise to a doubt, warranting verification, as to whether the interest on the said loan had been claimed as an expenditure of the business? In fact, in view of the ostensible continued deployment of the agricultural loan for the said purpose, the basis and rationale for the said cooption, as well as the entry/s passed in the books of the assessee's business, would need to be ascertained for being validated. We could travel to other additions to the capital account as well, though do not, in view of the foregoing, reflecting clear non-application of mind in the matter, consider it necessary to do so. Suffice to however add that, as apparent, the assessee is not maintaining any personal books of account nor in respect of agriculture. No wonder, the break-up of Rs.389.42 lakhs has not been specified in any of the replies by the assessee, to two of which (i.e., dated 12.12.2018 and 24.12.2018) reference was made by Sri.Kuriachan. There has again been no mention of any withdrawal by the assessee for personal or household purposes, also impacting availability of capital. It is the cash flow statement, which would also include capital transfers, as stated in respect to ASPL/FBL, that would demonstrate the source of addition to capital in the books of the assessee's business. The claim of proper non-examination by the Id.Pr.CIT is, for the said reasons, valid.

C.Issue #3: Non-verification of sales and purchases.

Sri.Kuriachan would, with reference to a notice u/s. 142(1) dated 03.9.2018 (paras 8 and 14 / PB pg. 41) show us that the relevant details were sought by the AO during assessment, which were duly furnished by the assessee (vide his reply dated 12.12.2018) (PB pg. 46). The Id.Pr.CIT has not, with reference thereto, stated as to what was found amiss or incongruent therein for the AO to have inquired further, with a view to arrive at a satisfaction *qua* the truth of the accounts. This is as there

has to be something on record to arouse or provoke inquiry. An inquiry would only be in wake of circumstances which would make it prudent, and not *de hors* the same, even as explained in *CIT v. Gabriel India Ltd.* [1993] 203 ITR 108 (Bom). It is this objective fact which must be satisfied on the basis of the material on record, aptly captured by the words “which should have been made” preceding the words “inquiries or verification” in *Explanation 2(a)* to sec.263, i.e., *qua* non-application of mind, which forms the basis of invoking sec.263, which we find as missing *qua* this objection by the Id. Pr. CIT. We accordingly find the same as without merit.

D.Issue #4

The AO did not obtain Form 3CB / 3CD reports, and omitted to inquire into various essential aspects, including various claims.

The same is again a bald claim by the Id.Pr.CIT, which could be appreciated only if he had highlighted certain reporting by the Auditor which, despite being warranted, not inquired into or taken cognizance of in assessment by the AO. In fact, his observation is also factually incorrect as it was, with reference to the material on record, shown to us by Sri.Kuriachan that the said audit report had been called for and duly furnished and, in fact, taken into consideration by the AO in framing the assessment. This objection, accordingly, fails.

E.Issue #5: Failed to analyze closing stock

The AO had failed to analyze the reported closing stock of Rs.4.12 lacs, being abysmally low when compared with the reported total turnover of Rs.11.95 crore. Without doubt, the AO ought to have, though had admittedly not, made an inquiry in the matter considering the stock being negligible in relation to turnover. Yes, we do observe, as perhaps the AO would have, the closing stock for the immediately preceding year being also at the same level, i.e., at Rs.4.07 lacs on a turnover of Rs.12.72 cr. However, that by itself is neither here nor there, only suggesting the facts and circumstances obtaining for the two years being uniform. An inquiry under the circumstances was surely prudent and called for, if only to furnish an insight into

the dynamics of the business, and a reason/s for an almost zero inventory. In *Gee Vee Enterprises v. Addl. CIT* [1975] 99 ITR 375 (Del), it stands explained, with reference to judicial precedents, that the order of the AO becomes erroneous on a failure to make enquiry where the circumstances call for it. This is not because there is anything wrong in the order if all the facts stated therein are assumed to be correct. However, the AO is not only an adjudicator but also an investigator and, therefore, cannot remain passive in the face of a return which is apparently in order but calls for further enquiry. It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an enquiry. The objection by the Id. Pr. CIT is under the circumstances valid, and is upheld.

F.Issue #6: Non-inquiry of major expenses

The AO has not examined major expenses, viz., on labour (Rs.1.38 cr.); diesel (Rs.2.10 cr.), etc. as shown in the accounts. The expenditure of Rs.1.38 cr. and Rs.2.10 cr. under a particular account head is certainly material in relation to the reported turnover of Rs.11.96 cr., particularly considering the decline in the net profit with reference to the immediately preceding year, even on being reckoned with reference to the profit prior to income-tax and depreciation, and which difference would get further accentuated upon eliminating therefrom interest and agricultural income. The same, surely, ought to have been pursued further by the AO. The objection is *per se* valid.

G.Issue #7:

The AO has not verified the agricultural income, shown at gross and net figures of Rs.22.10 lakhs and Rs.11.55 lakhs respectively. He has not verified the agricultural receipts and the deductions claimed by the assessee with reference to supporting material, viz., sale bills, vouchers of agricultural expenses, etc.

There has admittedly been no inquiry in the matter by the AO, which should have been made, particularly considering the quantum jump in the gross agricultural

income by nearly 33% vis-à-vis the immediately preceding year, and presumably on the same agricultural land inasmuch as there has been no withdrawal of capital for acquisition thereof during the current year. What, for instance, one may ask, and understandably, is the yield and the per unit realization? The objection is sustainable, and is accordingly upheld.

H. Issue #8: Non-inquiry qua applicability of s. 14A

The AO has not examined the applicability of sec.14A even as the assessee has made an investment at Rs.194.56 lakh (as at the year-end). There has, again, admittedly being no inquiry by the AO in the matter, sustaining the objection.

I. Issue #9: Non-verification of substantial cash deposits in bank accounts

The AO has not verified the substantial cash deposits in the eight bank accounts being maintained by the assessee during the relevant year. The AO, as it appears from the notice u/s.142(1) dated 29.5.2018 (PB pgs. 37-38), replied to vide letter dated 18.06.2018(PB page 39), sought explanation only for the source of cash deposited in HDFC Bank Ltd. Why, there is even no mention about the volume of the cash deposit, and which in fact could not be inasmuch as the bank statements were called for, for the first time, only per the said notice. No further inquiry stands made by the AO thereafter nor does the assessment order reflect any such verification by him. The objection is valid in law.

J. Issue #10: Non-inquiry of claim of interest on agriculture loan as business expense

The AO has not verified the interest expenditure claimed on agricultural loan of Rs.30 lakh, claimed as a business expense. We have in fact found the same query as arising while making inquiry into and verifying the capital addition (Issue #1). There has admittedly been no verification in the matter by the AO, which ought to follow the assessee's explanation, and which again does not cover all the aspects of the

matter, highlighted above (para 3A), with the loan document/s furnished being in fact admittedly only for Rs.25 lakhs, while, as it appears, the loan amount credited in the assessee's accounts is either Rs.30 lakhs or Rs.35 lakhs.

K.Issue #11: Non-inquiry *qua* interest on fixed deposit for Rs. 2.62 crores

The AO has not examined the interest income on the fixed deposit of Rs.2.62 crore. An addition for Rs.26,681 stands made by the AO in assessment (para 3) with reference to Form 26AS. The interest on the said fixed deposit, i.e., as reflected in Form 26AS, has been cross-verified by him with the assessee's return, adding the difference. There is, clearly, nothing to doubt the information reflected in Form 26AS, particularly considering that the same agrees with the assessee's return, with the difference, apparently unexplained, being added in assessment. What further inquiry in the matter of accounting interest, we wonder, ought to have been made by the AO? No case for non-application of mind in the matter is made out. Further, though there is reference to deposit at Rs.26 crore at para 6.4 of the impugned order, the same is clearly a typographical error in view of the correct statement at Rs.2,62,22,235 at page 2 of the impugned order, made with reference to the balance sheet (PB pg. 54).

L.Issue #12: Non-availability of bills of plant and machinery for Rs.5.77 lac on record.

Sri.Kuriachan would show us the calling during assessment of the depreciation details, as well as the invoices for the purchase of fixed assets. This is not in doubt. In fact, it is only on comparing the invoices of plant and machinery on record with that acquired during the year (Rs.55.12 lacs), that the shortfall therein has come to light. The objection is valid inasmuch as the assessee has claimed the payment for the said amount under the head 'plant and machinery' and, further, claimed depreciation thereon.

M. Issue #13

The AO has not examined the adequacy of withdrawal for household / personal expenses. There is no reference to household expenditure either in the notices by the AO nor the assessee's submissions during assessment. The only reference is to personal expenses for Rs.7,130, duly reported by the Auditor in Form 3CD. In fact the reference to this aspect has been made by us even while discussing the issue *qua* the capital addition (i.e., Issue #1, at para 3A). The objection, is thus valid in law.

4. In the result, the assessee's appeal is partly allowed.

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 Pr. CIT concerned.
4. The Sr. DR, ITAT, Cochin.
5. Guard File.

Asst.Registrar
ITAT, Cochin