

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

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

ITA No.81/Coch/2017: Asst.Year:2012-2013

The Deputy Commissioner of Income-tax, Circle 1(1), Kochi.	vs.	Fridgehouse Retail (P) Limited, XXX/1077 A Hospital Road Kochi – 682 011. [PAN : AABCF7004K]
(Appellant)		(Respondent)

Appellant by: Smt.J.M.Jamuna Devi, Sr.AR  
Respondent by:Sri.K.Sankaranarayanan, CA

Date of Hearing: 18.05.2023	Date of Pronouncement: 11.08.2023
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**ORDER**

Per Sanjay Arora, AM:

This is an Appeal by the Revenue directed against the Order by the Commissioner of Income-tax(Appeals)-1, Kochi [‘CIT(A)’ for short] dated 17.01.2017, allowing the assessee’s appeal contesting it’s assessment under section 143(3) of the Income-tax Act, 1961 (‘the Act’ hereinafter) for assessment year (AY) 2012-2013 vide order dated 30.3.2015.

2.1 The brief facts of the case are that the assessee, a company incorporated under the Companies Act, 1956 on 22.3.2011, took over the business of a partnership firm by the name Natesan Brothers (NB), in the business of purchase and sale of electrical home appliances, electronic and electronic equipments, etc, at different places in Kerala, under the trade name ‘Fridge House’, since atleast 1985, as a going concern, vide business transfer agreement (BTA) dated 01.4.2011, with effect from that date (PB pg. 8-9). Earlier, on 31.3.2010, the partners of NB had passed a resolution to the effect that Sri.G.Jaganathan s/o Sri.D.Ganesan, shall retire from the firm with effect from 31.3.2010; and the business of the firm shall be transferred to a

private limited company w.e.f. 01.04.2011. The resolution was signed by all the eight partners. Sri.S.Giridharan, Managing Partner, was authorized to undertake all the necessary steps toward the same, i.e., for and on behalf of the firm. Sri.C.Natesan, a partner with 10% share, expressed his desire not to join the proposed company, which was also duly recorded in the resolution.

2.2 Pursuant to the BTA, which in its operative part reads as under, the company acquired specified assets and liabilities of the firm NB:

“1. As and from 1.4.2011 the current assets and current liabilities of the Vendor has been taken over by the purchaser as a *going concern* with all the current assets of all kinds, rights, liabilities debts obligations and claims together with all the employees and unexecuted contracts.

2. On and from 1.4.2011 *all the employees* of the Vendor shall become the employees of the Purchaser and wherever necessary the purchaser shall enter into a fresh agreement of employment with the employee so transferred.

3. The businesses taken over were being conducted at various premises. The business of the firm shall be continued to be carried on from these premises and these premises shall be treated as branches of the firm at these addresses.

4. The vendor at the request and expense of the purchaser shall execute such deeds and to all such things as may be necessary for fully effectuating the above.”  
(*emphasis, supplied*)

Necessary entries were passed in the accounts of both, the firm and the company, both duly audited. In view of the Assessing Officer (AO), however, the said transfer of assets, for which credit was allowed in the account of the firm, was unexplained. He, accordingly, added the entire credit of Rs.1248.87 lakhs, as under, as deemed income u/s.68:(Amt. in Rs.)

	Natesan Brothers	Taken over by Fridgehouse
<b>Fixed assets</b>		
Closing WDV as on 31.03.2011	6,90,71,420	
Less : Taken over by Fridgehouse Retail Pvt.Ltd.	2,13,67,482	2,13,67,482
Balance returned at Natesan Brothers	4,77,03,938	

<b>Stock in Trade</b>		
Closing WDV as on 31.03.2011	8,81,10,898	
Less: Taken over by Fridgehouse Retail Pvt. Ltd.	8,81,10,898	8,81,10,898
Balance retained by Natesan Brothers	--	
<b>Debtors</b>		
Closing WDV as on 31.03.2011	3,38,17,222	
Less: Taken over by Fridgehouse Retail Pvt. Ltd.	1,22,26,898	1,22,26,898
Balance retained at Natesan Brothers	2,15,90,324	
<b>Advances &amp; Deposits – Assets</b>		
Closing WDV as on 31.03.2011	1,38,79,764	
Less: Taken over by Fridgehouse Retail Pvt. Ltd.	31,81,656	31,81,656
Balance retained at Natesan Brothers	1,06,98,108	
	<b>Total</b>	<b>12,48,86,934</b>

His reasons for the same are as under:

“The explanation offered by the assessee vide letter dated 23.3.2015 is not acceptable for the following reasons:

1. The old partnership firm vide deed dated 01.04.1998 survives as for transfer of business to a new firm vide deed dated 01.04.2010 requires the consent and signature of all partners which is not there.
2. The resolution passed on 31.03.2010 by the partners is a disputed resolution as one partner, Shri C. Natesan has filed a suit claiming that the signature has been forged and, further, the Court has held that there could be a chance that the signature might be forged.
3. The Court has passed interim injunction order against the partners from implementing the resolution dated 31.03.2010 till disposal of the suit.
4. The business transfer agreement has not been signed by all the partners.
5. The partners, Shri G Jaganathan and Shri C. Natesan, have claimed that the goods were transferred by the assessee company illegally in September, 2011, whereas the representative of the assessee claims that they are transferred on April 1, 2011.
6. All the partners of the partnership firm vide deed dated 01.04.1998 are not included as shareholders of the company.

7. The business transfer agreement dated April 1, 2011 is a fiction created by the assessee to deceive the Income Tax authorities and introduce unaccounted money as capital. The source of the capital brought in the business remains unexplained.

Taking into consideration all the facts of the case the credit entries passed by the assessee company in the books, in respect of claim of transfers from M/s Natesan Brothers, is added as income from undisclosed source as per the provisions of section 68 of the Income Tax Act as the explanation offered by assessee company is not satisfactory.”

The Id. CIT(A), in first appeal, examined the matter at length. All that the AO was, in his view, required to do was to see whether there had been a revaluation of assets and liabilities taken-over, or otherwise any adjustment in accounts made while recording the transfer of assets, allowing credit in respect thereof. No such exercise had been made. The assessee-company had been incorporated with an initial capital of Rs.2 crores, of which Rs.99.90 lakhs stands allotted to 14 shareholders, and Rs.100.10 lakhs remains unallotted as share application money. Even as the share capital of 10 shareholders is sourced from their capital balance in NB, the same, as also the funds transferred, which is from the new shareholders, i.e., other than the partners of NB, has not been inquired into or investigated by the AO. No case for invocation of s.68, as indeed s.69, is made out. He, accordingly, deleted the addition, concluding as under:

“9. In sum, the Appeal is allowed. The enhancement and addition made by the AO of Rs.12,48,86,934 is directed to be deleted. The AO may, as directed in paragraph-clause 8(k)(vi(1) of this order above inform the respective AOs of the firm being Natesan Brothers [PAN AABFN7335G] and of Shri.C.Natesan [whose PAN may be ascertained from the Appellant] to take necessary actions under the relevant provisions of the statute in the matter of any further payments or adjustments to be made for the impugned F.Y.2011-12 or any other financial year, following any decision of the Hon'ble Sub-Court, Coimbatore in the matter of the civil suit filed against the Appellant by Shri.C.Natesan.”

Aggrieved, the Revenue is in appeal.

8. We have heard rival parties, and perused the material on record.

8.1 Even as the appeal raises several grounds, we are at loss to understand the basis of the application of sec.68 in the given facts and circumstances of the case. There is no dissolution of the firm consequent to the transfer of business, and it continues to, as apparent, hold the balance assets and liabilities, i.e., other than those taken-over. It is not a case of a transfer covered u/s. 47(xiii). Whether the said transfer amounts to a slump sale, attracting s.50B, a matter arising in the case of the firm, does not concern us. Whether, therefore, all the partners of the firm became the shareholders of the transferee-company consequent to transfer, which is admittedly not the case, is of no consequence. The assets and liabilities taken over, being a part of the continuing business and, besides, being only current, are at book values, with their being no whisper in the assessment order about their valuation.

8.2 Ledger accounts of the parties in each other's accounts were called for by the Bench during hearing, to find that the same are in agreement. In fact, the firm (NB) has a negative (debit) balance as on 31.3.2012, i.e., the end of the relevant previous year, in the books of the assessee-company, on account of transfer of liabilities, as well as payments made thereto. The AO has conveniently ignored the debit/s arising in the books of the assessee. It is nobody's case that the corresponding business liabilities, transferred alongwith, are not real, or were in fact not transferred. True, a credit u/s. 68 is to be examined independent of the debit/s, if any, arising in the account of the creditor. The fact of the matter in the instant case, however, is that both arise out of the same transaction/s. How could, we wonder, one part be regarded as valid, and the other not, without of course bringing anything adverse on record in relation to any specific credit/s.

8.3 The Revenue does not dispute that the business of NB is, w.e.f. 01/4/2011, being carried on by the assessee. *Could the same be without transfer of assets?* How could, again, the BTA, being given effect to and, consequently, resulting in an actual transfer of business, be regarded as fictional? In fact, the dispute in relation to the business transfer between the partners, which owes its origin to the differences

between them, itself proves the assessee's case. The said differences, it may be appreciated, are clearly in respect of management control; a director having a much limited power to interfere in and disrupt a business of the company vis-a-visa partner in a firm, which is a contract between the partners. Giving credence thereto in the instant proceedings, which is the source of the AO's doubt, however, is depreciable, if not perverse, and is strongly disapproved. The purview of the assessment proceedings is the determination of an assessee's taxable income and, thus, it's correct tax liability. It would be a different matter, we may add, where the same provides an evidence having a bearing on the assessee's tax liability, and which is surely not the case. Even if, for instance, Sri.C.Natesan, has not attended the partners' meeting and/or signed the resolution dated 31.3.2010, it would at best have a bearing on the rights and liabilities of the partners *inter se*. The signature on the resolution by the other seven partners is not in doubt, so that the same was in fact passed. Even in respect of Sri.C.Natesan, the trial court has decided the case of alleged forgery of his signature against him. Why, even a cancellation of the agreement would not result in the credits in the assessee's accounts being regarded as not genuine. The same would in that case be liable to be reversed. That is, the raising of the dispute in respect of the transfer of business, on the contrary, establishes it's genuineness.

8.4 The nature and source of the impugned credits is satisfactorily proved, and the doubt *qua* the same expressed by the AO is wholly without basis on facts or in law. We find no reason to interfere and, accordingly, decline to. We decide accordingly.

9. In the result, the Revenue's appeal is dismissed.

*Order pronounced on August 11, 2023 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963*

Sd/-  
(Aby T. Varkey)  
Judicial Member

Sd/-  
(Sanjay Arora)  
Accountant Member

Cochin; Dated: August 11, 2023

Devadas G\*

Copy to:

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
4. The Sr. DR, ITAT, Cochin.
- . Guard File.

Assistant Registrar  
ITAT/Cochin