

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

Before Shri Sanjay Arora, Accountant Member and
Shri Manomohan Das, Judicial Member

ITA No. 902/Coch/2022
(Assessment Year:2017-18)

Al Kanz Money Exchange Pvt. Ltd 551, Kalliarambil Memorial Bldg. Kaipamangalam P.O. Moonnupedika, Thrissur 680681 [PAN:AAHCA8425H]	vs.	The Income Tax Officer Ward – 1(1), Thrissur
(Appellant)		(Respondent)

Assessee by:	Shri P.K. Jayan, CA
Revenue by:	Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing:	11.10.2023
Date of Pronouncement:	30.10.2023

ORDER

Per Sanjay Arora, AM

This is an Appeal by the Assessee directed against the part-allowance of it's appeal contesting it's assessment under section 143(3) of the Income Tax Act, 1961 (the Act) dated 20.12.2019 for Assessment Year (AY) 2017-18, by the Commissioner of Income Tax Appeals-3, Kochi [CIT(A)] vide his order dated 28.07.2022.

2. The assessee-company is in the business of money exchange, i.e., buying and selling foreign exchange. As explained to us during hearing, persons visiting Kerala from abroad are it's clients, who tender foreign currency thereto, which in turn is exchanged by the assessee with authorised dealers, earning a small commission. It has necessary approvals from the regulatory authorities. It returned an income of Rs.(-)21,523 for the year, which was initially subject to a limited scrutiny in view of large cash withdrawals (from the bank). The scope was later enhanced to complete

scrutiny on account of materials impounded in Survey u/s. 133A of the Act at it's premises on 07.12.2016. The adjustments to the returned income in assessment are on the basis of these materials, coupled with the sworn statements of it's Managing Director, Sh. Siddique, and Manager, Sh.Sasanth. Income was initially assessed at Rs.2,40,87,300, also initiating penalty proceedings u/s.271AAC of the Act.The additions that however survive the impugned order; the Revenue being not in appeal, are on two counts, aggregating to Rs.27,63,006, as under:

- (a) Rs.19,10,885, for unexplained source of unaccounted purchases; and
- (b) Rs.8,52,121, for undisclosed income on unaccounted sales.

3. The assessee was, during survey, found to be engaged in unaccounted sales, maintaining two sets of Accounts. The same, besides being subject to the statutory presumption as to truth of the contents thereof u/s. 292C of the Act, stands admitted, for which reference is made to answers to Questions 7 through 11 of Sh. Siddique's statement dated 09/12/2016, extracted at pg. 16 of the assessment order, adverted to during hearing, which further bears reference to the statement dtd. 07/12/2016 of Sh. Sasanath. All this also provides context to the huge cash withdrawals afore-referred. The issues arising for our adjudication are thus essentially *qua* the quantum of income, i.e., under the provisions of the Act, of such unaccounted business. That is, are primarily factual, to be decided on the basis of the material on record along with the explanations furnished. Data was retrieved from the hard disk (of the computer) impounded during survey, and print-outs, duly attested, taken, which in fact stand reproduced in the assessment order. Annexures B & C, being the assessee's purchases and sales, listed therein, are summarized at pg. 8of the impugned order, as under:

(Amount in Rs.)

Date	Annexure B		Annexure C	
	Sales	Purchases	Sales	Purchases
Total	46209882	49250947	21957912	226494

4. The first addition under appeal, i.e., *qua* the source of the unaccounted purchases, was determined by the Id. CIT(A) at Rs. 19,10,885 by regarding the same as financed – to the extent thereof, by unaccounted sales, as under: (Amount in Rs.)

Unaccounted Purchases	4,92,50,947
Less: Unaccounted sales (-)	4,62,09,882
Balance	30,41,065
Less: Cash generated as loose sheets (-)	11,30,180
Balance unexplained Purchase	19,10,885

As regards the profit on unaccounted sales, the second addition, the average gross profit (GP) rate for the preceding two years as per audited financials, i.e., 1.8%, was taken, determining it at Rs.8,52,121 (Rs.4,73,40,062 @1.8%).

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

5.1 The assessee's case before us was that Annexure B represents total sales, i.e., inclusive of accounted sales, so that in adopting the same for computing the profit of the unaccounted business, there has been duplication in respect of the accounted turnover. *Qua* the profit on such sales, the GP rate for the current and the preceding two years was furnished, reflecting an average of 0.45%, i.e., as against the applied 1.8%. The Revenue would, on the other hand, rely on the impugned order, emphasizing it as very reasonable, and which explains the near total relief allowed in first appeal. Further, the gross profit rate of 1.8% *is admitted* as the average of the preceding two years, duly audited, for which reference was made to the assessee's first objection, stated at pages 16 & 17 of the assessment order.

5.2 A mere browse of Annexures B & C, reproduced in detail in the assessment order, bears the truth of the assessee's contention; there being entries in identical amounts on several dates, i.e., where there has been no unaccounted business. Why the AO himself, at page 4 of his order, states of Annexures B & C as being the actual and accounted sales (after 26.08.2016) respectively. There has thus been, clearly, a

double addition in respect of the accounted sales, i.e., to the extent stated in Ann. C. The profit rate would accordingly be applied only on the unaccounted sales, i.e., by deducting Rs.219.58 lakhs from the total turnover of Rs.462.10 lakhs as per Ann. B, or Rs.242.52 lakhs. The ld. CIT(A) has wrongly regarded Rs. 11.30 lacs as the undisclosed sales upto 26/8/2016. The said figure is in fact the peak cash balance (on 17/8/2016) per the loose slips up to 26/8/2016, where-after duplicate accounts were systematically maintained on the computer. This finding by the AO, tabulating some data from 318 such slips impounded during survey at pages 3-4 of his order, is endorsed by the statements afore-referred, extracted in his order and, further, explains deduction thereof in computing the unexplained (as to source) cashpurchases (refer para 4) by the ld. CIT(A), so that his order is, to that extent, internally inconsistent.

This leaves us with the profit on the unaccounted sales for the year prior to 27/8/2016, i.e., not recorded in the computer (Ann. B). We shall take up this aspect a little later. Further, the profit rate to be applied shall be the average gross profit rate for the current year and the preceding two years, i.e., fys. 2014-15 to 2016-17, as per the assessee's disclosed accounts. The AO shall, in view of the wide variation in the profit rate per the audited financials, furnished in assessment, and as claimed before us, issue clear finding/s in the matter upon hearing the assessee and due verification.

5.3 As regards the first issue (para 2(a)), we discern the same as the working capital required for financing the unaccounted business. The adjudication by the ld. CIT(A), even as observed during hearing, is seriously flawed. It, firstly, treats the unaccounted purchases as requiring an equal sum to fund it. Money in business, save that deployed in non-current assets, gets rotated, also called the working capital cycle, leading to a volume for the year depending on the number of such cycles or rotations completed over a given period of time. There could also be credit line/s, trade or institutional, available to an assessee. The ld. CIT(A) has regarded the unaccounted purchases as itself representing the amount required to fund it. Two, he presumes purchases to succeed the sales inasmuch as only in such a case could the unaccounted

sales, realized in advance, of which there is no contention, much less exhibition, finance the unaccounted purchases. Purchases ordinarily precede the sales in any business, as indeed per the business model explained to us by Sh. Jayan, the ld. counsel for the assessee, as indeed per the sworn statements. And, cannot, therefore, explain the source thereof, and neither is there anything on record which could be regarded, or even referred to by the ld. CIT(A), as the basis of this finding by him. Why, the assessee's accounts (i.e., *qua* the accounted business) – not on record, would itself exhibit if it is indeed so, impacting the working capital requirement; the only difference being that the same is, instead of undisclosed, *qua* disclosed business. The working capital required for the unaccounted turnover (i.e., Rs.462.10 lakhs) of the assessee's business, shall accordingly be estimated at the same rate, i.e., in the same proportion, as obtaining for the accounted business as per its audited accounts. For example, if the working capital as per the audited accounts is at 15% (say) of the disclosed turnover (sale), the same shall be adopted for estimating the working capital, implying net current assets, deployed for undisclosed turnover of Rs. 242.52 lakhs. The AO shall for the purpose take the average of the audited financials as on 31.03.2016 and 31.03.2017, i.e., the beginning and the end of the relevant previous year. This would be further subject to an adjustment to account for the period to which the unaccounted sale pertains. A 15% (say) working capital w.r.t. the annual turnover implies a sum equivalent to an average sale for 1.8 (12 x 15/100) months. The unaccounted sale (Rs. 242.52 lacs) is for the period 27/8/2016 onwards, i.e., for nearly 7 months. The corresponding ratio would thus be at 25.7% (i.e., 1.8/7 months).

5.4 Coming back to the profit on the unaccounted cash sales up to 26/8/2016, wrongly regarded by the ld. CIT(A) at Rs. 11.30 lacs. The fact of the assessee engaging in unaccounted business even prior to 27.8.2016 is established. The same, in the absence of any direct material *qua* its quantification, could be, for instance, estimated in the same ratio to accounted sales, as obtains for the period post 26/8/2016, i.e., 110+% (242.52 lacs/219.58 lacs)(para 5.2). The matter shall,

accordingly, travel back to the file of the AO to estimate the same on some definite and sound basis after hearing the assessee; that cited by us being by way of an example, illustrative, though not binding. Sure, the matter ought to have been, more correctly, restored to the file of the Id. CIT(A). However, as other matters are being restored to file of the AO, we do so for this matter as well. This decides issue at 2(b).

5.5 In deciding in the manner afore-said, we may clarify to have also considered the other contentions raised before us. The argument of the Annexure B figures also including that in respect of the orders booked, which however did not fructify, without specifying the amount in relation thereto, much less identifying such transactions, is neither borne out by the record nor in fact advanced at any stage earlier. The same in fact contradicts the assessee's consistent stand, borne out by the record found in survey, of the same being in respect of actual sales/business. The other argument of the same also including the business executed by Sh. Siddique, the MD, also needs to be stated to be rejected, and for the same reasons. It is neither borne out by the record nor in fact advanced at any stage earlier. Even as observed during hearing, where so, the transaction/s as recorded would bear reference to the same being through him, i.e., in his personal capacity, which is not the case.

5.6 We decide accordingly.

6. In the result, the assessee's appeal is partly allowed and partly allowed for statistical purposes.

Order pronounced in the open court on October 30, 2023 under Rule 34 of The Income Tax(Appellate Tribunal) Rules, 1963.

Sd/-
(Manomohan Das)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin, Dated: October 30, 2023
n.p.

Copy to:

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

By Order

Assistant Registrar
ITAT, Cochin