

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

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

**ITA No. 578/Coch/2022&
SA No. 41/Coch/2022
(Assessment Year:2017-18)**

| | | |
|--|-----|---|
| Prestige Marketing Division IX/28A ID Area, A.M. Road Erumathala, Aluva 683112 [PAN:AANFP7676G] | vs. | Principal Commissioner of Income Tax CR Building , IS Press Road, Kochi 682018 |
| (Appellant) | | (Respondent) |

| | |
|--------------|---------------------------------|
| Assessee by: | Shri Anil D. Nair, Advocate |
| Revenue by: | Shri Sajit Kumar Das, CIT- D.R. |

| | |
|------------------------|------------|
| Date of Hearing: | 18.10.2023 |
| Date of Pronouncement: | 31.10.2023 |

ORDER

Per Sanjay Arora, AM

This is an Appeal by the Assessee directed against the Order under section 263 of the Income Tax Act, 1961 (hereinafter ‘the Act’) dated 30.03.2022 by the Principal Commissioner of Income Tax-1, Kochi (Pr. CIT) in respect of it’s assessment under section 143(3) of the Act dated 16.12.2019 for Assessment Year (AY) 2017-18.

2. The brief facts of the case are that the assessee-firm is a trader in PVC pipes and allied products, with a wide dealer network in the state of Kerala and south Tamil Nadu. Cash deposits at an aggregate of Rs.335.36 lakhs were found in its’ different bank accounts during the demonetisation period, falling within the relevant previous year. The same were sought to be explained in assessment proceedings as regular cash deposits by it’s sales executives working in the field who, apart from canvassing orders there-from, also collect dues from it’s customers, which are deposited cash in

it's bank accounts. The assessee being unable to substantiate it's explanation, a sum of Rs.68.25 lakhs, deposited by way of Specific Bank Notes (SBNs), was regarded as unexplained and deemed as it's income u/s. 69A of the Act. The balance Rs.267.09 lakhs, also not satisfactorily explained, was assessed as income from other sources. Even as the assessee appealed against it's assessment, the revisionary authority under the Act, on an examination of the assessment record, found the assessment as erroneous and prejudicial to the interests of Revenue inasmuch as the deposits for Rs.267.09 lac, equally unexplained as to their nature and source, ought to have been, instead of income from other sources, subject to tax u/s.68 and, accordingly, subject to higher tax rate u/s.115BBE of the Act, i.e., as against the normal tax rate at which the said income would otherwise be subject to. Aggrieved, the assessee is in appeal.

3. We have heard the parties, and perused the material on record. It is not in doubt that the basis and the premises for the assessment of Rs.267.09 lakhs, which the assessee claims as duly recorded in it's books of account, is for the reason that it is, in view of the AO, no satisfactorily explained as to its nature and source. As indeed is the case for Rs.68.25 lakhs deposited per SBNs. The limited issue therefore before us is if the assessing authority (AO) had, in doing so, applied his mind in the matter, i.e., in assessing the unexplained cash deposit in bank in currency other than SBNs, as income from other sources u/s. 56, as against u/s. 68 of the Act, which reads as under:

“Cash credits.

68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year:

Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

- (a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and
- (b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.”

This is as, where so, there can be no revision, which is impermissible where the AO has adopted one of the two permissible or reasonable views. We find no deliberation in the assessment order toward the same. Even no material, despite being enquired, has been brought to our notice indicating application of mind by the AO on this aspect of the matter, by making any pertinent enquiry. Even as observed by the Bench during hearing, from the stand point of section 68 of the Act (or for that matter section 69, which are *parimateria*, one in relation to the assets in the books and the other not, wholly or partly), how would it matter whether the cash deposited in bank is per SBN or non-SBN. To, no answer. That absence of proper enquiry, inasmuch as it indicates non-application of mind, is one of the infirmities that renders an order as erroneous and prejudicial to the Revenue, is well settled and towards which the Id. Pr. CIT has referred to the decisions in *Malabar Industrial Co. Ltd. vs. CIT* [2000] 243 ITR 83 (SC) and *Raja & Co. vs CIT* [2011] 335 ITR 381 (Ker), even as the same stands since (w.e.f. 01.6.2015) statutorily co-opted in section 263 itself.

4. We, for the reasons afore-stated, find no reason for interference with the impugned order and, accordingly, decline to. The assessee has also filed a stay application in respect of its instant assessment, which was also posted for hearing along with. Inasmuch as we have decided the appeal, the same becomes infructuous. We decide accordingly.

5. In the result, the assessee's appeal and stay petition are dismissed.

*Order pronounced in the open court on October 31, 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 31, 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