

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

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

**ITA No. 977/Coch/2022**  
(Assessment Year: 2015-16)

Sreedharan Nair Babu 42/1975, Madhusree P J Antony Ground Road Pachalam, Ernakulam 682012 [PAN:AJTPB 4145M]	Vs.	The Income Tax Officer Non Corporate Ward – 1(1) C.R. Building I.S. Press Road Kochi 682018
(Appellant)		(Respondent)

Assessee by:	Shri Arun Raj, Advocate
Revenue by:	Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing:	19.10.2023
Date of Pronouncement:	17.01.2024

**ORDER**

Per Sanjay Arora, AM

This Appeal by the Assessee challenges the dismissal of his appeal contesting his assessment under section 143(3) of the Income Tax Act, 1961 ("the Act") dated 07.12.2017 for Assessment Year (AY) 2015-16 by the Commissioner of Income Tax (Appeals), Income Tax Department [CIT(A)], vide its order dated 06.09.2022.

2. It would be relevant to state the background facts of the case. The assessee is an Advocate by profession, based at Ernakulam. For the relevant year he returned his income on 05.01.2016 at Rs.5,35,200, which was on account of cash deposits in his bank account during the year, subject to verification under the Act. The assessee having returned income @ 35% of the disclosed professional receipt of Rs.24,62,600, as against the cash deposit of Rs.67,03,100 in his bank account, the AO applied the said profit rate on the balance Rs.42,40,500, making thus an addition for

Rs.14,84,175. In appeal, the assessee filed confirmations from two Advocates, Smt. Smitha Sukumar, his wife, and Shri Rajesh Ayyappan, declaring Rs.20.70 lakhs and Rs.41.50 lakhs as being their fees for professional work collected by the assessee along with his professional charges, which had been paid by him to them and, further, being disclosed in the return of income for the relevant year. The assessee claiming to have explained the cash deposit in the bank account thus, did not find favour with the Id. CIT(A), who held as under: -

“6. The effective ground of appeal is against addition by ignoring the receipts of other 2 advocates. As per the appellant, the extra receipts of Rs.42,40,500/- considered by the AO for the purpose of estimating income @ 35%, is in fact receipts pertaining to his 2 junior advocates. As all the work relates to one client the party sent all the payments together in appellant's account. Copy of the ITR and confirmation of the 2 junior advocates namely, Smitha Sukumar and Rajesh Ayyapan, has also been filed. As per confirmations filed, Smita Sukumar has received Rs.20,70,100/- and Rajesh Ayyapan has received Rs.41,49,709/-, totalling to Rs.62,19,809/-. Before the AO, the appellant has stated that extra receipt is only Rs.42,40,500/- (Rs.67,03,100/- Rs.24,62,600/-). Thus the figures mentioned by the junior advocate does not match with the facts mentioned by the AO in Para 3 of the assessment order, which have not been challenged by the appellant. If it is assumed that the amount mentioned in the confirmation are correct that appellant the Senior Advocate has receipts of Rs.24,62,600/- only as against Rs.20,70,100/- and Rs.41,49,709/- by his juniors. In view of these facts the contention of the appellant difficult to accept. The appellant has not filed any other evidence in the form of confirmation from the clients and TDS details, if any. The junior advocates are filing their ITR and maintain Bank accounts then why they will ask the clients to deposit their share of professional receipts in the bank account of their senior when they have to file ITR by showing income from Business or Profession.

6.1 In the absence of any clinching evidence to prove that the extra receipts do not pertain to the appellant, I have no reason to deviate from the decision of the AO. The ground of appeal is 'Dismissed'.”

Aggrieved, assessee is in second appeal.

3.1 Before us, it was submitted by Shri Raj, the learned counsel for the assessee, that there has been no verification either by the Assessing Officer (AO), before whom

the assessee has stated of joint collection of professional fees, a normal practice where an Advocate is not dealing in all branches of law, with the clients being billed from the chamber of the senior Advocate. The ld. CIT(A) had drawn adverse inference on the basis of the un-matching of figures, where there could be a mistake. No addition in any case could sustain only on the basis of doubt or suspicion, howsoever strong. He accordingly prayed for the matter being restored to the file of the ld. CIT(A).

3.2 Smt. Devi, the ld. Sr. DR, would, on the other hand, rely on the impugned order, stating that the findings recorded by the ld. CIT(A) are in consonance with the material adduced by the assessee and, accordingly, warrant no interference.

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

We, for the reasons stated hereinafter, find no merit whatsoever in the assessee's case. True, all Advocates belonging to a Chamber may not practice in the same law or laws, so that the clients, though billed in the name of the firm, even if a proprietary concern of the Senior Advocate, to whom therefore the entire receipt may go, is shared. There are, however, no bills to demonstrate this. Further, the sharing would be on some definite basis, fixed client-wise or period-wise, or on the basis of the work done, for which the associate (Advocate) would accordingly be compensated, i.e., again on some definite basis, being essentially the services performed, of which there is no whisper, much less evidence. In fact, in such cases, the firm retains a part toward common, administrative expenditure, again absent. Why, there is nothing to show that the two juniors worked under the same chamber name or even as associates; the laws practiced, etc. That the entire receipt is in cash is again quizzical, particularly considering the tedium involved in transacting in cash, which needs to be receipted, besides attracting the issue of non-deductibility of expenditure in computing income of the payer [s.40A(3)]. That apart, there is nothing to suggest of it being receipted, i.e., issue of receipt to the clients, which may bear

reference to the bill number or the work done. There is no client-wise detail, i.e., the break-up of the receipt, client-wise, and which has a bearing from the stand point of TDS, supporting, even if indirectly, the assessee's explanation. Further, the same, upon being banked, would be retained by the firm/Senior Advocate to the extent of his share, including reimbursement of expenditure, and the balance transferred, of which there is again no detail. Why, one wonders, is the transfer not through the banking channel? Why, again, its receipt, even if in cash, is not acknowledged by the sharing counsel, which has to be through a contemporaneous evidence. No wonder, the figures stated by them, which is only at the first appellate stage, despite the returns for the relevant year having been filed by them in January/March, 2016, are at different (higher) sum. There is, further, nothing to show that the amount deposited stand withdrawn from the bank, only whereupon could it be transmitted to the other Advocate. There is also nothing to show of it being a continuing arrangement, obtaining in the past or even in the future. There is no explanation, at any stage, for the two Advocates reporting a higher sum, with in fact their returns reflecting claim of expenditure at 85% to 90% of the receipt.

We could in fact go on, pointing to other inconsistencies in the explanation and conduct. Suffice, however, to state that there is no shred of evidence to support the assessee's case, which accordingly has been inferred as a make-believe by the Revenue. No wonder there were no explanation, much less details, before the AO, while even before the Id. CIT(A) no figures stated are *sans* any evidence and, further, in mismatch. *On what basis, then, one may ask, does the assessee seeks restoration back to his file?* It is only where a compelling case is made out, that the Tribunal may, admitting additional evidence u/r. 29 of the Income Tax (Appellate Tribunal) Rules, 1963, remit the matter back for verification and examination. The prayer for restoration is, however, not accompanied by any evidence, making it, again, *de hors* the facts of the case, and no more than the bald plea without substance. No infirmity

in the impugned order stands pointed out to us. The assessee's case, whichever way one may look at it, only needs to be stated to be rejected.

5. We, in view of the foregoing, decline interference, and uphold the impugned order. We decide accordingly.

6. In the result, the appeal filed by the assessee is dismissed.

*Order pronounced on January 17, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963.*

Sd/-  
(Manomohan Das)  
Judicial Member

Sd/-  
(Sanjay Arora)  
Accountant Member

Cochin, Dated: January 17, 2024

Copy to:

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

n.p.

By Order  
Assistant Registrar  
ITAT, Cochin