

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

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

ITA No. 68/Coch/2022
(Assessment Year: 2017-18)

Mohammed Kutty Kayingil Mousufa Nivas Edappal P.O. Malappuram 679576 [PAN:CBXPM7315J]	vs.	Income Tax Officer (International Taxation) Kozhikode
(Appellant)		(Respondent)

Appellant by:	None
Respondent by:	Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing:	23.01.2024
Date of Pronouncement:	31.01.2024

ORDER

Per: Sanjay Arora, AM

This is an Appeal by the Assessee directed against the dismissal of his appeal contesting his assessment under section 143(3) of Income Tax Act, 1961 (the Act) dated 25.10.2019 for Assessment Year (AY) 2017-18 by the Commissioner of Income Tax (Appeals)-12, Bengaluru [CIT(A)], vide his order dated 15.12.2021.

2. None appeared for and on behalf of the appellant when the appeal was called out for hearing, and neither is there any adjournment motion, i.e., despite service of notice of hearing. This was the case on the last occasion as well. There is also no vakalath/PoA on record. We, accordingly, proceeded *ex parte* the assessee-appellant.

3. The brief facts of the case are that the assessee, a non-resident Indian maintaining a NRE account, returned his income for the year at Rs.33,730/-. The same was selected for limited scrutiny in view of large cash deposits in his bank

account during the demonetisation period, i.e., from 09/11/2016 to 31/12/2016. Of Rs.28.76 lakhs so deposited, Rs.8.76 lakhs was regarded by the Assessing Officer (AO) as unexplained in view of the cash withdrawals for Rs. 3,00,000 (on 08.09.2016) and Rs. 2,00,000 (on 15.09.2016), explained as the source, being over two months old. The assessee in fact withdrew cash in small amounts during the year and even thereafter. The balance Rs.3.76 lakhs, ascribed to the opening balance (as on 31.03.2016), was not accepted, again, for the same reason/s, making an addition for Rs.8.76 lakhs. In appeal, the Id. CIT(A) accepted the explanation *qua* cash withdrawal of Rs. 5 lacs in September, 2016, sustaining the addition for the balance Rs. 3.76 lacs, so that, aggrieved, the assessee is in second appeal.

4. We have heard the party before us, and perused the material on record. The assessee's case is principally of the Revenue unreasonably doubting the opening balance as at the beginning of the year, even as he is living and working abroad, with no known source of income in India. The burden to prove the nature and source of deposit in his bank account/s is clearly on the assessee and, therefore, nothing turns on his working abroad. No basis for the opening cash balance has been provided. The assessee, living abroad, would presumably withdraw from his bank account/s in India only on need basis. The same is also inconsistent with his frequent withdrawals in small amounts from his bank accounts in India; large cash withdrawals from his bank accounts in India, which is further explained to be for the purpose of investment, and admitted expenditure of Rs. 15.50 lakhs on personal expenses in India. If the assessee is, as stated, not living in India, what explains the huge personal expenses in India? The assessee may not have any known source of income in India, but then that is precisely the reason why the deposit stands regarded as unexplained, and deemed as income, which is u/s. 69A of the Act. It is not for the Revenue to investigate the source from where the income, deemed as so, whether by way of unexplained receipt or unexplained deposit, is sourced from, and it is no part of it's obligation to locate

the exact source. This represents trite law, and toward which we may, for the sake of completeness of our order, refer to *Kale Khan Mohammad Hanif v. CIT* [1963] 50 ITR 1 (SC); *CIT v. M. Ganapati Mudaliar* [1964] 53 ITR 623 (SC); and *CIT v. Devi Prasad Vishwanath Prasad* [1969] 72 ITR 194 (SC). In fact, it is for this reason that the law provides for it being deemed as income, which is otherwise source-based.

5. In view of the foregoing we find no infirmity, based on the material on record, in the confirmation of the addition for Rs.3.76 lakhs as unexplained cash deposit in assessee's bank account/s during the year. The same is, in consequence, liable to be taxed at a special rate u/s. 115BBE of the Act, also disputed. We decline interference.

6. In the result, the assessee's appeal is dismissed.

Order pronounced on January 31, 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 31, 2024
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