

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

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

**ITA Nos. 872 to 874/Coch/2022**  
(Assessment Yeas: 2015-16, 2016-17 & 2019-20)

Mytheenkunju Muhammed Kunju Kandathil Jewellers Ochira, Karunagappally Kollam 680526 [PAN: AJPPM5182R]	vs.	Dy. Commissioner of Income Tax (International Taxation) Circle Thiruvananthapuram
(Appellant)		(Respondent)

Appellant by:	Shri Jyothison J., CA
Respondent by:	Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing:	23.11.2023
Date of Pronouncement:	21.02.2024

**ORDER**

Per: Sanjay Arora, AM

This is a set of three Appeals by the Assessee, agitating it's regular assessments under the Income Tax Act, 1961 ("the Act"hereinafter) for three assessment years, being AYs. 2015-16, 2016-17 and 2019-20, arising out of a common order by the Commissioner of Income Tax (Appeals)-12, Bangalore [CIT(A)] dated 27.06.2022. All the assessments are pursuant to a survey at the assessee's, a non-resident Indian (NRI) running a gold jewellery shop by the name Kandathil Jewellers at Ochira, Kollam, Kerala, business premises on 15.10.2009, raising common issues, where accordingly heard together, and are being disposed of per a common order.

2. At the outset, it was, on a query, clarified by Shri Jyothison, the learned counsel for the assessee, that though the assessments pursuant to survey were made for AYs 2013-14 to 2019-20, that for the years not in appeal before us, stand accepted, i.e., consequent to first appeal. The facts of the case, explained in brief by

him, are that the assessee not returning income in response to notices u/s. 148(1) of the Act, the Assessing Officer (AO) invoked s. 144 of the Act for years up to AY 2018-19. While the AO, on the basis of comparative data, applied a net profit rate of 3% of the turnover, the Id. CIT(A) in appeal restricted it to 2%. For AY 2019-20, for which year the assessee filed a return of income on 31.03.2020, the AO, however, applied a profit rate of 5%, assessing income at Rs.98,70,252, adopting a turnover of Rs.20 crores, which stands confirmed in first appeal in view of the income being admitted. A perusal of the record shows that the assessee was during survey found to be not maintaining any books of account. Only daily cash sales and daily stock were found to be maintained, using a software 'GOLDEST'. Shri Abdul Shukkoor, the assessee's brother-in-law, managing the business, deposing u/s. 133A of Act on 15/16/5.2019, admitted on confronted with materials w.r.t. sales found during survey, to the sales being suppressed. The relevant part of his statement, the whole of which though stands perused, is as under:

Q. 23 As per the Income Tax Return filed for the AYs. 18-19 and preceding five years you have declared sales turnover below One Crore and filed such return of income by applying section 44AD of the Income Tax Act, 1961. However as stated herein above by you, you have not declared in the various income tax returns 15% of actual daily sales turnover and as stated above for the period 1.10.19 to 15.10.19 you have prepared tax invoices for 5% of sales turnover only.

Moreover, for example, during the month of September, 19 your sales turnover as per the daily sales Reports is Rs.1,76,15,969/-. Even for 15 days from 1.10.19 to 15.10.19, your sales as per Daily Sales report is Rs.1,05,37,600/-. Your explanation in this regard?

Ans: We admit that we have suppressed sales by showing meagre portion of sales turnover as stated above while filing Return of Income. Under these circumstances and considering the fact that we have suppressed our actual sales and we have not maintained any books of accounts for any AYs we hereby declare sales turnover for the following assessment years and offer 5% of sales turnover as profit and declare the same as additional income over and above the total income already returned for the respective assessment years:

AY	Sales Turnover	Profit (5% of STO)	Returned Income	Additional Income
2019-20	20,00,00,000/-	1,00,00,000/-	-	1,00,00,000/-
2018-19	18,00,00,000/-	90,00,000/-	7,99,130/-	90,00,000/-
2017-18	16,00,00,000/-	80,00,000/-	7,75,910/-	80,00,000/-
2016-17	15,00,00,000/-	75,00,000/-	7,71,500/-	75,00,000/-

2015-16	13,00,00,000/-	65,00,000/-	6,48,240/-	65,00,000/-
2014-15	12,00,00,000/-	60,00,000/-	5,91,020/-	60,00,000/-
2013-14	11,00,00,000/-	55,00,000/-	5,75,620/-	55,00,000/-

The assessee admitting to not maintaining any books of account and suppression of sales, the same were estimated on the basis of the data maintained on the computer, and assessments made taking recourse to s. 147 on a best judgment basis inasmuch as the assessee did not respond to s. 148 notices. We shall proceed year-wise.

3. AY: 2015-16 – The assessee had initially uploaded the return on 29.04.2016, returning income u/s. 44AD of the Act at Rs.7,78,986/-, i.e., on a turnover of Rs.97,37,325, on the basis of the VAT return. This was not accepted as sec. 44AD is applicable only for residents and, accordingly, regarded as invalid. The assessee not responding to the notice u/s. 148(1), income was assessed u/s. 143(3) r/w s. 144C of the Act on 30.11.2021. During assessment proceedings the assessee furnished income and sale figures of other firms in jewellery business, disclosing profit at 0.55% to 2.32% of sale. The AO considered the figures of Kalyan Jewellery Ltd. and Malabar Gold P. Ltd., returning income at 2.52% to 2.64%, and applied a net profit rate of 3% on the turnover of Rs.10.65 crores, i.e., as per the Goldest data base, i.e., at Rs.31,96,280. In appeal, the assessee furnished an affidavit dated 21/6/2022 by it's counsel, Shri Jyothison, common for all the years, whereby he avers the assessee to have accepted the turnover and agreeing to be assessed at a net profit rate of 2%. The same was accepted by the ld. CIT(A). The tabular chart forming part of the said affidavit, is as under; the turnover figures, as opposed to that admitted during survey, asper the assessee's software:

Sl. No.	Asst. Year	Turnover (in Rs.)	Profit (in Rs.)
1	2013-14	10,01,46,473/-	20,02,930/-
2	2015-16	10,65,42,683/-	21,30,854/-
3	2016-17	11,58,20,978/-	23,16,420/-
4	2017-18	13,16,87,347/-	26,33,747/-
5	2018-19	14,59,39,741/-	29,18,795/-
6	2019-20	15,00,00,000/-	30,00,000/-

4. We have heard the parties, and perused the material on record. The assessee's only grievance before us was that the assessment order not bearing Document Identification Number (DIN), the assessment is, in view of *CIT v. Brandix Mauritius Holdings Ltd.* (in ITA No. 63/2023, dated 20/3/2023) and Board Circular 19/2019, dated 14/8/2019, placing copies of the same on record, invalid. Even as he was unable to show us the legal basis for the same; s. 282B, with sub-heading "Allotment of Document Identification Number", being omitted by Finance Act, 2011, w.e.f. 01.04.2011, nor indeed any Rule to that effect, assessment record was called for, allowing Smt. Devi, the ld. Sr. DR, time to do so. She would vide her written submission dated 16/11/2023, place on record a communication dated 30/11/2021, the date of the assessment order, which bears DIN. Though Sh.Jyothison would object, stating that the said document is a separate document, titled 'Intimation letter for order u/s. 143(3) of the Income Tax Act', we find it as without merit and, rather, appears to have been made without reading the said document, bearing DIN: ITPA/AST/xx/xx/xx/xx1430(1), whereby the assessee is informed of being conveyed the order u/s. 143(3) dated 30.11.2021, bearing DIN ITPA/AST/xx/xx/xx/xx0018(1), issued earlier, electronically, i.e., after completion of accounting by CPC. There is no dispute that both the assessment order and the Intimation were uploaded on 30/11/2021. That apart, notice of demand u/s. 156 of the Act dated 30.11.2021, manually signed, as is the assessment order, forms part of the appeal file itself. This is in complete conformity with the Board Circular supra. *What, then, is the assessee's grievance?* Rather, the Intimation and the order being displayed on the Revenue's portal, the objection is not only invalid but also unfortunate.

No other ground was taken or pressed before us even as the appeal raises several grounds, and which was also confirmed by us from Shri Jyothison during hearing. The assessee's appeal for AY 2015-16 is accordingly dismissed.

5. AY: 2016-17 – The only objection for this year (as also for AY 2019-20), the primary facts for which are the same as for AY 2015-16, by the assessee, as projected by Shri Jyothison, is that the assessment order has not been signed, either physically or digitally, by the AO. Authentication of a document being a necessary condition for its validity, even as explained in *Kilasho Devi Burman v. CIT* [1996] 219 ITR 214 (SC), the assessment record, called for, was examined to find a physically signed copy of the assessment order by one, Deeptha M.S., Dy. CIT, International Taxation Circle, Thiruvananthapuram, the extant AO. As explained through her written submissions dated 16.11.2023 by Smt. Devi, also enclosing along with a copy of a letter of even date by the incumbent AO, C.M. Premeela, Asst. CIT (International Taxation) Circle, Thiruvananthapuram, that due to technical problems that at times arise, digital signatures would not work. It is usual under such circumstances to pull out the order from the ITPA and manually sign the same, also clarifying that only the body of the order is entered and all other fields therein are filled by the system itself, viz., Date, PAN, DIN, etc., so that no manipulation, much less antedating, is possible. To further buttress the point, copy of the notices u/s. 274 r/w ss. 271A and 271B of the Act, both dated 30.11.2021, digitally signed at 5:07 pm and 5:09 pm, as well as their being uploaded, exhibited by a successful delivery report dated 30.11.2021 (at 6:55 pm), is furnished (PB pgs. 29-31) (for AY 2016-17). It was also explained that orders for both the years, i.e., AYs. 2016-17 & 2019-20, were, besides being uploaded, also mailed to the assessee at his registered email ID.

The assessment order for AY 2016-17 dated 30.11.2021 is thus valid. There has been, we agree with the Revenue, due compliance of s. 282A r/w r. 127A of the Income Tax Rules, 1962, both read-out during hearing. We find no inconsistency, as Shri Jyothison would contend, between s. 282A of the Act and r. 127A. While the former postulates that any notice or other document issued under the Act shall be authenticated, the latter provides for the manner thereof. The two provisions are to be read in conjunction and in harmony. Section 282A(1) stands amended by Finance

Act, 2016, w.e.f. 01.06.2016, substituting the words 'sign any manuscript by that authority' by the words 'sign and issue in paper format or communicate in electronic format by that authority in accordance with such procedure as may be prescribed'. Sec. 282A(2) further provides that if the name and office of the designated income tax authority is printed, stamped or otherwise written on any notice or document required to be issued, served or given for the purposes of the Act by any income tax authority, the same shall be deemed to be authenticated. Further, r. 127A provides that the printing of the name and office of the income authority in the body of the email or in the attachment thereto where the notice or other document is transmitted by way of attachment to the email, or is displayed as a part of electronic record, or likewise on the attachment to the electronic record, it would be deemed to be authenticated where the email or, as the case may be, electronic record is sent from the email address of the income tax authority or, as the case may be, displayed on its designated website. *It is clear that the law has provided for deemed authentication in view of the transmission of the documents electronically from a designated email address or per a designated website.* The name of the officer, along with designation, is clearly printed on the assessment order. That is, not only is the assessment order signed physically, it is also deemed to be authenticated. There is no case by the assessee that the conditions of r.127A have not been complied with; the Revenue stating of both uploading as well as transmission through email ID on the date of passing the assessment order, and which aspect is not in dispute.

The assessee has, in view of the foregoing, no case. He not pressing any other ground, his appeal for AY 2016-17 is dismissed as without merit.

6. AY: 2019-20:

6.1 No document for this year, however, stands adduced before us, and which explains our making a separate mention for this year. The assessment order in the appeal file, as indeed in the assessment folder called for from the Revenue, bears only

the name and designation of the extant Assessing Officer, both printed thereon. That would fulfil the condition of s. 282A where the procedure of r. 127A is complied with; both provisions, as afore-explained, being required to be read together. It is not the assessee's case that the condition/s of r. 127A is not complied with; the Revenue stating of both uploading as well as transmission through email ID, on the date of passing the assessment order, i.e., 30/9/2021, an aspect not in dispute before us. In view of deemed authentication, there is no question of applicability of the decision in *Kilasho Devi Burman* (supra). The assessee, accordingly, fails on his this plea.

6.2 At this stage, Shri Jyothison would state that the assessee seeks to withdraw his plea as to the assessment being not valid on account of non-authentication, and would rather press for adoption of net profit rate of 2%, i.e., as for the preceding years, as at 5% of the turnover. Even as explained during hearing, there is no need for the assessee to withdraw his plea, even as he may press an alternate ground, with in fact we having already disposed of the assessee's plea *qua* non-authentication. The alternate plea is admitted without the assessee having to withdraw his earlier plea. The same, however, is without merit. The assessment for AY 2019-20, as against a best judgement assessment u/s. 144 for the earlier years where the assessee had not responded to the notices u/s. 148(1), so that the AO, invoking s. 144, was by law obliged to gather materials and confront them to the assessee before making assessment, is u/s. 143(3) of the Act. The burden to prove his return of income, including the claims preferred thereby, is on the assessee (*CIT v. Calcutta Agency Ltd.* [1951] 19 ITR 191 (SC)(also see: *Lakshmiratan Cotton Mills Co. v. CIT* [1969] 73 ITR 634 (SC);and which can further only be on the basis of proper materials (*CIT v. R. Venkataswamy Naidu* [1956] 29 ITR 529 (SC)).

The objection to adoption of a higher net profit rate of 5% (of sales) for AY 2019-20, as against at 2% for the preceding years, apparently appealing, is found as without merit in the given facts and circumstances of the case. To begin with, the

assessee himself returns a profit rate of 8% (of turnover/gross receipt), even as he has the option to report a lower profit rate on getting his accounts audited. While it is again apparent that the assessee does so to avoid scrutiny of its tax returns by the Revenue – not maintaining books of account and disclosing drastically reduced turnover (for all the years up to AY 2018-19), bringing it within the qualifying limit of Rs. 1 cr. (which though stands increased to Rs. 2 cr. w.e.f. AY 2017-18), that does not detract from the fact of his returning a higher profit rate of 8%, which the statute deems as reasonable in case of a retail business, as the assessee's, where the turnover does not exceed the said limit. Though the said return was not accepted due to his residential status, that is a different matter altogether. The returns, in our view, were valid; the only debility being that the assessee could not, availing s. 44AD, avoid scrutiny thereof. Why, the turnover, found to be far in excess of the prescribed limit, in any case ousts the assessee's case for availing the summary procedure u/s. 44AD. What we seek to emphasize is the evidentiary value of the said return/s, a legal document bearing his verification. Admission, as explained in *Pullangode Rubber Produce Co. Ltd. vs. State of Kerala* [1963] 91 ITR 18 (SC), is an extremely important piece of evidence (*Bhagirath Aggarwal v. CIT* [2013] 351 ITR 143 (Ker)). That apart, Shri Shukoor, the person managing the business and, further, looking after both its purchases and sales (refer answer to Q.4), per his statement dated 15/16.10.2019, admits to disclosing sales at, on an average, 85% of the actual sales and, on being confronted with evidence as to sale suppression (for the period 1/10/2019 to 15/10/2019) found during survey, at only 60% thereof (which he ascribes to a 'mistake'), which he could not though corroborate. And, further, of a profit rate of 5% on turnover. *He, in fact, does so for all the years, from AYs. 2013-14 to 2019-20.* There is nothing to show his statement being influenced or under duress.

It is this profit rate that has accordingly been applied by the Revenue. Why, the turnover is borne out by the assessee's own software – which would attract the presumption u/s. 292C, and, in fact, endorsed subsequently by the assessee through

his counsel's, also representing before us, sworn affidavit. The difference in the two sets of turnovers, i.e., as per the software and as stated in Shri Shukoor's statement, being higher, is on account of it being an estimate, taken in the absence of the precise figures being available at the time of recording the statement, which was on the night of 15/16.10.2019. And which therefore stand corrected by the assessee subsequently, and on which aspect we observe no dispute. It is not the case of the Revenue that the assessee's turnover is even higher than that per its software. The same, if anything, proves the validity of his statement –its premise being *suppression* of turnover and profit, and which would extend to both, i.e., the turnover and the profit part thereof.

Coming to the profit rates for other years, the Revenue has, in choosing the jewellers, identified two which are public companies (or deemed to be so on account of their turnover), and whose accounts therefore could be regarded as credible. Two, the reported profit rate between 2.47% to 2.64% is on a much higher turnover, i.e., 80 to 100 times that of the assessee. That of the third company, i.e., Sky Gold Ltd., exhibits a wide variation (i.e., from 0.55% to 2.04%), not explained, and which would therefore need to be examined, has accordingly been rightly excluded from the estimation exercise. In fact, the rate of 2.04% is on a turnover of Rs.33.84 crores, which is comparable with that of the assessee, while that for the other two years, reporting 0.55% and 0.72%, is on a much higher turnover of Rs.807 cr. and 549 cr. The same, if anything, validates the inference of a decline in the profit rate on account of increased turnover. As we see it, this is due to huge administrative load concomitant to a network of branches spread across the country, while the assessee is a single unit establishment, bearing a much lower administrative expenditure. This aspect has not been examined at any stage, and our limited purview in the matter is with regard to adoption of correct profit rate in the assessee's case, i.e., for AY 2019-20; there being no dispute in its respect for the preceding years.

Here it may also be relevant to clarify that for years prior to AY 2019-20, the Revenue was, in the absence of the assessee returning income u/s. 148, constrained to

assess the income u/s. 144 of the Act, which obliged the AO to gather material and confront the same to him. That is, the Act throws the burden for making an informed estimate of the assessee's income for the relevant year/s on the AO. Though the returns voluntarily filed earlier, disclosing profit at 8%, disregarded due to the assessee being a non-resident, could validly be regarded as evidence, the Revenue has not done so. The Board requiring the assessments to be evidence-based, rather than on the basis of the statements, unless corroborated, the Revenue has proceeded on the basis of the reported profit of other firms in the business. It has failed to appreciate that all the returns, filed earlier by the assessee voluntarily, returning profit at 8%, is corroborating material, so that the lower of the two rates, i.e., 5%, as admitted, could have been applied for all the years. Be that as it may, it is not so constrained for the current year, for which the assessment is u/s. 143(3) of the Act. The assessee returning income at Rs.98,70,252, the AO has accepted the same. The same is consistent with the estimated turnover of Rs. 20 crores, yielding a profit rate of less than 5%. Shri Jyothison was in this regard specifically questioned by the Bench about the turnover per the software for f.y. 2018-19, i.e., the previous year relevant to AY 2019-20, and to which he replied as being not available. Why; only the assessee can answer. The estimate is reasonable considering that the sale for the 15 day period in October, 2019 is Rs. 176 lacs. There is, in this view of the matter, no scope, factually and, therefore, legally; the Id. CIT(A) emphasizing the latter, for any reduction therein. *That is, the assessee stands rightly assessed at income returned on 31/3/2020.*

We may clarify that we have dwelled on the facts of the case as we are, in confirming the assessed income, not in agreement with the Id. CIT(A). There is no law that the assessed income, a product of the law as applied to the facts of a case, cannot be lower than the returned income. Rather, it is only where an assessment fails, that the assessee may not be able to avoid the tax incident on his returned income (*CIT v. Shelly Products* [2003] 261 ITR 367 (SC)).

6.3 We decide accordingly.

7. In the result, the assessee's appeals are dismissed.

*Order pronounced on February 21, 2024 under Rule 34 of The Income Tax  
(Appellate Tribunal) Rules, 1963*

Sd/-  
(Manomohan Das)  
Judicial Member

Sd/-  
(Sanjay Arora)  
Accountant Member

Cochin, Dated: February 21, 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