

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

Before Shri Sanjay Arora, Accountant Member and
Ms. Kavitha Rajagopal, Judicial Member

ITA Nos. 156 & 158/Coch/2023
(Assessment Years: 2005-06 & 2008-09)

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| Parayarukandy Vettath Gangadharan Kerala Transport Company K.T.C. Building, YMCA Calicut 673001 [PAN: ADHPG8318B] | vs. | Dy. CIT, Circle - 1(1) Calicut |
| (Appellant) | | (Respondent) |

| | |
|----------------|-------------------------------|
| Appellant by: | Shri Suresh Kumar C., CA |
| Respondent by: | Smt. J.M. Jamuna Devi, Sr. DR |

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| Date of Hearing: | 06.02.2024 |
| Date of Pronouncement: | 29.04.2024 |

ORDER

Per Sanjay Arora, AM:

This is a set of two Appeals by the Assessee directed against the dismissal of his appeals contesting his assessments under section 147 read with sec.143(3) of the Income-tax Act, 1961 (the Act) dated 04.03.2015 for assessment years (AYs.) 2005-2006 & 2008-09, by the Commissioner of Income-tax (Appeals) [CIT(A)] vide his orders of even date (05.01.2023). The appeals raising a common issue, were heard together, and are being disposed of per a common order for the sake of convenience.

2. At the very outset, it was a common contention by the parties that the subject matter of the instant appeal is the same as that of the assessee's case for assessment year 2007-2008 (in ITA No.157/Coch/2023), heard by the Tribunal on 24.01.2024. Inasmuch as the same is pending as on date, a common order be passed, also incorporating the arguments that may be now advanced. As explained by the Bench, even as the parties were the same, it being before a different constitution, separate

orders would have to be passed, even as the latter part of the contention was, in the interest of justice, accepted, and the hearing proceeded with on that basis.

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

3.1 The sole issue raised in these appeals, as for AY 2007-2008, is the validity of the impugned assessments, assailed as time barred, in view of sec.150 r/w 153(3) r/w *Explanation 3* thereto. The order in the assessee's case for AY 2007-2008 stands since passed by the Tribunal on 12.04.2024. The facts and circumstances of the instant cases are the same as for AY 2007-8; the impugned assessments being made by initiating reassessment proceedings pursuant to the disposal of the appeals by the Tribunal for AY 2005-2006 (ITA No.382/Coch/2011, dated 11.01.2013 / PB pgs. 44-46) and AYs. 2007-2008 and 2008-2009 (ITA Nos.352 & 353/Coch/2013, dated 30.08.2013 / PB pgs. 10-12) in case of Kerala Transport Company (KTC), a firm in which the assessee is a partner, with the like directions, as indeed the respective cases of the opposing parties. And which, in fact, is the admitted position. The said decision would thus equally apply to and hold for the instant appeals as well.

3.2 The Tribunal in the assessee's case for AY 2007-08, after a detailed discussion in the matter, found the assessee's case as both factually and legally unsustainable; it's summarized findings reading as:

'4. *In Sum:*

The facts of the case being simple and undisputed, the issue boils down to whether the instant assessment could be said to be in consequence of a finding or direction by an appellate court, i.e., by the Tribunal vide it's order dated 30.08.2013 (ITA Nos. 352 & 353/Coch/2013) in the case of KTC, i.e., in view of the restricted meaning of the said term as explained in *Murlidhar Bhagwandas* (supra), followed by *Rajinder Nath v. CIT* [1979] 120 ITR 14 (SC). The same is clearly so, with, rather, there being instances of Hon'ble Courts, with a view to restore justice, *suo motu* directing assessment of income in the hands of the other, intimately connected person. The extended time limit, i.e., w.r.t. s. 153(3)(ii) r/w s. 150, shall accordingly apply. The assessee's challenge before us, while not pressing

this aspect, rests on the non-applicability of *Explanation 3* thereto which, in view of our finding aforesaid, is render(ed) superfluous or of no consequence. *Without prejudice*, a firm being not a juristic person, with no legal identity, but only a compendious name of all the partners constituting it, though assessable separately under the Act, hearing the partner/s is integral to the hearing of the firm. A partner, thus, is to be regarded as heard when a firm, in which he is a partner, is heard. No prejudice, which the law, by providing for the condition of prior hearing, in essence seeks to provide, in our opinion, stands caused to any of the partners of the firm, KTC, when the Tribunal opined in the matter vide it's order dated 30.8.2013 (ITA No. 352/Coch/2013 for AY 2007-08), and the requirement of law, as enshrined in *Explanation 3* to s. 153(3)(ii), is met. That is, either way, the saving of sections 150(1) and 153(3)(ii) is therefore applicable in the instant case. We decide accordingly.'

Further, though Shri Suresh would draw our attention to the difference in the language employed by the Tribunal in passing it's orders *qua* KTC, both read out during hearing, we find no such difference. In either case, the Tribunal has deleted the addition u/s. 2(22)(e) of the Act in the hands of the assessee, KTC, solely only the basis of the same being assessable in the hands of the individual partners who are undisputedly the shareholders of the firm, a finding by the AO, which it observes, had not disputed at any stage, i.e., an admitted fact. The words 'considered opinion' in para 4 of it's order dated 30.8.2013 would be of no moment inasmuch as it only conveys the Tribunal's findings in the matter.

3.3 We, accordingly, for the same reasons as inform the order by the Tribunal in the assessee's case for AY 2007-08 *supra*, adopting the same, find the impugned assessments as in time. The assessee's challenge fails. We decide accordingly.

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

Order pronounced on April 29, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-
(Kavitha Rajagopal)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin; Dated: April 29, 2024

Devdas G*

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