

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

Before Shri Sanjay Arora, AM & Shri Soundararajan K, JM

ITA No.886/Coch/2022 : Asst.Year 2017-2018

Koonammavu Thomas Johny Koonammavu House PO Kanimangalam Thrissur - 680027 [PAN:AMOPJ1087E]	vs.	The Income Tax Officer Ward 2(2) Thrissur.
(Appellant)		(Respondent)

Appellant by:	Sri. Dileep Balachandran, CA
Respondent by:	Smt. J.M. Jamuna Devi, Sr. DR

Date of Hearing:	08.05.2024
Date of Pronouncement:	28.05.2024

ORDER

Per Sanjay Arora, AM:

This Appeal by the Assessee is directed against the Order dated 29.07.2022 by the Commissioner of Income-tax (Appeals), Income Tax Department [CIT(A)], dismissing the assessee's appeal contesting its assessment under section 144 of the Income-tax Act, 1961 (the Act), dated 30.12.2019 for assessment year 2017-2018.

2. At the outset, it was submitted by Sri. Balchandran, the ld. counsel for the assessee, that there had admittedly been no representation by the assessee, i.e., apart from a small write-up, requesting for adjournment, to the ld.CIT(A) on 12.01.2021, throughout, i.e., either before the assessing or the first appellate authority. The non-representation before the Assessing Officer (AO) was on account of his total faith in his counsel, Sri Velath Ranjit Raghavan (PAN:AHWPR8044C), to manage his tax assessment proceedings. Besides, his daughter had been hospitalised in December 2019, towards which discharge summary dated 19.12.2019 is enclosed. The assessee, who is not even a matriculate, is a salaried employee drawing a salary of Rs.18,000

per month. He had during the relevant previous year, i.e., fy 2016-17, availed gold loan, taken on pledge of gold belonging to self and family, from South Indian Bank, Koorkenchery, for Rs.30.90 lakh. The sum was advanced to friends and relatives for personal or business purposes in the aftermath of demonetization scheme of the Union of India. In addition, he had introduced Rs.3.17 lakh from his own sources. It was the return of these sums, deposited cash in his bank accounts, to meet the repayment of the bank loan, that has been regarded as unexplained by the AO, deeming it as income u/s.69A of the Act (Rs.21,90,500). The outgoing to various parties, on capital account, were deemed as purchases, 8% whereof is estimated as profit (Rs.1,96,436). The non-cash credits in the bank accounts were, again, deemed as unexplained investment, and brought to tax u/s.69 (Rs.21,62,579), making a total addition of Rs.45,49,515. The same stands confirmed in first appeal, again, principally for the same reason, i.e., non-representation, and, therefore, failure to explain the nature and source of the cash and non-cash credits in his bank accounts. The assessee, who did not return any income for the year, he would, adverting to a computation of income placed on record, continue, admits to a gross total income (GTI) of Rs.4.98 lakh, which includes the transactions in his bank accounts; interest income of Rs. 3.22 lacs; and the interest paid to bank (Rs. 0.40 lacs). He would close with a prayer for restoration back to the file of the AO for, in the interest of justice, being allowed one final opportunity to the assessee, a man of small means, making his ends meet through labour and some part-time business, to present his case. Smt. Devi, the Id. Sr. DR, would support the orders by the authorities below.

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

4.1 Our first observation in the matter is the non-alluding to lack of opportunity for being heard by the assessee before any authority. *What, we wonder, can an authority do expect providing reasonable opportunity of hearing prior to adjudication?* The reference to his daughter's illness in December, 2019, is misplaced, if not misleading, as notice u/s. 142(1) dated 14.5.2019 itself made it clear that non-representation by

27/5/2019 shall attract an assessment u/s.144. The return was selected for being subject to the verification procedure under the Act under operation 'clean money', and the AO, bound to complete the assessment within the statutory time period, had to *per force* rely on the information gathered from bank through recourse to s.133(6).

4.2 Be that as it may, we find the assessment as seriously deficient. It is only the credit in the bank accounts, two in number, in excess of the sum advanced by bank as loan, that could be regarded as unexplained and deemed as income, either as unexplained money u/s.69A or, as the case may be, investment u/s.69. One of the two bank accounts referred to in the assessment order, as it appears to us, is the loan account, and the other, a saving/current deposit account inasmuch as the same branch would not open two similar accounts of a person. The source of credit would thus be clear to anyone making an inquiry with the bank in relation to the assessee's accounts, with in fact the first and the most basic question to the Bank ought to be the number of the assessee's bank accounts and their nature. Sure, source/s of the gold pledged with the Bank may not explained, and liable to be added u/s.69/69A. That, however, would be presumptuous in the absence of any verification in its respect, either from the assessee or from the bank, who may, as per its rules, inquire into the source of the gold pledged with it for availing gold loan in view of the provisions of the Money Lending Act or any other law incident on pawning, or under its internal guidelines. Further, the assessee's address, as indeed his occupational details furnished to the bank, would have revealed him to be, where so, a salaried person, leading to, on inquiry, details of his salary income, which is liable to be taxed and, further, may also explain, even if in part, the source of cash deposit, which cannot be taxed again on it being deposited in the bank account. We do not, by any means, in stating so, imply to exonerate the assessee, who has been not responsive; rather, recalcitrant, exhibiting a conscious disregard of his statutory obligations. The notice u/s. 142(1) would have been served only on the assessee, and who only could provide his representative the relevant details. It is, clearly, not a case of a delayed or partial

response, but of a complete, deliberate non-response, extending to the appellate proceedings. That, nevertheless, shall not justify an assessment grossly inconsistent with the facts of the case. Besides tax and interest, it has grave penal consequences.

5. Under the circumstances, we, in the conspectus of the case, and for the reasons afore-stated, only consider it fit and proper to, setting aside the impugned order, restore the assessment back to the file of the AO for a consideration afresh on merits, in accordance with law, subject to a cost of Rs.25,000 (twenty five thousand) on the assessee, to be deposited under the appropriate head of account to the credit of the Central Government. Sri Balachandran, on this being proposed by the Bench, sought one month's time to do so, which we allow upto 30.06.2024. The AO shall adjudicate per a speaking order after allowing the assessee a reasonable opportunity of hearing, by issuing definite findings of fact based on the material on record, in accordance with law, including as to time limitation. He is at liberty to draw adverse inference/s, as permissible under law, in case of continued non-cooperation. It is, we make it clear, a case of a complete set aside of the assessment. We decide accordingly.

6. In the result, the appeal by the assessee is allowed for statistical purposes on the afore-said terms.

Order pronounced on May 28, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-
(Soundararajan K.)
Judicial Member
Cochin, Dated: May 28, 2024

Sd/-
(Sanjay Arora)
Accountant Member

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 Bench