

IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH : COCHIN

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA.No.671/COCH./2023  
Assessment Year 2013-2014

Kesavan Damodran Gopala Krishnan, Elemecs Wedding Castle, Link Road, KAYAMKULAM – 690 502. Kerala. PAN AKQPG0226J	vs.	The Income Tax Officer, TRIVANDRUM.
(Appellant)		(Respondent)

For Assessee :	Shri Shakunth, C.A.
For Revenue :	Smt. V. Swarnalatha, Sr. DR

Date of Hearing :	20.08.2024
Date of Pronouncement :	22.08.2024

**ORDER**

**PER SATBEER SINGH GODARA, J.M.**

This assessee's appeal, for the assessment year 2013-2014, arise against the order of the learned CIT(A)-12, Bengaluru, Bengaluru's order in DIN No.ITBA/APL/M/250/2023-24/1054519552(1), dated 21.07.2023, in proceedings u/sec.143(3) of the Income Tax Act, 1961 (in short the "Act").

Heard both the parties. Case file perused.

2. During the course of hearing, the learned counsel for the assessee submitted that the learned CIT(A) has erred in law and on facts in confirming addition of Rs.12,85,882/- respect of advertisement and publicity expenses in advance in the earlier year and claimed as revenue expenditure in this year; sustaining the addition of Rs.4,28,69,250/- u/sec.68 and sustaining the addition of Rs.71,68,480/- in respect of rent advance.

3. Learned counsel is fair enough in not pressing assessee's above extracted first and foremost substantive ground. Rejected accordingly.

4. Next comes the assessee's endeavour to treat the impugned unexplained cash credits addition of Rs.4,28,69,250/- as his business income and therefore, the only inference that could be drawn is that the impugned sum represents his business as well as than unexplained cash credits. We are of the considered view that this is essentially is a mixed question of law and facts wherein it is the assessee's bounden duty to plead and prove all the relevant facts which he has failed to discharge. We accordingly not impressed by the assessee's sole substantive ground in absence of any appropriate reply coming from his side. No other argument has been raised so as to rebut the learned

lower authorities action making sec.68 addition. This second substantive ground stand declined therefore.

5. Lastly comes rent advance addition of Rs.71,68,480/- wherein the assessee claims to have paid to his landlord in the preceding assessment year and recorded in the books in the impugned assessment year. The Revenue has drawn strong support from the fact that the assessee has not been able to plead and prove all the relevant facts vis-à-vis advances made in the said earlier assessment year followed by return thereof in the relevant previous year. Faced with this situation, learned counsel submits that the assessee is now ready and willing to file all the relevant details before the Assessing Officer if one more effective innings has been given. We thus deem it appropriate in the larger interest of justice to restore the assessee's instant last substantive grievance back to the Assessing Officer to decide the issue by giving effective opportunities to the assessee, subject to the rider that it is the assessee's sole risk and responsibility to plead and prove his case before him with all relevant documents. Ordered accordingly.

6. This assessee's appeal is partly allowed in above terms.

Order pronounced in the open Court on 22.08.2024.

Sd/-  
[AMARJIT SINGH]  
ACCOUNTANT MEMBER

Sd/-  
[SATBEER SINGH GODARA]  
JUDICIAL MEMBER

Cochin, Dated 22<sup>nd</sup> August, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The CIT(A) concerned.
4.	The CIT concerned
5.	The D.R. ITAT, Cochin Bench, Cochin.
6.	Guard File.

//By Order//

//True copy//

Sr. Private Secretary, ITAT, Cochin Bench,  
Cochin