

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH : COCHIN

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

ITA.Nos.367, 368 & 369/COCH./2014
Assessment Years 2004-05, 2005-06 & 2006-07

Meezan Realtors Private Ltd., 5/3410, II-Level, Galleria Trade Centre, Markaz Complex, CALICUT. Kerala. PAN AAECM7939D	vs.	The ACIT, Circle-1(1), KOZHIKODE. Kerala.
(Appellant)		(Respondent)

For Assessee :	Shri Raghunathan, Advocate
For Revenue :	Smt. V. Swarnalatha, Sr. DR

Date of Hearing :	20.08.2024
Date of Pronouncement :	23.08.2024

ORDER

PER SATBEER SINGH GODARA, J.M.

These assessee's three appeals, ITA.Nos.367, 368 & 369/COCH./2014, for assessment years 2004-05, 2005-06 & 2006-07, arise against the CIT(A), Kozhikode, Kozhikode's as many order nos.ITA-86 & 86A/R1/CIT/ CLT/2011-12 & Appeal Nos.ITA.179, 180, 172, 173/R1/CIT/ CLT/2013-14, all dated 05.02.2014, in proceedings u/sec.144 r.w.s.147 of the Income

Tax Act, 1961 (in short the "Act"), assessment year-wise, respectively.

Heard both the parties. Case files perused.

2. It emerges at the outset that the assessee's former twin appeals ITA.Nos.367 & 368/Coch./2014 raise an identical issue of correctness of sec.68 unexplained cash credits addition; representing share application/premium money; amounting to Rs.70 lakhs and Rs.35.10 lakhs in assessment years 2004-2005 and 2005-2006; respectively. Learned counsel refers to the assessee's additional evidence application placing on record a copy of the order dated 23.04.2019 passed by the Deputy Director of Enforcement [under the provisions of Foreign Exchange Amendment Act, 1999] that the said prescribed competent authority has levied Rs.5 lakhs penalty after concluding that the appellant had violated the provisions of "FEMA" law whilst receiving Rs.50 lakhs in the first and foremost assessment year 2004-2005 herein. He accordingly seeks to buttress the point that given a finding coming from the statutory authority under FEMA law; it is clear that he is deemed to have discharged the onus of proving identity, genuineness and creditworthiness of the sum in question of Rs.50 lakhs atleast in

the first and foremost assessment year 2004-2005 which forms the subject matter of sec.68 addition before us.

3. The Revenue's case on the other hand is that since the assessee has filed the instant additional evidence for the first time, the same requires Assessing Officer's afresh factual verification.

4. We find merit in the Revenue's instant vehement arguments since all these FEMA proceedings' details have not seen light of the day in the instant income tax proceedings. We thus accept the assessee's substantive grievance only to the tune of Rs.50 lakhs in principle subject to the Assessing Officer's factual verification of all these intervening developments of assessment year 2004-2005 in ITA.No.367/Coch./2014. Ordered accordingly.

5. We now left with the remaining share application money/premium addition of Rs.20 lakhs in assessment year 2004-2005 and Rs.35,10,000/- in assessment year 2005-2006 (supra). Learned counsel has vehemently argued that not only the impugned sum(s) had come from banking channels in assessee's account(s) but also all the relevant details thereof

stood duly filed in the course of assessment as well as before the CIT(A) in the lower appellate proceedings. We are of the considered view that mere filing of such documentary evidence hardly discharges the assessee's onus in light of Sumati Dayal vs. CIT [1995] 214 ITR 801 (SC); CIT vs. Durga Prasad More [1971] 82 ITR 540 (SC) and NRA Iron & Steel Pvt. Ltd., vs. PCIT [2019] 412 ITR 161 (SC). Faced with this situation, we confirm both the learned lower authorities respective findings regarding the impugned balance figures of Rs.20 lakhs in assessment year 2004-2005 and Rs.35,10,000/- in assessment year 2005-2006, respectively. The assessee's instant first and fore most appeal ITA.No.367/Coch./ 2014 is partly allowed for statistical purposes and ITA.No.368/Coch./2014 for the assessment year 2005-2006 is dismissed in above terms.

6. Lastly comes the assessee's third appeal ITA.No.369/ Coch./2014 for the assessment year 2006-2007. Learned counsel is indeed very fair in filing before us a copy of the relevant document found and seized during the course of search/survey leading to the impugned addition of Rs.429 lakhs u/sec.68 of the Act representing the alleged cash credits. Learned counsel submits that neither there is any signature nor the relevant

details in the said document which could lead to the impugned addition. He further quotes CBDT's landmark circular(s) dated 10th March, 2003 and 16th December, 2014 that mere admissions or confessions made during the course of search or survey; as the case may be; hardly carry any significance and therefore, even if the Revenue's arguments are accepted the foregoing document is only a dumb one than supported by relevant cogent details.

7. Learned DR on the other hand referred to all the relevant entries in the documents which has come from the assessee's side itself. Her case is that it duly indicates heading i.e., "profit and loss account' for the period from 01.04.2003 to 27.05.2008. Learned DR accordingly drawn strong support from the impugned addition based on the said seized document.

8. We have given our thoughtful consideration to the foregoing rival stands and find no merit in assessee's arguments. We make it clear first of all that the clinching fact admittedly is that the document hereinabove had indeed been found during the course of search/survey only. That being the clinching fact, we are of the considered opinion that the statutory presumption u/sec.292C(1) of the Act [inserted by the Finance Act, 2007 with retrospective effect from 01.10.1975] indeed comes into play. We

wish to emphasize it that the impugned addition is not an isolated figure since it contains a list of similar other items which have gone undisputed from the assessee's side. The only inference which arises in these peculiar facts and circumstances is that the assessee's said document is indeed a self-explanatory one giving rise the learned lower authorities action making the impugned addition in his hands.

9. Learned counsel's next submissions that it was incumbent for the departmental authorities to prove that the said document pertains to the assessee. We are of the considered view that once the assessee has failed to rebut sec.292C statutory presumption by explaining these entries in the document impounded; there is no other option with the Assessing Officer but to invoke sec.292C of the Act for the purpose of making the addition in question. We accordingly reject the assessee's instant sole substantive ground in his last appeal ITA.No.369/Coch./2014. Dismissed.

10. To sum-up, assessee's first and foremost appeal ITA.No.367/Coch./2014 is partly allowed for statistical purposes, and the remaining two appeals ITA.Nos.368 & 369/Coch./2014

are dismissed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 23.08.2024

Sd/-
[AMARJIT SINGH]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Cochin, Dated 23rd 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