

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

**Before Shri Satbeer Singh Godara, Judicial Member &
Shri Amarjit Singh, Accountant Member**

ITA No.99/Coch/2024 : Asst.Year 2011-2012
ITA No.100/Coch/2024 : Asst.Year 2012-2013
ITA No.101/Coch/2024 : Asst.Year 2013-2014

Sri.Ukkandath Dileepan Ukkandath House, Uroob Nagar Pallapram, Ponnani PO Malappuram – 679 577. PAN : ARIPD3004C.	v.	The Assistant Commissioner of Income-tax (OSD) (International Taxation) Kozhikode.
(Appellant/Applicant)		(Respondent)

Appellant by : Sri.C.Venugopal, Advocate
Respondent by : Smt.V.Swarnalatha, Sr.DR

Date of Hearing : 14.08.2024	Date of Pronouncement : 14.08.2024
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ORDER

Per Bench :

These assessee's three appeals ITA Nos.99/Coch/2024, 100/Coch/2024 & 101/Coch/2024, arise against the CIT(A)/NFAC, as many DIN & Order Nos.ITBA/APL/S/250/2023-24/1058931560(1) (for asst.year 2011-2012), ITBA/APL/S/250/2023-24/1058932761(1) (for asst.year 2012-2013), ITBA/APL/S/250/2023-24/1058933385(1) (for asst.year 2013-2014), all dated 20.12.2023, in proceedings u/s.143(3) / 143(3) r.w.s. 147 of the Income-tax Act, 1961; in short "the Act" hereinafter, assessment year-wise, respectively.

Heard both the parties at length. Case files perused.

2. We note at the outset that the assessee pleads the following grounds in his "lead" appeal ITA Nos.99/Coch/2024,

for first and foremost assessment year 2011-2012 reading as follows:-

“(1) The order of the Commissioner of Income Tax (Appeal)-12, Bengaluru is contrary to law, facts and circumstances of the case.

(2) The Commissioner of Income Tax (Appeal) erred in confirming the validity of the reopening of the assessment u/s 147 by issue notice u/s 148 of the I.T.Act, 1961.

(3) The Commissioner of Income Tax (Appeal) has erred in holding that the amount of Rs.28,90,077/- deposited in the appellant's account when such deposit in the NRI account of the appellant was relating to travel agency business towards reimbursement of costs.

(4) The Commissioner of Income Tax (Appeal) has erred in holding that the amount deposited should be treated as income of the appellant when such amounts were actually received by the appellant on account of his employer viz. M/s.Delta Travel and Holidays (LLC) situated in Dubai and when such receipts were not in the nature of charges recovered by the appellant from the customers.

(5) For these and other additional grounds of appeal that may be adduced at the time of hearing, the order of the Commissioner of Income Tax (Appeal) -12, Bengaluru is opposed to law and unsustainable in the facts and the circumstances of the case.”

3. The CIT(A)/NFAC's detailed discussion upholding Assessing Officer's action qua validity of sec.148 proceedings as well as making business income addition of Rs.28,90,077, reads as under:-

“6. FINDINGS AND DECISION

The grounds of appeal, statement of facts, the submissions made by the appellant in response to the hearing notices and the order of the Ld. AO have been carefully considered. The grounds of appeal are adjudicated as under.

6.1 The first four grounds of appeal relate to the appellant's objections against the reassessment proceedings initiated in

his case. The appellant has challenged the issue of notice u/s 148 by the ITO, Ward-4, Tirur as lacking jurisdiction since the appellant was a non-resident. However, as discussed by the AO in the impugned order, the PAN jurisdiction of the appellant based on his local address was with ITO, Ward-4, Tirur who issued the notice u/s 148. The AO's reply to the objections raised by the appellant is reproduced below.

"The case was re-opened u/s 147 on the ground that the investment made by you was not explained and no return of income was filed. The notice was issued by ITO, Ward 4, Tirur who was having territorial jurisdiction over your residential address and your residential status was not known to the officer at the point of the initiation of the proceedings u/s 147. The PAN jurisdiction was also with ITO, Wand 4, Tirur only. You have filed the return of income on 28.06.2018 and your AR appeared before the Assessing Officer. The point regarding your residential status was raised then only and the case was instantly transferred to the officer having the correct jurisdiction. Subsequently the notice us 143(2) and 142(1) were issued by the officer having jurisdiction over your case. Your AR filed a letter on 10.08.2018 in which the jurisdiction was not questioned. The proceedings are now being carried on by this ward and hence the objection regarding the jurisdiction is not acceptable.

Regarding the dispute on the reason for re-opening, it may be noted that during the course of enquiry with DDIT(Inv.), Palakkad, you had explained that the investment in M/s Rouba Residency Hotels Pvt. Ltd. was out of the withdrawals made during the period from 01.04.2008 onwards from NRE/NRO account maintained by you at Federal Bank It was also understood that you had maintained an SB Account of Federal Bank in which huge deposits totalling to Rs.28,90,077/- was made and no explanation for source of the same was filed. As the tall unexplained investment was above the income not chargeable to income tax, the Assessing Officer has made up her mind believing that the income chargeable to tax had escaped assessment"

The issue of the notice u/s.148 by the AO having jurisdiction over the appellant's PAN is in order as the appellant's local residential address fell within the jurisdiction of the ITO Ward 4 Tirur. In the impugned order, the AO has stated that the PAN directory in the systems does not have a column to show the residential status of the appellant and at the time of issuing of notice, the jurisdiction of the appellant as per the website incometaxindiaefiling.gov.in was with the ITO, Ward 4, Tirur only. Thereafter, the case was transferred to the International

Taxation Ward Kozhikode once the AR submitted details of the appellant's non-resident status. It is noted from the impugned assessment order that the notice u/s 148 was issued on 29.03.2018. The appellant's representative appeared before the ITO, Ward-4, Tirur on 29.05.2018 with an authorization from the appellant dated 30.04.2018. Subsequently, the appellant filed his return in response to the notice u/s 148 on 28.06.2018. In the case of Abhishek Jain vs ITO (2018] 94 taxmann.com 355, the Hon'ble Delhi High Court had emphasised the provisions of section 124(3) and held that the jurisdiction of an AO cannot be called into question after the expiry of one month after the date of service of a notice u/s 148. The appellant's objections regarding the issue of the notice u/s 148 are not tenable in the light of the foregoing discussion.

6.2 The appellant has also raised an objection to the AO forming a belief that the appellant's income had escaped assessment. From the facts of the case discussed in para 2 supra, it is evident that the AO had sufficient reason to believe that the appellant's income had escaped assessment. The tangible material brought on record by the AO is the fact that information was available with the AO regarding the investment made by the appellant in M/s Rouba Residency Hotels Pvt. Ltd. during the year under consideration. The appellant had not filed any return of income despite having made this investment. Given the above factual matrix, it is fair to conclude that at the time of the issue of notice u/s 148, the AO had grounds to believe that the appellant's income had escaped assessment. The principle that a prima facie belief that income has escaped assessment is a sufficient ground for reopening of an assessment has been upheld in various decisions including, inter alia, Raymond Woollen Mills vs ITO and Others [1999] 236 ITR 34 (SC) and Nova Promoters and Finlease Pvt. Ltd. vs DCIT [2012] 18 taxmann.com 217(Delhi). The objection raised by the appellant on this account is therefore unfounded. Hence the reopening of the appellant's assessment is held to be in order. Grounds of appeal nos. 1 to 4 are accordingly dismissed.

6.3 Grounds of appeal nos. 5 and 6 deal with the merits of the addition made by the AO. The appellant was maintaining NRO SB Account No. 10044100003330 in Federal Bank, Ernakulam North, North in which a total deposit of Rs.28,90,077/- was made during F.Y.2010-11. In the impugned order, the AO has noted that these amounts were deposited either as transfer from various other accounts or in cash and these amounts were subsequently withdrawn mainly in cash by the appellant or some other person. The

appellant has claimed that the receipts into his NRO account were his business receipts and since the appellant was a resident of the UAE, these receipts would not be taxed in India. The appellant has claimed that the source of the deposits relates to the business carried on by him in Dubai.

6.4 The appellant's submissions reproduced at para 5 (supra) have been carefully considered. The appellant has submitted a current residence permit for the period 23/11/2021 to 22/11/2024 and not for the year under consideration. From the copy of the commercial licence submitted by the appellant, it is seen that the appellant's share in M/s Delta Travels and Holidays LLC was 25%. The account into which the deposits were made was the appellant's NRO Savings Bank Account and not the account of M/s Delta Travels and Holidays LLC. The AO in Para 17 of the impugned order has also documented that out of the receipts into the appellant's account, no amount was transferred to the account of the appellant or any other account and that these amounts were utilized for the investment of the appellant in India. Even during the appellate proceedings, it has not been substantiated by the appellant that these amounts were utilized for the purpose of his travel agency business in Dubai. Even if the appellant's claim that these receipts relate to the visa fee and expenses collected by the appellant from tourists and other visa applicants in India is accepted, the source of the appellant's income is in India. Section 5(2) specifies that in the case of a non-resident, income that is received or deemed to be received in India would be subject in tax in India. Since the deposits were made into the appellant's NRO Savings Bank Account, they represent the income of the appellant in India. Further, the appellant has given no details of expenses incurred for earning this amount and hence the addition of the entire amount is sustained.

7. In the result, the assessee's appeal is dismissed.”

4. Coming to the first and foremost legal issue of the validity of sec.148/147 proceedings, we find that neither the assessee has filed his paper book nor placed on record the corresponding reopening reasons. Rejected accordingly.

5. Next coming to the business income addition of Rs.28,90,077, we make it clear that both the lower authorities

are more than fair on the one hand in treating the assessee's foregoing sums under the head business income. The fact also remains that there is no corresponding business expenditure either claimed or allowed in both the lower proceedings. It is in this factual background that we are of the view that the assessee's entire receipts; even if not supported by the corresponding business expenditure, could not be in entirety. Faced with this situation, we conclude that even if the assessee has not proved any business expenditure, larger interest of justice would be met in case we confirm this business income addition of Rs.28,90,077 to a lumpsum amount of Rs.18,90,007 in these peculiar facts and circumstances. The assessee gets relief of Rs.10,00,000. Necessary computation shall follow. This "lead" appeal ITA No.99/Coch/2024 is partly allowed.

6. We now advert to assessee's latter twin appeals ITA Nos.100/Coch/2024 and 101/Coch/2024 for assessment years 2012-2013 and 2013-2014 respectively. Learned DR submits that the business income addition in both these cases is of Rs.18,04,277 and Rs.12,26,940; assessment year-wise, respectively. We proceed on the basis of our foregoing reasoning to restrict the impugned addition to Rs.10,00,000 and Rs.7,00,000, on estimation principle. Ordered accordingly.

7. Learned DR submits that the assessee had further raised three substantive grounds before the CIT(A) seeking to delete unexplained investment addition of Rs.10,31,300 and

Rs.21,09,400, assessment year wise, respectively. We thus deem it appropriate to restore the instant remaining issues raised in both the appeals to the Assessing Officer for re-adjudication by applying “telescoping” method. Ordered accordingly.

8. No other arguments or grounds raised in the instant appeals.

9. To sum up, these assessee’s three appeals ITA No.99 to 101/Coch/2024 are partly allowed in the foregoing terms. A copy of the common order be placed in the respective case files.

Order pronounced in the open court on this 14th Day of August, 2024.

Sd/-
(Amarjit Singh)
A CCOUNTANT MEMBER

Sd/-
(Satbeer Singh Godara)
JUDICIAL MEMBER

Cochin ; Dated : 14th August, 2024.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Concerned.
4. The CIT Concerned.
5. The DR, ITAT, Cochin.
6. Guard File.

Asst.Registrar/ITAT, Cochin