IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

Before Shri Waseem Ahmed, Accountant Member &
Shri Soundararajan K, Judicial Member

ITA No.981/Coch/2022: Asst.Year 2011-2012

Sri.Vettuvanthodi Abdul Azeez Selmec, MelekunathParamb B.C.Road, Cheruvannur Feroke – 673 631. **PAN : AEYPA7989J.**	v.	The Assistant Commissioner of Income-tax, Circle 2(1) Kozhikode.
(Appellant)		(Respondent)

Appellant by :Sri.K.Rishal, Advocate
Respondent by : Ms.Leena Lal, Sr.AR

Date of Hearing : 03.10.2024		**Date of Pronouncement : 21.10.2024**

O R D E R

Per Bench :

This appeal by the assessee arises out of the order of the CIT(A)/NFAC, Delhi, dated 11.10.2022in the proceedings u/s143(3) of the Income-tax Act, 1961; in short "the Act" hereinafter, in respect of assessment year 2011-2012.

2. The first issue raised by the assessee is that the learned CIT(A) erred in confirming addition of Rs.34,49,929 under the provisions of sec.68 of the Act. The Assessing Officer during the course of assessment proceedings found that there was addition to the capital account of the assessee to the tune of Rs.76,97,615, but the source for such addition to the extent of Rs.34,49,929 was not substantiated. Therefore, the AO

treated the same as unexplained cash credit u/s68 of the Act and added to the total income of the assessee. The view taken by the AO was subsequently confirmed by the ld.CIT(A).

3. Being aggrieved by the order of the ld.CIT(A), the assessee is in appeal before us. The learned AR before us submitted that he has been instructed not to press the impugned amount of alleged unexplained cash credit introduced by the assessee to the tune of Rs.34,49,929 except the sum of Rs.8 lakhs received from his wife. It was submitted by the learned AR that the money was withdrawn by the wife of the assessee in cash, which was introduced as capital contribution by the assessee. The learned AR in support of his contention has drawn our attention on the various amount withdrawn by the wife of the assessee placed at pages 6 and 7 in the order of the ld.CIT(A). According to the ld.AR, the Revenue has not brought on record any material suggesting the amount withdrawn by the wife of the assessee was utilized for any other purpose other than the capital contribution by the assessee.

4. On the other hand, the learned Departmental Representative vehemently supported the order of the authorities below.

5. We have heard the rival contentions of both the parties and perused the materials available on record. The source of capital contribution by the was disbelieved by the lower authorities to the tune of Rs.8 lakh out of the total money

received for Rs.9 lakhsfrom the wife on the reasoning that there was no income tax return filed by the wife of the assessee. However, in our considered view, non-filing of the return of income cannot be a ground for rejecting the statement of the assessee.

5.1 In the present case, the assessee produced the documents for the withdrawal of the fund by his wife and there was no iota of doubt raised by the authorities below about such cash withdrawal from the bank account. Similarly, there was no information available on record suggesting that the cash withdrawn from the bank has been used by the assessee for some other purposes. Accordingly, we disagree with the findings of the authorities below. At this juncture, it is equally important to note that the amount received through banking channel by the assessee from the bank account of the wife for Rs.1 lakh was accepted as genuine. As such, the action of the authorities below is contradictory in a way that banking entry was believed genuine but the entries through the cash though withdrawn from the bank has not been believed as genuine. Accordingly, we set aside the findings of the ld.CIT(A) and direct the AO to delete the addition made by him.

6. The next issue raised by the assessee is that the ld.CIT(A) erred in confirming the addition of Rs.21,88,997 on account of non-deduction of TDS. At the outset, the ld.AR before us submitted that the disallowance on account of non-deduction of TDS cannot be made in entirety by virtue of

amendment made to sec40(a)(ia) of the Act by the Finance Act 2014. Accordingly, the ld.AR contended that the disallowance can be restricted to Rs. 6,56,700.00 only being 30% of Rs.21,88,997.00.

7. On the contrary, the ld.DR could not controvert the argument advanced by the ld.AR of the assessee.

8. After hearing both sides and upon perusal of the relevant materials on record, we find force in the argument advanced by the ld.AR for the assessee. There was an amendment by the Finance Act 2014 under the provisions of section sec.40(a)(ia) of the Act, which has been held retrospective being curative. Accordingly, we hold that the disallowance on account of non-deduction of TDS can be restricted to the tune of 30% as discussed above. Hence, ground of appeal is partly allowed.

9. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on this 21st day of October, 2024.

Sd/-	**Sd/-**
(Soundararajan K)	**(Waseem Ahmed)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Cochin ; Dated : 21st October, 2024.
Devadas G*

Copy to :
1. The Appellant.
2. The Respondent.
3. The CIT Concerned.
4. The DR, ITAT, Cochin.
5. Guard File.

Asst.Registrar/ITAT, Cochin