

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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No.957/Coch/2022
Assessment Year: 2011-12

Thattantavita Asharaf Thattantavita House PO Thuneri Vadakara Kozhikode District 673514 PAN NO : AIVPA7829G	Vs.	ITO Ward-2(2) Kozhikode
APPELLANT		RESPONDENT

Assessee by	:	Sri R. Krishnan, A.R.
Revenue by	:	Sri Ilaiyaraaja K.S., Sr. D.R.

Date of Hearing	:	01.07.2024
Date of Pronouncement	:	01.07.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of NFAC for the assessment year 2011-12 dated 28.9.2022. The assessee raised following grounds:

1. *“The orders of the Assessing Officer and of the First Appellate Authority are against law, facts and circumstances of the case.*
2. *When substantial sum of money is available in the hands of the assessee as share of profits as per order of Settlement Commission, the Assessing officer as well as the CIT (Appeals) has grossly erred in not applying or telescoping it to the amount of the investment of Rs. 6,96,960/-, as the department has not brought any evidence to show that the appellant has used the amount for any other purpose.*
3. *When the assessee has not received the income as per original return, the Assessing Officer has erred in treating a nonexistent income as income, as it will amount to taxing an unreal income even if the*

appellant is not eligible for any refund as 148 proceedings are not intended for the benefit of appellant.

4. *As the Superior Authority accorded sanction blindly, mechanically and without application of mind for issue of notice u/ s. 148, the assessment order is legally invalid. The CIT (Appeals) has not specifically mentioned why the decisions cited by the appellant are not applicable to the appellant's case.*
 5. *The reasons given by the Assessing Officer are not valid reasons for the issue of notice u/ s. 148, when the Assessing officer has not brought any nexus between the amount deposited and appellant's income.*
 6. *Subsequent to the assessment of the appellant as a partner of the firms wherein the department conducted search u/s. 132 and as all these firms settled their case before the Income Tax Settlement Commission, Additional Bench, 640, Anna Salai, Nandanam, Chennai-600035 and the Settlement Commission treated all these firms as AOP's of more number of persons, the order of the Assessing Officer in view of the Settlement Commission's Order has no merit, more particularly when the notice u/ s. 143(2) was issued on 18-12-2018 after the order of the Settlement Commission dated 01-06-2018.*
 7. *As the assessment proceedings against the appellant is based on the search conducted at the premises of another person, and as the CIT (Appeals) in Para 4.9 of the order confirms this fact, the proceedings ought to be initiated under Section 153C of the Act. That express statutory mandate not being followed in the case of the appellant, the assessment proceedings gets invalidated.*
 8. *For these and other grounds that may be raised at the time of hearing, the demand as per assessment order may kindly deleted.”*
- 2.** At the time of hearing, the ld. A.R. not pressed ground Nos.3 to 7. Accordingly, these grounds are dismissed as not pressed. The only ground left with us is ground No.2 as above.
- 3.** After hearing both the parties, we are of the opinion that same issue was considered by NFAC in the case of Puthiya Purayil Aysha vide order dated 20.2.2024 PAN BKYP8225Q DIN & order No.ITBA/NFAC/S/250/2023-24/1061202517(1) wherein observed as under:

“6.1.7 The findings of the AO was considered. The AO has not commented on the findings made in the settlement commission's order and the claim of the appellant's thereof. The settlement's commission was again

re-visited. The 15 & 16 of the commission's order, the cash flow of Shri Abdul Rehman has been mentioned. The surplus cash for the year has been arrived at Rs. 1.09 crores and the same has increased over the years. There is specific mention of Rs.6 lakhs separately for family expenses excluding the surplus. Once the AO makes claim regarding the sources of investment or possession of cash it is incumbent upon the department to substantiate beyond reasonable doubt as to the three limbs i.e identity, genuineness and creditworthiness of the party involved. Shri Abdul Rehman has furnished the confirmation letter advancing money to the appellant. The settlement commission order contains detail as regards the substantial inflow and withdrawals from the NRE account. In any case the surplus cash mentioned at page 16 of the commission's order leave little doubt as regards the creditworthiness of the husband of the appellant for the given year. In so far as the daughter's contribution is concerned, the out of books investment and return is undoubtedly proven and claimed by the parties. The same would not have been disclosed in the return as the facts were revealed during the search on the group later. The share of profits from the firms is in any case not taxable in the hands of the partners. Just because the ROI was not filed in a timely manner, the profits earned from undisclosed investment cannot be doubted per se when the undisclosed income has been brought within the ambit of the tax. The share of the profits earned by the appellant also cannot be doubted as the undisclosed investment has been accepted by the appellant. Therefore, the remand report of the AO does not contain any substantial facts which may contravene the fresh set of claims made by the appellant.

6.1.8 The applicant's claim as- regards the proof -of credit worthiness of the contributors to the extent of sharing from the profits earned by the entities of PARCO Group has thus become incidental to the Commission's order and is required to be considered. In other words, the appellant is requesting for telescoping of the additional income offered before the Hon'ble Settlement Commission. The same is also apparent from the Rule 9 report filed by the CIT(Central) which has been discussed at Page 25 the Settlement Commission's order. The same is reproduced below :-

.....The database containing actual data are kept in different pen drives and accounted data for the current year alone is maintained in the computers. Further, the access to the actual database is protected by multiple passwords. However, the database of actual business affairs of all jewelleryes (except Nadapuram and Mananthavady) is regularly sent to the Corporate Office at Kadavathur adjacent to the house of Shri P.P. Abdul Rehman and Shri P.P. Aboobacker by way of e-mail The profits are shared by the partners, regular withdrawals and investment in different new jewellery show room by the Parco group.”

6.1.9 Although the appellant has given multiple sources of the investments, however, cogent evidences have not been provided to accept each and every claim at face value. However, the appellant was required to furnish sufficient evidences which may explain her investment of Rs. 60 lakhs in

the Firm, M/S. Swarnanjali Gold, Kuttiyadi, in the year in question. When her Share of Rs. 21 77,764.31/- & her daughter's share of Rs. 37,47,896.00/- is considered along with the amount of 6 lakhs which she has received from her husband, the total amount arrives at 60.31/-Now, since 6 lakhs from the profit share of her daughter has already been considered in AY 2010-11, it is required to be accounted for and if the leftover amount of Rs. 1.5 lakhs is factored in, the resultant exceeds Rs. 60 lakhs.

6.1.10 Therefore, in respect of the Settlement Commissions order passed in the case of Parco Group dated 31.05.2018, the averments made by the appellant is found to hold merits and therefore the addition made under section 69 of the IT Act deeming the investment as unexplained is liable to be deleted. In the event these grounds of appeal are ALLOWED.”

3.1 The present NFAC in the impugned order ought to have taken the same view on the issue disputed before us. Being so, taking a consistent view, we direct the ld. AO to pass fresh order in the light of above order passed by NFAC in the case of co-owner Puthiya Purayil Aysha cited (supra). Ordered accordingly.

4. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 1st July, 2024

**Sd/-
(Soundararajan K.)
Judicial Member**

**Sd/-
(Chandra Poojari)
Accountant Member**

Bangalore,
Dated 1st July, 2024.
VG/SPS
Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**