

IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH : COCHIN

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

ITA.No.26/COCH./2017  
Assessment Year 2008-2009

The Income Tax Officer, Ward-1(3), Room No.505, 5 <sup>th</sup> Floor, Aayakar Bhavan, Kowdiar, TRIVANDRUM. KERALA. PIN – 695 003.	vs.	Shri Xavi Mano Mathews, TND-10, Panachikal House, Tagore Nagar, Vazhuthacaud, THIRUVANANTHAPURAM. PIN – 695 104. PAN AEWPM3853M
(Appellant)		(Respondent)

For Revenue :	Shri Dr. S. Pandian, CIT-DR
For Assessee :	Shri Suresh Kumar, C.A.

Date of Hearing :	21.08.2024
Date of Pronouncement :	07.11.2024

**ORDER**

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

This Revenue's appeal, for the assessment year 2008-2009, arise against the CIT(A), Trivandrum, Trivandrum's order in ITA.No.104/TVM/CIT(A), TVM/2010-11, dated 25.11.2016, in proceedings u/sec.143(3) of the Income Tax Act, 1961 (in short the "Act").

Heard both the parties. Case file perused.

2. The Revenue pleads the following substantive grounds in the instant appeal :

1. *"The Learned CIT(A) erred in deleting additions made by the A.O towards unexplained credit u/s 68 of IT Act on the basis of evidence produced/explanation made during appeal proceedings and also erred in deleting a part of addition made by the A.O towards Deemed dividend u/s 2(22)(e) of IT Act*
2. *The deletion of Rs.1,98,86,558/- limited to the extend AO has conceded in remand report is without coming to a satisfaction regarding (a) identity (b) genuiness and (c) credit worthiness in view of recording by Lt. CIT(A) such as "substantial amount", "could have been credited amount of money received from appellant's mother.....", "Rs.1,20,69,000/- to be received by 30.06.2007..." in his order. The Ltd. CIT(A) ought to have noted that the onus is on assessee to conclusively establish the entire sequence of transaction resulting in the receipt of sums. The deletion based on probabilities and surmises is wrong.*


3. *The Ld. CIT(A) ought to have sustained Rs.12,00,000/-, Rs.3,99,906/- and Rs.26,00,000/- out of addition of Rs.1,80,60,000/-, Rs.4,82,094/- and Rs.27,00,000/- respectively.*
  4. *Deemed Dividend Lt.CIT(A) ought to have noted that as per section 2(22)(e) the dividend include any payment (total sum of receipt) made by the company by way of loan or advance to a shareholder holding not less than 10 percent of voting power w.r.t accumulated profit. CIT(A) restricted it to maximum amount of loan which is against the provisions of that section. The decision of Lt.CIT(A) is not in accordance with provisions of section 2(22)(e) in matters like maximum amount, sum claimed to be received by wife of appellant etc.*
  5. *For these and other grounds that may be advanced at the time of hearing the order of the learned Commissioner of Appeals, Trivandrum on the above points may be set aside and that of the Assessing Officer restored.”*
3. It emerges during the course of hearing with the able assistance coming from both the sides that there is hardly any much a need for us to delve deeper in the relevant factual matrix

so far as the Revenue's above extracted substantive grounds on merits are concerned. This is for the precise reason that learned CIT(A) had sought a remand report from the Assessing Officer which came to be filed on 08.05.2014 reading as under :

1. "Kindly refer to the above. Assessment in this case was completed u/s 143(3) on 31.12.2010 making an addition of Rs.9,52,46,488/- towards unexplained cash credits/deemed divided etc. As per the directions referred above, the assessee filed an argument note along with proof of certain cash credits appearing in the books of accounts of the assessee on 10.03.2014. A letter dated 03.04.2014 was sent to the assessee calling for evidences for unconfirmed cash credits. The peak credit of the assessee has also arrived at Rs.93,84,512/-. The assessee was also asked to furnish the source of peak credit at the time of hearing. Assessee filed a detailed note on 08.04.2014 in this regard. Details filed by the assessee have been thoroughly examined. After verification it was found that the assessee has filed proof for confirming cash credits to the extent in Col No.3 below.

2. Unexplained cash credits.

Amount disallowed in the	Proof furnished along with the argument note.	Proof accepted to	Unexplained cash credits
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 A.J. PRIJLAL  
 धिकारी वार्ड - 1(3)  
 Officer, Ward 1(3)  
 / Thiruvananthapuram -03



Assessment in Rs.		the extent of Rs.	still remains Rs.
1	2	3	4
1,98,86,558/-	After examination of cash book, the peak credit is worked out to Rs.93,84,512/-	-	93,84,512/-
1,00,00,000/-	Confirmation letter from the Senior Manager, Canara bank. Source of credit is explained.	1,00,00,000/-	-
10,50,000/-	Confirmation letters for Rs.10,50,000/- (Rs.8 lakh and Rs.2.5 lakhs) source confirmed.	10,50,000/-	-
1,92,60,000	Rs.1,20,00,000/- was confirmed by South Indian Bank which was credited through clearing. And the assessee has availed loans out of this amount totaling to Rs.1,90,60,000/- in various dates from the Bank.	1,90,60,000/-	2,00,000
27,90,000	Confirmation of EP Edwin and Premalatha	21 lakhs	6,90,000
20,00,000	Confirmation of Cherian A Paul	20 lakhs	-
1,20,00,000	Deemed dividend	1,20,00,000/-	-
15,44,000	Deemed dividend.	15,44,000	-
8,82,000	Amount received from KSFE to the extent of	4,82,094	399,906/-
24,00,000	No confirmation	24,00,000	24,00,000
3,00,000	Bank statement of Mrs.Hema Mary Mathew	3,00,000	-
2,00,000	No confirmation	-	2,00,000
10,00,000	Bank statement of Smt.Rema Anil Nair	10,00,000	-
14,00,000	Confirmed by Dr.Preethy Mary.	14,00,000	-
2,18,96,516	Loan taken from M/s. Southern Field Ventures (P) Ltd.	2,18,96,516	-

3. Addition made towards loan amount received from the Company as deemed dividend under section 2(22)(e) amounting to Rs.3,54,40,516/- has to be considered separately as the assessee argued that the financial statements of the Company shows that the company is not having accumulated profit during the previous year or at the time of advancing the loan and therefore section 2(22)(e) is not applicable.



4. Assessee has filed copy of two agreements regarding details of amount received to the assessee's account out of the amount received from slaughter tapping of the Estate owned by his mother and which is managed by the assessee from 2000 onwards. It is seen that an amount of Rs.94,69,000/- was received by him during the relevant assessment year in this account and the same is deposited in assessee's account and used for his business purposes. Hence, it is submitted that the source of peak credit may kindly be treated as explained.

4. It is in this factual backdrop that the Revenue could hardly dispute that the CIT(A) has precisely acted on the basis of the Assessing Officer's remand report only whilst deciding the corresponding issue(s) in assessee's favour. Faced with this situation, we quote CIT vs. D.M. Purnesh [2020] 426 ITR 169 (Kar.); Smt. B. Jayalakshmi vs. ACIT [2018] 91 taxmann.com 486 (Mad.) to conclude that once the learned assessing authority has itself accepted the assessee's corresponding claim(s) in above terms, the Revenue could hardly be held to as an aggrieved party against the CIT(A)'s action deleting the impugned addition(s). Ordered accordingly.

5. This Revenue's appeal is dismissed in above terms.

Order pronounced in the open Court on 07.11.2024.

Sd/-

[AMARJIT SINGH]  
ACCOUNTANT MEMBER

Sd/-

[SATBEER SINGH GODARA]  
JUDICIAL MEMBER

Cochin, Dated 7<sup>th</sup> November, 2024

VBP/-

Copy to

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

//By Order//

//True copy//

Sr. Private Secretary, ITAT, Cochin Bench,  
Cochin