

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

**BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI SONJOY SARMA, JM**

**ITA No. 960/Coch/2024
Assessment Year: 2017-18**

Thekkinian Poulouse Varkey Appellant
Thekkinian (H), Koratty South P.O., Thrissur 68030
[PAN: AEDPV4959E]

vs.

ACIT, Circle - 2(1), Thrissur Respondent

Assessee by: Ms. Niveditha K. Kammath, Advocate
Revenue by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 09.06.2025
Date of Pronouncement: 31.07.2025

ORDER

Per: Inturi Rama Rao, AM

This appeal filed by the assessee is directed against the order of the National Faceless Appeal Centre, Delhi [CIT(A)] dated 26.09.2024 for Assessment Year (AY) 2017-18.

2. Brief facts of the case are that the appellant is an individual engaged in the business of executing construction contracts under the name and style of T.P. Constructions. The return of income for AY 2017-18 was filed on 01.11.2017 declaring income of Rs. 77,93,730/-. Against the said return of income, the assessment was completed by the ACIT, Circle 2(1), Thrissur (hereinafter called

"the AO") vide order dated 26.11.2019 passed u/s. 143(3) of the Income Tax Act, 1961 (the Act) at a total income of Rs. 2,29,34,710/-. While doing so, the AO brought to tax the addition to capital of Rs. 1,13,38,759/- as unexplained investment, as the appellant had failed to give satisfactory explanation in support of source of capital investment. Similarly, the AO also made addition on loss on sale of Rs. 36,97,436/- debited to Profit & Loss A/c. for alleged failure of the assessee to explain the nature of transaction.

3. Being aggrieved, an appeal was filed before the CIT(A) contending that there is no need to make addition to capital as the capital was introduced out of addition made in the assessment for AY 2015-16 vide order dated 22.09.2017. It is further submitted that the loss of Rs. 36,97,436/- had arisen on account of sale of tiles which were procured for the business purposes of the appellant, since the contract was originally awarded on turnkey basis which included supply of material and labour. Subsequently, the awarder had procured himself the tiles, which resulted in this addition. Based on this submission the CIT(A), after calling remand report from the AO, confirmed the addition taking into consideration the remand report submitted by the AO and the rejoinder to the remand report submitted by the appellant.

4. Being aggrieved, the appellant is in appeal before this Tribunal in the present appeal.

5. The learned counsel for the assessee submitted that the appellant offered an explanation in support of the source of addition of Rs. 97,62,000/- to the capital by stating that the said capital contribution was made out of intangible additions made in the assessment year 2015-16. With regard to the addition on loss on sale of tiles of Rs. 36,97,436/- it is submitted that the contract was awarded on turnkey project which included supply of material and labour. However, subsequently the awarder changed the terms of contract and supplied tiles which were used for execution of the project. Since the tiles could not be used, they were sold on loss of Rs. 36,97,436/-, which is debited to the Profit & Loss A/c. and claimed as deduction.

6. On the other hand, the learned Sr. DR, referring to the findings of the CIT(A) submits that the appellant had not discharged the onus of proving the source of addition made to capital. Similarly, the appellant also failed to discharge the onus of proving the fact that the terms of contract were changed, therefore, no claim can be allowed.

7. We have heard the rival contentions and perused the material available on record. Grounds of appeal A to C challenges the findings of the CIT(A) confirming the addition made u/s. 68 treating the addition to capital as unexplained investment. On a mere perusal of the assessment order, it would reveal that the AO made addition of addition to capital as unexplained investment for the failure of the

assessee to discharge the onus of proving the source of capital introduced in the firm. However, during the course of proceedings before the CIT(A) the appellant had filed an explanation stating that the capital was introduced out of addition made in the assessment of Rs. 97,62,000/- to the returned income which attained finality in the absence of any further proceedings. This contention was rejected by the CIT(A) based on the findings given by the AO in the remand report that in the absence of evidence to show that the creditors have been removed from the Balance Sheet during the current year. In our considered opinion, it is not a material to be considered while judging the validity of the explanation offered in support of the source of capital introduction. It is settled position of law that when an addition is made to the returned income during the assessment proceedings, the amount represented by such addition is a part of real income and can be available to the assessee for subsequent application. Reference in this regard can be made to the decision of the Hon'ble Apex Court in the case of Anantharam Veerasinghaiah & Co. v. CIT [1980] 123 ITR 457 and the decision of the Hon'ble Kerala High Court in the case of Smt. Annamma Paul v. CIT [1979] 121 ITR 433 wherein it was held as under: -

“1. It was for the assessee to give a satisfactory explanation in regard to the case credit entries. If the assessee's explanation is found to be unacceptable, the entries may be taken to represent his income accruing during the accounting year. The burden of proof to link the unexplained credits to the intangible additions is on the assessee and not on the department. However, on the basis of the material on record, the Tribunal found that no such fund of

intangible additions of Rs. 55.210 (for the assessment years 1948-49 and 1949-50) could have been available to the assessee for reintroduction in the accounting year relevant for the assessment year 1950-51.

2. The period prescribed for taking action for reopening assessments was a period of limitation and not a jurisdictional condition. Being so, the longer period of limitation, which came into force before 31-3-1959 and before the proceedings of reassessment were initiated, was allowable to the Revenue. The proceedings were, therefore, not barred by limitation and the addition of Rs. 49,700, on the facts and circumstances of the case, was not unwarranted and illegal.”

8. This principle was followed subsequently by Hon'ble Kerala High Court in the case of CIT v. K. Sreedharan [1992] 201 ITR 1010. Thus the CIT(A), without taking into consideration the above proposition of law, merely confirmed the addition by citing that the appellant had not shown any evidence to show that the creditors were removed from the Balance Sheet. In the circumstance, we are of the considered opinion that the interest of justice would be met, if the matter is restored to the file of the CIT(A) for de novo adjudication keeping in view the ratio of the above decisions after according opportunity of being heard to the appellant. Thus, grounds A to C stand partly allowed for statistical purposes.

9. Grounds of appeal D & F challenges the confirmation of addition on account of loss on sale of tiles of Rs. 36,97,436/-. It was stated that the appellant had bought tiles for the purpose of execution of the project. It was stated that the said project was originally awarded on turnkey basis. Subsequently the terms of

contract were changed and the awardee by himself bought the tiles which were used for the purpose of the project and, therefore, the tiles bought by the appellant were sold for loss of Rs. 36,97,436/- and the same was claimed as deduction in computing taxable income. Before the AO no evidence, whatsoever, was filed by the appellant substantiating the claim for loss. During the course of proceedings before the CIT(A) the appellant had filed an explanation. However, the explanation was not accepted by the CIT(A) for the alleged failure of the assessee to substantiate the claim with evidence. In our considered opinion what is to be examined by the CIT(A) is whether the appellant had purchased these tiles for the purpose of his business and the same were sold for a loss or not. Since the CIT(A) had failed to examine from this perspective, we are of the considered opinion that the matter may be restored to the file of CIT(A) for de novo adjudication after affording opportunity of hearing to the assessee. Grounds of appeal D & F stand partly allowed for statistical purposes.

10. In the result, the appeal filed by the assessee stands partly allowed for statistical purposes.

Order pronounced in the open court on 31st July, 2025.

Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 31st July, 2025
n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin