IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH

BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI SOUNDARARAJAN K., JM

ITA Nos. 695 to 700/Coch/2024 – AYs: 2012-13 to 2017-18

Vrindavan Builders Pvt. Ltd. 105, Opp. Chishi Marketing Complex Circular Road, Dimapur, Sadar Dimapur SO, Nagaland 797112 [PAN: AABCV8155F]	vs.	ACIT, Central Circle Aayakar Bhavan, Karbala Junction, Kollam 691001
(Appellant)		(Respondent)

ITA Nos. 732 to 736/Coch/2024 – AYs: 2013-14 to 2017-18

ACIT, Central Circle Aayakar Bhavan, Karbala Junction, Kollam 691001	vs.	Vrindavan Builders Pvt. Ltd. 105, Opp. Chishi Marketing Complex Circular Road, Dimapur, Sadar Dimapur SO, Nagaland 797112
(Appellant)		(Respondent)

Assessee by: Shri S.K. Tulsiyan, Advocate
Revenue by: Shri Suresh Sivanandan, CIT-DR

Date of Hearing: 21.03.2025
Date of Pronouncement: 09.06.2025

O R D E R

Per Bench

These are cross appeals filed by the assessee as well as Revenue directed against the orders of the Commissioner of Income Tax (Appeals)-3, Kochi [CIT(A)], dated 21.16.2024 for Assessment Years (AY) 2012-13 to 2017-18.

2. Since identical issues are involved in all the appeals, they are heard together and disposed of by this common order.

3. For the sake of clarity and convenience facts relevant to the appeal in ITA No. 696/Coch/2024 for AY 2013-14 are stated herein.

4. Brief facts of the case are that the assessee is a private limited company incorporated under the provisions of Companies Act, 1956. Search and seizure operations under the provisions of section 132 of the Income Tax Act, 1961 (the Act) were conducted in the case of one Shri M.K. Rajendran Pillai, his wife Smt. Valsala Raj and sons Shri Varun Ran and Shri Arun Raj and also in the business concerns of Sreevalsam Group on 08.06.2017. This group of concerns is stated to be engaged in the business of running textile shops, jewellery shops, finance business, bar attached hotels, vehicle dealerships, fuel outlets, educational institutions, etc. The assessee is a company in which the family members of Shri Rajendran Pillai were interested as promoters-cum-Directors.

5. It is stated that during the course of search and seizure operations it was found that the appellant was in receipt of funds from sources/entities located in Nagaland to the account of the assessee company which were not explained in the return of income filed for the year under consideration. Accordingly, issued a notice u/s. 148 of the Act. During the assessment proceedings it is found that the assessee company had received loans from Nagaland based

parties aggregating to RS. 5,72,66,080/-details of which are available page Nos. 2 & 3 of the assessment order. It was stated that the assessee company had failed to offer any plausible explanation in support of the source of above credit. The AO also observed that during the course of assessment proceedings in the case of Shri Rajendran Pillai, it was found that the funds were transferred to the family members of the Shri Rajendran Pillai and other business entities are unaccounted income earned by him in Nagaland to the tune of Rs. 24,31,96,513/-. In the assessment of Shri Rajendran Pillai the amount so transferred were assessed to tax on substantive basis for AYs 2010-11 to 2017-18. However, the AO noting the fact that the assessment in the case of Shri RajendranPillai are subject matter of appeal before the CIT(A), proceeded to make the addition on protective basis in the hand of the assessee company. During the course of reassessment proceedings, the AO found that the assessee company received funds through bank accounts to the extent of Rs, 2.09.50,500/- from Nagaland based parties and also made cash deposits in bank accounts to the extent of Rs. 58,53,000/- and brought to tax the same by alleging that the assessee company failed to substantiate the source of above credits and cash deposits on protective basis videassessment order dated 18.03.2020 passes u/s. 143(3) r.w.s. 147 of the Act.

6. Being aggrieved, an appeal was filed before the CIT(A). contesting that the very initiation of reassessment proceedings are

void in law as the AO had deliberately not followed the procedure laid down by the Hon'ble Supreme Court and challenging the action of the AO in making protective addition in the hands of the assessee company as the same were already taxed in the hands of Shri Rajendran Pillai. The CIT(A), taking into consideration the findings of the ITAT in the case of M.K. Rajendran Pillai held that the assessee company along with the family members of Shri Rajendran Pillai and his group concerns are being subjected to separate assessments, the substantive addition in respect of credits appearing in the hand of the family members and business concerns of Shri Rajendran Pillai would no longer can be sustained, the protective assessment made in the hands of the assessee company was confirmed as substantive assessment in the hands of the assessee company. However, the CIT(A) deleted the addition based on the findings given in the case of Shri Rajendran Pillai that the addition in respect of credits found in the bank account of the assessee company stated to have been received from Shri G.K. Rengma and Excellence Associates are treated as loan, not as income. Accordingly deleted the addition to the extent of Rs. 1,86,50,500/-. However, based on the finding given by the ITAT in the case Shri Rajendran Pillai, the CIT(A) confirmed the addition in respect of loan received from other parties to the extent of Rs. 23,00,000/- and also confirmed the addition on account of unexplained cash deposit

to the extent of Rs. 58,53,000/-. Thus, the appeal filed by the assessee stands partly allowed by the CIT(A).

7. Being aggrieved by that part of the order of CIT(A), which is against the assessee, the assessee company is in appeal before this Tribunal in ITA No. 696/Coch/2024 and being aggrieved by that part of order of CIT(A) which is against the Revenue, the Revenue is in appeal in ITA No. 732/Coch/2024.

8. Before we deal with the issues in the present appeals and cross objection, it is significant to make a note of the factual matrix of the case of Shri Rajendran Pillai. Shri Rajendran Pillai is stated to be resident of Nagaland. He is stated to be looking after the police vehicles including procurement of spare parts, etc. Search and seizure operations u/s. 132 of the Act were conducted on 08.06.2017 in the case of Shri Rajendran Pillai along with family members and group concerns. It is found that Shri Rajendran Pillai and his family members and group concerns have received money from as many as 38 different bank accounts held in the names of various individuals and entities based at Nagaland. It is also further found that huge amount of cash was found in the bank accounts held by Shri Rajendran Pillai and his family members and group concerns. The funds received from persons as well as entities based at Nagaland were utilised for the purpose of purchase of properties during 2012-13 to 2017-18. The Assessing Officer of Shri Rajendran Pillai found that the money lenders/loan creditors had not maintained any books

of account and claimed exemption u/s. 10(26) of the Act. The confirmations obtained from these creditors are found to be defective for certain discrepancies and mismatch in signatures, etc. The AO further returned a finding that all these loan creditors were deriving income from executing contracts with the government of Nagaland, were mere name lenders and opened bank accounted operated by Shri Rajendran Pillai. Business receipts credited to the bank accounts were immediately transferred to the bank account of Shri Rajendran Pillai and his family members by persons and entities and in consideration for lending names they were paid commission by Shri Rajendran Pillai. In nutshell, the sum and substance of the case set out by the AO is that Shri Rajendran Pillai was actually carrying on the business in the name of other people based in Nagaland. The amounts so transferred to the family members of Shri Rajendran Pillai and his group business concerns actually belonged to him. Accordingly, he made addition of Rs. 305.59 crores for AY 2012-13 to 2017-18, details of which are as under; -

No.	Particulars	Amount (Rs.)
1	Credit received from 38 Bank Accounts of Nagaland based entities/concerns	243.19 crores
2	Cash Deposits in the bank accounts of assessee and his family members	24.74 crores
3	Cash deposits in Vrindavan Builders Pvt. Ltd.	2.27 crores
4	Cash component in land transaction	16.10 crores
5	Other credits in bank accounts of assessee and his family members	19.28 crores
	Total	**305.59 crores**

9. The assessment was challenged before the CIT(A), who had confirmed the additions. On further appeal before the Tribunal, the Tribunal had deleted the addition made in respect of funds received by family members of Shri Rajendran Pillai and the group concerns by holding as under: -

> "10. After due consideration of material facts, we find that the debit / transfer entries aggregating to Rs.243.19 Crores have been treated to be the assessee's income on the allegation that assessee's unaccounted income has been routed through these accounts for the benefit of group as a whole. However, in para 7.10, we have already taken a position that the credit transfer received by the other family members and group concerns could not be assumed to be assessee's undisclosed income since it is nowhere been established by the lower authorities that the assessee was de-facto owner of either Nagaland based bank accounts or the owner of bank accounts of various recipients. The other family members and group concerns of the assessee were separate Income Tax assessee and subjected to separate assessment. Therefore, the credit received in those accounts ITA Nos.580 to 586/Coch/2022 - 57 - could not be held to be the assessee's income. Under these circumstances, the assessee's onus would remain confine to explain the credit received by it in his own bank accounts. Further, the assessment proceedings for AY 2018-19 have already been quashed by us on legal grounds. Therefore, at the outset, the addition, to that extent, could not be sustained in the hands of the assessee. We order so."

10. This order was appealed by the Revenue before the Hon'ble Kerala High Court, which confirmed the findings of the Tribunal as under: -

"9. As for the cash deposits received in the bank accounts of the assessee, his family members and group concerns, the Appellate Tribunal found that, apart from adding the cash deposits found in all the accounts to the total income of the assessee towards unexplained cash deposits under Section 68 of the I.T. Act, the authorities below had also rejected the explanation given by the assessee that the amounts received by him were by way of loan from persons in Nagaland. Based on its earlier finding that the Revenue had not established that the bank accounts held by the other family members and group concerns actually belong to the assessee himself, the cash deposits in the said accounts were directed to be excluded from the additions made to the taxable income of the assessee."

11. Keeping in view this background we proceed to adjudicate the issues in the appeals.

ITA 696/Coch/2024 – AY : 2013-14

12. At the first instance we shall take up the assessee's appeal which goes to the root of the matter. The assessee company raises the following grounds of appeal: -

"1a. That on the facts and in the circumstances of the case, the assumption of jurisdiction u/s 147 by the Ld. Assistant Commissioner of Income-tax, Central Circle, Kollam (hereinafter referred to as 'the A.O') u/s 147 of the Income-tax Act, 1961 ('the Act') is bad-in-law and the Ld. Commissioner of Income-tax (Appeals)-3, Kochi [hereinafter referred to as 'the CIT(A)], vide order dated 21.06.2024 has erred in confirming his action of assuming jurisdiction..

1b. That on the facts and in the circumstances of the case, the Ld. CIT(A) has failed to appreciate that recourse to the

provisions of 147 of the Act for the purpose of making protective assessment is impermissible and bad-in-law.

1c. *That the Ld. CIT(A) while upholding the jurisdiction assumed by the Ld. A.O u/s 147 of the Act has failed to consider that the order passed by the Ld. A.O u/s 147 of the Act without first disposing the Objections raised by the Appellant Company to notice issued u/s 148 by a separate speaking order is bereft of jurisdiction and contrary to the directions issued by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd.&Ors., 259 ITR 19 (SC)*

1d. *That the Ld. CIT(A) while upholding the jurisdiction assumed by the Ld. AO u/s 147 of the Act has overlooked the trite law that an assessment on the basis of search materials found in course of search of another person can only be made u/s 153C of the Act and not u/s 147 of the Act.*

2. *That the Ld. CIT(A) has erred in upholding the additions made by the Ld. A.O. without following the procedure of enquiry/assessment provided under section 142(1), 142(2) and 142(3) of the Act.*

3. *That the Ld. CIT(A) has erred in upholding addition of Rs. 25,00,000/- made by the Ld. A.O on account of transfer made by P.S. Enterprise ignoring the submissions and evidences filed by the Appellant company.*

4. *That the Ld. CIT(A) has further erred in confirming the addition of Rs. 26,75,000/- made by the Ld. A.O on account of cash deposit in the bank account of the Appellant company ignoring the explanations filed by the Appellant company.*

5. *That, the Appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds."*

13. Ground Nos. 1 to 1d challenges the very validity of reopening of assessment on the ground that there were no reasons to believe that income escaped assessment to tax. It is submitted that assessment proceedings were sought to be reopened primarily on the ground that there were certain fund transfers into the bank accounts of the Assessee from Nagaland based parties-fund transfers were in the nature of loans and duly reflected as such in the audited financial statements of the Assessee - merely because certain sums of money had been received in the Assessee's bank account from certain Nagaland based entities, it could not automatically be inferred that the same were in the nature of income of the Assessee which had escaped assessment.

13.1 It is further submitted that Formation of belief based on definite material and information is a mandatory condition for acquiring jurisdiction to issue notice u/s 148-such formation of belief cannot be based on suspicion, surmises, conjectures but must be based on cogent material that establishes a live link or casual nexus between the information available and inference so drawn by the A.O-reliance placed on the decisions of the Hon'ble S.C. in Calcutta Discount 1961 41 ITR 191(SC), ITO v. Lakmani Mewal Das, 1976 103 ITR 437 (SC), and SheoNath Singh v. AACIT, 972 SCR (1) 175 (SC).

13.2 Reassessment proceedings were initiated merely on the basis of 'reason to suspect' and not 'reason to believe' for the purpose of

making fishing and roving enquiries in connection with the various items depicted in the regular books of account of the Assessee-not permissible - reliance placed on ChhugamalRajpal vs. S.P. Chaliha [1971] 79 ITR 603 (SC); BakulbhaiRamanlal Patel vs. Income Tax Officer (2011) 79 CCH 0204 (Guj). Reassessment proceedings initiated by the Ld. A.O on the basis of the satisfaction borrowed from the unverified information received from the Investigation Wing without any independent application of mind and without conducting any such independent enquiry/investigation by the Ld. A.Onot permissible reliance placed on PCIT vs. Meenakshi Overseas Pvt Ltd, reported in 82 taxmann.com 300 (Del HC); Signature Hotels (P) Ltd. vs. ITO (2011) 60 DTR (Del) 60; CIT vs. Odeon Builders Pvt. Ltd. [2019] 418 ITR 315 (SC) etc. It is further submitted that the reassessment proceedings initiated by the AO is bad in law for the reasons that the AO has failed to provide the reasons recorded u/s. 147 of the Act for issuance of notice u/s. 147 of the Act. Further it is submitted that the A.O had failed to provide the Assessee with copy of the satisfaction sheet where the Reasons for escapement of income had been recorded by him and also failed to provide the copy of approval granted by the appropriate authority u/s 151 of the Act despite categorical request copy of approval u/s 151 which has a reference to the reasons recorded are to be mandatorily provided to the Assessee, in absence of which the assumption of jurisdiction by the Ld. AO in initiating the

proceedings u/s 147 will be rendered invalid -reliance placed on Saraswati Garewal [2024] 158 taxmann.com 37 (Raipur ITAT), Tata Capital Financial Services Ltd. v. Asst. CIT [2022] 137 taxmann.com 315 (Bom) and Sabh Infrastructure Ltd. v. ACIT [2018] 89 taxmann.com 409 (Del). Finally it is contended that no reassessment proceedings can be initiated for the purpose of making protective addition placing reliance on the decision of the Hon'ble Bombay High Court in the case of DHFL Venture Capital Fund v. ITO 358 ITR 471 (Bom).

14. On merits, it is submitted that the loans received from Nagaland parities of Rs. 5,72,66,080/- were genuine and creditworthiness and identity of the parties was proved. Therefore, no addition is called for. Thus, he submitted that the appellant had discharged the onus of proving the ingredients of section 68 of the Act. Since the identity, genuineness and creditworthiness of the transaction are proved, not addition is required to be made.

15. On the other hand, the ld. CIT-DR seriously opposed the above submissions.

16. We heard the rival submissions and perused the material on record. Now we shall take up ground of appeal No. 1 challenging the very validity of initiation of reassessment proceedings. The appellant company challenged the validity of the reassessment proceedings on several scores. No we shall deal with the submission

of the appellant that no reassessment proceedings can be initiated for the purpose of making a protective addition. From the mere reading of the para 7 of assessment order, it would be crystal clear that the Assessing Officer had initiated the reassessment proceedings in the appellant's case for the purpose of making protective addition in the hands of the appellant, on the contingency that if the CIT(A) in the case of Mr. Rajendran Pillai were to hold against the Department, the additions should be made in the hands of the appellant. Thus it is clear that the Assessing Officer sought to reopen the assessment based on the contingency of outcome of the appeal proceedings in the case of Mr. Rajendran Pillai, which does not meet the requirement that income should escaped assessment. However, such and exercise is permissible in the case of regular assessment not in the case of reassessment proceedings as held by the Hon'ble Bombay High Court in the case of DHLF Venture Capital Fund v. ITO [2013] 358 ITR 471. The relevant findings of the Hon'ble High Court are extracted as below: -

> ***16.*** *The basis on which the Assessing Officer has purported to reopen the assessment is placed beyond any doubt by the affidavit which has been filed in reply to the Petition. As we have noted, there is no ambiguity whatsoever in the reasons which have been communicated to the assessee in the order dated 18 May 2012, but in the affidavit in reply, it has been stated that the income of Rs.32.83 Crores arising from the investment of contributions of the contributors to the Venture Capital Fund which has been claimed as exempt in the hands of the Petitioner should be assessed as income in the hands of the AOP of the contributors of the Petitioner "on a protective*

basis". Again it has been stated that the issue of taxing the AOP of the contributors of the Petitioner "has arisen from the submission of the Petitioner before the appellate authorities" where the Petitioner has contended that the transactions amount to a revocable transfer and that the income which would arise should be taxed in the hands of the individual contributors. The reopening of an assessment under Section 148 on the basis of a submission which is raised before the appellate authority by the assessee is clearly impermissible because what Section 147 requires is a formation of a reason to believe by the Assessing Officer. In the present case, there is clearly a want of compliance with the jurisdictional condition. The Assessing Officer has not formed a reason to believe that income has escaped assessment since the reopening is based purely on a contingency that may arise upon a particular outcome before the appellate tribunal.

17. *Undoubtedly as counsel appearing on behalf of the Revenue submits the concept of a protective assessment is well known to the law of income tax in India. The basis on which a protective assessment is carried out is summed up succinctly in Sampath Ayengar's Law of Income Tax (11th edition, Vol. VI, page 9724) :*

"Protective assessment - The Assessing Officer may often have to assess the same income in more than one place. Sometimes they may be made by different officers as, for example, where an officer assessing A thinks that certain income belongs to him but another officer assessing B is of the opinion that the income is his. Sometimes the same officer may find that an assessee before him is returning a particular income but is of the opinion that it should be assessed in the hands of a firm or a family and not in the hands of the person who returned it. It has been held that the officer may, when in doubt (Not otherwise : CIT v. Shri Ramchandraji Maharaj Ka Bada Mandir[1988] 73 CTR (MP) 79), to safeguard the interests of the Revenue assess it in more than one hand (Lalji Haridas v. ITO [1961] 43 ITR 387 (SC)). But this procedure can be

permitted only at the stage of the assessment as, at higher levels, it is possible for the appellate or revisional authority to give a clear finding as to the assessee who is liable to be so assessed leaving the one who is aggrieved to get redress by appropriate proceedings. (See Dayabaiv.CIT [1985] 154 ITR 248 (MP)). In any event, if, at the stage of the Tribunal or High Court it is found that the same income is assessed in both places, the Department should provide relief suomotuto one of them. (ITO v. Bachu Lal Kapoor [1966] 60 TR74 (SC)). There can be precautionary assessments but not protective recovery. (CIT v. Cochin Co. Pvt. Ltd.[1976] 104ITR655 (Ker.)). But where an assessment is intended to be protective, it should be so expressed. (CIT v. Khalid Mehdi [1987] 165 ITR 685 (AP)).

18. *A protective assessment as the learned author indicates (Vol. 1 page 272) is regarded as being protective because it is an assessment which is made ex abundanticautela where the department has a "doubt as to the person who is or will be deemed to be in receipt of the income". A departmental practice, which has gained judicial recognition, has emerged where it appears to the Assessing Officer that income has been received during the relevant Assessment Year, but where it is not clear or unambiguous as to who has received the income. Such a protective assessment is carried out in order to ensure that income may not escape taxation altogether particularly in cases where the Revenue has to be protected against the bar of limitation. But equally while a protective assessment is permissible a protective recovery is not allowed. However, such an exercise which is permissible in the case of a regular assessment must necessarily yield to the discipline of the statute where recourse is sought to be taken to the provisions of Section 148. Protective assessments have emerged as a matter of departmental practice which has found judicial recognition. Any practice has to necessarily yield to the rigour of a statutory provision. Hence, when recourse is sought to be taken to the provisions of Section 148, there has necessarily to*

be the fulfillment of the jurisdictional requirement that the Assessing Officer must have reason to believe that income has escaped assessment. To accept the contention of the Revenue in the present case would be to allow a reopening of an assessment under Section 148 on the ground that the Assessing Officer is of the opinion that a contingency may arise in future resulting an escapement of income. That would, in our view, be wholly impermissible and would amount to a rewriting of the statutory provision. Moreover, the reliance which is sought to be placed on the provisions of Explanation 2(a) to Section 147 is misconceived. Explanation 2 provides a deeming definition of cases where income chargeable to tax has escaped assessment and clause (a) includes a case where no return of income has been furnished by the assessee although his income or the income of any other person in respect of which he is assessable exceeds the maximum amount which is not chargeable to tax. As the reasons which have been disclosed to the assessee would indicate, this is not a case where an assessee has not filed a return of income simplicitor. The whole basis of the reopening is on the hypothesis that if the provisions of Sections 61 to 63 are attracted as has been claimed by the assessee, and the income of Rs.32.83 Crores which has been claimed by the assessee to be exempt is treated as exempt, in that event an alternate basis for taxing the income in the hands of the AOP of the contributories is sought to be set up. For the reasons already indicated, the entire exercise is only contingent on a future event and a consequence that may enure upon the decision of the Tribunal, that again if the Tribunal were to hold against the Revenue. A reopening of an assessment under Section 148 cannot be justified on such a basis. There has to be a reason to believe that income has escaped assessment. 'Has escaped assessment' indicates an event which has taken place. Tax legislation cannot be rewritten by the Revenue or the Court by substituting the words 'may escape assessment' in future. Writing legislation is a constitutional function entrusted to the legislature.

The ratio that can be culled out is that resort to provisions of section 147 cannot be made in order to make a protective assessment or addition. The ratio of the decision of the Hon'ble Bombay High Court cited supra is squarely application to the facts of the case. Therefore, we are of the considered opinion that initiation of reassessment proceedings are bad in law. Accordingly, we quash the reassessment proceedings and the consequent assessment made u/s. 143(3) r.w.s. 147 of the Act. Since, we quashed the reassessment proceedings accepting one of the contentions of the appellant that no resort to provisions of reassessment cannot be made for the purpose of making protective additions, all other contentions raised by the appellant are kept open.

Thus, the appeal filed by the assessee stands allowed.

Revenue Appeal in ITA No. 732/Coch/2024 – AY: 2013-14

15. Since in the asessees's appeal we quashed the assessment order on the grounds of validity of the initiation of reassessment proceedings, the appeal filed by the Revenue also stand dismissed as assessment order does not survive. Appeal dismissed.

4. Since identical issues and facts are involved in assessee's appeals in ITA Nos. 695 & 697 to 700/Coch/2024, our findings in ITA No. 696/Coch/2024 shall apply *mutatis mutandis* all appeals.Therefore, the appeals filed by the assessee company are

stand allowed in terms of our findings in assessee's appeal ITA No. 696/Coch/2024.

5. The Revenue's appeals in ITA Nos. 733 to 736/Coch/2024 stand dismissed in terms of our findings in ITA No. 732/Coch/2024.

6. In the result, the appeals filed by the assessee for assessment years 2012-13 to 2017-18 are allowed and the appeals filed by Revenue for assessment years 2013-14 to 2017-18 are dismissed.

Order pronounced in the open court on 9th June, 2025.

Sd/-	Sd/-
(SOUNDARARAJAN K.)	**(INTURI RAMA RAO)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Cochin, Dated: 9th June, 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