(2024) 12 KL CK 0001

High Court Of Kerala

Case No: Income Tax Appeal Nos. 27, 17, 26, 28, 39 & 44 Of 2024

The Pr.Commissioner Of Income Tax(Central)	APPELLANT
Vs	
Sri M.K.Rajendran Pillai	RESPONDENT

Date of Decision: Dec. 3, 2024

Acts Referred:

- Income Tax Act, 1961 - Section 132, 153A

Hon'ble Judges: Dr. A.K.Jayasankaran Nambiar, J; K. V. Jayakumar, J

Bench: Division Bench

Advocate: Susie B Varghese, Navaneeth.N.Nath, R.V.Easwar, Sidharth A.Menon, Sandra Mariya, Vinitha S.T., Ananya Rath

Final Decision: Dismissed

Judgement

Dr. A.K.Jayasankaran Nambiar, J

1. These I.T. Appeals preferred by the Revenue impugn a common order dated 20.01.2023 of the Income Tax Appellate Tribunal, Cochin Bench that

partly allowed appeals preferred by the respondent/assessee against orders confirming additions made to the taxable income declared by him under

the Income Tax Act [hereinafter referred to as the â€œI.T. Actâ€] for the assessment years 2012-13 to 2017-18 [six assessment years].

2. The brief facts necessary for the disposal of these appeals are as follows:

The assessee and his family members run various business concerns that are grouped together under the umbrella of M/s.Sreevalsam Group of

concerns. There was a search conducted under Section 132 of the I.T. Act at the residential and office premises of the proprietors and the business

concerns on 08.06.2017, pursuant to which, a notice was issued to the assessee under Section 153A of the I.T. Act on 03.08.2018. The

respondent/assessee, is a partner to the extent of 39% in one of the partnership concerns namely, M/s.Money Muttam Finance, and has a limited

shareholding of approximately 11% and 15% respectively in M/s.Mooneymuttathu Nidhi Limited and M/s.Allebasi Builders and Developers (P)

Limited. His wife and children are proprietors and partners respectively in other business concerns that come under the umbrella of M/s.Sreevalsam

group. The respondent/assessee and his family members, as well as all the entities of the group, are separately assessed to income tax and it is not

disputed that the respondent/assessee does not hold any position in the management and control of the majority of the firms/corporate entities of

M/s.Sreevalsam group.

3. On receipt of the notice under Section 153A of the I.T. Act, the respondent/assessee filed a return of income on 01.12.2018 declaring an income of

Rs.6.17 lakhs. Notices under Section 143(2) and Section 142(1) were issued on various occasions to the assessee requiring it to file requisite

documents including cash flow statements and statements of assets and liabilities. Although the assessee raised objections with regard to the issuance

of notice to him by contending inter alia that the proceedings initiated against him were without jurisdiction, and alternatively, sought time from the

Assessing Authority for filing applications for settlement before the Income Tax Settlement Commission, the Assessing Authority did not accede to

the said requests and the assessments were completed against the assessee on 17.03.2020. In the assessment order, the Assessing Officer found that

substantial additions had to be made to the declared income of the assessee towards (i) credit receipts from 38 bank accounts of Nagaland based

entities/concerns (ii) cash deposits found in the bank accounts of the assessee and his family members (iii) cash deposits in Vrindavan Builders Private

Limited (iv) cash component in land transactions and (v) other credits in bank accounts of the assessee and his family members. The total additions

made by the Assessing Officer was in an amount of Rs.305.59 crores. It is understood that protective assessments for the aforementioned

assessment years were also made in relation to the other business concerns and family members of the assessee.

4. Aggrieved by the assessment orders passed against him, the respondent/assessee preferred appeals before the First Appellate Authority which

granted limited relief to the assessee but largely confirmed the demand in the assessment orders. It was therefore that the assessee preferred further

appeal before the Appellate Tribunal which partly allowed the appeal by the order impugned in these appeals preferred by the Revenue.

5. In the appeals filed before us by the Revenue, many questions of law were initially raised. At the time of admission of the appeals, however, the

respondent/assessee was asked to respond only to the following substantial questions of law which arise from the impugned order of the Tribunal,

namely;

1. Whether, the Appellate Tribunal is right in law in deleting the additions made in the hands of the assessee in respect of credits from the 38 Nagaland based banks

received in the bank account of the assessee, his family members, others, ignoring the given fact of said Nagaland accounts being under control of family member, no

evidence led to substantiate the explanation offered, ignoring the sworn statements made under Sec.132(4) of the Act, thereby the genuineness of the transactions as

per the mandate of the provisions of section 68 of the Act including the first proviso provided thereunder remaining undischarged ?

2. Whether the Appellate Tribunal is justified in holding that cash deposited in bank account of the assessee, to the extent of cash deposits in the Nagaland based

accounts of family members, others, stood explained ignoring the fact that lower authorities had rejected the cash flow statement on ground of lack of evidence and

further no evidence was furnished for claim of contract work/consultancy income ?

3. Whether Appellate Tribunal is justified in interfering with order of CIT (A) and in deleting the various additions sustained by the CIT (A) and are not the findings

of fact by the Tribunal perverse, uncalled for and unjustified ?

6. We have heard Smt.Susie B. Varghese, the learned Standing Counsel for the Income Tax Department and Sri.R.V.Easwar, the learned senior

counsel duly assisted by Sri.Sidharth A. Menon, Smt.Sandra Mariya and Smt.Ananya Rath, the learned counsel appearing on behalf of the

respondent/assessee.

7. The main thrust of the argument of the learned Standing Counsel for the appellants before us is with regard to the findings of the Appellate Tribunal

regarding the credit entries in the accounts of the group concerns, of amounts received from Nagaland based entities, unexplained cash deposits found

in the bank accounts of the said group concerns and other credit entries found in the said bank accounts. While the Revenue would contend that the

respondent/assessee had not given satisfactory explanations for the said credits including cash deposits in the various bank accounts, it is the case of

the respondent/assessee, that was sustained to a significant extent by the Appellate Tribunal, that he could be assessed only in respect of credit entries

and cash deposits that were relatable to his bank account and not in relation to such entries and deposits as were traceable to the bank accounts of his

family members or other group concerns. We have therefore to examine the legality of the findings of the Appellate Tribunal on the said issues for the

purposes of answering the questions of law referred to us.

8. When we examine the findings of the Appellate Tribunal with regard to the credit entries made in the various accounts in respect of amounts

received from Nagaland based entities, we find that the total addition made on this account aggregates to Rs.243.19 crores for the assessment years

in question. Out of this, only an amount of Rs.23.98 crores was credited to the account of the assessee herein, whereas the remaining amount of

Rs.219.2 crores represented receipts in the accounts of other family members/group concerns and third parties. The Tribunal, on a consideration of

the material on record, found that the credit transfer received by other family members and group concerns could not be assumed to be the assessee's

undisclosed income since the Revenue could not establish, at any stage, that the assessee was either the de facto owner of the Nagaland based bank

accounts or the owner of the bank accounts of the various recipients. This was particularly significant because it was an admitted fact that the other

family members and group concerns of the assessee were assessees in their own right before the Income Tax Authorities and subject to separate

assessments under the I.T. Act. Following the said findings, the Appellate Tribunal held as follows in paragraphs 12 and 13 of its order:

â€œ12. Out of credit entries aggregating to Rs.131.26 Crores the assessee group made IDS, 2016 disclosure for Rs.21.13 Crores which include assessee's disclosure of

Rs.6.81 Crores and other family members' disclosure of Rs.14.31 Crores. The requisite forms, declarations including Form 3 has been placed in the paper-book which

would dispel the concern raised by Ld. CIT(A) in the impugned order. The other family members made payment of Rs.4.58 Crores for subsequent transfers which

have no connection with the present assessee. The unsecured loans received from these parties aggregated to Rs.88.41 Crores out of which loans of Rs.11.72 Crores

has been received by the assessee (Rs.3.22 Crores from Shri G.K. Rengma and Rs.8.49 Crores from M/s Excellence Associates). The remaining amount of Rs.17.11

Crores was proposed to be disclosed by the assessee group before Hon'ble lTSC. The assessee proposed settlement for Rs.5.45 Crores on this count. Considering

these figures, the additions to the extent of Rs.5,44,90,000/- stand confirmed since the assessee has himself computed this disclosure before us to make up for

remaining undisclosed consultancy / liaisoning income. This leave assessee's onus to prove the ingredients of Sec.68 with respect to unsecured loan of Rs.11.72

Crores received from Shri G.K. Rengma and M/s Excellence Associates.

13. As per the requirement of Sec.68, the assessee is required to prove the identity of the payee, their respective creditworthiness and genuineness of the

transactions. With respect to both these entities / individuals, the assessee has placed on record (Table 17G of paper-book) copies of PAN and Aadhar, Income Tax

exemption certificate issued u/s 10(26), copies of work order issued by the Government, Copies of immovable properly ownership certificates etc. The audited

financial statements, turnover certificates, affidavits affirming the said transactions as furnished before lower authorities has also been placed on record.

Undisputedly, the source of such loans is government contractual receipts as held by Ld. AO himself. Upon perusal of table extracted in para 8.6, it is quite evident

that both these parties are engaged as government contractors since past several years and executing voluminous contract for the government. Undisputedly the

transactions have taken place through banking channels. On the basis of all these documentary evidences, it could be said that the requisite onus as required to be

discharged u/s 68 was duly discharged by the assessee and it was the onus of the revenue to dislodge the same. However, upon perusal of orders of lower

authorities, we find that no cogent material or evidences are on record to dislodge the claim of the assessee rather the additions are based more on allegations,

surmises, conjectures and mere suspicion. In such a case, these amounts could not be considered to be the assessee's undisclosed income. We order so. In the

result, the addition to the extent of Rs.5,44,90,000/- is sustained under this head and the balance additions stand deleted. The corresponding grounds raised by the

assessee in all the years stands partly allowed.â€

The Tribunal therefore limited the addition to the taxable income of the assessee under this head to an amount of Rs.5,44,90,000/-.

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. As regards the amount of Rs.6.26 crores that remained as a cash deposit in the assessee's own bank

account, the Tribunal found that an amount of Rs.26.48 lakhs was already dealt with in the assessment for the assessment year 2018-19 that was

subsequently set aside, and hence, could not be taken into account. In respect of the balance amount of Rs.599.56 lakhs, the Appellate Tribunal went

through the cash flow statement for the assessment years 2012-13 to 2017-18 worked out by the assessee, and finding it to be satisfactory and after

reducing therefrom amounts relatable to the assessment year 2018-19, the Appellate Tribunal sustained the additions on this count to Rs.5,35,15,000/-.

The separate additions made towards the purchase of immovable properties were also deleted by the Appellate Tribunal, based on its findings with

regard to the non-addition of amounts credited to the bank accounts of family members and group concerns to the income of the assessee.

10. Lastly, with regard to the other credit entries that were found in the bank accounts of the assessee and other family members and concerns, the

Appellate Tribunal followed its earlier finding regarding the non-attributability of credit entries in the bank accounts of family members and group

concerns to the income of the assessee and restricted the additions to only such entries as were relatable to the bank account of the assessee. The

addition sustained for the various years under that head was limited to Rs.88,50,000/-.

11. It is also significant to note that the Appellate Tribunal, while arriving at the figure relating to total additions that were sustainable against the

assessee, also took note of the declarations that had been filed and payments made by the respondent/assessee in connection with the applications that

he had proposed to file before the Income Tax Settlement Commission. As already noticed, the said applications could not be filed because the

Assessing Officer had completed the assessment before the assessee could approach the Settlement Commission. The figures declared by the

assessee in the said applications, that he had produced before the Tribunal, were considered by the Appellate Tribunal for the purposes of sustaining

the additions to his total taxable income as dealt with above.

12. During the hearing of these appeals, the learned Standing Counsel for the Revenue laid considerable emphasis on the deletion of additions made to

the taxable income of the assessee in respect of credit entries which the assessee had explained as loans availed from Sri.G.K.Rengma and

M/s.Excellence Associates. The amounts of Rs.3.22 crores and Rs.8.49 crores respectively availed as loans from the aforesaid two persons,

according to Revenue, were not satisfactorily explained by the assessee for the purposes of Section 68 of the I.T. Act. In support of her contention,

she would rely on the judgment of the Supreme Court in Principal Commissioner of Income Tax (Central) â€" 1 v. NRA Iron & Steel Pvt. Ltd. -

[(2019) 412 ITR 161 (SC)].

13. Per contra, it is the submission of the learned counsel for the respondent/assessee that the statutory burden cast on an assessee confronted with a

notice that sought an explanation for cash credits in his accounts, was only to establish to the satisfaction of the Assessing Officer the proof of identity

of the creditors, the capacity of creditors to advance money and the genuineness of the transaction. He places reliance on the decision in Kale Khan

Mohammad Hanif v. Commissioner of Income Tax - [(1963) 50 ITR 1 (SC)] to contend that once an assessee has submitted the documents relating

to identity, genuineness of the transaction and creditworthiness, then it is for the Assessing Officer to conduct a further enquiry and call for more

details before invoking Section 68 of the I.T. Act. It is his submission that it is only if the assessee is not able to provide a satisfactory explanation of

the nature and source of the receipt that the Revenue can treat the receipt as income in accordance with Section 68 of the I.T. Act. As rightly pointed

out by the learned counsel, we find that the Appellate Tribunal considered the aforesaid aspects and specifically found that with regard to the said

amounts of Rs.3.22 crores and Rs.8.49 crores, the assessee had placed on record copies of the PAN and Aadhar cards, Income Tax exemption

certificates issued under Section 10(26) of the I.T. Act, copies of work order issued by the Government, copies of immovable property ownership

certificates etc. along with audited financial statements, turnover certificates and affidavits affirming the loan transactions, all of which clearly aided

the assessee in discharging his initial burden of proof that the persons from whom the amounts were received had advanced these amounts as loans to

the assessee and they were persons who had the requisite means to advance the said amounts. The fact that these transactions had taken place

through banking channels was also found by the Tribunal to be significant in assessing the genuineness of the transactions. We see no reason, as we

have no material before us, to disbelieve the findings of the Tribunal on this count.

14. Before parting, we might also notice that the Appellate Tribunal had sustained certain additions to the taxable income of the assessee by rejecting

the argument of the assessee that such additions were made without there being any material that was obtained by the Revenue consequent to the

search under Section 132 of the I.T. Act and therefore could not be made at all in proceedings pursuant to a notice under Section 153A of the I.T.

Act. The Tribunal had rejected his contention by placing reliance on the decision of this Court in E.N. Gopakumar [1975 Taxmann.com 215], wherein,

it was held that there is no requirement of incriminating materials being detected in a search in order to complete an assessment or re-assessment of

income under Section 153A of the I.T. Act. As is well settled through the judgment of the Supreme Court in Principal Commissioner of Income Tax

Central-3 v. Abhisar Buildwell Pvt. Ltd. - [(2024) 2 SCC 433], the ratio in Gopakumar (supra) is no longer good law since the court in Abhisar

Buildwell (supra) clearly found that in case no incriminating material is unearthed during the search, the Assessing Officer cannot assess or reassess

taking into consideration other material in respect of completed assessments/unabated assessments and no addition can be made in the absence of

such incriminating material found during the course of search under Section 132 of the I.T. Act. No doubt, the assessee has not come in appeal

against the order of the Appellate Tribunal but we thought it apposite to mention this to demonstrate that the Revenue cannot be seen as prejudiced in

any manner by the order of the Appellate Tribunal impugned in these appeals.

In the result, we see no reason to interfere with the impugned order of the Appellate Tribunal, and we, therefore, dismiss the I.T. Appeals by

answering the substantial questions of law raised against the Revenue and in favour of the assessee.