

(2003) 04 KL CK 0061

High Court Of Kerala

Case No: IT Appeal No. 103 of 2000

Commissioner of Income Tax

APPELLANT

Vs

Navas M. Meeran

RESPONDENT

Date of Decision: April 9, 2003**Acts Referred:**

- Income Tax Act, 1961 - Section 158BB, 16

Citation: (2003) 183 CTR 388 : (2004) 267 ITR 627**Hon'ble Judges:** J.M. James, J; G. Sivarajan, J**Bench:** Division Bench**Advocate:** P.K.R. Menon and George K. George, for the Appellant; P. Balachandran, for the Respondent

Judgement

G. Sivarajan, J.

The matter arises under the IT Act, 1961, (for short "the Act"). The Revenue is aggrieved by the order of the Income Tax Appellate Tribunal, (for short "the Tribunal") passed in IT (S & S) A. 24/Coch/1998 filed by the respondent-assessee in respect of the block assessment for the period 1st April, 1986, to 17th June, 1996. There was a search operation conducted in the business premises of Eastern group of companies and in the residence of Shri. M.E. Meeran, who is the father of the assessee. Based on the books and other documents seized in the search, proceedings were initiated, inter alia, against the assessee u/s 158BD r/w Section 158BC of the Act. Pursuant to the notice issued u/s 158BD, the assessee filed returns for the block period on 9th June, 1997, showing a total undisclosed income of Rs. 10 lakhs. The AO, while completing the block assessment, determined the total unaccounted investment at Rs. 14,49,127. The assessee, being aggrieved by the said order, filed appeal before the Tribunal, which, by the impugned order deleted the addition. Similarly, the AO had denied standard deduction claimed by the assessee against the salary received from M/s Eastern Condiments (P) Ltd. The Tribunal, without any discussion, held that there is no justification in denying the standard

deduction on the salary received by the assessee, by observing that there is no bar in receiving salary from the company, in which the assessee is said to be a director.

2. This Court, while admitting the appeal, ordered notice on the following questions of law :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and fact in deleting the addition of Rs. 14,49,127 made as unaccounted investment of the assessee in the firm M/s Eastern Retreads (P) Ltd?

2. Whether, on the facts and in the circumstances of the case, should not the Tribunal have remitted the case to the AO for a fresh consideration of the addition ?

3. Whether, on the facts and in the circumstances of the case, the assessee is entitled to standard deduction u/s 16(1) of the IT Act ?

4. Whether, on the facts and in the circumstances of the case and without determining as to whether the assessee-director is an employee, the Tribunal is right in law in allowing deduction u/s 16(1) of the IT Act ?

5. Whether, on the facts and in the circumstances of the case, should not the Tribunal have remitted the case for a fresh consideration of the issue ?"

3. These questions, it must be noted, relate to the deletion of the addition of Rs. 14,49,127 and the direction regarding the entitlement of standard deduction.

4. Shri P.K.R. Menon, senior Central Government standing counsel for Taxes appearing for the appellant, submitted that the Tribunal failed to consider all the relevant matters, particularly, the seized documents RM-1 and A-28, in the proper perspective. The senior counsel also submitted that the Tribunal had observed that though the assessee had filed explanation with regard to the two seized slips, the AO was silent about the reply, but the Tribunal also failed to consider the said explanation before entering a finding that the seized material does not reflect any unaccounted transaction by the assessee. The senior counsel also produced copies of A-28 and RM-1 documents along with CMP 2339 of 2003. He had also filed a statement explaining the contents and correlation of those two documents. The senior counsel, based on these materials, submits that either the Tribunal or the AO must be directed to consider the matter afresh with reference to the explanation offered by the assessee as well as the statements filed for correlating the two documents mentioned above. The senior counsel further submitted that before grant of standard deduction, the Tribunal should have entered a finding as to whether there is employer-employee relationship between the assessee and the company in which the assessee is a director. He submitted that the Tribunal did not enter any finding on this question, and therefore, this issue also has to be remitted to the Tribunal or the AO. Senior counsel also pointed out that the Tribunal itself has remanded the assessment to the AO in respect of certain other matters.

5. Shri P. Balachandran, learned counsel appearing for the respondent-assessee, submits that the Tribunal had considered each and every material available on record, particularly RM-1 and A-28 documents, which are the sheet anchor of the AO, and entered a categorical finding that there is absolutely no material to hold that the figures found in RM-1 document represented undisclosed income of the assessee. Counsel accordingly submits that except the surmises based on RM-1 document, there is no other material to correlate the inference drawn by the AO that the assessee had undisclosed investment in the business of Eastern group of companies. Counsel also submitted that since the assessee was drawing salary from the company in which the assessee, is a director, he is entitled to claim standard deduction and the Tribunal was justified in allowing the claim.

6. We have considered the rival submissions and have perused the orders of the AO and the Tribunal. We note that the AO, in his order, has extracted the contents of A-28 document and also, referred to RM-1 slip and observed that so far as RM-1 document is concerned, "this slip of paper does not contain any specific details." But immediately he draws the inference that "as per the slip of paper found in the house of the assessee, at Adimali, the investment made by him is Rs. 17,19,727." The AO also noted the explanation of the assessee with regard to RM-1 that both the seized slips of paper are nothing but projected estimate of investments or "certain calculations out of wishful ambition." Though certain reasons are stated, it does not appear to have any impact on RM-1 slip. We find that the Tribunal had referred to the various materials and the explanation furnished by the assessee in para. 7 of the appellate order. However, the findings are contained in para 9 of the said order, which reads as follows :

"We have gone through the order of the AO and considered the rival submissions. RM-1 is the paper seized from the premises of the assessee. It does not throw any light to infer whether the figures in the slip are incomings or outgoings or what the figures in the paper stand for. It also does not throw any light, even if the figures indicates investments, where the investments are made by the assessee if they are withdrawals, from where such withdrawals are made ? Then coming to the paper seized, the entries of which are reproduced on p. 4 of the assessment order, it is admittedly seized from the premises of Sri Naiju Joseph of Vazhakulam. In this slip against the name of the assessee, Sri Navas, against the column "Land" the figure of Rs. 8,70,903 is shown, i.e., upto 1st Feb., 1994. The AO vide his letter dt. 6th May, 1997, called upon the assessee to explain the investments made by him in immovable properties (p. 10 of the paper book). The assessee by his letter dt. 2nd June, 1997, explained the investments in the immovable properties stating that these are all reflected in his cash flow statement. The AO does not seem to be discussing anything about this in the assessment order and does not say why he is not prepared to accept the explanation offered by the assessee. Coming to the money said to have been introduced in the assessee's name in the books of account on various dates, the assessee explains at pp. 2 and 3 of the letter, dt. 2nd June,

1997, that the investments by him in M/s Eastern Treads Ltd. had been taken care in the cash flow statement. The AO did not comment on this also. Later on the assessee was called upon to explain the investments in M/s Eastern retreads (P) Ltd. amounting to Rs. 17,19,727 (p. 2 of the letter dt. 6th May, 1997, by the AO). This is the figure which is reflected in RM-1 discussed earlier. As we have already stated there is nothing to show what this figure actually is ? The case of the Revenue is that this figure can be correlated with the figure in the slip seized from the residence of Sri Naiju Joseph of Vazhakulam, which is marked as Annexure-A-28. As we have already stated, the investment/cost of land is shown at Rs. 8,70,903 in the slip marked as annexure-28. In the letter, dt. 2nd June, 1997, the assessee gave the details of actual investments. However, the AO does not say why he is not accepting the assessee's explanation. If the actual investment is more than what is shown in the document as also the expenses, the same should have been brought in the assessment order specifically to show what is the actual investment in each plot of land or piece of land and only the difference should have been added. Likewise, the explanation of the assessee with regard to the cash credits in his name has also not been specifically dealt with and rejected the explanation of the assessee without assigning any reason. As we have noted hereinabove, in the list of items is shown a van costing Rs. 2,00,000 and another item mentioned as vehicles costing Rs. 3,75,000. There is no discussion about these items in the assessment order, the AO accepted the papers seized from the residence of Sri Naiju Joseph as true because of the reason that softener and other items shown almost agree. However, this alone is not sufficient to warrant any addition in the absence of correlations."

7. With reference to RM-1 slip the Tribunal observed that it does not throw any light to infer whether the figures in the slip are incoming or outgoing, or what the figures in the paper stands for. It is also stated that it does not throw any light; even if the figures indicate investment, whether the investments are made by the assessee, and if they are withdrawals, from where such withdrawals are made. It is also relevant to note that though the Tribunal has adverted to the reply filed by the assessee in his letter dt. 6th May, 1997, regarding the investments made by him in immovable properties, and further, though the Tribunal found that the AO has not considered the same, the Tribunal also did not consider the contents of the explanation offered by the assessee to ascertain the acceptability of the said explanation. Likewise, the Tribunal has noted that the assessee had filed a reply dt. 2nd June, 1997, explaining the investment made in M/s Eastern Retreads Ltd. wherein it is stated that the said investments had been taken care of in the cash flow statement. But the AO did not comment on this. It is also relevant to note that the Tribunal also has not made any effort to see whether the cash flow statement filed by the assessee had, in fact, taken care of the investments made in M/s Eastern Retreads Ltd. The Tribunal had further observed that when the assessee gave the details of actual investments in the reply dt. 2nd June, 1997, it was the duty of the AO to find out as to whether the said explanation is acceptable or if the actual

investment is what is shown in the document as also the expenses, the same should have been brought into the assessment specifically to show what is the actual investment in each plot of land or piece of land and only the difference should have been added. Here also, the Tribunal did not choose to consider the explanation by itself or to direct the AO to consider the explanation offered by the assessee in his replies before taking a final decision as to the justifiability of the addition made by the officer.

8. Since there is no due consideration of the explanation offered by the assessee in respect of the entries contained in the two slips either by the AO or by the Tribunal, we are of the view that the matter requires consideration at the hands of the AO, particularly in view of the fact that the Tribunal itself has, in its appellate order, directed the AO to consider certain matters.

9. In the above circumstances, we set aside the findings of the Tribunal contained in paras. 9 and 10 of the impugned order, deleting the addition made by the AO and remit the matter to the AO for fresh consideration in accordance with law and in the light of the observations made in this judgment. Certainly, the AO will consider the explanations offered by the assessee referred to in para. 10 of the appellate order. We make it clear that it is open to the assessee to place all his arguments and also any other additional evidence in support of his contentions before the AO.

10. We have already noted that the Tribunal has allowed the claim for standard deduction made by the assessee without any discussion. Since we have already remitted the matter to the AO, we direct the AO to consider the claim of the assessee for standard deduction also afresh. Certainly, the AO has to consider the question as to whether there is any employer-employee relationship between the assessee and the company in which the assessee is a director.

This IT appeal is disposed of accordingly.