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| <b>IN THE INCOME TAX APPELLATE TRIBUNAL</b>          |
| <b>COCHIN BENCH, COCHIN</b>                          |
| <b>BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER</b> |

|                           |
|---------------------------|
| I.T.A. No. 130/Coch/2017  |
| Assessment Year : 2009-10 |

|   |            |  |
|---|------------|--|
| Dilip George Varghese,<br>Thalakotte, Kuravankonam,<br>Trivandrum-695 003.<br>[PAN: ACWPV2362A] | <b>Vs.</b> | The Income Tax Officer,<br>Ward-1(1),Trivandrum. |
| <b>(Assessee-Appellant)</b>   |            | <b>(Revenue-Respondent)</b>                      |

|                    |                            |
|--------------------|----------------------------|
| <b>Assessee by</b> | Smt. Preetha S. Nair, Adv. |
| <b>Revenue by</b>  | Shri A. Dhanaraj, Sr. DR   |

|                              |                           |
|------------------------------|---------------------------|
| <b>Date of hearing</b>       | 25/04/2017                |
| <b>Date of pronouncement</b> | 26 <sup>th</sup> /04/2017 |

### **ORDER**

Per GEORGE GEORGE K.,JUDICIAL MEMBER:

This appeal, at the instance of the assessee, is directed against the order of the CIT(A), Trivandrum dated 08-02-2017. The relevant assessment year is 2009-10.

2. The solitary issue that arises for my consideration is whether the CIT(A) is justified in confirming the assessment order with regard to the addition made under section 69A of the I.T. Act.

3. The brief facts of the case are as follows:

The assessee is an individual who is engaged in the business of rubber manufacturing. For the assessment year 2009-10, the return of income was filed on 30/11/2009, declaring loss of Rs.4,70,270/- and net agricultural income of Rs.3,85,000/-. The assessment was taken up for scrutiny by issuance of notice u/s. 143(2) of the Act. In the course of assessment proceedings, it was noticed that the assessee had made cash deposits on various dates in the Axis Bank account during the year under consideration, amounting to Rs.15,81,000/-. The assessee was asked to explain the source of the cash deposits amounting to Rs.15,81,000/-. It was submitted by the Authorized Representative of the assessee that these deposits were mostly made from the withdrawals of the OD A/c maintained by the assessee with Indian Overseas Bank (IOB) and also margin money loan received from the Government. The Assessing Officer, after examining the explanation of assessee, the books of account etc., held that the withdrawals made from IOB were for other purposes and cannot be source for cash deposits made in Axis Bank. The Assessing Officer was of the view that except for a sum of Rs.1,25,000/- deposited with Axis Bank on 14/07/2008, there is no co-relation with the withdrawals made from Indian Overseas Bank. Therefore, the Assessing Officer, after giving credit of Rs.1,25,000/-, the balance cash deposits amounting to Rs.14,56,000/- ( i.e., 15,81,000-1,25,000/-) was treated as income assessable u/s. 69A of the I.T. Act.

4. Aggrieved by the order of the assessment, the assessee preferred an appeal before the first appellate authority. The CIT(A) confirmed the order of the Assessing Officer and dismissed the appeal of the assessee.

5. Aggrieved by the order of the CIT(A), the assessee preferred an appeal to the Tribunal. The Ld. Counsel for the assessee has filed a detailed paper book comprising of 36 pages, inter alia, enclosing I.T. return copies for AY 2009-10 and 2010-11, confirmation letter from M/s. A.N. Rubbers, for sale of latex and scrap, Bank statement of Axis Bank, income and expenditure statement of rubber estate for the assessment years 2006-07, 2007-08, 2008-09, the margin money loan taken proceeding, Bank statement of the IOB for the period 01/01/2007 to 31/12/2015 etc. It was submitted that the assessee is having rubber estate and had disclosed net agricultural income for the relevant assessment year amounting to Rs.3,85,000/- which has not been disputed by the Assessing Officer. Even in the earlier assessment years and in the subsequent assessment years, the assessee had disclosed agricultural income and the finding of the CIT(A) that no agricultural income was disclosed by the assessee in the past years and subsequent years is false. To prove this, the Ld. Counsel for the assessee has taken me through income and expenditure statement of the rubber estate and the returns of income filed by assessee for the subsequent years to show that agricultural income was disclosed in the subsequent AY's. With regard to the withdrawals from the Indian Overseas Bank and its redeposits with the

Axis Bank, the assessee submitted that each of the cash deposits in the Axis Bank could be co-related with the withdrawals from the Indian Overseas Bank and other source of income available with assessee.. It was further submitted that the assessee had received Rs.2,50,000/- from District Industries Centre, Trivandrum as margin loan money for setting up an industry and this amount was also withdrawn and deposited in the Axis Bank account of the assessee. It was submitted that the addition made u/s. 69A of the I.T. Act is not warranted and the same is to be deleted.

6. The Id. DR on the other hand submitted that for the cash deposits amounting to Rs.14,56,000/-, the assessee was not able to prove the source and the Assessing Officer has rightly added the same u/s. 69A of the Act.

7. I have heard the rival submissions and perused the material on record. The assessee had made cash deposits in Axis Bank aggregating to Rs.15,81,000/-. The amount and the date on which the cash deposits were made and the source for same, as claimed by the assessee are detailed below:

| Date       | Amount | Source of funds             |
|------------|--------|-----------------------------|
| 03.04.2008 | 265000 | Deposit out of cash on hand |
| 09.04.2008 | 15000  | Agricultural income         |
| 14.07.2008 | 125000 | Deposit out of cash on hand |
| 18.10.2008 | 101000 | Agricultural income         |
| 06.11.2008 | 100000 | Agricultural income         |
| 09.12.2008 | 100000 | Agricultural income         |
| 05.01.2009 | 60000  | Deposit out of cash on hand |

|            |                  |                             |
|------------|------------------|-----------------------------|
| 08.01.2009 | 230000           | Margin money loan           |
| 09.02.2009 | 275000           | Deposit out of cash on hand |
| 26.02.2009 | 50000            | Deposit out of cash on hand |
| 26.02.2009 | 30000            | Deposit out of cash on hand |
| 04.03.2009 | 50000            | Deposit out of cash on hand |
| 16.03.2009 | 35000            | Deposit out of cash on hand |
| 25.03.2009 | 135000           | Agricultural income         |
| 28.03.2009 | 10000            | Deposit out of cash on hand |
| Total      | <b>15,81,000</b> |                             |

7.1 Out of the total deposits of Rs.15,81,000/-, the Assessing Officer had given credit of Rs.1,25,000/- deposited on 14/07/2008 and balance Rs.14,56,000/- was brought to tax u/s. 69A of the Act. Out of the above deposits made, the assessee had claimed the following cash deposits were out of agricultural income, which are detailed below:

| Date       | Amount          | Source of funds     |
|------------|-----------------|---------------------|
| 09.04.2008 | 15000           | Agricultural income |
| 18.10.2008 | 101000          | Agricultural income |
| 06.11.2008 | 100000          | Agricultural income |
| 09.12.2008 | 100000          | Agricultural income |
| 25.03.2009 | 135000          | Agricultural income |
| Total      | <b>4,51,000</b> |                     |

7.2 The assessee had furnished income and expenditure statement of the Rubber Estate owned by him for the current year as well as for the prior and subsequent years. For the relevant assessment year, the assessee had also furnished a confirmation letter from A.N. Rubbers who had purchased rubber latex and scrap from the assessee. The confirmation letter is place at page 11 of the paper book which reads as follows:

"TO WHOMSOEVER IT MAY CONCERN"

*This is to confirm that we have made the following payments to Mr. Dilip George Varghese, Thalakkotte, Kuravankonam, Trivandrum-695 003 against purchase of ammoniated rubber latex and scrap rubber purchased from him during the year ended 31-03-2009:-*

| <u>Sl. No.</u> | <u>Date</u>  | <u>Amount</u>   |
|----------------|--------------|-----------------|
| 1.             | 8-Apr-2008   | 15,000          |
| 2.             | 4-Oct-2008   | 48,000          |
| 3.             | 17-Oct-2008  | 53,800          |
| 4.             | 28-Oct-2008  | 58,000          |
| 5.             | 5-Nov-2008   | 42,650          |
| 6.             | 26-Nov-2008  | 47,000          |
| 7.             | 8-Dec-2008   | 56,000          |
| 8.             | 15-Jan-2009  | 11,000          |
| 9.             | 2-Feb-2009   | 9,000           |
| 10.            | 3-Mar-2009   | 63,000          |
| 11.            | 12-Mar-2009  | 48,000          |
| 12.            | 23-Mar-2009  | <u>26,605</u>   |
|                | <i>Total</i> | <u>4,78,055</u> |

*For A.N. Rubbers  
sd/-  
Authorized Signatory*

7.3 The above confirmation letter was rejected by the CIT(A) only for the reason that the assessee was not disclosing any agricultural income in the past as well as in the subsequent assessment years. This conclusion of the CIT(A) is wrong. In the current year, the assessee had disclosed net agricultural income of Rs.3,85,000/- . Even in the subsequent assessment year, a perusal of the return of income shows that the assessee had declared net agricultural income of

Rs.3,70,000/-. The payments made by M/s. A.N. Rubbers aggregating to Rs.4,78,055/- match with the deposits made by the assessee in the Axis Bank. Since the assessee had disclosed net agricultural income of Rs.3,85,000/- in the current AY which has not been disputed by the Assessing Officer, I have no hesitation to hold that the claim of the assessee that the deposits made on 09/04/2008, 18/10/2008, 06/11/2008, 09/12/2008 and 25/03/2009 amounting to Rs.15,000/-, Rs.1,01,000/-, 1,00,000/-, Rs.1,00,000/- and Rs.1,35,000/- respectively has been properly explained. Hence I delete the addition made amounting to Rs.4,51,000/-. It is ordered accordingly.

7.4 As for the balance Rs.10,05,000/- added u/s. 69A, it is claimed that the source of funds are deposits made out of withdrawals from the assessee's OD account and the margin loan money received from District Industries Centre, Trivandrum. In the interest of justice and equity, I am of the view that one more opportunity needs to be granted to the assessee to explain the source of cash deposits with Axis Bank. If the assessee is in a position to co-relate the cash withdrawals and deposits within a reasonable time in the Axis Bank account, credit for the same shall be given. With these directions, I restore the issue of addition of Rs.10,05,000/- to the Assessing Officer. The Assessing Officer shall dispose of the matter after affording a reasonable opportunity of hearing to the assessee. The assessee shall produce necessary evidence and

shall co-operate with the Assessing Officer for expeditious disposal of the case. It is ordered accordingly.

8. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Pronounced in the open court on 26<sup>th</sup>-04-2017.

sd/-  
(GEORGE GEORGE K.)  
JUDICIAL MEMBER

Place: Kochi

Dated: 26<sup>th</sup> April, 2017

GJ

Copy to:

1. Dilip George Varghese, Thalakkotte, Kuravankonam, Trivandrum-695 003.
2. The Income Tax Officer, Ward-1(1), Trivandrum
3. The Commissioner of Income-tax(Appeals), Trivandrum.
4. The Pr. Commissioner of Income-tax, Trivandrum.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)  
I.T.A.T., Cochin