

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER

I.T.A. No.30/Coch/2017
Assessment Year : 2013-14

The Income-tax Officer, Ward-1(1), Non-Corporate, Kochi.	Vs.	Shri Abraham Varghese Charuvil, M/6/-139, Charuvil House, Changampuzha Nagar, Kalamassery, Kochi-682 033. [PAN :AGQPC 2237F]
(Revenue-Appellant)		(Assessee-Respondent)

Revenue by	Shri A. Dhanaraj, Sr. DR
Assessee by	Shri K.P. Paulson, CA

Date of hearing	24/04/2017
Date of pronouncement	26 th /04/2017

ORDER

Per GEORGE GEORGE K., JUDICIAL MEMBER:

This appeal, at the instance of the Revenue, is directed against the order of the CIT(A)-II, Kochi dated 21/11/20216. The relevant assessment year is 2013-14

2. The grounds raised read as follows:

1. The Order of the Commissioner of Income-tax(Appeals-II), Kochi, in I.T.A. No. 104/NCW-1(1)/CIT(A)-II/15-16 dated 21/11/2016, is opposed to law, facts and circumstances of the case.

2. Whether the Commissioner of Income Tax(Appeals) was right in allowing the assessee's appeal holding the facts and circumstances of the

case as identical to the case of ITO vs. Dr. Koshy George, reported in (2009) 317 ITR (AT) 116(Cochin) decided by the ITAT, Cochin Bench as in the case the transactions were not through banking channels.

3. The learned CIT(A) erred in granting relief to the assessee without any evidence in support of his claim that the entire cash receipt of Rs.80 lakhs was the sale consideration of agricultural land especially the registered document showed a lesser price.

4. The learned Commissioner of Income Tax(A) erred in treating the entire cash deposits were sale consideration as the assessee has not provided any proof for connection between the money deposited in the bank account and the money received from purchaser.

5. For these and other grounds that may be urged at the time of hearing, it is requested that the order of the Commissioner of Income tax(Appeals) may be set aside and that of the Assessing Officer restored.

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

The assessee is an individual. For the assessment year 2013-14, the return of income was filed on 31/03/2015, declaring total income of Rs.71,430/-. The assessment was taken up for scrutiny by issuance of notice u/s. 143(2) of the I.T. Act. In the course of assessment proceedings, the assessee was asked to explain the source of cash deposits in Federal Bank amounting to Rs.80 lakhs. The assessee vide letter dated 30/11/2015 stated that he and his wife had sold agricultural for Rs.70,79,500/- which was deposited in Federal Bank and balance cash deposits are out of agricultural income. The Assessing Officer noticed that the sale proceeds of agricultural property as per sale deed is only Rs.30,59,500/- The Assessing Officer held that only Rs.30,59,500/- can be given credit. The Assessing Officer further gave credit for agricultural income of Rs.10,40,500/-

declared in return of income and balance of Rs.39,00,000/- (i.e., Rs. 80,00,000 - Rs.30,59,500 – Rs.10,40,500) was brought to tax as unexplained deposit under the head 'income from other sources'. The relevant observation of the Assessing Officer reads as follows:

"When requested to explain the source of these deposits, the assessee vide his letter dated 30/11/2015 has stated that all these deposits are sale proceeds of agricultural land of his wife, Smt. Alice Abraham and himself at Athikkayam, Pathanamthitta but on verification of the documents filed by the assessee, it was noticed that the sale proceeds of land as per the sale deed is only Rs.30,59,500/-. An agricultural income of Rs.10,40,500/- was also declared in the return of income filed by the assessee and his wife for the previous year relevant to the assessment year 2013-14 but no documentary evidence has been filed to show the source for the balance deposit of Rs.39,00,000/-. Therefore, a proposal was issued to the assessee on 08/12/2015 to treat the balance deposit Rs.39 lakhs as unexplained deposit of the assessee.

3. The assessee has filed a reply on 17/12/2015 in response to the proposal issued on 08/12/2015 but the assessee could not furnish any evidence in support of source of balance cash credits of Rs.39,00,000/-. It was contended by the assessee that this amount is also the sale proceeds of the Agricultural Property which was not shown in the sale deed.

4. The contention raised by the assessee has been duly considered. It is settled position of law that only the amount shown in the sale deed can be taken as the legally approved value of the property. The balance amount if any can be considered only as the black money or the unaccounted money of the assessee. The primary duty of the Income Tax Department is to unearth and assess the unaccounted money. Under these circumstances, the balance amount of Rs.39,00,000/- is treated as the unaccounted income of the assessee and assessed under the head Income From Other Sources."

4. Aggrieved by the addition of Rs.39 lakhs, the assessee preferred an appeal before the first appellate authority. Before the first appellate authority, it was submitted that the assessee along with his wife had sold agricultural land which is exempt from capital gains tax. It was submitted that this fact is also admitted by the Assessing Officer and whatever money received over and above the sale deed is nothing but a part of receipt on account of sale of agricultural land. It was contended that the Assessing Officer has erred in bringing the same to tax as income from other sources. It was further contended before the CIT(A) that in the return of income filed in the case of the assessee and his wife, the entire sale consideration on sale of agricultural land was disclosed, namely, Rs.70,79,500/-. The CIT(A), by following the order of the Cochin Bench of the Tribunal in the case of ITO vs. Dr. Koshy George (2009) 317 ITR (AT) 116 (Cochin) held that the amount deposited in the bank account is the sale proceeds of agricultural land and is not liable to be taxed as 'income from other sources'. The relevant finding of the CIT(A) reads as follows:

"I have gone through the assessment order and submission of the appellant. During the course of assessment proceedings, the Assessing Officer found that the assessee had deposited a total of Rs.80 lakhs in cash in its account, i.e., Rs.40 lakhs on 16.4.2012 and Rs.40 lakhs on 17.7.2012. On being asked, the assessee said that he had sold his rubber plantation and received sale consideration for the same, in cash. However, the purchaser put a smaller value as sale consideration received in cash in his Bank account. The Assessing Officer did not accept the contention of the assessee and added the difference between actual consideration and consideration received as per the agreement for sale, as income from other sources u/s. 68. Now during the course of appellate

proceedings, the appellant contends that this was the agricultural property he sold, and he received entire amount of sale consideration in cash which is inclusive of consideration as per Sale Deed and the additional amount, popularly known as "On Money", which he deposited in his bank account. He further stressed that before shifting to India, he worked abroad, i.e., Middle East, for a number of decades, and his income in India is income from house property and a meager amount of interest income on his deposits in Bank. Therefore, since the amount of cash deposited in the bank, over and above the amount mentioned in sale deed, also represents consideration received on sale of agricultural land, the same is exempt from incidence of tax. In his support, he placed reliance on the decision of the Hon'ble jurisdictional ITAT, Cochin Bench in the case of ITO vs. Koshy George, reported in (2009) 317 ITR (AT) 116 (Cochin), wherein, the Honourable Bench held that any surplus money arising to an assessee on sale of agricultural land would always partake the character of agricultural income itself. The consideration stated in the Registered Sale Deed was agricultural income. Likewise, "the on money" also should be treated as agricultural income. Since the facts of the instant case is squarely covered by the decision of Jurisdictional ITAT Cochin in the decision discussed above, addition of Rs.39,00,000/- is hereby deleted."

5. The Revenue being aggrieved is in appeal before the Tribunal. The Ld. DR submitted that out of total cash deposits of Rs.80 lakhs, the amount shown in the sale deed of agricultural property amounting to Rs.30,59,000/- and agricultural income of Rs.10,40,000/- was given due credit by the Assessing Officer and balance Rs.39 lakhs was brought to tax as 'income from other sources'. It was submitted by the Ld. DR that there is nothing on record to link the deposits of Rs.39 lakhs with the sale of agricultural land. It was submitted that the source of the deposit has not been properly explained and therefore, the Assessing Officer has rightly brought the same to tax as 'income from other sources'. It was further submitted by the Ld. DR that the case law relied on by the CIT(A) to decide the issue in favour of the assessee, namely, ITO vs. Dr.

Koshy George (supra) is distinguishable on facts because in that case, the entire sale consideration was received through banking channels whereas in the instant case, it is cash deposits and there cannot be any link between cash deposits and sale of agricultural land, except what has been disclosed in the sale deed.

6. The Ld. AR on the other hand reiterated the submissions made before the I.T. authorities and relied on the findings/conclusions of the CIT(A).

7. I have heard the rival submissions and perused the material on record. The assessee is a retired person who is aged about 75 years. He had spent major part of his life in the Gulf countries and was unaware of the intricacies of tax laws in India. The admitted fact is that the assessee alongwith his wife had 7.01 acres of agricultural land which was cultivated with Rubber and was having Rubber Board registration. The sale proceeds of the said agricultural land is not a capital asset as per section 2(14) of the I.T. Act. This fact is also accepted by the Assessing Officer, by not taxing the sale consideration of Rs.30,59,500/- disclosed in the sale deed.

7.1 According to the assessee, the total sale consideration is Rs.70,79,500/- and because of insistence of the buyer to save stamp duty, the sale consideration was disclosed in the sale deed at Rs.30,59,500/-. It was stated that Rs.30,59,500/- was circle rate fixed by the Kerala Government. It was

submitted that the entire sale consideration of Rs.70,79,500/- was deposited in Federal Bank on 16/04/2012 and 17/07/2012. On perusal of the bank accounts with Federal Bank, I notice that there is not much of transaction in the bank account of the assessee either before or after the sale transaction of agricultural land. The assessee is not having any other source of income so as to generate undisclosed income of Rs.39 lakhs. The assessee was an NRI and on his retirement, he was doing agricultural activities. Most importantly, I notice that there is no concealment, because in the income tax return filed before the IT authorities, the assessee and his wife had disclosed the entire value of sale transaction amounting to Rs.70,79,000/- (including the on-money). A copy of the income tax return filed by the assessee and his wife alongwith computation statement for the assessment year 2013-14 are enclosed at pages 7 to 19 of the paper book filed by the assessee. In the peculiar facts and circumstances of the case, I have no hesitation to hold that the receipt of on-money was in no way different from the receipt amount shown in the sale deed. The Assessing Officer has not disputed the source of cash receipts. Her only contention is that balance value of the property not shown in the sale deed can only be considered as unaccounted money/on-money and the same has to be brought to tax as 'income from other sources'.

7.2 In this context, it is important to refer to section 68 of the I.T. Act, which reads as follows:

"Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year."

The above section has application when no explanation is offered or the explanation offered is not satisfactory in the opinion of Id. Assessing Officer. Further, by using the words "may be charged", instead of "shall be charged, it is clear that addition u/s. 68 is not mandatory. On the other hand the Assessing Officer has to apply his mind on facts of each case and decide whether the addition is warranted.

7.3 As mentioned earlier, the assessee is an aged person, who had settled down in his native place. He was engaged in agricultural activities on his retirement and there is nothing on record to suggest that the assessee alongwith his wife were in a position to generate unaccounted income of Rs.39 lakhs other than on-money on account of sale of agricultural land. The payment of on-money is an unfortunate practice in most part of our country, and none can deny this factual situation. It is the case of the assessee that the buyers were insisting on reducing the sale consideration to be disclosed in the sale deed for the purpose of reducing stamp duty payment. This contention of the assessee cannot be totally brushed aside. I also place reliance on the order of the Cochin Bench of the Tribunal in the case of ITO vs. Dr. Koshy George (supra), wherein it

was held by the Tribunal that any surplus money arising to an assessee on sale of agricultural land would partake the character of agricultural income itself.

7.4 For the aforesaid reasoning, I hold that the order of the CIT(A) is correct and in accordance with law and no interference is called for. It is ordered accordingly.

8. In the result, the appeal filed by the Revenue is dismissed.

Pronounced in the open court on 26th -04-2017.

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

Place: Kochi

Dated: 26th April, 2017

GJ

Copy to:

1. Shri Abraham Varghese Charuvil, M/6/-139, Charuvil House, Changampuzha Nagar, Kalamassery, Kochi-682 033.
2. The Income-tax, Officer, Ward-1(1), Non Corporate, Kochi.
3. The Commissioner of Income-tax(Appeals)-II, Kochi.
4. The Pr. Commissioner of Income-tax, Kochi.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

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

