

<b>IN THE INCOME TAX APPELLATE TRIBUNAL</b>
<b>COCHIN BENCH, COCHIN</b>
<b>BEFORE S/SHRI ABRAHAM P. GEORGE, AM &amp; GEORGE GEORGE K., JM</b>

I.T.A. No. 352/Coch/2016
Assessment Year : 2011-12

Shri Subash Kizhakkeparambil Chandrasekharan Nair, Kizhekkeparambil House, Park Lane, Kottayam. [PAN:ADZPC 3028J]	<b>Vs.</b>	The Assistant Commissioner of Income-tax, Central Circle-2, Kochi.
<b>(Assessee-Appellant)</b>		<b>(Revenue-Respondent)</b>

<b>Assessee by</b>	Shri C.B.M. Warriar, CA
<b>Revenue by</b>	Shri A. Dhanaraj, Sr. DR

<b>Date of hearing</b>	16/05/2017
<b>Date of pronouncement</b>	16 /05/2017

### **ORDER**

Per ABRAHAM P.GEORGE, ACCOUNTANT MEMBER:

This appeal filed by assessee is directed against an order of the CIT(A)-IV, Kochi dated 16/06/2016. Assessee is aggrieved on an addition of Rs. 54,05,000/- made u/s. 68 of the Income Tax Act, 1961 ('the Act' hereinafter), confirmed by the CIT(A).

2. Facts apropos are that assessee is a stockist and distributor. He had filed his return of income for the impugned assessment year declaring an income of Rs.5,72,260/-. Assessing Officer was having information through Annual

Information Return that assessee had deposited a sum of Rs.54,05,000/- in his Saving Bank account with Indusind Bank Ltd. Though the assessee initially denied having made such deposits in any Bank, when the statement of account was put to him, assessee admitted the deposits. Thereafter, assessee filed a letter before the Assessing Officer claiming that he had earlier advanced loans to three different parties through cheques and the deposits in the Bank Account were cash repayments from such debtors. Of these three debtors named Shri Bijumon V., Shri Justin Francis and Shri K.C. Jayakumar, one was his brother. The Assessing Officer pointed out to the assessee that the cash deposits were made prior to the issue of cheques to these three parties. As per the Assessing Officer, if the deposits were cash returned by the debtors, then the cheques given by the assessee as loans should have preceded the date of such deposits. Assessing Officer was of the opinion that cash deposits made by the assessee, were undisclosed income of the assessee. He made an addition of Rs.54,05,000/- u/s. 68 of the Act.

3. In his appeal before the CIT(A), contention of the assessee was that there were cash deposits as well as cash withdrawals from the Bank account and the Assessing Officer had considered only the deposits, while making the addition. Further, as per the assessee, the cash deposits were made by the debtors after discounting the cheques issued to them, through their respective Bank accounts. Contention of the assessee was that when cheques came to his Bank for clearing

cash received by the debtors on discounting these cheques earlier, were deposited, so that the cheques were not dishonoured. As per the assessee, there was a chain of cheque discounting between the three debtors, namely, Shri Bijumon V., Shri Justin Francis and Shri K.C. Jayakumar. However, the CIT(A) was not impressed. According to him, the claim of the assessee that refunds of loans aggregating to Rs.6,90,000/- to Shri Bijumon V., loans aggregating to Rs.15,95,000/- to Shri Justin Francis and loans aggregating to Rs.30,94,000/- to Shri K.C. Jayakumar were used for making the deposits could not be believed. As per the CIT(A), the cash deposits in assessee's Bank account had preceded the date of the cheques. Thus, as per the CIT(A), the cheques and the cash deposits could not be co-related and assessee had failed to discharge the onus on him to prove the source of cash deposits. He upheld the addition made by the Assessing Officer.

4. Now before us, the Ld. Counsel for the assessee submitted that out of the three debtors, Shri K.C. Jayakumar and Shri Justin Francis were Income Tax assessee and Shri Bijumon V., though he was not an income tax assessee, was a vegetable vendor who had income below taxable limit. Contention of the Ld. AR was that even if the deposits were to be considered as unexplained, the Assessing Officer ought to have computed the peak credit before making the addition. As per the Ld. AR, peak deficit came to Rs.3,09,500/- only. According to him, confirmations given by the three parties were not verified by the

Assessing Officer. Ld. AR submitted that if given another chance, assessee would be able to clearly demonstrate the source for the cash deposits.

5. Per contra, Ld. DR strongly supported the orders of the lower authorities.

6. We have heard the rival contentions and perused the material on record. Copy of the Bank account of the assessee, cash deposits of which were considered for addition, has been placed at paper book pgs. 6 -13. What we find from the said copy is that the cash deposits were of sums varying between Rs. 2 lakhs to Rs.4000/-. The number of the cash deposits came to 55. As against each of these deposits, there were withdrawals by cheque in the preceding few days. The cheques issued in the name of the three parties were also almost of the same amount as the cash deposits. Peak credit in the Bank account as per the Bank statement comes to Rs.3,02,091.83 only on 26-11-2010. Contention of the assessee that the cheques given to the three debtors were discounted by them and cash received on such discounting used for making the deposits has not been carefully examined by the lower authorities. In the facts and circumstances of the case, we are of the opinion that the question regarding quantum of addition that can be done u/s. 68 of the Act requires fresh look by the Assessing Officer. We set aside the orders of the lower authorities and remit it back to the file of the Assessing Officer for considering the issue afresh in

accordance with law. Needless to say, assessee has to be given an opportunity to substantiate its case and furnish evidence in support.

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

Pronounced in the open court on 16-05-2017.

sd/-  
(GEORGE GEORGE K.)  
JUDICIAL MEMBER

sd/-  
(ABRAHAM P. GEORGE)  
ACCOUNTANT MEMBER

Place: Kochi

Dated: 16th May, 2017

GJ

Copy to:

1. Shri Subash Kizhakkeparambil Chandrasekharan Nair, Kizhekkeparambil House, Park Lane, Kottayam.
2. The Assistant Commissioner of Income-tax, Central Circle-2, Kochi.
3. The Commissioner of Income-tax(Appeals)-IV, Kochi,
4. The Commissioner of Income-tax, Central, Kochi.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

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