

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, COCHIN**

Shri George George K, Judicial Member

ITA No.337/Coch/2018 : Asst.Year 2010-2011

Sri.Johny Sebastian C/o.K.Venkatachalam Aiyer & Co.Chartered Accountants Adithya Commercial Arcade Nagambadom Kottayam – 686 001. PAN : AISPS0595C.	Vs.	The Income Tax Officer Ward – 2 Kottayam.
(Appellant)		(Respondent)

Appellant by : Sri.Gopalakrishnan, CA
Respondent by : Smt.A.S.Bindhu, Sr.DR

Date of Hearing : 27.03.2018	Date of Pronouncement : 01.04.2019
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ORDER

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 12.03.2018. The relevant assessment year is 2010-2011.

2. There is a delay of 71 days in filing this appeal. The assessee has filed a petition to condone the delay, accompanied by an affidavit stating the reasons for the delay in filing this appeal before the Tribunal. I have perused the reasons stated in the affidavit for the delayed filing of this appeal. I am of the view that the delay in filing the appeal is not on account of any latches on the part of the assessee and I am satisfied that there is sufficient cause for condoning the

delay. Hence, the delay of 71 days in filing this appeal is condoned and I proceed to dispose of the same on merits.

3. The solitary issue that is raised in this appeal is whether the CIT(A) is justified in confirming the addition of Rs.14,00,000 made by the Assessing Officer.

4. Briefly stated the facts of the case are as follows:

The Assessing Officer in the assessment completed u/s 143(3) of the I.T.Act had made an addition of Rs.14 lakh as unexplained investment u/s 69 of the I.T.Act. The relevant observation of the A.O. reads as follows:-

"9. I have examined the reply of the assessee. The assessee had initially stated that the source for the cash deposit found in his bank account is nothing but agricultural income. Only when it was pointed out that the agricultural income returned is only Rs.5 lakhs as against the Rs.19 lakhs claimed vide his letter dated 20.11.2012 does he come out with a new evidence of sale of rubber trees. The courts have held that in order to discharge the burden of proof, it is the duty of the assessee to not only furnish the identity of the creditor but also prove his credit worthiness as well as genuineness of the transaction. The assessee has stated that the amount of Rs.16,00,000 was received from Shri.Roy George from sale of rubber trees. Examination of the above Shri. Roy George reveal that he is not in a position to pay hefty amount to the assessee as stated in the agreement signed. Shri. Roy George is not an income tax assessee and does not have a Permanent Account Number."

5. Aggrieved by the addition of Rs.14 lakh by the Assessing Officer u/s 69 of the I.T.Act, the assessee preferred an appeal

to the first appellate authority. The CIT(A) confirmed the addition made by the Assessing Officer. The relevant finding of the CIT(A) reads as follow:-

"4.1.5 The assessee during the appeal proceedings has not produced any evidence to prove that the assessee in fact received the cash by sale of trees but only relied on the sale agreement produced during the course of assessment proceedings. However, as rightly concluded by the Assessing Officer, the lack of creditworthiness of the purchasers clearly proves that the transaction is not genuine. Therefore, the addition made by the Assessing Officer on account of the cash deposit is confirmed and the grounds raised by the assessee are dismissed."

6. Aggrieved by the order of the CIT(A), the assessee has preferred this appeal before the Tribunal, raising the following grounds:-

1. Learned Commissioner of Income Tax and the Assessing Authority grossly erred in not appreciating and understanding to accept that the amount of Rs.14,00,000/- deposited on various dates in the savings bank account with South Indian Bank Kurivilagad and South Indian Bank Vakathanam in the name of the appellant was made out of the sale proceeds of the rubber trees and the rubber latex received as per the contract executed on 25.06.2006 and the entire amount represents agricultural income. The learned Commissioner of Income Tax and the Assessing Authority ought to have understood that income earned by the appellant from the sale of rubber trees and rubber latex is agricultural income and the appellant had correctly and completely disclosed the exact nature and source of the income in respect of the sum of Rs.14,00,000/-

obtained and deposited in the savings bank account.

2. The Learned Commissioner of Income Tax further erred in confirming the addition of Rs.14,00,000/-- made by the Assessing Authority under Section 69 of the Act against cash deposits made in the savings bank account maintained in the name of the appellant without proper application of mind as he failed to correctly appreciate that the appellant had established the nature and original source of the income and in the sworn statement given before the Learned Assessing Authority, the contractor confirmed categorically and specifically that he has undertaken contract for the purchase of the standing rubber trees and to carry out the slaughter tapping of the rubber trees before cutting them for an aggregate consideration of Rs.16,00,000/- and such consideration for the value of the standing trees together with the right to carry out slaughter tapping of the rubber trees for a period of three years from 2006 was evidenced by the agreement dated 25.06.2006 and the contractor paid the consideration to the appellant out of the sale proceeds of the rubber trees and the rubber latex obtained out of the slaughter tapping. The Learned Commissioner of Income Tax failed to understand that the sworn statement given before the assessing authority by the contractor together with the sale agreement produced during the course of the assessment proceedings clearly established and proved the genuineness of the transaction and the original sources for the cash deposits of Rs.14,00,000 made out of the sale value of rubber trees and therefore the Assessing Authority was wrong in concluding that transaction is not genuine.

3. The Learned Commissioner of Income Tax grossly erred in confirming the addition of Rs.14,00,000/- made by the assessing authority. The learned Commissioner should have accepted the explanation furnished by the appellant for the

original source for the cash deposits for an amount of Rs.14,00,000/- made in the bank.

4. Other grounds as shall be urged at the time of the hearing of the appeal."

7. The learned AR has filed a paper book comprising of 42 pages enclosing the copy of the Slaughter Tapping Agreement entered between the assessee and Sri.Roy George on 25.06.2006, statement recorded from Sri.Roy Goerge by the Income-tax Department on summons issued to him, copies of the orders of the Assessing Officer and the CIT(A) etc. The learned AR reiterated the submissions made before the Income-tax Authorities. The learned Departmental Representative, on the other hand, strongly supported the assessment order and the CIT(A)'s order.

8. I have heard the rival submissions and perused the material on record. The Assessing Officer accepted the agricultural income of Rs.5,00,000 offered for assessment. The balance amount of Rs.14,00,000 being the sale value of 2000 rubber trees given for slaughter tapping and its sale was not accepted. In support of the claim for the income of Rs.14,00,000 earned by way of sale of rubber trees the assessee furnished the following evidences.

(i) Agreement executed on 25-06-2006 with Mr.Roy George granting the right for slaughter tapping of 2000 rubber trees and subsequent sale of the said rubber

trees during the relevant assessment year, namely, Asst.Year 2010-2011.

(ii) Confirmation letter from Mr. Roy George confirming that an amount of Rs.20,00,000 had been paid to the assessee in installments.

8.1 Further, Mr. Roy George appeared before the learned Assessing Authority on 30-12-2012 in response to the summons issued and gave sworn statement. In response to the questions raised by the assessing authority, Mr. Roy George confirmed the following.

(i) He is a farmer growing banana, ginger etc. He was also engaged in the activity of undertaking contracts for slaughter tapping of rubber plantation and purchase of rubber trees from rubber planters.

(ii) Sri. Roy George had entered into a business dealing with the assessee Sri. Johny Sebastian. Accordingly, he had entered into a contract for the slaughter tapping of rubber trees and purchase of 2000 rubber trees for a total value of Rs.20,00,000. Thus, he acquired the right for the slaughter tapping of the rubber trees for a period of three years from 2006 to 2009.

(iii) Sri.Roy George paid an amount of Rs.20,00,000 to the assessee, Sri. Johny Sebastian by installments in accordance with the agreement executed for the purchase

of 2000 rubber trees and slaughter tapping.

(iv) An amount of Rs.50,000 was paid as advance at the time of the execution of the contract.

(v) The balance amount of Rs.19,50,000 was paid out of the sale proceeds of the natural rubber obtained by slaughter tapping and sale value of the rubber trees purchased from the assessee.

(vi) The money for payment of the initial advance of Rs.50,000 was raised by way of loan from Muthoot Bankers and Co-Operative Bank, Kuravilangad against the security of the gold ornaments.

(vii) He also agreed to produce the proof in support of the loan taken from Muthoot Bankers and Co-operative Bank, Kuravilangad.

(viii) The timber obtained by cutting 2000 rubber trees in the plantation was sold through the broker Mr. Hamsa Kunju to various persons. He also agreed to produce evidences in support of the sale of rubber trees made to several parties through the broker.

8.2 Shri. Roy George is not a creditor. He is a customer who purchased 2000 rubber trees from the assessee as per an agreement executed in the year 2006. The value of the rubber trees was paid as and when Mr. Roy George was cutting and removing the rubber trees from the plantation. Sri. Roy George

appeared before the Assessing Authority in response to the summons and confirmed that he sold the rubber trees to his customers and as and when he obtained the sale proceeds from his customers, he gave the said sum to the assessee.

8.3 In short, Sri. Roy George was simply carrying out the trading activity of purchasing rubber trees from the assessee and selling the same to his customers. As and when the rubber trees were removed from the plantation, Mr. Roy George sold the rubber wood to his customers and the payments were given to the assessee immediately on receipt of the sale proceeds from the customers. This is not an unexplained cash credit/investment. For this purpose, the customer need not possess or own a huge cash balance of Rs. 14,00,000 at a time. In such transaction, the persons agreeing to purchase the rubber trees will not have much resources. The initial advance of Rs. 50,000 was raised by Shri. Roy George from the Co-operative Bank and Muthoot Bank by way of loan against the security of the gold pledged.

8.4 As regards the rubber planting and its activities are concerned, a rubber tree requires about seven years to provide yield or for reaching its maturity to give latex. Thereafter it will be possible to obtain rubber latex from the rubber tree for a further period 23years. After normal tapping, the yield of rubber latex will decrease gradually. Finally, the quantity of the latex obtained by normal tapping will decrease substantially and the income from latex will not be sufficient

to meet the expenditure for the maintenance of the plantation. In other words, maintaining the plantation thereafter will not be economical. The rubber trees are given for slaughter tapping for a specific period ranging from one year to three years. In the activity of slaughter tapping, the rubber trees are tapped intensely with the aim of obtaining maximum yield. Within a period of three years the entire quantity of rubber latex available in a rubber tree will be taken. Thereafter, the rubber trees will be having only the value of timber. The standing rubber trees thereafter will be cut and sold as timber. Such rubber wood is used for the manufacture of furniture and packing cases. Thus a contract for slaughter tapping and the cutting and removal of the rubber trees will be executed over a period of 2-3 years. In such cases, the final activity is cutting the rubber trees and selling the rubber wood within a period of five to six days from the date of cutting. The customer who purchases the rubber wood will pay the value of the rubber wood in advance or on the delivery of the timber and part of same is in turn paid to the plantation owner. These contracts are normally undertaken by the rubber tappers individually or by a group of rubber tappers.

As regards the income received from slaughter tapping is concerned, it would be agricultural income whereas the income received on sale of slaughter rubber trees would be a capital receipt and not an agricultural income going by the judicial pronouncements. As per the agreement entered between the assessee and Sri.Roy George (agreement dated

25.06.2006) a sum of Rs.6,00,000 was to be received for slaughter tapping and Rs.14,00,000 was for sale of rubber trees. The sale of rubber trees has admittedly taken place during the relevant assessment year going by the agreement entered between the assessee and Sri.Roy George. The income from sale of rubber trees being a capital receipt going by the judicial pronouncements, the said income cannot be disclosed in the return of income as agricultural income.

8.5 As mentioned earlier, the assessee has substantiated the genuineness of the transaction and the sources for the investments with the following documentary evidences:

- (i) Agreement executed with Shri. Roy George granting right for slaughter tapping and sale of rubber trees.
- (ii) Sworn statement given before the Assessing Authority confirming that Mr. Roy George entered into a contract for the slaughter tapping and purchase of 2000 rubber trees for an aggregate amount of Rs. 20,00,000.
- (iii) The explanation of the contractor for the advance of Rs.50,000 given at the time of the execution of the agreement.
- (iv) The explanation that the sum of Rs.20,00,000 was paid to the assessee in installments by Shri. Roy George.

The confirmation of Mr. Roy George that the sources for the payment of the sum of Rs.20,00,000 to the assessee was out of the proceeds obtained from the sale of the rubber latex obtained by slaughter tapping and the sale of rubber trees situated in the plantation and which were removed during the relevant assessment year.

(v) The identity of Shri. Roy George, the person with whom the agreement for slaughter tapping was entered, was established by giving the details of his family, his residential address and appearing before the Assessing Authority.

(vi) Shri. Roy George confirmed that he is maintaining bank accounts with Federal Bank, and Co-Operative Bank at Kuravilangad. His family also owns 50 cents of land in the name of his mother. He is also engaged in agricultural activities in ginger, banana etc in the land owned. Shri. Roy George was also engaged in the activity of slaughter tapping in the past. The assessee Shri. Johny Sebastian is known to him and he had entered an agreement for slaughter tapping and purchase of 2000 rubber trees.

8.6 The Assessing Officer and the CIT(A) had erred in concluding that the assessee has not produced any concrete evidence to prove the creditworthiness of Sri. Roy George. They have also wrongly applied the principles laid down in Section

69 of the Act with the mandatory requirements of establishing the creditworthiness of a loan creditor. Shri. Roy George is not a loan creditor. In fact, he is a customer who purchased the latex and rubber trees from the assessee and the entire amount was paid in several installments in accordance with the sale of the rubber trees to his customers and its realization. For the aforesaid reasons, I delete the addition of Rs.14 lakh. It is ordered accordingly.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 01st day of April, 2019.

Sd/-
(George George K)
JUDICIAL MEMBER

Cochin ; Dated : 01st April, 2019.
Devdas*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The Pr.CIT, Kottayam.
4. The CIT(A)-Kottayam
5. DR, ITAT, Cochin
6. Guard file.

(Asstt. Registrar)
ITAT, Cochin