

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

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.310/Coch/2017 : Asst.Year 2006-2007
ITA No.311/Coch/2017 : Asst.Year 2007-2008
ITA No.312/Coch/2017 : Asst.Year 2008-2009
ITA No.313/Coch/2017 : Asst.Year 2009-2010
ITA No.314/Coch/2017 : Asst.Year 2010-2011
ITA No.315/Coch/2017 : Asst.Year 2011-2012
ITA No.316/Coch/2017 : Asst.Year 2012-2013

The Asst.Commissioner of Income-tax, Central Circle 2 Ernakulam	Vs.	M/s.Thomson Agencies Kombodinjammakkal P.O. Thrissur – 680 697. PAN : AADFT8116H.
(Appellant)		(Respondent)

Appellant by : Smt.A.S.Bindhu, Sr.DR
Respondent by : Sri. Sathish John Kanichai, FCA

Date of Hearing : 07.03.2019	Date of Pronouncement : 01.04.2019
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ORDER

Per George George K., JM

These appeals at the instance of the Revenue are directed against the consolidated order of the CIT(A) dated 21.03.2017. The relevant assessment years are 2006-2007 to 2012-2013.

2. Since common issue is raised in these appeals, they were heard together and are being disposed off by this consolidated order.

3. The solitary issue that is raised in these appeals is whether the CIT(A) is justified in deleting the addition made u/s 68 of the I.T.Act.

4. Identical grounds are raised in these appeals, except for variation in figures. The ground raised read as follows:-

"1. The CIT(A) erred in deleting additions u/s 68 on account of unexplained cash credits brought into the assessee firm by partners. The CIT(A) wrongly held that should the partners fail to explain the sources for the cash brought in, addition has to be considered in the hands of the partners. The CIT(A)'s position is contrary to the scheme of section 68 of the Income Tax Act wherein it is held that "where any sum if 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 if the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charges to income tax as the income of the assessee of the previous year." This section leaves no doubt that the addition u/s 68 has to be made in the hands of the assessee in whose books the credits appear and not in the hands of the creditor of the assessee.

2. The CIT(A) in deciding that unexplained credits brought into the books of the firm by the partners need to be considered in the hands of the partners and not the firm, has overlooked the decision of the Hon. High Court of Rajasthan in CIT vs. Kishorilal Santhoshilal [1995] 216 ITR 9 (Raj.) wherein it was held that unexplained credits attributed to partners in the books of the firm is assessable in the hands of the firm itself.

3. The CIT(A) has erred in holding that additional income declared by the partners of the assessee firm before the Income Tax Settlement Commission was

sufficient to explain their credits in the books of the firm. This is illustrated below:

AY	Name of the partner	Income returned	Additional income before the ITSC and income added by ITSC	Total	Unexplained credit in Thomson Agencies	Not explained by additional income before ITSC
2009-10	P.T.Benny	44,70,980	13,16,376	57,87,356	46,39,680	33,23,304
2009-10	P.T.Davis	45,11,190	13,15,799	58,26,989	47,94,816	34,79,017
2009-10	P.T.Varghese	39,78,230	11,50,958	51,29,188	45,00,000	33,49,047
						1,01,51,363

4. *The CIT(A) has overlooked that going by CIT(A)'s own logic, unexplained credit total Rs.1,01,51,363 in A.Y. 2009-10. This ought to have been sustained.*

Grounds of Appeal for Other years

Ground 1 and 2 may be taken for all the other years.

Note:

Standard grounds / Conventional grounds may be added."

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

The assessee is a firm, engaged in trading of poultry feed, cattle feed and other allied products. The partners of the assessee-firm are Sri.P.T.Davis, Sri.P.T.Varghese, Sri.P.T.Benny, Smt.Reny Johnson and Smt.Gracy Thomas. Their share ratio is equal. The assessee-firm belongs to Thomson Group. There was a search and seizure operation conducted u/s 132 of the Income-tax Act, 1961 on 27.09.2011 in the case of Thomson Group of companies. The assessee-firm and its partners were covered in the search conducted u/s 132 of the I.T.Act. Pursuant to the search proceedings, notice u/s 153A of the I.T.Act was issued and assessments u/s 153A r.w.s. 143(3) of the I.T.Act was

completed for assessment years 2006-2007 to 2012-2013. The Assessing Officer had made addition u/s 68 being the capital investments and current account cash credits made by the partners in the assessee-firm. The partners of the assessee-firm had introduced cash in the books of account of the assessee on dates starting from 23.05.2015 to 06.03.2006. The Assessing Officer concluded that the partners did not have sufficient withdrawals on matching dates of introduction of capital and current account credits. Accordingly, the Assessing Officer treated the introduction of credits as unexplained and added the same to the income of the assessee-firm u/s 68 of the I.T.Act. The relevant finding of the Assessing Officer in making the addition u/s 68 of the I.T.Act, concerning assessment year 2006-2007 reads as follows:-

"4.1 Cash credits in the form of current account capital:

On verification of the cash book maintained for the period, it is seen that the following cash credits made in the accounts of the assessee firm in the names shown against them.

Date	Amount	In the name of
23-05-2005	12000	P.T.Benny
24-05-2005	11000	P.T.Davis
25-05-2005	12000	P.T.Varghese
09-08-2005	15000	Gracy Thomas
09-08-2005	12000	Reeny Johnson
09-08-2005	15000	P.T.Benny
09-08-2005	8000	P.T.Davis
09-08-2005	15000	P.T.Varghese
27-10-2005	20000	Gracy Thomas
27-10-2005	20000	Reeny Johnson
27-10-2005	20000	P.T.Benny
27-10-2005	20000	P.T.Davis

27-10-2005	20000	P.T.Varghese
28-10-2005	20000	Reeny Johnson
28-10-2005	20000	P.T.Benny
28-10-2005	20000	P.T.Davis
28-10-2005	20000	P.T.Varghese
18-11-2005	10000	P.T.Benny
07-12-2005	20000	Gracy Thomas
07-12-2005	20000	Reeny Johnson
07-12-2005	20000	P.T.Benny
07-12-2005	20000	P.T.Davis
07-12-2005	20000	P. T. Varghese
08-12-2005	20000	Gracy Thomas
08-12-2005	20000	Reeny Johnson
08-12-2005	20000	P.T.Benny
08-12-2005	20000	P.T.Davis
08-12-2005	20000	P.T.Varghese
09-12-2005	20000	Gracy Thomas
09-12-'2005	20000	Reeny Johnson
09-12-2005	20000	P.T.Benny
09-12-2005	20000	P.T.Davis
09-12-2005	20000	P.T.Varghese
06-03-2006	20000	P.T.Davis
Total	610000	

4.2 The AR was requested to explain the source with supporting documentary evidences for each of the cash credits. The AR had only a standard reply for the cash credits that sources for all adequately explained and are reflected as drawing from their respective concerns. Each of the above individuals source was verified and the summery of the finding are as follows:

Reeny Johnson: Smt. Reeny Johnson was a housewife during that period and had not filed return under section 139(1). She had not even filed a return for the year even in response to notice served under section 153C of the Act. The current account statement of her husband Sri P.T. Johnson as in his proprietary business, St.Thomas Poultry Farm was studied. Even here, on the dates or on the nearby

dates on which Reeny Johnson is stated to have brought in cash, no withdrawals were found.

Grace Thomas: *She is the proprietor of Grace Poultry farm. The current account of her in that business was studied. No withdrawal during the above period from this entity was found from this account.*

P.T. Davis: *He was the proprietor of Maria Poultry Farm. On inspection of the current account drawing, there is a withdrawal of Rs.20,000/- made on 06/03/2006. This can be allowed to be used to explain as the source for the credit into the firm on of similar amount of Rs.20,000/- made on 06/06/2006.*

P.T.Benny: *His current account statement as in proprietary business of Best Poultry Farm was studied. No matching withdrawals seen on dates immediate precede the dates of deposit.*

P.T. Varghese: *His current account statement as in proprietary business of Anna Poultry Farm was studied. No matching withdrawals seen on dates immediate precede the dates of deposit.*

Hence, the source for difference of sum of Rs.5,90,000 (610000-20000) credited into cash book is treated as un-explained and taxed under section 68 of the Act."

6. Aggrieved by the addition made u/s 68 of the I.T.Act for assessment years 2006-2007 to 2012-2013, the assessee preferred appeals to the first appellate authority. The CIT(A) deleted the addition made u/s 68 of the I.T.Act. The CIT(A) noticed that additional income was disclosed by the partners

before the Income Tax Settlement Commission and such additional income offered by the partners would be sufficient to cover the introduction of capital / credits in the partners account for the respective assessment years. The relevant finding of the CIT(A) concerning assessment year 2006-2007 reads as follows:-

"6.3. I have gone through the assessment order and the Grounds of Appeal of the appellant. It is seen that the partners of firm have brought in capital in cash, amounting to Rs.6,10,000/- in total, during the year under consideration. It can be seen from the chart that capital has been introduced on various dates starting from 23.05.2005 to 06.03.2006. A search was conducted in Johnson Group of cases. Subsequent to the search, the individuals in the group preferred to approach Income Tax Settlement Commission, whereas, other firms and companies of the group were assessed by the AO. In the case of M/s. Thomson Agencies, the AO has not mentioned about any incriminating document and has also not discussed; whether any evidence was found, indicating that the assessee firm was engaged in earning any unaccounted income. Cash introduced through the capital account of the assessee was part of the regular books of accounts of the assessee firm. The individual partners are all income tax assesseees and have admitted to have earned unaccounted income and, therefore, they approached Hon'ble Settlement Commission and have disclosed various amounts before the Hon'ble Commission. In view of these facts, identity and creditworthiness of the partners cannot be doubted. Also, the cash has been introduced in relatively small denominations by the partners on various dates, ranging from the minimum of Rs.8,000/- by P.T. Davis on 09.08.2005 to a maximum of Rs.20,000/- by many partners on various dates. It is not that the partners have denied having introduced this capital in cash into the firm.

Even if, the partners are not able to prove the source of these capital introductions, addition needs to be made in the hands of individual partners and not the firm. In view of the facts and legal position discussed above, addition of Rs.5,90,000/- made u/s.68 of the I.T. Act in the case of the assessee firm cannot be sustained. The same is deleted. This Ground of appeal of the appellant is allowed."

7. Aggrieved by the order of the CIT(A), the Revenue has preferred these appeals before the Tribunal. The learned Departmental Representative relied on the grounds raised. The learned AR, on the other hand, has filed a paper book enclosing the orders of the Income-tax authorities, the details of credits introduction by the partners, the partnership deed, the income tax returns of the assessee-firm and its partners etc. The learned Counsel has also filed details of additional income disclosed by partners before the Income Tax Settlement Commission. The AR also placed on record the order of the Income Tax Settlement Commission dated 23.06.2014.

8. We have heard the rival submissions and perused the material on record. The CIT(A) had deleted the addition made u/s 68 of the I.T.Act primarily for the reason that the creditors are identified and the additions are to be made in the hands of the creditors. This reasoning of the CIT(A) goes against the provisions of section 68 of the I.T.Act. When an assessee records credit in the name of third party in its books of account, it must prove not only the identity of the creditors, the capacity of the creditors to advance money, but also the genuineness of the transaction. The onus of proving the

source of a sum of money found to have been received by the assessee is on the assessee itself. When the nature and source of the receipt cannot be satisfactorily explained by the assessee, it is open for the Revenue to hold that it is the income of the assessee. Further the burden lies with the assessee to show that the income is from a particular source. In the instant case, for all the assessment years, the A.O. has examined the creditworthiness of all the partners and has categorically found that the partners did not have sufficient withdrawals on matching dates of introduction of capital / current account credits. We also notice that the A.O. had given due credits for source when there was matching withdrawal / explanation by partners.

8. The CIT(A) further was of the view that the partners of the assessee-firm had disclosed substantial additional income before the Income Tax Settlement Commission and that would be sufficient to cover the introduction of capital / credit in their current account. We have perused the order of the Settlement Commission dated 23.06.2014. There are variations in the additional income computed by the Income Tax Settlement Commission and the details of the additional income that was furnished by the learned AR before the Tribunal. For example, in the case of Sri.P.T.Davis, the additional income computed by Income Tax Settlement Commission according to the learned AR for the assessment year 2006-2007 is a sum of Rs.27,27,954, whereas as per the order of the Income Tax Settlement Commission, we noticed that the additional income computed was only Rs.5,83,954

and including income returned, the total income for Sri.P.T.Davis is only a sum of Rs.12,77,164. Similar variation is found in the case of other partners and for other assessment years also. Moreover, we notice that the additional income offered before the Income Tax Settlement Commission and accepted by it was also sought to be explained for making investments with Thomson Granites Private Limited, in which the partners of the assessee-firm are also shareholders / Directors. There is no clarity of the availability of additional income with the partners for introduction of capital / credits in the partners account in the assessee-firm. The Assessing Officer also did not have the benefit of Income Tax Settlement Commission's order (The assessment order was completed on 28.03.2014, whereas the Income Tax Settlement Commissioner's order was dated 23.06.2014). Since the Assessing Officer did not have the benefit of Income Tax Settlement Commissioner's order and for a proper examination of availability of funds with the partners of the assessee-firm for making investments in assessee-firm, necessary the matter needs to be remanded to the A.O. for fresh consideration. The assessee is directed to furnish the orders of the Income Tax Settlement Commission and also cash flow statement to prove that there the disclosure made before the Income Tax Settlement Commission towards unexplained income was directly invested in these funds as their respective capital and there should be direct nexus between the disclosure made by the assessee before the Settlement Commission and the

investment in these firms. If so the A.O. shall take into consideration the additional income computed by Income Tax Settlement Commission in the hands of partners of assessee-firm for giving due credits in partners account. The A.O. shall also consider whether there was duplication in source of investments by partners in the other group companies / concerns out of additional income computed by the Income Tax Settlement Commission and reduce the same for giving due credit in the hands of partners for introduction of capital in assessee-firm. It is ordered accordingly.

9. In the result, the appeals filed by the Revenue are allowed for statistical purposes.

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

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

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 CIT(A)-IV, Kochi.
4. The CIT(Central), Kochi.
5. The DR, ITAT, Cochin.
6. Guard file.

BY ORDER,

AR-ITAT- Cochin