

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

Before Shri George George K, Judicial Member

ITA No.270/Coch/2020 : Asst.Year 2006-2007

Sri.N.S.John M/s.Enjaves Spices & Chemical Oils Limited, V.Kottayam Pathanamthitta – 689 656. PAN : AFLPS6412C.	Vs.	The Income Tax Officer Ward 2 Thiruvalla.
(Appellant)		(Respondent)

Appellant by : Sri.K.M.V.Pandalai, Advocate
Respondent by : Sri.Mritunjaya Sharma, Sr.DR

Date of Hearing : 04.08.2020	Date of Pronouncement : 05.08.2020
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ORDER

This appeal at the instance of the assessee is directed against the order of the CIT(A), dated 03.09.2018. The relevant assessment year is 2006-2007.

2. There is a delay of 589 days in filing this appeal. The assessee has filed condonation petition and an Affidavit stating therein the reasons for not filing the appeal on time. The relevant portion of the Affidavit filed by the assessee reads as follow:-

"The above appeal was filed by me before this Hon'ble Income-Tax Appellate Tribunal against the order dated 3.09.2018 passed by the Commissioner of Income Tax (Appeals), Kottayam u/s 250 of the I.T.Act, for the assessment year 2006-07. The said order was received on 15.09.2018. I was suffering from Carcinoma colon since 2017. Later there developed recurrence with metastases (Lung and Liver) and later I received palliative Chemotherapy.

This had to be discontinued due to my poor general health condition. Moreover I am also on medication for Diabetes, Coronary artery Disease and Dyslipidemia. At present also I am undergoing regular follow up treatment. Hence I was on continuous treatment since 2017, as evidenced by the Medical Certificate issued by the Doctor attached to Muthoot Hospitals, Kozhencherry on 13.03.2020. In the said circumstances I was not in a position to attend to my personal matters relating to Income tax etc. Due to my ill health I stepped down from the position of Managing Director and now I am only a Director in the company. Hence I could not arrange to file this appeal before this Hon'ble Tribunal in time. The Appeal ought to have been filed on or before 14.11.2018. This appeal could be filed only on 21.03.2020. Hence there occurred a delay of 494 days which is not willful.

There is no willful negligence or laches on my part. In case if this delay of 493 days is not condoned, it would cause irreparable harm and injustice of this Appellant. Hence it is just and reasonable that the above delay is condoned and justice rendered to this appeal. It is prayed accordingly."

2.1 The assessee has filed the medical certificate of Dr.Abu Abraham Koshy, Muthoot Hospitals, Kozhencherry.

2.2 The learned Departmental Representative strongly opposed the delay condonation petition.

2.3 I have heard the rival submissions and perused the material on record. The assessee was diagnosed with Carcinoma Colon in 2017 and later developed recurrence with metastases (Lung and Liver) and received palliative chemotherapy which was later discontinued due to poor

health condition. He is also on medications for Diabetes Mellitus Coronary Artery Disease and Dyslipidemia. This is certified by the Doctor who treated the assessee (copy of the medical certificate is enclosed). Since the assessee was suffering from Cancer and on account of lockdown, there was a total delay of 589 days (494 + 95 days). The delay in filing this appeal cannot be attributed to any laches on the part of the assessee. There is sufficient reasons for belated filing of this appeal. Hence, I condone the delay of 589 days and proceed to dispose of the appeal on merit.

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

The assessee is the Managing Director of a company named M/s Enjayes Spices & Chemical Oil Ltd. The AO received information that the assessee had invested a sum of Rs.18.00 lakhs in the above said company. Hence the AO reopened the assessment of the year under consideration by issuing notice u/s 148 of the IT Act, 1961 and asked for explanations with regard to the above said investment. The assessee explained that the above said company had engaged a person named Mr. A.L.Prasad for arranging loan from foreign sources. In that connection, M/s Enjayes Spices & Chemical Oil Ltd., paid a sum of Rs.6.25 Lakhs to Shri A.L. Prasad and further a sum of Rs.5.75 lakhs was paid by a person named Shri Ruban Thomas, who was son in law of the assessee. Thus Shri A.L. Prasad was paid a sum of Rs.12.00 lakhs in aggregate. It was claimed that Shri Ruban Thomas, who is the son in law of the assessee, has advanced the

amount of Rs.5.75 Lakhs to Shri A.L. Prasad on behalf of the company. It was further submitted that Shri A.L. Prasad failed to arrange foreign funds and hence, the company demanded back the amount of Rs.12.00 lakhs paid to him. In that connection, it was claimed that criminal proceedings were also initiated against Mr.A.L.Prasad and finally the dispute was settled out of Court. In accordance with settlement, the assessee received a sum of Rs.18.00 lakhs from Shri A.L.Prasad in full and final settlement of amount due from him. Before the AO, the assessee could not furnish any evidence in support of receipt of loan from his son in law, i.e., Shri Ruban Thomas. It was further claimed that excess amount of Rs.6.00 lakhs received from Mr.A.L.Prasad represents reimbursement of expenses incurred by the assessee on behalf of company and Shri Ruban Thomas for pursuing the matter of recovery of amount. However, the assessee could not produce any evidence in support of this submission also. Hence, the AO accepted the credit to the extent of Rs.6.75 lakhs i.e. the amount paid by the above said company and accordingly assessed the balance amount of Rs.11.75 lakhs as income of the assessee. In the appellate proceedings, the CIT(A) granted relief of Rs.3.00 lakhs, being the assessee's share of reimbursement of expenses and confirmed the balance addition of Rs.8.75 lakhs. On further appeal, the ITAT Cochin Bench in ITA No.71/Coch/2016 by order dated 18.04.2016, set aside the issue of addition of Rs.8,75,000 to the files of the Assessing Officer.

4. Pursuant to the remand by the ITAT, the Assessing Officer passed an order u/s 143(3) r.w.s. 254 of the I.T.Act on 04.08.2016 by adding the sum of Rs.8,75,000 to the returned income. The relevant finding of the Assessing Officer reads as follow:-

"5. The Hon'ble ITAT made it clear that the addition relating to Rs. 5.75 lakhs shall stand sustained, if the documents relating to criminal proceedings did not contain anything about the claim of receipt of Rs. 5.75 lakhs by way of loan from the son-in-law of the assessee. The ITAT also stated that the litigation expenses of Rs.3,00,000 being re-imburement, claimed to be given to Ruban Thomas is connected with the claim of receipt of loan of Rs.5.75 lakhs.

6. Subsequently, a letter was issued to the assessee on 26.05.2016 asking the assessee to furnish documentary evidence on 09.06.2016 in support of his claim that his son-in-law had advanced an amount of Rs.5,75,000. In reply to this, the assessee filed an adjournment letter dated 07.06.2016 seeking one month's time. The case was reposted to 08.07.2016. Since the assessee did not respond to the above letter, a letter was issued to the assessee on 14.07.20'16 proposing to complete the assessment by rejecting the assessee's claim. The assessee was given time till 25.07.2016 to file his objection to the above proposal.

7. In reply, the assessee under the covering letter dated 23.07.2016 furnished copy of warrant of arrest issued by the Judicial First Class Magistrate II, Pathanamthitta, order of the Magistrate, copy of petition submitted by Advocate and copy of certificate issued by Advocate Shri Abraham George dated 17.09.2008 explaining the events. Further, the assessee stated that he has paid back the amount of Rs.5.75lakhs due to Ruban Thomas to Shiney Ruban on 29.06.2016 as per direction given by Ruban Thomas.

8. I have examined the evidence furnished by the assessee. An examination of the warrant of arrest, order of the Magistrate, copy of petition submitted by Advocate and copy of certificate issued by Advocate Shri Abraham George reveals that there is no involvement of Shri Ruban Thomas in the case. There is nothing in these documents to suggest that Shri Ruban Thomas had advanced an amount of Rs. 5,75,000. The mere fact that he had paid back the above amount can in no way prove thee genuineness of the loan. This could very well

be an adjustment between the assessee and his daughter and son-in-law to escape income tax assessment.

9. The Hon'ble ITAT made it very clear in its order that the addition relating to Rs. 5.75 lakhs shall stand sustained, if the documents relating to criminal proceedings did not contain anything about the claim of receipt of Rs. 5.75 lakhs by way of loan from the assessee's son-in-law. It has been verified that criminal proceedings contain nothing about the claim of receipt of Rs.5.75 lakh and the assessee has also failed to produce an concrete evidence to prove that his son-in-law ad advanced a loan to him. In the above circumstances, the assessee's claim is rejected and Rs. 5.75 lakh along with the litigation expenses of Rs. 3 lakhs claimed is disallowed. "

5. Aggrieved by the order of the Assessing Officer, the assessee filed appeal before the first appellate authority. The CIT(A) confirmed the view taken by the Assessing Officer. The relevant finding of the CIT(A) reads as follow:-

"4.4. The facts of the case, the grounds of appeal and the arguments of the Appellant have been considered. The assessment under section 143(3) r.w.s. 254 is to be made as per the directions of Hon'ble ITAT. The Hon'ble ITAT has clearly held that if the documents relating to criminal proceedings did not contain anything about the claim of receipt of Rs.5.75 lakhs by way of loan from the son-in-law of the Appellant, the addition relating to Rs. 5.75 lakhs shall stand sustained. The Hon'ble ITAT has further observed that similar directions will apply to Rs.3,00,000 being the litigation expenses. During the 'set aside assessment proceedings, the Appellant failed to produce any document which reflects that the amount of Rs.8,75,000 is received from Ruban Thomas, son-in-law of the Appellant. The Appellant has not produced any documents during the appeal proceedings to prove his claim. Considering these fact, the addition of Rs.8,75,000 made by the Assessing Officer is upheld and the grounds raised by the Appellant are dismissed."

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

“1. The orders passed by the authorities below are opposed to law, facts and circumstances of the case.

2. The 1st Appellate authority ought to have considered and appreciated the evidence produced by the Appellant independently and decided the appeal.

3. The Assessing Officer ought to have properly considered the documents produced before passing the impugned order. Though copies of accounts as well as details of relevant bank transactions to prove the genuineness of loan from Appellant's son-in-law were produced before the Assessing Officer, the Assessing Officer did not properly consider the same while passing the impugned order.

4. The Assessing Officer ought to have borne in mind that in criminal complaints filed u/s 138 of the Negotiable Instruments Act for dishonour of cheque, it is not necessary to disclose the source of money of the Complainant at the time of filing of the Complainant. It is only to be disclosed at the time of trial, that too if insisted by the opposite party. Therefore the authorities below erred in not accepting the fact that Mr.Prasad had returned money in settlement of the criminal case out of Court.

5. The authorities below ought to have accepted the Confirmation letter given by Mr.Ruban Thomas (Appellant's son-in-law) to the effect that he had advanced money to Mr.Prasad abroad, in the circumstances of the case.

6. The Assessing Officer and the CIT(A) erred in discarding the details regarding the bank transactions and ledger entries in the books accounts of Enjayes Spices and Chemical Oils. Ltd; (of which the Appellant was the Mg.Director at the relevant time) relating to repayments of the amount after realisation in the settlement of criminal case.

7. The Assessing Officer & the CIT(A) ought to have found that the subsequent events have amply proved that The Appellant owed a sum of Rs.5,75,000/- to his son-in-law and repaid it to Mrs.Shiny Ruban as requested by Mr.Ruban Thomas.

8. The authorities ought to have allowed the balance amount of Rs.3 lakhs also towards litigation expenses since huge amount of expenses was incurred in recovering the amount from Mr.Prasad who resides in a distant place in another State, especially when the Appellant produced all available documents relating to litigation.

For these and other grounds that may be urged at the time of hearing, it is humbly prayed that the addition of Rs.8,75,000/- made in the assessment may be deleted."

7. The learned AR relied on the grounds raised. The learned AR has also filed a paper book enclosing argument notes, copy of confirmation letters of assessee's son-in-law, Mr.Ruben Thomas, copy of the Federal Bank account, copy of cheque drawn for the transfer of sum of Rs.5,75,000 to Mr.Ruben Thomas's wife, copy of the ledger account in the profit and loss account of the assessee.

8. The learned Departmental Representative strongly supported the orders of the Income Tax Authorities.

9. I have heard the rival submissions and perused the material on record. The finding of the Tribunal in the earlier round of litigation in ITA No.71/Coch/2016 (order dated 18.04.2016) reads as follow:-

"12. Having heard rival submissions, I am of the view that, in the interest of natural justice, the assessee should be provided with one more opportunity to prove the claim of receipt of Rs.5.75 lakhs from his son-in law, since the same has been claimed to have been received in 2001. If it is proved that the above said amount was received in 2001, the same cannot be assessed during the year under consideration, since what was received during the year under consideration was only refund of amount given to Shri Prasad. However, I make it clear that it is the responsibility of the assessee to substantiate the claim of receipt of loan in the year 2001. According to Ld A.R, the documents relating to criminal proceedings may throw light on the above said claim. Accordingly, we set aside the order of Ld CIT(A) on this issue and restore the same to the file of the AO with the direction to examine the same afresh in the light of

documents that may be furnished by the assessee in this regard. I also make it clear that the addition relating to Rs.5.75 lakhs shall stand sustained, if the documents relating to criminal proceedings did not contain anything about the claim of receipt of Rs.5.75 lakhs by way of loan from the son-in-law of the assessee.”

9.1 The Tribunal in the earlier round of litigation had clearly stated that the addition relating to Rs.5,75,000 shall stand confirmed if the documents relating to criminal proceedings did not contain anything about the claim of receipt of Rs.5.75 lakh by way of loan from the son-in-law of the assessee. The ITAT also stated that the litigation expenditure of Rs.3 lakh being reimbursement claimed to be given to Mr.Ruben Thomas is connected with the loan of Rs.5.75 lakh. The above finding of the ITAT has attained finality since the revenue nor the assessee had taken the matter in further proceedings. The assessee had not produced the criminal complaint to prove that a sum of Rs.5.75 lakh was given by way of loan by the son-in-law of the assessee nor has the assessee proved the amount of sum of Rs.5.75 lakh was given to Mr.A.L.Prasad in the year 2001. Since the ITAT's order in ITA No.71/Coch/2016 has clearly stated that the sum of Rs.5.75 lakh is to be sustained if the documents relating to criminal proceedings did not contain anything about the claim of receipt of Rs.5.75 lakh by way of loan from the son-in-law of the assessee, I sustain the above additions because the assessee has failed to furnish the documents relating to the criminal proceedings neither before the Income Tax Authorities nor before the ITAT.

10. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on this 05th day of August, 2020.

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin, dated 05th August, 2020
Devadas G*

Copy to :

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

BY ORDER

Asst.Registrar/ITAT/Kochi