

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

THURSDAY, THE 31ST DAY OF JANUARY 2019 / 11TH MAGHA, 1940

ITA. No.286 of 2009

AGAINST THE ORDER IN ITA NO.165/1999 OF THE INCOME TAX APPELLATE  
TRIBUNAL, COCHIN BENCH DATED 23-02-2004

APPELLANT/APPELLANT:

THE COMMISSIONER OF INCOME-TAX  
KOTTAYAM.

BY ADV. SRI.JOSE JOSEPH, SC, FOR INCOME TAX

RESPONDENT/RESPONDENT:

M/S.SREE GANESH TRADING COMPANY,  
KILIMANOOR.

BY SMT.ALEENA MARIA JOSE [AMICUS CURIAE]

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 31.01.2019,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

K. Vinod Chandran, J.

The issue arises under Section 68 of the Income Tax Act, 1961 [for brevity, 'the Act of 1961']. The respondent/assessee is a firm, who was asked to explain certain credits seen in the Books of Accounts, which, the assessee claimed, were amounts received from the partners. The total unexplained credits made addition of was Rs.13,60,000/- under Section 68 of the Act, 1961. Since the respondent/assessee was not represented, despite notice having been served, we appointed Advocate Aleena Maria Jose as Amicus Curiae.

2. The question of law raised is as to whether the Tribunal was correct in having deleted the additions, since the creditworthiness of the donor, to the three

partners, who are said to have given advances to the firm, had not been established.

3. The learned Standing Counsel for the Revenue submits that the assessee, on being asked to explain the credits, pointed out three partners, who had advanced loans of Rs.2,00,000/-, 7,15,000/- and 4,45,000/- respectively. The said partners were K.J. Jayaprakash, G. Rajagopalan, and P.N. Sahadevan. Though the identity of the creditor was not in dispute, the three partners were not able to explain or establish the creditworthiness of the persons who were their source. All the three partners admitted that they had advanced amounts to the firm. As to their source they stated that they received the amounts from another. It is the creditworthiness of that other person that the assessing officer doubted.

4. To advance the above proposition, Revenue

would rely on M.A. Unneeri Kutty v. Commissioner of Income-Tax [(1992) 198 ITR 147 (Ker)]. The Tribunal had placed much reliance on the fact that it was the first year of business, which, according to the learned Counsel, is irrelevant. The learned Counsel would rely on Commissioner of Income-Tax V. Bhadra Enterprises [(1997) 228 ITR 645 (Ker)], wherein a similar circumstance of unexplained credits having been revealed in the first year of business, was added on by the Assessing Officer. The Tribunal having reversed the said addition, the Revenue was before this Court. It was held that though the firm itself had been conducting the business for the first year, there can be no presumption that the business was not earlier carried on by the partners. The concept of partnership was explained as a coming

together of various persons.

5. Ms.Aleena Maria Jose, Amicus Curiae, would contend that there is absolutely no question of law arising from the order of the Tribunal. The learned Counsel would contend that a satisfactory explanation, in so far as an unexplained credit, has to be on three grounds; the identity of the creditor, his creditworthiness and the genuineness of the transaction. Here, the creditors are the partners of the firm and hence there could be no dispute raised on genuineness, for the partners having admitted advance of money made to the firm, especially in the first year of business. As to the creditworthiness, it is contended that the assessee's obligation is only to satisfy the creditworthiness of the person, who is pointed out as the donor and the donor's source need not be looked into for the purpose of considering

the addition in the case of the partnership firm. Though the partners and the firm are not, in common law recognised as different entities, under the Income-tax laws they are treated as separate distinct assesseees, argues the Amicus Curiae.

6. The learned Amicus Curiae would rely on Tolaram Daga v. Commissioner of Income-Tax, Assam [(1996) 49 ITR 632], Commissioner of Income-Tax v. Metal & Metals of India [(2007) 208 CTR Reports 457], Commissioner of Income-Tax v. Rameshwar Dass Suresh Pal Cheeka [(2007) 208 CTR Reports 459] and Commissioner of Income-Tax v. Jaiswal Motor Finance [(1983) 141 ITR 706] to buttress her contentions.

7. We notice from the order of the Assessing Officer that the alleged unexplained credit was explained by the assessee, pointing out the three partners, who admitted to have advanced

the said credits.

8. Sri.K.J. Jayaprakash, one of the partners, was said to have advanced an amount of Rs.2 lakhs. Sri.K.J. Jayaprakash filed a statement admitting to the advance and also indicated his source as being from one Sreedevi, who also filed a confirmation letter. Smt.Sreedevi in fact stated that she had received the amounts as consideration in a sale of property. However, the Assessing Officer found that the sale deed was executed on 05.01.1993 and advance is said to have been made on 16.03.1994. We are of the opinion that merely because of the advance was after one year, it cannot be said that Sreedevi had not given the money to K.J. Jayaprakash. Moreover, Sreedevi had a valid contention in so far as she having stated, a loan having been given to yet another person, who returned the money with interest, totalling Rs.1,25,000/-, out of which the

amounts were paid to Sri.K.J. Jayaprakash.

9. Rs.7,15,000/- was owned up by one G.Rajagopalan, another partner, who claimed the amount as having been received from his own wife. His wife's brother one Surendran, who was working abroad, is said to be the source of the said amounts. It was found that Sri.Surendran was working abroad, but he was not able to make any remittance directly to his Bank Account for reason of he, having not been able to get an ACCAMA [which the Assessing Officer finds is akin to a Ration Card, which alone would enable the opening of a Bank Account in the Gulf countries]. The fact that Sri.Surendran was working abroad was never doubted and the mere fact that he had not sent any money to his account was the reason for having rejected the source pointed out by the assessee firm.

10. Again, Rs.4,45,000/- was said to have



been advanced by yet another partner by name Sri.P.N. Sahadevan. Sri.P.N. Sahadevan contended that he had received it from his nephew one Sri.V. Sadasivan. Sri.P.N. Sahadevan had also produced a confirmation letter from Sadasivan, as to the latter having taken a loan of Rs.4,45,000/- from him. A copy of the Demand Draft was also produced before the Officer. The Assessing Officer found that the confirmation was only in respect of the amounts due to P.N. Sahadevan and there was no confirmation as to Sadasivan having paid back the amounts. We notice from the order of the Tribunal that the assessee had a specific contention that the details were explained in pages 6 & 7, where NRE DD numbers are given and the local address of Sri.V. Sadasivan was also furnished. In addition to this, the details like photocopies of the Passport of the creditor, Certificate of the Company where he was working etc. were also

given. Moreover, the details of the DD sent by V.Sadasivan to P.N. Sahadevan was also produced.

11. Considering the rival submissions made by the Revenue and the assessee, we are of the opinion that the assessee firm has been able to point out the persons, from whom the firm had received credits. With respect to M.A. Unneeri Kutty, it has to be noticed that the decision is an authority for the proposition that the assessee has to prove the identity of the creditor as also his creditworthiness and the genuineness of the transactions. Here, the creditors, as pointed out by the assessee firm, were the three partners. The three partners had also produced credible material to show their source of income for the specific advances made to the firm. If at all the source of the donor/ creditor is doubted, then there could be an assessment made only on that donor or creditor

and not on the firm, who has proved the identity and creditworthiness of their creditor. To that end is the various decisions placed on record by the learned Amicus Curiae.

In such circumstances, we agree with the learned Amicus Curiae that no question of law arises from the order of the Tribunal and hence we reject the above appeal. No costs.

Sd/-

**K.VINOD CHANDRAN**

**JUDGE**

Sd/-

**ASHOK MENON**

**JUDGE**

**APPENDIX**

**PETITIONER'S EXHIBITS:**

<b>ANNEXURE-A</b>	<b>TRUE COPY OF THE ORDER OF THE ASSESSING OFFICER.</b>
<b>ANNEXURE-B</b>	<b>TRUE COPY OF THE ORDER OF THE CIT (APPEALS) .</b>
<b>ANNEXURE-C</b>	<b>TRUE COPY OF ORDER OF THE ITAT IN ITA NO.165/COCH/99, DATED 23/02/2004.</b>