

**T.C. Eapen Vs. Cit, Thiruvananthapuram**

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**SooperKanoon Citation :** [sooperkanoon.com/731265](http://sooperkanoon.com/731265)

**Court :** Kerala

**Decided On :** Jul-06-2006

**Reported in :** [2006]156TAXMAN202(Ker)

**Appeal No. :** IT Appeal No. 136 of 2000 6 July 2006

**Appellant :** T.C. Eapen

**Respondent :** Cit, Thiruvananthapuram

**Advocate for Pet/Ap. :** Antony Dominic and Anil D. Nair *for the Appellant* P.K.R. Menon and George K. George *for the Respondent*.

**Judgement :**

**K.S. Radhakrishnan, J.**

This appeal is preferred by the assessee against the order of the Income Tax Appellate Tribunal, Cochin Bench in ITA. No. 34(Coch,)/97 dated 23-4-1999. Assessee had filed the return of income for the first time on 13-12-1995 declaring a total income of Rs. 38,830 for the assessment year 1995-96. For the assessment year 1996-97 he had filed a return declaring an income of Rs. 1,44,834 being interest on bank deposits alone on 17-4-1996. In the said return he had shown a sum of Rs, 7,03,000 as the capital gain on the sale of 33 cents of agricultural land in Survey No. 3195 of Kawdiar Village. Exemption under section 54B was claimed in respect of the capital gains disclosed since there were

purchases of three items of properties by him for an aggregate consideration of Rs. 20,25,000 before and subsequent to the sale of the property mentioned above.

2. Search and seizure operations were carried out at the residence of the assessee on 19-3-1996 under section 132 of the Income Tax Act. During the course of search, fixed deposit receipts with Alappat Fashion Jewellery, Trivandrum for an amount of Rs. 11.5 lakhs were found out and seized. Notice under section 158BC was issued to the assessee on 12-8-1996. In response to the notice the assessee filed a return in form No. 2B on 12-9-1996. In this return, assessee had shown undisclosed income of Rs. 54,940. In response to notices under sections 142(t) and 142(it) the assessee had filed cash flow statements for the period 11-4-1985 to 19-3-1996 and a statement showing his assets and liabilities as on 31st of March every year commencing from 31-3-1986 to 31-3-1995 and also as on 19-3-1996. Proceedings were initiated under section 158BC for the purpose of assessment of the undisclosed income of the period from 1-4-1985 to 19-3-1996. After considering the cash flow statements filed by the assessee and the source for the investments and the outgoings, the assessing officer determined the undisclosed income at Rs. 18,72,890. Aggrieved by the assessment of the undisclosed income for the block period at Rs. 18,72,890, assessee filed appeal before the Tribunal. Tribunal rejected the appeal, against which this appeal has been preferred.

3. Assessee has raised the following questions of law for our consideration:

'1. Whether, on the facts and circumstances of the case and evidence available on record was the Tribunal justified in sustaining the addition of Rs. 93,398 for the assessment year 1994-95 towards appellant's share of income from the car parking business at Thiruvananthapuram Air Port

2. whether, on the facts and circumstances of the case and evidence on record was the Tribunal justified in sustaining the rejection of explanation offered by the assessee for sources of Rs. 2 lakhs as share income received by the assessee's wife from her family property and Rs. 3 lakhs received by the assessee from his family members towards his share of property and consequently treating Rs. 5 lakhs as income from undisclosed source for the assessment year 1996-97

3. Whether, on the facts and circumstances of the case, the evidence on record particularly that of Mr. Ranjan the Broker to the transaction and the admission of the assessee in the return filed for the assessment year 1996-97, should not the Tribunal have held that the sale consideration available with the assessee for the sale of property was Rs. 23,33, 100 and not Rs. 17,05,000?

4. Whether, on the facts and circumstances of the case the findings of the assessing authority in Annexure-A and Annexure-C statement filed by the assessee along with the income-tax return for 1996-97, is not the Tribunal wrong in assuming that the appellant has returned only Rs. 17,05,000 as sale consideration received and the rejection of explanation based on the said assumption wrong and unsustainable?'

Counsel appearing for the assessee submitted that the findings of the Tribunal on the additions and rejection of explanations for the source for assessment years 1994-95, 1995-96 and 1996-97 for the block period from 1-4-1985 to 19-3-1996 are not correct or tenable. Counsel submitted that the explanation offered by the assessee ought to have been accepted by the Tribunal. Counsel submitted that an amount of Rs. 93,938 is liable to be deleted from the undisclosed income computed for the assessment year 1994-95. Further it was also stated that the Tribunal has committed an error in rejecting the assessee's explanation for the source of Rs. 5 lakhs being the share income received by the assessee and his wife towards their respective share from family property. Further it was also stated that the Tribunal has committed an error in rejecting assessee's explanation on the additional consideration received for the sale of property over and above the amount disclosed in the documents. Counsel appearing for the revenue on the other hand contended that the Tribunal as final fact finding authority has considered all aspects of the matter and came to the right conclusion on the various questions raised and submitted that this court in this jurisdiction shall not disturb the findings of fact rendered by the Tribunal.

4. The most important point to be considered is as to whether the explanation furnished by the assessee with regard to the investments made by him for the acquisition of the assets is correct or not. Assessing authority took the view that

the cash flow statements filed by the assessee do not render any help to explain satisfactorily the source and nature of acquisition of the funds utilised for the investments made by the assessee. For the assessment year 1994-95 the undisclosed income was assessed at Rs. 1,32,385, which includes Rs. 93,398 as the share from the business of providing car parking facility at Trivandrum Air Port. During the course of search at the residence of the assessee, two sheets of paper wherein the details of the profit derived from the contract work of collection of charges for car parking at the Trivandrum Air Port were recorded - assessee submitted that he had to get one-third share of the net profit after meeting all expenses from the contract taken in the name of one Muraleedharan. In the cash flow statement filed only a sum of Rs. 10,482 was shown as the income from Airport car parking during the financial year 1994-95 relevant to the assessment year 1995-96. As per the records seized, the assessee has got a sum of Rs. 93,398 as his share in the profit from the said business for the period up to January, 1994. This was brought to tax as undisclosed income of the assessee for the assessment year 1994-95. A sum of Rs. 10,482 was shown as income from Airport car parking in the cash flow statement, which was treated as the income for the assessment year 1995-96. We find no infirmity in directing him to pay tax on those amounts as undisclosed income since the assessee himself has stated that he used to get share profits. That would indicate that he was conducting business in partnership. In the absence of any satisfactory explanation the Tribunal was justified in including the amount as undisclosed income.

5. Tribunal has also considered the question with regard to the claim of opening cash balance of Rs. 4,45,157 as on 1-4-1995. It was stated that the said amount was said to be made up of the share from the family properties of the assessee and his wife. It was further stated that a sum of Rs. 1,60,000 was received by the assessee's wife during the financial year 1992-93 as her share in the family properties. The amount was claimed to have been paid by her brother Mathew. Further it was also stated that a further sum of Rs. 40,000 was paid by Mathew in the financial year 1993-94 again as the share due to the assessee's wife. Assessing officer did not accept the claim. It was noticed that there was no evidence furnished before the assessing officer in support of the claim that a total sum of Rs. 2 lakhs was paid by Mathew. Claim of the assessee was elaborately

considered by the Tribunal in its order, which is in fact, reflected in the Tribunal's order in paragraphs 15 to 20. Tribunal ultimately concluded that the assessing officer was justified in not accepting the claim that the assessee was having with him the sum of Rs. 4,45,157 as the opening cash balance as on 1-4-1995. We find no error in the finding of facts rendered by the Tribunal.

6. Assessee had claimed receipt of an extra amount of Rs. 6,28,100 as consideration for the sale of the property at Kavu Road. Statement of the assessee was first recorded by the Income Tax Officer (CIO) on 22-1-1996 under section 131 of the Income Tax Act wherein he had stated that he had sold 33 cents of land in his name in S. No. 3195 for a total consideration of Rs. 16,83,000 on 13-10-1995. Statement of the purchaser was also taken. In his statement on 24-3-1997 he had stated that consideration was Rs. 17.05 lakhs. No contra evidence has been adduced by the assessee apart from the cash flow statement wherein he had stated that he had received a sum of Rs. 23,33, 100. Without any contra evidence we are not inclined to accept the statement made by the assessee before the assessing officer under section 131 of the Income Tax Act as well as the statement made by the purchaser that the consideration was Rs. 17.05 lakhs. That being the situation the explanation that the extra amount of Rs. 6,28, 100 is nothing but undisclosed income. Under such circumstance we find no infirmity in the order passed by the Tribunal to be interfered by us in this appeal. Questions raised are all answered against the assessee.

Appeal lacks merits and the same would stand dismissed.