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**(1966) 08 KL CK 0016**  
**In the High Court Of Kerala**  
**Case No : Income Tax R. No. 61 of 1965**

M.I. Chakkoru

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

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**Date of Decision :** 12-08-1966

**Acts Referred:**

Income Tax Act, 1922 — Section 66(2)

**Citation :** (1980) 121 ITR 440

**Hon'ble Judges :** M.S. Menon, C.J;P. Govindan Nair, J

**Bench :** Division Bench

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## Judgement

1. The Income Tax Appellate Tribunal Madras Bench, in compliance with the direction of this court in its order in O.P. No. 1001 of 1964 has made this reference u/s 66(2) of the Indian I.T. Act, 1922. The question referred reads thus:

"Whether the conclusion of the Tribunal that set off against the intangible addition of the profit of the business cannot be allowed, is sustainable in law ? "

2. The year of assessment is 1959-60 and in order to understand the question referred it is necessary to state a few facts.

3. The Income Tax Appellate Tribunal dealt with two appeals relating to the assessments for the two years 1953-59 and 1959-60 by a common order. For the year 1958-59, additions have been made to the income because of certain unexplained cash credits found in the account books of the assessee pertaining to the relevant period of account. The total of these additions for the year of assessment 1958-59 came to Rs. 12,500. There was a further addition of Rs. 8,000 on estimate. For the year 1959-60 certain cash credits totalling a sum of Rs. 37,500 was found in the accounts of the assessee in the period of account relating to the year of assessment 1959-60. The ITO asked for an explanation of the assessee and after obtaining his explanation as well as a sworn statement from him found his explanations to be unsatisfactory and added the whole of Rs. 37,500 for the year 1959-60. In appeal, the AAC, however, reduced the additions

by Rs. 10,400 on the following reasoning:

"The appellant's other contention however, that there has been intangible additions in the accounting year itself and this should be set off against the addition of cash credits, is reasonable and should be allowed. There is intangible addition of Rs. 6,500 in the business of wholesale rice and paddy and another Rs. 3,900 in the Miscon Oil Mill. The intangible addition for the year amounted to Rs. 10,400. To this extent, in my opinion the appellant is entitled to a further relief. There will be a reduction of Rs. 10,400 on this account."

4. Before the Income Tax Appellate Tribunal the assessee gave up his original explanation and contended that the additions made because of cash credit entries unexplained, viz., Rs. 27,100 must be taken to represent the additions towards income made during the previous year. This, according to the assessee, as stated before us amounted to Rs. 20,500. This contention of the assessee was not accepted by the Tribunal.

5. Counsel on behalf of the assessee urged before us that this contention should have been accepted. His argument is that it is not possible for the department to deny the fact that the assessee had earned additional income to the extent of Rs. 20,500 for the year of assessment 1958-59 which has been added to the income returned by the assessee on the basis of unexplained cash credits and also on the basis of estimated income from the business disclosed. We do not think that such a contention put toward at the stage at which it was put forward and which was inconsistent with the explanation given by the assessee earlier should necessarily be accepted by the Tribunal. It is well established that when cash credits are found in the account books of an assessee during the relevant period of account it is the assessee who should give satisfactory explanation in regard to those entries. This is as it should be, for the details regarding this are peculiarly and perhaps exclusively within the knowledge of the assessee. If the explanation given by the assessee is not satisfactory, it is not disputed before us that those cash credit entries may be taken to represent the income of the assessee and the entries being during the relevant period of account, income had accrued to the assessee during that year of account. If that is so, we see in principle no distinction merely because it is found that the assessee had earned income in a year prior to the previous year. The explanation given by the assessee must satisfy the authorities that the cash credits represent some amounts other than the income of the year. In weighing his explanation, his conduct, his explanation at the initial stage on which he relied even at the appellate stage, and the shift in the ground before the Tribunal made for the first time as well as any material which will link up the cash credit entries in the concerned year of assessment with the amount that the assessee is supposed to have had at the end of the year prior to the previous year, are all relevant factors. As to whether a particular cash credit entry has been explained in a satisfactory manner is a matter completely within the purview of the assessing authorities and the final authority, the Tribunal.

6. We are not satisfied that considering all the circumstances of the case any error has been committed by the Tribunal in not accepting the case that has been urged by the assessee before the Tribunal for the first time, a case which is inconsistent with the stand that he had taken till then.

7. We have been referred to two decisions of the Madras High Court in S. Kuppuswami Mudaliar Vs. Commissioner of Income Tax, Madras, and B. Abdul Qadir Vs. Commissioner of Income Tax, Madras, . We do not understand these decisions as laying down a principle that whenever an estimate had been made of income for any particular year the amount added by that estimate as income from the business disclosed and additions to income from undisclosed sources because of unexplained credits must be taken to be available with the assessee for being credited in a subsequent year of account. And that in all such cases it is for the department to establish that that amount was not available with the assessee. If these decisions imply the casting of any such burden on the department, with great respect we are unable to agree with that view.

8. In the light of the above, we answer the question referred to us in the affirmative, that is, in favour of the department and against the assessee.

9. We direct the parties to bear their respective costs.