

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

**Before Shri George George K, JM & Shri Manjunatha G, AM**

ITA No.196/Coch/2016 : Asst.Year 2008-2009

M/s.Chowallur Builders Private Limited C/o.Smt.K.K.Celin Sneha Nivas -8/385 Parlikkad P.O. Vadakanchery. <b>PAN : AACCC0453A.</b>	Vs.	Dy.Commissioner of Income-tax Central Circle Thrissur.
(Appellant)		(Respondent)

Appellant by : Sri. John Neelankavil, Advocate

Respondent by : Sri. A.Santhom Bose [CIT-DR]

<b>Date of Hearing : 18.12.2017</b>	<b>Date of Pronouncement : 19.12.2017</b>
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**ORDER**

**Per George George K, JM**

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 04.01.2016. The relevant assessment year is 2008-2009.

2. The grounds raised read as follows:-

*"1. The authorities below erred in issuing notice u/s 153C of the Income Tax Act.*

*The A.O. completed the assessment u/s 143(3) r.w.s. 153 C for the A.Y. 2008-2009. A search was conducted in the business premises of M/s.St.Antony's Timber Depot on 23.10.2008.*

*During the course of search in their business premises no books of accounts or documents belonging to the Appellant was found or seized. Only two loose sheets (no sign) namely, SJ-1 and SJ-III were found. These do not belong to the Appellant. The Assessing Officer in his Order stated that SJ-III is a sale agreement for the sale of property entered into by the Appellant and M/s.St.Antony's Timber Depot and the same has been signed by both the parties. But copy of seized material viz. SJ-III given to the Appellant by the A.O. is only a copy of note book of the St.Antony's, in which some property transactions are recorded that too without any signature. So the Assessing Officer committed serious misrepresentation while issuing Assessment Order. Sale agreement mainly relied by the Assessing Officer while assessing the income of the Appellant is imaginary one. Thus the assessing authority erred in assessing Appellant on the basis of certain loose papers which are not belonging to the Appellant.*

*2. The Appellant Company is not in existence on the date of commencement of the assessment proceedings. The Appellant is a defunct company and struck off by the Registrar of Companies, Kerala. So the assessment proceeding on the Appellant is against law and invalid.*

*The Appellant is a defunct company and the name of the company has been struck off from the register of companies on 20/12/2016 and thereby the company is dissolved. The Registrar of companies, Kerala have issued a notification to this effect on 13.12.2006 and a copy of it had been forwarded to the lower authorities. There is no provision in the Act to make assessment on a defunct and struck off company. Order of assessment against a defunct company is invalid as it is against a person not in existence.*

3. *The first Appellate Authority without verifying the records confirmed the order of the Assessing Officer.*

*On the above grounds and such other grounds that may be raised at the time of hearing, it is prayed to grant the relief claimed in the appeal."*

3. Brief facts of the case are as follow:-

3.1 The assessee is a company. It had sold 30.50 cents of land at Chembukavu in Thrissur town to M/s.St.Antony's Timber Depot, vide document No.3424/07 dated 24.04.2007. The value disclosed in the sale deed was Rs.18,30,000. There was a search and seizure in the residential premises of Shri Babu John, the Managing Partner of the firm M/s.St.Antony's Timber Depot u/s 132 of the Income-tax Act. In the course of search, certain documents and materials were seized. According to the Assessing Officer, the seized documents (SJ-I and SJ-III) point out that the property sold by the assessee to M/s.St.Antony's Timber Depot was for a total consideration of Rs.99,90,000 instead of Rs.18.30 lakh disclosed in the sale deed. The A.O. sent proposal for calculating long term capital gains by adopting the sale consideration at Rs.99,90,000 and allowing the benefit of indexed cost of acquisition and indexed cost of improvements if any. The assessee's director late Shri Jacob John denied having received any consideration more than Rs.18.30 lakh disclosed in the sale deed. According to the Assessing Officer, the seized documents, viz., SJ-III and the statement of Shri Babu John recorded during the course of search u/s 132(4) clearly show the said property has been

purchased by M/s.St.Antony's Timber Depot from the assessee for a total consideration of Rs.99.90 lakh, and therefore, long term capital gains was calculated by taking the sale value at Rs.99.90 lakh instead of 18.30 lakh disclosed in the sale deed.

4. Aggrieved by the adoption of sale value at Rs.99.90 lakh, the assessee preferred an appeal to the first appellate authority. The assessee challenged the validity of issue of notice u/s 153C of the Act. Further it was contended that the assessee-company was not in existence on the date of commencement of the assessment proceedings, therefore the assessment framed on non-existent entity is against law and invalid. Further on merits it was submitted that SJ-I and SJ-III the seized material does not relate to the assessee. It is stated that the narration of the Assessing Officer in para ten of the impugned assessment that SJ-III is a sale agreement for the sale of property entered into by the assessee and M/s.St.Antony's Timber Depot and the same is signed by both the parties is incorrect. It was submitted that the seized material, viz., SJ-III is only a copy of the note book of M/s.St.Antony's Timber Depot wherein certain property transaction are recorded and is without any signature. It was stated that these noting are not with reference to the property sold by the assessee. The CIT(A) however rejected the contentions raised before him and dismissed the appeal of the assessee. The CIT(A) confirmed the long term capital gains computed by the Assessing Officer and the sale consideration

was taken at Rs.99.90 lakh instead of 18.30 lakh disclosed in the sale document.

5. Aggrieved by the order of the CIT(A), the assessee has filed the present appeal before the Tribunal. The learned Counsel for the assessee submitted that the assessee is a defunct company and the name of the company was struck off from the Registrar of Companies on 20.12.2006. It was submitted that the Registrar of Companies, Kerala have issued a notification to this effect on 13.12.2006 and the copy of it was furnished to the Income-tax Authorities. It was stated that there is no provision in the Income-tax Act to make an assessment on a defunct company. Therefore, it was argued that the assessment against the defunct company is invalid as it is against a person who is not in existence. For the above proposition the learned Counsel for the assessee relied on the judgment of the Hon'ble Delhi High Court in the case of Spice Infotainment Ltd. v. CIT [(2012) 247 CTR 0500] and CIT v. Vived Marketing Servicing Pvt. Ltd. ITA No.273/2009 dated 17<sup>th</sup> September, 2009. On merits, it was contended by the learned Counsel for the assessee that the seized material relied on by the Assessing Officer in taking the sale value of the property at Rs.99.90 lakh is on the basis of SJ-III which is not an agreement for sale, on the contrary it was stated that it is only loose sheets of certain figures without any indication that these are amounts paid for the sale of impugned property. It was submitted that the Assessing Officer has not conducted any independent

investigation so as to enhance the sale consideration to Rs.99.90 lakh from the documented value of Rs.18.30 lakh. It was argued that the statement recorded u/s 132(4) of the Act, from Shri Babu John also does not state that an amount of Rs.99.90 lakh has been paid to the assessee for the sale of impugned property. It was contended that the burden of proving actual consideration was higher than document value is on the Assessing Officer and the Assessing Officer has not been able to produce any corroborative evidence to prove the contrary. Therefore, it was submitted that the assessment order based on presumption and conjecture is to be quashed.

5.1 The learned Departmental Representative, on the other hand, supported the orders of the Income-tax Authorities.

6. We have heard the rival submissions and perused the material on record. The Assessing Officer had adopted the sale consideration at Rs.99.90 lakh on the basis of the statement recorded u/s 132(4) of the Act of the purchaser and the seized material viz., SJ-I and SJ-III. SJ-I and SJ-III are enclosed at page 66, 67 and 68 of the paper book filed by the assessee. The assessee had applied for copies of SJ-I and SJ-III and the same was provided to the assessee by the Department. The document issued to the assessee viz., SJ-I is property statement of the purchaser and SJ-III is certain noting of the purchaser. The Assessing Officer in his order (para 10) had stated that SJ-III is a sale agreement for the sale of property entered into by the assessee and

M/s.St.Antony's Timber Depot and the same has been signed for both the parties. But SJ-III which is enclosed in the paper book (page 67 and 68) shows it is only loose sheets of papers in which some transaction of the purchaser are recorded and that too without any signature. Therefore, the imaginary sale agreement relied by the Assessing Officer while adopting the sale consideration at Rs.99.90 lakh is not correct. The CIT(A) has omitted to consider this crucial aspect of the case. Further the statement u/s.132(4) of the Act relied on by the A.O. recorded from Shri Babu John, who is the Managing Partner of M/s.St.Antony's Timber Depot does not state in exact terms that he had purchased the property from the assessee for a total consideration of Rs.99.90 lakh. In the statement recorded there is no mention about the details of property, namely survey number, nature of property and from whom the property has been purchased. The copy of the English translation of the statement recorded u/s 132(4) from Shri Babu John, who is the Managing Partner of M/s.St.Antony's Timber Depot, is placed on record. The question posed concerning SJ-I is question No.11 and question posed pertaining SJ-III is question No.15 and 17. In answer to question No.15 and 17, there is no mention of assessee's name anywhere. Even the extent of the land does not tally with the description in the sale deed. The burden of proving the actual consideration is not the documented value, but it is something above the documented value is on the Assessing Officer. The Assessing Officer ought to have conducted independent inquiry as regards value of the

property by referring same to the DVO. In the instant case, as mentioned earlier, heavy reliance has been placed by the Assessing Officer on the so called agreement for sale, viz., SJ-III. The seized material namely SJ-III is not an agreement for sale, but certain noting of the purchaser without any signature and does not mention anywhere the name of the assessee-company or its Directors. Even noting of purchaser about property details he purchased does not tally with the description of the property sold by the assessee. Nor the statement u/s 132(4) of the Act recorded from the purchaser indicate that assessee was paid above sum of Rs.99.90 lakh.

6.1 In the case of M.M.Financers (P) Ltd. v. DCIT [(2007) 107 TTJ (Chennai) 200], the Tribunal held that no addition could be made in the hands of the assessee on the basis of statement made by a third party and the unsigned agreement and loose papers seized from the residence, in the absence of any corroborative material to show the payment of any undisclosed consideration by the assessee towards the purchase of land.

6.2 In the case of CIT v. P.V.Kalyanasundaram [(2006) 282 ITR 259 (Mad.)], the Hon'ble Madras High Court had observed as under:-

*"The Tribunal had given factual finding and held as follows: `We find that it is the uniform view of the Courts and also held by the Apex Court in K.P.Varghese vs. ITO (1981) 24 CTR (SC) 358 : (1981)*

*131 ITR 597 (SC) the burden of proving actual consideration in such transaction is that of revenue. Considering the entire gamut of the case, we find that revenue has failed to discharge its duties and as held by the Id.CIT(A) instead made up a case on surmises and conjectures which cannot be allowed. Under the circumstances, we do not find any infirmity in the order of the Id.CIT(A) and we uphold the appellate order in this regard'.*

*We also found that the Assessing Officer did not conduct any independent enquiry relating to the value of the property purchased. He merely relied on the statement given by the seller. If he would have taken independent enquiry by referring the matter with the Valuation Officer, the controversy could have been avoided. Failing to refer the matter was a fatal one."*

6.3 The Assessing Officer had framed the assessment mainly stating that the agreement for sale was seized and also placing reliance on the statement recorded u/s 132(4) from Shri Babu John. As mentioned earlier, there is no agreement of sale that was seized nor was the statement of Shri Babu John indicating that the assessee was paid more than the declared value in sale deed. Therefore, we have to conclude the adoption of sale consideration at Rs.99.90 lakh is not supported by any corroborative evidences / materials. Hence, we direct the Assessing Officer to adopt the sale consideration as disclosed in document No.3424/07 dated 24.04.2008 viz., Rs.18.30 lakh instead of Rs.99.90 lakh for the purpose of calculating long term capital gains. It is ordered accordingly.

7. Since we have decided the issue on merits, the other legal issues that are raised by the assessee in this appeal is not adjudicated.

8. In the result, the appeal filed by the assessee is partly allowed as indicated above.

Order pronounced on this 19<sup>th</sup> day of December, 2017.

Sd/-  
(Manjunatha G.)  
ACCOUNTANT MEMBER

Sd/-  
(George George K.)  
JUDICIAL MEMBER

Cochin ; Dated : 19<sup>th</sup> December, 2017.  
Devdas\*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT, Kochi.
4. CIT(A)-IV, Kochi.
5. DR, ITAT, Cochin
6. Guard file.

By order  
(Asstt. Registrar)  
ITAT, Cochin