

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

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.82/Coch/2018 : Asst.Year 2007-2008

ITA No.83/Coch/2018 : Asst.Year 2008-2009

ITA No.84/Coch/2018 : Asst.Year 2009-2010

The Commonwealth Trust India Limited, C/o.K.I.Mayankutty Mather Jaikrishna R., Advocates Iyer & Iyer, Rajaji Road Ernakulam-682 035. PAN : AAACC9285E.	Vs.	The Jt.Commissioner of Income-tax, Special Range Kozhikode.
(Appellant)		(Respondent)

SA No.23/Coch/2018 : Asst.Year 2007-2008

(Arising out of ITA No.82/Coch/2018)

SA No.24/Coch/2018 : Asst.Year 2008-2009

(Arising out of ITA No.83/Coch/2018)

The Commonwealth Trust India Limited, C/o.K.I.Mayankutty Mather Jaikrishna R., Advocates Iyer & Iyer, Rajaji Road Ernakulam-682 035.	Vs.	The Jt.Commissioner of Income-tax, Special Range Kozhikode.
(Applicant)		(Respondent)

Revenue by : Smt.A.S.Bindhu, Sr.DR

Assessee by : Sri.R.Jaikrishna

Date of Hearing : 04.02.2019	Date of Pronouncement : 04.02.2019
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ORDER

Per George George K, JM :

These appeals at the instance of the assessee are directed against the consolidated order of the CIT(A) dated 21.12.2017. The relevant assessment years are 2007-2008, 2008-2009 and 2009-2010. The assessee has also filed stay

applications seeking to stay the recovery of outstanding tax arrears.

2. Common issues are raised in these appeals. Hence they were heard together and disposed of by this consolidated order.

3. Two issues are raised in all these appeals –

(i) whether the assessee is liable for capital gain on sale of land at Olavakkode?

(ii) whether the fair market value fixed as on 01.04.1991 at 269 per cent is correct?

We shall adjudicate the issues as under:-

Capital gain :

4. The Assessing Officer had held in the assessment completed u/s 143(3) r.w.s. 147 of the I.T.Act for assessment years 2007-2008 to 2009-2010 that the assessee was liable to be assessed to Income-tax on capital gains arising from sale of land at Olavakkode. The assessee had claimed that the capital gains cannot be computed as the land was acquired by the assessee free of cost from British Company under the scheme of amalgamation.

5. Aggrieved by the assessments, the assessee preferred appeals to the first appellate authority. The learned CIT(A) following the judgment of the Hon'ble Kerala High Court in assessee's own case for assessment year 1991-1992 (ITA No.135 of 2000 judgment dated 08.04.2008) held that the assessee was liable for capital gains.

6. The assessee being aggrieved by the order of the CIT(A) has raised this issue before the Tribunal. The learned AR reiterated the submissions made before the Income-tax authorities. The learned Departmental Representative, on the other hand, supported the orders of the A.O. and the CIT(A).

7. We have heard the rival submissions and perused the material on record. The Hon'ble High Court of Kerala in assessee's own case for assessment year 1991-1992 in ITA No.135 of 2000 (judgment dated 08.04.2008) had held that the assessee was liable for capital gains in respect of sale of land at Olavakkode. The relevant finding of the Hon'ble High Court has been extracted at para 8 of the CIT(A)'s order, hence the same is not reiterated here. In view of the decision of the Hon'ble jurisdictional High Court rejecting the assessee's claim that it cannot be liable for capital gains as it had acquired this property free of cost, is rejected.

8. The next issue raised in all these appeals is with regard to the fair market value as on 01.04.1981 adopted at Rs.269 per cent of land. The assessee had claimed the fair market value as on 01.04.1981 at substantially higher, which was rejected by the A.O. and by the CIT(A). The relevant finding of the CIT(A) in this regard reads as follows:-

"The Assessing Officer in his orders for all these three assessment years under consideration has adopted the value at Rs.269/- per cent of land which was based on the transaction reported from adjacent survey numbers. The Assessing Officer has adopted the higher value of transactions and I see no reason to disturb the values

adopted by the Assessing Officer. Therefore, this ground is also decided against the appellant."

9. Aggrieved by the order of the CIT(A), the assessee has raised this issue before the Tribunal. The learned AR reiterated the submissions made before the Income-tax authorities. The learned Departmental Representative, on the other hand, supported the orders of the A.O. and the CIT(A).

10. We have heard the rival submissions and perused the material on record. The assessee has not produced any evidence / material to prove that the fair market value as on 01.04.1981 is more than Rs.269 per cent adopted by the A.O. Hence, we confirm the fair market value as on 01.04.1981 at Rs.269 per cent. Hence, this issue is decided against the assessee.

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11. Since the appeals are disposed off, the Stay Applications filed by the assessee are dismissed as infructuous.

12. In the result, the appeals as well as Stay Applications filed by the assessee are dismissed.

Order pronounced on this 04th day of February, 2019.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Cochin ; Dated : 04th February, 2019.
Devdas*

Copy of the Order forwarded to :

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

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin