

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

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

ITA No.09/Coch/2018 : Asst.Year 1996-1997

ITA No.10/Coch/2018 : Asst.Year 1996-1997

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.01/Coch/2018 : Asst.Year 1996-1997

SA No.02/Coch/2018 : Asst.Year 1996-1997

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
-------------------------------------	---

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 31.10.2017. The relevant assessment year is 1996-1997. ITA No.09/Coch/2018 arises out of the order of assessment passed u/s 143(3) of the I.T.Act, whereas the ITA

No.10/Coch/2018 arises out of the order of rectification passed u/s 154 of the I.T.Act. The assessee has also filed stay applications seeking to stay the recovery of outstanding tax arrears.

2. The assessment u/s 143(3) of the I.T.Act was completed vide order dated 30.12.1998. The Assessing Officer made disallowance of Rs.2,35,039 u/s 40A(3) of the I.T.Act. The A.O. also made an addition of Rs.3,25,542 under the head 'capital gains'. These additions are challenged in ITA No.09/Coch/2018.

ITA No.09/Coch/2018

U/s 40A(3) of the I.T.Act

3. The CIT(A) had directed the A.O. to make disallowance of Rs.2,66,236. The relevant observation of the CIT(A) reads as follows:-

"5. The first issue is regarding the disallowance u/s 40A(3). During the appeal proceedings, the appellant had given details of entire payments and it is seen that many of the payments are made by cheque but description is given as 'paid in cash'. Also many of the amounts are merely book entries. On examination of these amounts, only the following payments are clearly disallowable under section 40A(3).

1. *Payment to C Radhakrishnan for supply of Firewood advance. Rs.2,10,000*
2. *Payment to Asma Steels for Rs.16,426*

supply of M.S.Plate.

3.	<i>Payment to Asma Steels for supply of M.S.Sheet.</i>	<i>Rs.14,640</i>
4.	<i>Payment to Nallalam Furniture works.</i>	<i>Rs.12,750</i>
5.	<i>Purchase of timber</i>	<i>Rs.12,420</i>
		<i>-----</i>
		<i>Rs.2,66,236</i>
		<i>=====</i>

The Assessing Officer is directed to make the disallowance u/s 40A(3) only on these payments."

4. We have heard the rival submissions and perused the material on record. We find that the assessee had made cash payments. The assessee has not produced any evidence that the said cash payments fall within the exceptional situation enumerated under Rule 6DD of the I.T.Rules, 1962. Hence, the CIT(A) is justified in his direction to make disallowance u/s 40A(3) of the I.T.Act in respect of payment totaling to Rs.2,66,236. It is ordered accordingly.

Capital Gains

5. The assessee had received additional compensation on acquisition of 0.1466 hectares of land by Government of Kerala at Puthiyara on 10.01.1990. It was claimed by the assessee that it was not liable for capital gains taxation, since the assessee had acquired this property free of cost. We find this dispute was considered by the Hon'ble High Court of Kerala in assessee's own case for assessment year 1991-1992 (ITA

No.135 of 2000 – judgment dated 08.04.2008). The Hon'ble High Court had categorically held that the assessee is liable for capital gains. Therefore, we confirm the CIT(A) order on this issue and reject the grounds raised by the assessee.

ITA No.10/Coch/2018

6. The only issue that is raised in this appeal is whether the CIT(A) is justified in sustaining the disallowance of deduction of market value of land as on 01.04.1974 and 01.04.1981 while computing the long term capital gains. The Assessing Officer vide order dated 14.12.1999, passed a rectification order u/s 154 of the I.T.Act. The A.O. had taken market value of land at `zero'. The A.O. held that there was no need to grant any cost while computing the capital gains for additional compensation. The CIT(A) confirmed the view taken by the Assessing Officer. The relevant finding of the CIT(A) reads as follows:-

"The second appeal is regarding the withdrawal of cost by the order issued u/s 154 of the Income Tax Act dated 14.12.1999. On verification of the records, it is seen that the appellant has already adjusted the market value of this land on 01.04.1974 at Rs.3,000 per cent as per the order of Income Tax Appellate Tribunal in ITA No.206 dated 08.04.1999. Therefore, the appellant is not entitled for any further deduction on this issue. Therefore, I agree with the Assessing Officer on withdrawal of deduction given for market value of Rs.1,62,275/- for the land acquired by the Government of Kerala on which additional compensation received by the appellant company."

7. We have heard the rival submissions and perused the material on record. It is clear that the assessee had already adjusted the market value of the property as on 01.04.1974,

and therefore, the assessee is not entitled for any further deduction of the cost of land. Hence, the Assessing Officer is correct in withdrawing the deduction given for market value as on 01.04.1974. It is ordered accordingly.

SA Nos.01 & 02/Coch/2018

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

9. 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