

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

I.T.A. No. 458/Coch/2018
Assessment Year : 2011-12

The Income Tax Officer, Ward-1, Kottayam.	Vs.	M/s. Ayyappa Roller Flour Mills Ltd., Industrial Development Area, Muppathadom, P.O. Edayar, Kochi.
(Revenue-Appellant)		(Assessee-Respondent)

Revenue by	Smt. A.S. Bindhu, Sr. DR
Assessee by	Shri P. Sathisan, Adv.

Date of hearing	09/05/2019
Date of pronouncement	09/05/2019

ORDER

Per CHANDRA POOJARI, AM:

This appeal filed by the assessee is directed against the order of the CIT(A)-I, Kochi dated 23/07/2018 and pertains to the assessment year 2011-12.

2. The Revenue has raised the following grounds of appeal:

1. The order of the Commissioner of Income Tax(Appeals)-I, Kochi is opposed to the facts and circumstances of the case.
2. In the facts the circumstances of the case, the learned Commissioner of Income Tax(Appeals) is not correct to direct the Assessing Officer to adopt Rs. 50,000/- per cent as fair market value as on 01.04.1981.
 - 2.1 The learned Commissioner of Income Tax(Appeals) ought to have taken into consideration the fact that, in the year 1992, the Government of Kerala has acquired 1.59 ares of the property under consideration and awarded a

sum of Rs. 66,4307- per ares, i.e., Rs. 26,894 per cent as compensation. The learned CIT(Appeals) should have considered that the fair market value of the very same property in the year 1981 cannot be more than that of in the year 1992.

2.2 The learned Commissioner of Income Tax(Appeals) ought to have appreciated the sale of a property in survey No.71472 which was a high way facing property near to the assessee's property and was registered on 25.05.1981 for a value of Rs.7,128/- per are, ie., Rs.2885.83 per cent.

3. The facts of the case are the assessee sold the property as on 01.04.1981. In order to ascertain the fair market value of the property, the A.O. requested the office of the sub registrar, Edapally. However, the sub registrar Edapally expressed his inability in giving the FMV stating that the Govt. of Kerala has started the system of maintaining FMV of the land in recent years only. The Assessing Officer again asked if there was any recorded sale instance of a similar property on 01.04.1981 or any date near to that. The SRO, Edapally submitted details of such instance. The A.O issued a show cause to the assessee asking as to why the average of these sale instances should not be adopted as FMV of the appellant's property. In response the appellant objected to the proposal of the A.O. and placed reliance on a decision of the Tribunal in the case of Kurian Joseph vs DCIT in ITA 137/Coch/2014. The assessee placed reliance on this decision because the land in question in this case was located on Edapally Bye pass having proximity to assessee's land. In the case mentioned above the Tribunal accepted the FMV rate of Rs. 51,272/- per cent as on 01.04.1981. However, the A.O. rejected the plea of the assessee holding that the land belonging to Shri Kurian Joseph was not a highway facing property and that the Tribunal had decided the question of fact and therefore, the decision cannot be a precedence. The assessee's other plea of employing the reverse indexation

method was also rejected by the Assessing Officer stating that the CBDT circular No. 636 dated 31.08.1992 nowhere prescribes that the assessing officer should adopt reverse indexing method for computation of cost of acquisition. In order to reach at a conclusion, the A.O. made enquiries with special Tahasildar (LA) MH No. 111, Vytilla. The Tahasildar informed that in the year 1991-92, the Govt. of Kerala had acquired land adjacent to NH 47 for widening of Highway and a part of assessee's land under consideration was also acquired along with other's property. The A.O. summed up that the Govt. of Kerala acquired the land in 1991-92 and paid compensation @ 26,894/- per cent. The A.O. made further enquiry with SRO, Edapally and received sales information near to date of 01.04.1981 and held that the highest price for which the land was registered near the date of 01.04.1981 was Rs. 7128/- per are and therefore, the A.O. fixed the FMV of assessee's land at Rs. 2885.83 per cent and valued the entire property as on 01.04.1981 @ Rs. 7,05,787/- and computed Long Term Capital Gain accordingly.

4. On appeal, the CIT(A) observed that the assessee sold 75.046 cents of land together with two residential houses for a total sale consideration of Rs. 4,75,52,850/-. The land was purchased prior to 1981. The assessee estimated the fair market value of land as on 01.04.1981 at Rs. 45,000/- per cent for the purpose of computation of capital gains. However, the A.O. restricted the fair market value at Rs.3000 per cent as on 01.04.1981. The CIT(A) observed that the assessing officer appeared to have placed reliance on the registered document dated 19.01.1980 for the purpose of estimating the fair market value as on 01.04.1981

According to the CIT(A), both the land are located in the same area, having proximity to the same National Highway. Land in both the cases were purchased before 1981. Both the lands are reasonably large in area, albeit land in the instant case is larger. The CIT(A) observed that in one case, the assessee estimated FMV as on 01.04.1981 at Rs. 45,000/- per cent, whereas in the instant case, the same has been estimated at Rs. 60,000/- per cent by the assessee. In both the cases, the A.O. relied on the registered document near to the date of 01.04.1981. In the case of Kurian Joseph, the A.O. estimated fair market value as on 01.04.1981 at Rs. 3000/- per cent, whereas in the instant case the A.O. has estimated the fair market value at Rs. 29927/- per cent. The CIT(A) relied on the decision of the Tribunal in the case of Kurian Joseph which held as under:

"11. Now, coming to the valuation of the land, the land is admittedly situated few meters away from the bypass road which is part of NH 47. It is also an admitted fact that NH 47 and bypass road was formed even in the 1981. The subject matter of land has proximity to the National Highway. It has potential for future development because of its location. The land was sold for construction of a multi-storeyed building consisting of 80 apartments. By taking into consideration all these factors, this Tribunal is the considered opinion that the lower authorities were not justified in restricting the same at Rs. 3000/- per cent. The land compared by the assessing officer is 2 km away from the subject matter of land, therefore the value of 5 cents of land cannot be taken as a comparable case for estimating the fair market value of the land. Therefore, the lower authorities may not be justified in taking the value of the land at Rs. 3000/- per cent. Accordingly, the orders of the lower authorities are set aside and the assessing officer is directed to take Rs, 45,000/- per cent as fair market value as on 01.04.1981."

4.1 Thus, the CIT(A) observed that the facts of the instant case are identical to the one discussed above, except for the fact that subject land in the instant case has more location advantage, as it is touching the highway No. 47, unlike the land of MR. Kurian Joseph, which fell on the service road. In view of this fact, the CIT(A)

was of the view that the Assessing Officer was not justified in restricting the FMV of the subject land as on 01.04.1981 at Rs. 2992/- per cent against the demand of Rs.60,000/- made by the assessee. The CIT(A) estimated the FMV of subject land Rs. 50,000/- per cent as on 01.04.1981 and accordingly, by relying on the decision of the Tribunal cited supra, directed the AO to adopt Rs. 50,000/- per cent as Fair Market Value of land as on 01.04.1981 for the purpose of computation of capital gains.

5. Against this, the Revenue is in appeal before us. The Ld. DR relied on the order of the Assessing Officer.

6. The Ld. AR submitted that the land was originally acquired by M/s Cochin Roller Flour Mills , a partnership firm between years 1966 to 1974 at a total consideration of Rs. 1,42,000/-. Later on, the firm was converted into a pvt ltd. company and book value of the land on date of conversion from firm to company was Rs. 589130/- because of the improvement done on the land, which has not been taken into consideration by the A.O. for the purpose of allowing indexation. It was submitted that subsequently, the private limited company was amalgamated with the assessee company by an order of the High court of Kerala dated 20/11/2001, wherein the land was revalued at Rs. 225000/- by a valuation report dated 21/12/1998, which was approved by Honorable Kerala high court. It was submitted that NH 47, passing in front of assessee's property was opened in 1980 and the land became a prime commercial property and the value of land substantially

increased. In view of these facts, it was submitted that the FMV fixed by the A.O. @ Rs. 2992/-per cent as on 01.04.1981 definitely appears to be very much on the lower side. The assessee has also brought out many dissimilarities between the land used as comparable by the A.O. to the land owned and sold by the assessee. appellant. The assessee placed reliance on the decision of ITAT, Cochin bench in the case of Kurian Joseph vs DCIT cited supra.

7. We have heard the rival contentions and perused the record. In this case, the Assessing Officer had adopted the fair market value of the impugned property as on 01/04/1981 at Rs.2885.53/- per cent and valued the entire property as on 01/04/1981 at Rs.7,05,787/- on the basis of SRO, Edapally. On the other hand, the CIT(A) determined the value of the property as on 01/04/1981 at Rs.50,000/- per cent on the basis of the value determined by the Tribunal in the case of Kurian Joseph in ITA No. 137/coch/2014 dated. In our opinion, it cannot be said that the value of the property which was considered by the Tribunal in the case of Kurian Joseph is identical. As such, in the present case, the CIT(A) cannot determine the fair market value determined on the basis of the Tribunal order in the case of Kurian Joseph. Accordingly, we vacate the findings of the CIT(A) on this issue. In our opinion, the fair market value is to be determined by the DVO instead of determining the value by the Assessing Officer/CIT(A) without taking the technical expert's opinion. Hence, we remit this issue to the file of the Assessing Officer and direct him to get the valuation report for the impugned property from the DVO and decide the issue afresh. Needless to say that the DVO has to consider the various

actual transactions which took place during the relevant period and in the immediate vicinity of the impugned property. Hence, this ground of appeal of the Revenue is partly allowed for statistical purposes.

9. In the result, the appeal filed by the Revenue is partly allowed for statistical purposes.

Order pronounced in the open Court on this 9th May, 2019

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Place: Kochi
Dated: 09th May, 2019

GJ

Copy to:

1. M/s. Ayyappa Roller Flour Mills Ltd., Industrial Development Area, Muppathadom, P.O. Edayar, Kochi.
2. The Income Tax Officer, Ward-1, Kottayam.
3. The Commissioner of Income-tax(Appeals)-I, Kochi.
4. The Pr. Commissioner of Income-tax, Kochi.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin

I.T.A. No.