

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

**Before Shri George George K, Judicial Member**

ITA No.445/Coch/2018 : Asst.Year 2009-2010

Smt.Anila Kumari.G.S NP 12/550, Anila Bhavan Elavattom P.O. Nedumangadu Trivandrum - 695 562 <b>PAN : BEIPS7622K.</b>	Vs.	The Income Tax Officer Ward - 1(1) Trivandrum.
(Appellant)		(Respondent)

Appellant by : Sri.M.Ramesh Kumar, CA  
Respondent by : Smt.A.S.Bindhu, Sr.DR

<b>Date of Hearing : 13.06.2019</b>	<b>Date of Pronouncement : 14.06.2019</b>
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**ORDER**

This appeal at the instance of the assessee is directed against the Commissioner of Income-tax (Appeals)'s order dated 31.08.2018. The relevant assessment year is 2009-2010.

2. The solitary issue argued was with regard to the computation of short term capital gains.

3. Briefly stated the facts of the case are as follows:

The assessee during the relevant year had sold land and building on 09.05.2008 for a total consideration of Rs.33,50,000. Out of the total consideration, the share of building and land was valued at Rs.26,10,000 and Rs.4,60,000, respectively. The land was treated as a long term

capital asset and accordingly indexed cost of acquisition was allowed for an amount of Rs.4,42,320 against the sale consideration received of Rs.4,60,000. Therefore, long term capital gains was worked out at Rs.17,680. There is no dispute raised in this appeal with regard to the computation of long term capital gains.

4. The dispute raised in this appeal is with regard to the computation of short term capital gains on the amount received as cost for the building. The assessee had constructed a house. The Corporation had allotted door number on 29.11.2004, the date which was treated as the date of completion of house property. Since the house property was sold within three years of construction, the property was treated as short term capital asset and accordingly short term capital gains was calculated on the sale of house property. For the construction of the house, the assessee had claimed to have spent Rs.25,50,000. The said amount is stated to be housing loan availed amounting to Rs.15 lakh, another Rs.9 lakh said to have been received from assessee's husband and further a sum of Rs.1,68,250 which the assessee claims that her husband had taken gold loan. It was submitted that the above amounts were utilized for house construction. After examining the evidences submitted by the assessee, the Assessing Officer treated the cost of construction of house property at Rs.18 lakh and arrived at short term capital gain of Rs.8,10,000 (26,10,000 - 18,00,000).

5. Aggrieved by the assessment order, the assessee preferred appeal to the first appellate authority. The CIT(A) confirmed the computation made by the Assessing Officer as regards the short term capital gains.

6. Aggrieved by the order of the CIT(A), the assessee has preferred this appeal before the Tribunal. The learned Counsel for the assessee has filed a brief written submission, which reads as follows:-

*"1. The Assessing Officer has arrived at the cost of construction of the property of Rs.1800000/- based on the estimate given by the appellant to the housing loan bank amounting to Rs.1770000/- which is not correct and is opposed to the facts and circumstances of the case. It is a known fact that most of the banks provide only 75% as housing loan on the total cost of construction. Hence the bank loan of Rs.1500000/- advanced to the appellant should have been on a total construction amount of Rs.2000000/- minimum. More over the basis for adhoc fixation of construction amount to Rs 1800000/- based on the estimate given to the bank fail to muster merit on the decision, by the learned Assessing Officer.*

*2. All the sources for the construction of the property are supported by valid documents like housing loan, gold mortgage loan and affidavits by the appellant. Hence the proof of construction cost is genuine and reasonable.*

*3. As per building permit the area of construction is 381.088sq. m (around 3800sq feet) and the cost of construction of per sq feet works out to Rs 474/-, according to the learned Assessing Officers computation, which is not feasible in the light of the available cost of construction standard. Hence the cost of construction of Rs 25.50 lakhs disclosed by the appellant is quite reasonable and fair considering the area of construction, during that period.*

*4. The learned Assessing Officer has failed to opt for valuation by the department authorizeo authority for the said property. Instead an adhoc valuation has been done by the learned officer, which is not justifiable.*

5. *Justice has been denied to the appellant since the appellate decision is ex-parte.*

6. *The capital gain computation is also based on assumptions and unreasonable grounds."*

7. The learned Departmental Representative, on the other hand, strongly relied on the findings / conclusions of the Income-tax authorities.

8. I have considered the rival submissions and perused the material on record. As per the building permission, the area of construction is around 381.088 sq.mt. (around 3,800 sq.ft.). The Assessing Officer had granted the cost of construction at Rs.18 lakh, which worked out roughly to Rs.475 per sq.ft. The assessee ought to have proved that she had incurred the cost of Rs.25,50,000 as disclosed by her. I noticed that the assessee did not appear before the first appellate authority. On specifically asked, the authorized representative submitted that it was a mistake on his part having not filed written request for adjournment of the case before the first appellate authority. It was submitted that orally he had sought for the adjournment of the case, however, due to miscommunication, the appeal being old case, was heard *ex parte* by the CIT(A) and disposed off. In the interest of justice and equity, I am of the view that the matter needs to be considered afresh by the Assessing Officer. The assessee has produced evidence before the A.O. to prove that the residential building of approximately 3,800 sq.ft. was constructed and cost incurred on the same is Rs.25.50 lakhs. As a last chance, I grant the assessee an opportunity to

produce the necessary proof before the Assessing Officer so that reasonable cost can be taken as a cost of construction for the purpose of computation of short term capital gains. It is ordered accordingly.

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

Order pronounced on this 14<sup>th</sup> day of June, 2019.

Sd/-  
**(George George K.)**  
**JUDICIAL MEMBER**

Cochin ; Dated : 14<sup>th</sup> June, 2019.  
Devdas\*

**Copy of the Order forwarded to :**

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

BY ORDER,

(Asstt. Registrar)  
**ITAT, Cochin**