

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

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

ITA No.510/Coch/2019 : Asst.Year 2015-2016

Sri.Monson Job Kallukulam House Nannuvakkadu Pathanamthitta – 689 645. <b>PAN : ABSPJ7724P.</b>	Vs.	The Income Tax Officer Ward 2 Thiruvalla.
(Appellant)		(Respondent)

Appellant by : Sri.M.S.Venkitachalam  
Respondent by : Smt.A.S.Bindhu, Sr.DR

Date of Hearing : 21.11.2019	Date of Pronouncement : 26.11.2019
------------------------------	---------------------------------------

**ORDER**

**Per George George K, JM :**

This appeal at the instance of the assessee is directed against the Commissioner of Income-tax (Appeals)'s order dated 02.07.2019. The relevant assessment year is 2015-2016

2. The grounds raised read as follows:-

*"1. The property with an extent of 93 cents came into the hands of the father of the assessee Mr.Joseph Job by way of Settlement Deed No.2721/1980 executed on 19.09.1980 by the grandfather of the assessee Mr.Koshy Thomas Subsequently a partition deed dated 04.03.2014 was executed by the father of the assessee by which the right to the property came into hands of the assessee.*

2. *The contention of the learned assessing officer is that the value of the 93 cents of property as per the settlement deed is only Rs.10,000/- and since the date of the settlement deed is 19.09.1980, this value adjusted to Rs.50,000/- has to be adopted as the market value as on 01.04.1981.*

3. *The learned assessing officer has not taken the following points into consideration while completing the assessment.*

(i) *In a settlement deed, since value has no relevance, the value given in the Settlement deed cannot be taken as the market value of the property. Moreover, the settlement is between father and son. The actual market value will be entirely different.*

(ii) *The assessee can produce other documents which are executed near to the date of the settlement deed where the value of the property is very high.*

4. *Copies of sale documents produced for determination of market value in the area were in respect of properties located only 800 metres away from the property sold and only 150 mtrs. from M.C.Road.*

5. *The Appellant, therefore, prays that, based on the arguments presented above and other points / evidences that may be produced at the time of hearing, the Commissioner of Income Tax (Appeals) be kind enough to quash the order issued by the Income Tax Officer, Ward 2, Thiruvalla under section 143(3) of the Income Tax Act, 1961 or pass such other order deemed fit in the facts and circumstances of the case."*

3. Brief facts of the case are as follows:

The assessee an individual, filed his return of income for the assessment year 2015-2016 on 03.03.2017 declaring total

income of Rs.3,05,850, which included long term capital gains of Rs.2,75,800. The long term capital gains declared was on account of sale of 21.22 cents of land, which the assessee came into possession by way of a partition deed executed by his father. The assessee's father became the owner of the impugned property by way of a settlement deed dated 19.09.1980. The assessee had sold the property of 21.22 cents of land on 18.03.2014 for a sum of Rs.28,35,800. While calculating the long term capital gain, the assessee had taken the value as on 01.04.1981 at Rs.2,50,000 for 21.22 cents of land and indexed cost was arrived at Rs.25,60,000.

4. The assessment was completed vide order dated 28.11.2017 u/s 143(3) of the I.T.Act. In the said assessment order, the Assessing Officer did not agree with the claim of the assessee of indexed cost of acquisition of the impugned property at Rs.25,60,000. The Assessing Officer fixed the cost of the property as on 01.04.1981 at Rs.11,409 for 21.22 cents of land and arrived at the indexed cost at Rs.1,16,828. Accordingly, the long term capital gains was worked out at Rs.27,18,972 (28,35,800 – 1,16,828). The relevant finding of the Assessing Officer reads as follow:-

*"I have examined the argument of the assessee. The value adopted by the assessee cannot be accepted as the assessee himself claimed that it is estimated. The assessee did not have any comparable cases to prove that the value adopted by him is correct. On the other hand, the value as on 19.09.1980 for 93 cents is shown as Rs.10,000/- in the deed by which*

*his father acquired the property. Some consideration can be given to the fact that the above deed was registered on 19.09.1980 that is 6 months before the cut off date i.e. 01.04.1981. Taking into consideration all the factors, the value for 93 cents as on 01.04.1981 can be reasonably adopted as Rs.50,000/-."*

5. Aggrieved by the re-computation of long term capital gains by the Assessing Officer, the assessee preferred an appeal to the first appellate authority. It was contended before the first appellate authority that the value shown in the settlement deed dated 19.09.1980 is only nominal value for the purpose of registration of the document and not the actual market value. Further, the assessee had submitted copies of various documents and claimed that the value of property in the area as on 01.04.1981 is more than the value adopted by the assessee in the return of income filed by him. The CIT(A), however, rejected the contentions raised by the assessee and dismissed the appeal of the assessee. The relevant finding of the CIT(A) reads as follow:-

*"4.4 The facts of the case, the grounds of appeal and the arguments of the Appellant have been considered. The main argument of the Appellant is that the value shown in settlement deed is only nominal value as the same is not sale. The learned AR filed a translated copy of the settlement deed and on perusal of the same, it is found that what was stated in the document is "Market Value" and not nominal value. Further, on perusal of three sale documents produced by the learned AR to prove the market value of the property sold, it is observed that all three properties were located on M.C.Road. But the property sold by the Appellant is not located on M*

*C Road. Further, the learned AR could not give any further details of proximity of the Appellant property to the M C Road. Further, the Appellant had also estimated the cost without any basis. Under these circumstances, considering the facts, it is held that the indexed cost determined by the Assessing Officer is reasonable. Accordingly, the grounds raised by the Appellant are dismissed."*

6. The assessee being aggrieved, has filed the appeal before the Tribunal. The learned AR relied on the grounds raised. Further it was pleaded that the assessee may be granted one more opportunity to prove that the value of the impugned property as on 01.04.1981 is more than Rs.2,50,000. It was submitted that the copies of the sale document produced for determination of market value in the area in respect of properties located is only about 800 meters away from the impugned property and he can prove the same with necessary evidence before the Assessing Officer.

7. The learned Departmental Representative, on the other hand, supported the orders passed by the Income-tax authorities.

8. We have heard the rival submissions and perused the material on record. The assessee had produced various sale deeds to prove the value of property in the area is more than the value shown by the assessee as on 01.04.1981 for calculating the long term capital gains of the impugned property. However, the CIT(A) has stated that the sale documents of the property claimed by the assessee in the

nearby vicinity of impugned property is located in M.C.Road and the assessee has not been able to prove with any details, proximity of the impugned property to that of M.C.Road. In the interest of justice and equity, we are of the view that one more opportunity should be granted to the assessee to prove his case that the value as on 01.04.1981 with regard to the impugned property is in the range of Rs.2,50,000 for 21.22 cents of land. For the above said purposes, we restore the case to the Assessing Officer. The assessee is at liberty to produce the sale deeds of properties in the vicinity of the impugned property executed around the year 1981 to prove his case that the value of the impugned property as on 01.04.1981 is around Rs.2,50,000 for 21.22 cents of land. The Assessing Officer shall afford a reasonable opportunity of hearing to the assessee. It is ordered accordingly.

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

Order pronounced on this 26<sup>th</sup> day of November, 2019.

Sd/-  
**(Chandra Poojari)**  
**ACCOUNTANT MEMBER**

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

Cochin ; Dated : 26<sup>th</sup> November, 2019.  
Devadas G\*

**Copy of the Order forwarded to :**

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

BY ORDER,

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