

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

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

ITA No.255/Coch/2019 : Asst.Year 2010-2011

M/s.Sunrise Institute of Medical Science Pvt.Ltd. C/o.Rangamani & Company Chartered Accountants P.B.No.3807, Rajarajeswari Bhavan, Pazhaveedu P.O. Alleppey – 688 099. <b>PAN : AAICS4341K.</b>	Vs.	The Dy.Commissioner of Income-tax, Central Circle – 1 Kochi.
(Appellant)		(Respondent)

Appellant by : Sri.R.Krishnan, CA  
Respondent by : Smt.A.S.Bindhu, Sr.DR

<b>Date of Hearing : 27.11.2019</b>	<b>Date of Pronouncement : 02.12.2019</b>
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**ORDER**

**Per George George K, JM**

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 18.01.2019. The relevant assessment year is 2010-2011.

2. The grounds raised read as follows:-

*"1. The learned Commissioner of Income Tax (Appeals) erred in directing the Assessing Officer to adopt the rate of Rs.1,83,913/- per cent as selling price of the land in question for the Asst.Year 2005-06, and to use the Consumer Inflation Index for the year 2009-10 to arrive at the selling price of the land. Such estimation is highly impracticable and cannot be the basis for arriving at the selling price.*

2. *The learned Commissioner of Income Tax (Appeals) erred in enhancing the assessment without giving a notice to the appellant. Such a direction is bad in law.*

3. *The learned Commissioner of Income Tax (Appeals) ought to have appreciated that there is no scope for estimation, without any material, as far as the sale price is concerned. Both the Assessing Officer as well as the Commissioner of Income Tax (Appeals) have gone by estimates as against documented price declared by the appellant. The officers below failed to establish that the documented price is not the actual consideration.*

4. *The learned Commissioner of Income Tax (Appeals) ought to have noted that appellant had raised various objections in the several grounds raised and without addressing the same, the Commissioner of Income Tax (Appeals) went wrong in deciding the issue on circumstantial evidence, which is bad in law."*

3. The brief facts of the case are as follow:

The assessee is a company engaged in running a multi specialty hospital. There was a search u/s 132 of the I.T.Act on 25.08.2009 in the premises of Dr.Hafeez Rehman Padiyath, one of the Directors of the assessee-company. For the assessment year 2010-2011, the return of income was filed on 15.09.2011 declaring total taxable income of Rs.41,92,264. The assessment was completed u/s 143(3) of the I.T.Act vide order dated 30.12.2011. In the assessment completed, the Assessing Officer had made an addition of Rs.91,96,000 u/s 69 of the I.T.Act. The relevant finding the Assessing Officer in making the addition of Rs.91.96 lakh reads as follow:-

*"4. In the previous year relevant to Assessment year 2010-11, the assessee purchased 64.2 cents of land at Kollam from one Mr. Ponnann (Alias Ramachandran, Elayidath Veedu, Kavanadu po, Kallam) and his brothers wife Ammini for a documented consideration of Rs.36,03,500 on 22.06.2009 and 24.06.2009 in three separate documents. The documented consideration of this deal looks suspiciously*

*small since land purchased by the assessee is near the National Highway.*

*4.1 An advance of Rs. 60.5lakhs was paid by Sunrise Institute on 27.01.2009, However on 24.06.2009, the date of registration of property, the amount of Rs.23,96,500 was paid back to the Sunrise Institute as the value shown in the registered sale deed was only Rs.36,03,500. It can assumed that the amount must have gone back to the seller in cash.*

*4.2 The value of the land as per the document appears low for another reason. In FY 2005-06 about 4.5 cents of land belonging to Shri. Ponnann and adjacent to the plot sold to Sunrise Institute was acquired by Special Tahsildar Land Acquisition, National Highway, Kollam for which compensation of Rs.1,63,895 was received. On contesting the award the assessee was given enhanced compensation and in effect he received Rs.1,83,913 per cent. (Form 16A issued by the special Tahsildar is placed on record) On the same logic the market value for AY 2010-11 should be at least Rs.2,00,000 percent. So the actual consideration paid must be in the region of Rs.1.28 crore as against Rs.36.03 lakhs as per the documents. It is safe to assume that the on money payment in the transaction is about 91.96 lakhs.*

*4.3 The department has in its possession circumstantial evidence in the form of large cash deposits in the bank accounts of Mr. Ponnann in the period of the transaction suggesting on money payment by the assessee.*

*4.4 A proposal to tax the on money payment was given to the assessee. Vide notice dated 22.12.2011. In the reply furnished by the assessee it argued that the assessee wanted to back out of the deal as there were disputed concerning the property and that was why the deal took such a long time to finalize. According to the assessee, the return of part of the advance was also due to that reason. According to the assessee, the valuation by the Tehsildar is not reliable as the property purchased by the assessee is not a roadside property. The assessee further argued that no party to the deal has admitted to paying extra consideration.*

*4.5 In Income Tax proceedings, preponderance of probability is enough to bring an item to tax. Such evidence exists in this case. Therefore, the on money payment involved in the land deal totaling Rs.91.96 lakh is assessed in the hands of the assessee under section69."*

4. Aggrieved by the addition made by the Assessing Officer u/s 69 of the I.T.Act, the assessee preferred an appeal to the first appellate authority. The CIT(A) directed the A.O. to adopt the rate of Rs.1,83,913 per cent as selling price of the land in question for the assessment year 2005-2006 and to use the consumer inflation index for the assessment year 2009-2010 to arrive at the selling price of the land. The relevant finding of the CIT(A) reads as follow:-

*"The AO has clearly brought out these fact by annexing a field sketch of the land purchase which amply bears out the falsity of the appellant's claim. The unlikelyhood neigh impossibility, of an advance returning a part of the advance money at the time of registration for the sale of the same property for which he was advanced money and the fact that there are huge cash deposit in his bank account during the corresponding period, clearly corroborate the departments claim that on money has exchanged hand during the above transaction.*

*In view of the above facts the AO is directed to adopt the rate of Rs.183913 per cent as the selling price of the land in question in F.Y.2005-06 and use the Consumer Inflation Index (CII) for the year 2009-10 and 2005-06 to arrive at the selling price of the land purchased by the appellant on 24.06.2009."*

5. Aggrieved by the order of the CIT(A), the assessee has preferred this appeal before the Tribunal. The learned AR reiterated the submissions made before the Income Tax Authorities. The learned AR also filed a paper book comprising of 12 pages enclosing the argument notes submitted before the CIT(A), copies of the remand report of the Assessing Officer, the reply filed by the assessee to the remand report submitted, etc. The learned Departmental Representative, on the other hand, strongly supported the assessment order and the CIT(A)'s order.

6. We have heard the rival submissions and perused the material on record. On a query from the Bench, it was admitted by both the parties that in the hands of one of the sellers (Sri.Ponnan), the issue of addition with regard to sale of impugned land is pending adjudication before the CIT(A). There has to be consistency insofar as taking a decision in the hands of the purchaser as well as in the hands of the seller. The learned DR states that the CIT(A) for the assessee as well as the seller of the impugned property is the same. Therefore, to have a consistency for adjudicating the issue in the hands of the buyer, i.e., the assessee and that of the seller, we restore the issue raised before us to the files of the CIT(A). The CIT(A) shall consider both the appeals of the assessee (the purchaser) and that of the seller together and shall take a decision in accordance with law. Needless to state, the CIT(A) shall afford a reasonable opportunity of hearing to the assessee. It is ordered accordingly.

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

Order pronounced on this 02<sup>nd</sup> day of December, 2019.

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

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

Cochin ; Dated : 02<sup>nd</sup> December, 2019.  
Devadas G\*

**Copy of the Order forwarded to :**

1. The Appellants
2. The Respondent.
3. The CIT (Appeals)-III, Kochi
4. The CIT (Central) Kochi.
5. The DR, ITAT, Cochin
6. Guard file.

BY ORDER,

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