

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

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

ITA No.589/Coch/2017 : Asst.Year 2011-2012

Sri.C.P.Viswanatha Menon Mangayiul House Post Ettumanoor Kottayam – 686 631. PAN : ACUPV4947K.	Vs.	The Asst.Commissioner of Income-tax, Central Circle Kottayam.
(Appellant)		(Respondent)

Appellant by : Sri.P.Rejinark
Respondent by : Smt.A.S.Bindhu, Sr.DR

Date of Hearing : 10.12.2019	Date of Pronouncement : 10.12.2019
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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 07.08.2017. The relevant assessment year is 2011-2012.

2. The issues raised in this appeal are as follows:-

- (i) Whether the CIT (A) is justified in dismissing the appeal as not maintainable.
- (ii) Whether the CIT(A) has erred in not setting aside the assessment order completed u/s 153C of the I.T.Act, for want of satisfaction note.
- (iii) The CIT(A) has grossly erred in not adjudicating the issues on merits, namely, the grounds raised by the

assessee against the additions made by the Assessing Officer.

(iv) The impugned assessment order passed u/s 153C of the I.T.Act is *void ab initio* and *sine qua non* in law as no notice was served on the assessee u/s 153C of the I.T.Act, instead notice was issued u/s 153A of the I.T.Act which is invalid as no warrant of search was issued in the name of the assessee.

3. At the very outset, we noticed that the appeal of the assessee has been dismissed by the CIT(A) as not maintainable and he does not have jurisdiction to adjudicate the appeal. The CIT(A)'s reasoning is that, since the assessee had preferred revision u/s 264 of the I.T.Act, the appeal is not maintainable.

4. We have perused the revisionary application u/s 264 of the I.T.Act and the order passed by the CIT u/s 264 of the I.T.Act. The order of the CIT passed u/s 264 of the I.T.Act is regarding adjudication of the issue on merits, namely, denial of exemption u/s 54F of the I.T.Act on long term capital gains computed. The grounds raised before the CIT(A) is concerning the validity of assessment u/s 153C of the I.T.Act. According to the assessee, no satisfaction note was recorded by the Assessing Officer in the case of searched person, therefore, assessment completed u/s 153C of the I.T.Act in case of assessee is invalid. Since the grounds raised in the revisionary proceedings u/s 264 of the I.T.Act and the grounds raised before the CIT(A) is different, certainly, the CIT(A) has to adjudicate the grounds raised before him, which

are not the subject matter of revision before the CIT in the revisionary proceedings u/s 264 of the I.T.Act. However, we noticed that there is a delay of 600 days in filing the appeal before the CIT(A). The CIT(A) at the first instance shall consider the delay petition filed before him and in the event the delay is condoned by him, he shall consider the legal grounds and other grounds which are not subject matter of revision application before the CIT u/s 264 of the I.T.Act. It is ordered accordingly.

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

Order pronounced on this 10th day of December, 2019.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Cochin ; Dated : 10th December, 2019.
Devadas G*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-IV, Kochi.
4. The CIT (Central), Kochi.
5. The DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin