

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

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No. 181/Coch/2021
(Assessment Year: 2012-13)

Late C.M. Joseph
Rep. by L/H Mariamma Joseph
Hotel Floral Park
Gandhi Nagar
Kottayam 686008
PAN – AFTPJ2439Q

Vs. DCIT/ACIT, Central Circle
Public Library Building
Sasthri Road
Kottayam 686001

Appellant

Respondent

Appellant by: Shri Mathew Joseph, CA

Respondent by: Smt. J.M. Jamuna Devi, SR. DR

Date of Hearing: 10.01.2023

Date of Pronouncement: 30.03.2023

ORDER

Per: Beena Pillai, JM

The present appeal is filed by the assessee against the order dated 26.08.2021 passed by the learned CIT(A)-3, Kochi for AY 2012-13 on following grounds of appeal: -

“1. The Assessing Officer estimated the capital gain on sale of rural agricultural land at Rs.3,15,53,421/- without any evidence or basis and without considering the facts of the case. The action of the Assessing Officer is against law, facts and natural justice.

2. The fact that the rural agricultural land is not a capital asset also was ignored by the Officer.”

2. At the outset the learned A.R. submitted that both the assessment order as well as the impugned order of the learned CIT(A) have been passed ex-parte. It is further submitted by the learned A.R. that the statement recorded from Shri Sabu Cyriac does not contain what is recorded in the relevant paragraphs of the learned CIT(A)'s order. He relied on the copy of the statement recorded along with the true translation which is placed on pages 8 & 9 of the paper book. The learned A.R. submitted that the Revenue authorities have grossly erred in estimating the value of sale consideration for the purpose of computing capital gain on transfer of immovable property based on an unsigned agreement. It was his humble submission that the issue may be remanded to the AO for de novo verification as no documents have been filed by the assessee before the authorities below in support of assessee's contentions.

3. On the contrary, the learned D.R. did not object for de novo consideration of the entire issue by the AO.

4. We have heard the rival contentions and perused the material on record. We note that the learned CIT(A) has upheld the entire addition based on the statements from Shri Sabu Cyriac. On verification of the statement of Shri Sabu Cyriac, that is filed before us, we are convinced that the observations recorded by the learned CIT(A) does not arise from them. We are, therefore inclined to remand the entire appeal to the AO having regard to the fact that the assessment order has been passed under Section 144 of the Act and the AO is in good position to verify the entire assessment. The AO shall consider the submission of the assessee and call for necessary

documents in order to carry out the verification to determine whether there was transfer of assets and in the event there is a transfer to determine the correct value of the property so transferred for the purpose of computing the capital gain in the hands of the assessee. The assessee is directed to cooperate by furnishing all relevant details as called for. The assessee is also directed to furnish any other evidence which she may hold in her possession in support of her claim. We accordingly allow the grounds of the assessee for statistical purposes.

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

Dictated and pronounced in the open Court on 30th March, 2023.

Sd/-
(Padmavathy S)
Accountant Member

Sd/-
(Beena Pillai)
Judicial Member

Cochin, Dated: 30th March, 2023

Copy to:

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

By Order

//True Copy//

Assistant Registrar
ITAT, Cochin

n.p.