

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

Before Shri Sanjay Arora, Accountant Member and
Shri Manomohan Das, Judicial Member

**ITA Nos. 472 to 474/Coch/2022 &
SA Nos. 14 to 16/2022**

(Assessment Years: 2011-12, 2012-13 & 2014-15)

Chengazhasseril Thomas Kurian Chengazhasseril Keezhampara P.O. Melampara, Bharananganam Kottayam 686578 [PAN:ACKPT3883G]	vs.	Asst. CIT, Central Circle, Kottayam
(Appellant)		(Respondent)

**ITA Nos. 47 to 50/Coch/2022 &
SA Nos. 06 to 09 to 16/2022**

(Assessment Years: 2011-12 to 2014-15)

V.D. Devasia Valiplackal, Teekoy P.O. Kottayam 686580 [PAN:ACZPD2876Q]	vs.	Asst. CIT, Central Circle, Kottayam
(Appellant)		(Respondent)

Assessee by:	Shri Joseph Markose, Advocate
Revenue by:	Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing: 13.07.2023

Date of Pronouncement: 29.09.2023

ORDER

Per Bench

This is a set of 7 appeals in respect of assessments under section 153A read with section 143(3) of the Income Tax Act, 1961 ('the Act' hereinafter) for Assessment Years (AYs.) 2011-12 to 2014-15 in respect of two assessees, consequent to search action in their case under section 132 of the Act, on part relief by the Commissioner

of Income Tax (Appeals)-3, Kochi [CIT(A)] vide his separate (albeit combined for all the years) orders dated 29.11.2021 and 08.02.2022.

2. The appeals, raising common issues, which explains their being heard together, were argued at length, i.e., *qua* each of the grounds raised in appeal, even as it was a common ground before us that a completed and unabated assessment was, in view of the decision in *Pr. CIT vs. Abhishar Buildwell Pvt. Ltd.* [2023] 454 ITR 212 (SC), overruling, besides others, the decision by the Hon'ble jurisdictional High Court in *Gopakumar (E.N.) v. CIT* [2017] 390 ITR 131 (Ker), would survive only where incriminating material had been found during search, initiated by issue of warrant on 22/9/2014, which led to the assumption of jurisdiction to assess and issue of notice u/s. 153A of the Act by the Assessing Officer (AO).

3. We shall proceed assessee-wise and year wise.

I. Shri C.T. Kurian

A. AY 2011-12

1. The return of income for this year was in the first instance filed on 31.5.2013 admitting an income of Rs.2,13,840. The same, a valid return u/s. 139(4) of the Act, was processed u/s.143(1) on 10.06.2013, presumably without any adjustment. This was followed by issue of notice u/s.143(2) on 30.09.2014. Inasmuch as notice u/s. 143(2) of the Act could be issued and served by 30.09.2014, assessment for AY 2011-12 qualifies to be a pending assessment which, falling within six years preceding the assessment year relevant to the previous year in which the search is conducted, shall therefore abate. In fact, para 3 of the assessment order clearly records incriminating material (as well deposition vide statement u/s.132(4)) revealing investment in immovable properties by the assessee, not explained by his disclosed sources of income, being found and seized. Notice u/s.153A of the Act, issued on 25.05.2016, was responded to by filing a return on 23.08.2016, admitting an income of Rs.6,11,330. Assessment there-under shall therefore obtain. The assessee in fact

admits the investments in immovable properties, and it is the validity or otherwise of his explanation as to the source thereof, including its quantum, which is the bone of contention or the subject matter of dispute between the parties.

2. The explanation by the assessee for the said investment was principally by way of a cash flow statement for the relevant year, i.e., f.y.2010-11, which finds reproduction at para 5 (pages 3-7) of the assessment order. The same enlists sources and application of funds, at Rs.3,05,20,775 (Rs.305.21 lacs) each, so that the closing cash-in-hand balances the two sides. The same included the following receipts:

- a) Sale of 8.86 acres of land by Smt. Mercy Kurian (wife) : Rs.26.66 lakhs
- b) Sale of 8.82 acres of land by Shri Sunny Kutty Thomas : Rs.26.54 lakhs
- c) Agricultural income (Rs.40.14 lakhs – less agricultural expenses Rs. 17.50 lakhs) : Rs.22.64 lakhs
- d) Sale of 1.74 acres of land : Rs.16.82 lakhs

The same did not find acceptance by the AO, who was called upon by the learned CIT(A) in the appellate proceedings to furnish a remand report, reproduced, interspersed with the latter's observations, at pgs. 16-24 of the impugned order. The Revenue's case, in principal, is of the assessee's case being not substantiated. There was nothing to show of investment in the name of the assessee's wife and brother as having been made by him, for him to claim benefit of section 64 of the Act, justifying thus the inclusion of the sale of their land in his cash flow statement. Similarly, his land holding, after the sale in December, 2010, is at a mere 4.33 acres, which could not explain the huge agricultural income claimed by the assessee, viz. at Rs.102.94 lakhs for AY 2012-13, being in fact not disclosed per the original returns. The assessee's appeal for the year being dismissed, he is in second appeal.

3.1 Before us, it was claimed that the assessee's wife had no independent source of income and, in fact, her bank accounts were also being operated by the assessee. As

regards his brother, he had entered into an agreement with him on 15.4.2004 (PB pgs. 14-15, 16-17) to the effect that 8.78 acres of land to be purchased in his name shall in fact belong to the assessee, and the ostensible owner would have no right or interest therein. That apart, sale of cardamom, which is the basis of the agricultural income, besides being evidenced by sale bills, also bearing the names of the buyers, issued by the Kerala Cardamom Processing the Marketing Co. Ltd., an independent body working under the auspices of the Spices Board, is supported by the closing stock maintained by the assessee, i.e., as on 31.03.2010 (at 145565.93 kgs). The same, therefore, cannot be doubted, as the Revenue does without any basis.

3.2 The Id. Sr. DR would, on the other hand, submit that the merits of assessee's explanation has been examined by the Revenue with reference to the explanations and documents furnished, no infirmity in which has been pointed out by the assessee, whose case is, as apparent, made-up.

4. We have considered the rival contentions, and perused the material on record. We begin by reproducing the AO's findings inasmuch as they remain largely undisturbed and survive the first appeal, representing the gist of the Revenue's case:

- a. Assessee's admitted source of Income is from commission only apart from non-taxable agriculture income.
- b. Assessee didn't maintain any books of accounts to enable this office to verify the genuineness of the huge cash credits (of course debit also) to ostensibly claim the benefits of cash availability which is subsequently utilized both for payment of document prices as well as on money payment.
- c. The assessee was stated to be involved in a business activity before the search assessment. To avoid the rigour of explaining huge credits in the bank invented the theory of commission and non-maintenance of books of account.
- d. The gross receipts from all sources is miniscule compared to the total credit in all bank accounts for the ostensible purpose of explaining the source for everything.
- e. To enjoy the fruits of non-taxable agriculture income by clubbing the income attributable to his wife and brother without bother to explain the source for the acquisition of the agriculture lands owned by them.

- f. It is strange to observe that the assessee has filed a self-serving affidavit duly not arisen to the effect that bank accounts, loans, property transactions, agriculture income, in nut shell, the entire assets and liability of his wife Mercy Kurian and his brother Sunnykutti- attributable to Mr. Kurian only- a credulous affidavit without substantiation by whom on whose financial affairs over which CT Kurian is claiming credit.
- g. A perusal of the cash flow for all the seven year reveals a pattern. The assessee is augmenting his cash-in-hand balance slowly from 31/03/2009 to the year of investment in Pala, i.e., 31/03/2012. Once that purpose is achieved, he has reverted back to the normal practice of admitting only the required cash in hand balance.”

5. Our first observation in the matter is that the cash flow statement (CFS), even as observed during hearing, is not prepared on a date-wise basis. Time is integral to any explanation, and the CFS tendered is only the assessee’s explanation for the nature and source of the investment/expenditure. *How could, for example, a later (in time) receipt explain the outgoing at an earlier point of time?* Sure, the dates are specified in both the source and application sections of the CFS. The same, listed separately, get split and, therefore, the availability of cash at any given date is not known, and would require being worked each time the source of investment or an outgoing is to be verified. No wonder, it has been not. *The second deficiency in the said Statement is that it includes bank accounts as well.* How would, again, one may ask, the bank balance explain a cash outgoing or, for that matter, vice versa. The two, i.e., cash and bank components of the statement, therefore, need to be segregated, though would bear cross references to each other, i.e., where cash is deposited with or withdrawn from, the bank. The assessee shall, accordingly, prepare such a statement, for which all that is required to be done is to segregate the cash and bank components of the single statement, tabulating it date-wise, i.e., in the form of cash-book or bank-book, which, had the assessee being maintaining accounts, would have been obviated. Expenses such as personal expenses, or otherwise those not documented, may be, where regular, entered on per month average basis. Similarly, agricultural income and expenditure would, where and to the extent not documented, has necessarily to correspond to the harvest and cultivation period respectively of the relevant crop. It is

only this that would result in a meaningful statement, which can then be subject to an examination by the assessing authority.

6. The next thing that we observe is the huge opening cash (as on 01.04.2010) at Rs.33.25 lakhs. The assessee, it may be appreciated, is not a trader, much less *qua* a trade with substantial cash sales, in which case the same would rather find regular cash deposit in bank. To the extent the assessee seeks credit for the said balance, it forms a part of assessee's explanation for the source of funds. Further, it would be incorrect to say that as the AO has not made any separate addition for the same, he has accepted the same, for which one may only need to refer to clause 'g' of his findings (at para 4 of this order). It is also pertinent to state that where the AO does not accept a particular source/s of cash inflow, a revised statement would have to be prepared excluding the same, and it is only the deficiency in cash arising thus for which an addition can, on facts and in law, be made for the relevant year, and not in the manner in which the AO has proceeded, even as pointed out by Shri Markose, the ld. counsel for the assessee, during hearing. This, though, is subject to a caveat, i.e., an addition made for any sum on account of a *negative* cash balance during the year, inasmuch as the same would be in addition to the additions made on the basis of the assessee's consolidated cash flow statement, would lead to a corresponding increase in the closing cash-in-hand.

7. With this background, we proceed to discuss each of the additions made to the returned income in assessment and, further, under appeal.

8.1 The first addition is for Rs.53,01,266, being the sale proceeds of the land belonging to the assessee's wife (8.86 acres) and brother (8.82 acres), claimed to be credited to the assessee's bank account on 04.12.2010 and 05.01.2011 respectively, and which though aggregate to Rs.53,18,925. The same, along with another 8.74 acres in assessee's name, are stated as purchased by the assessee in February, 2005, and sold on 02.12.2010. The ld. CIT(A), after noting the AO's findings at para 1

(pg.17) of his order, to the effect that the assessee's case is unsubstantiated, issued his findings in the matter, as under: -

- “1. The material on record shows that Smt Mercy Kurian and Sri Sunny Kutty Thomas independently owned bank accounts, availed agricultural loans from banks, availed agricultural subsidy from the Government, made investments in shares and made investments in fixed deposits. Hence the financial transactions carried out by Smt. Mercy Kurian and Sri Sunny Kutty Thomas cannot be clubbed in the cash flow statements of the appellant. Hence the appellant's grounds are rejected and the additions made by the Assessing Officer on account cash deficits found after such exclusion of financial transactions carried out by Smt. Mercy Kurian and Sri SunnyKutty Thomas are upheld.”

8.2 The assessee has before us, toward the same, relied on withdrawals for Rs.3.25 lakhs, Rs.3.50 lakhs and Rs.6.50 lakhs from his bank account with Meenachil East Urban Co-op. Bank Ltd. (MEUCB)(OD A/c 295) on 03.01.2005, 07.01.2005 and 03.02.2005 respectively. While the former two are stated to be in respect of the brother's land, the last, of his wife. The fact that all the three transactions of purchase of agricultural land are *qua* cardamom plantations, in the same area, for the same land size, and at the same time, though not determinative of the matter, yet indicate a single hand and a common purpose. This is as being closely related, acting in unison is not surprising. Surely, the assessee is a principal actor in the transactions, as one of the family members usually is.

The three withdrawals afore-noted, which are per cheques, have not been correlated with the respective purchase dates, nor indeed it is shown that there were no corresponding withdrawal/s in the accounts of the assessee's wife and brother. Further, Shri Markose, on an enquiry by the Bench, could not exhibit the withdrawal for the assessee's land, admittedly purchased at the same time. *How could that be?* Further still, even if the assessee had indeed funded the purchase of land by his wife and brother, it would, to be regarded as his, further require the ostensible purchaser being shown as the assessee's benami. This is as it may well be that the purchaser being a close relative, the assessee had helped him/her, particularly considering that it generates a source of income, and from an activity being undertaken by the assessee,

giving rise to the confidence that it would be a profitable venture. The funds deployed by the assessee, assuming so, could be by way of a loan – with or without interest, to be repaid, and which may well be from the income so arising. This is particularly so as there is nothing to show that the assessee had disclosed the income (agricultural) which, though exempt under the Act, is yet to be included for rate purposes, on the said lands as his income for any of the intervening years, i.e., fys. 2004-05 to 2009-10, even as income is admitted to arise September, 2006 onwards, or incurred expenditure in relation to the entire 26.42 acres of the land at Anaviratty.

8.3 So however, in our opinion, the land purchased in wife's name can, in the conspectus of the case, be reasonably regarded as the assessee's property, in any case, money realized on its sale as available to the assessee for his purposes. It is customary in Indian society to acquire property in wife's name with a view to securing her, both in terms of an asset and a source of income. Mercy Kurian has no independent source of income, for her to acquire the said land. Even otherwise, it is apparent that the assessee is managing all the funds belonging to him and his wife, with there being transfers between their bank accounts with MEUCB. The assessee's explanation, to that extent, must therefore be regarded as acceptable. The matter, though principally factual, we are in this supported by decisions in *State of Kerala vs. Mohammed Hassan* [1997] 223 ITR 550 (Ker.); *Sunny Kuriakose vs. CAIT* [1996] 221 ITR 12 (Ker). Credit in respect of sale of her agricultural land would be available to the assessee even if she is an assessee under the Kerala Agricultural Income Tax Act, 1950, returning/reporting agricultural income thereunder inasmuch as the assessee, having access to those funds, could certainly have used them for his purposes, so that the source can be regarded as satisfactorily explained. As a corollary, all the income arising to the assessee's wife would stand to be assessed in his hands, statutorily mandated u/s. 64 of the Act. This shall obtain even where Mercy Kurian is an assessee under the 1950 Act.

8.4 As regards the agreement dated 15.4.2004 with Sunny Kutty, the assessee's brother, there is firstly nothing to show that the same was produced and relied upon before the Revenue authorities, whose orders bear no reference thereto. Why, Sh. Markose could not answer as to why and how this agreement was entered into 10 months before the actual purchase, with there being nothing to show that the purchase agreement had been entered into, or advance therefor made, at the relevant time. In fact, the copy on record not reflecting the back-side of the first page, the same, called for by the Bench to ascertain the said date, was not produced. The agreement states of it being in view of the Kerala Land Ceiling Act. The argument is not supported by any material, even if a sworn affidavit by the assessee's brother *qua* his total land holding, for us to take the same with any seriousness. In fact, being against public policy, the same cannot be regarded as a valid agreement in law. The sale proceeds on land sale have expectedly, and contrary to what stands stated, gone to the respective bank accounts of the sellers, being sba/cs 5308 and 5309 (with MEUCB), i.e., of the assessee's brother and wife respectively. There is further no transfer of funds between the bank account of the assessee (sb 5026) and his brother, Sunny Kutty, even as the former bears credit for the sale of his 8.74 acres of land. Management of an estate/business, assuming so, would not, by itself amount to ownership of the property/sale proceeds. The assessee's case *qua* his brother's land is without merit and, in any case, unproved. Its rejection by the Revenue is, accordingly, upheld.

8.5 The assessee gets part-relief. The AO has, in computing the addition, factored the impact of the bank balances (opening and closing) of the assessee's brother's and wife's bank accounts included in the CFS. The addition sustained, accordingly, shall not be for Rs.26,53,500, but adjusted for the balances in the brother's bank account/s.

9. The second addition under appeal is, at Rs.16,22,978, for agricultural income, being on cardamom, disclosed at Rs. 22,64,249, at net of expenditure of rs. 17.50 lacs. The same admittedly including that in respect of 17.68 acres of cardamom

plantation held by the assessee's wife and brother, the AO, having excluded the sale proceeds of their lands in reckoning the source of funds with the assessee, has, per contra, excluded the income *qua* their lands in the CFS, which sums thus become the assessee's taxable receipt. We have found the assessee's claim admissible *qua* his wife. Agricultural income to that extent would accordingly be accepted, though would stand to be included in the assessee's income for rate purposes. This sums our decision in principle.

9.1 The basis of the AO's working of the share of each and, consequently, of the assessee, is, however, not clear. The assessee, besides land at Anaviratty, has another cardamom plantation (4.33 acres) at Village Chakkupallom, Udumpanchola Taluk, Idukki District, making his holding at 13.06 acres, as against 17.68 acres of his wife and brother, resulting in his share being at 42.48 % (71.30 %, including wife's land). Two, the bifurcation of total cardamom sale, i.e., Rs.40,14,249, is as under, resulting in assessee's share being at 28.33 % (41.80 % including wife's share):

C.T. Kurian (assessee)	: Rs.11,36,805/-
Mercy Kurian (wife)	: Rs. 5,40,595/-
Sunny Kutty (brother)	: Rs.23,36,849/-

9.2 The sale, even though through an independent body, would not by itself imply that the sale is in the capacity of an agricultural producer. As explained by the AO, the auction house does not insist on proof of land-holding to enable participation in the sale of cardamom. What is mandated is only the registration number. Why, the sale by each of the three does not even remotely correspond with their land holdings, with that by the brother being more than that by the other two combined, even as his land holding is 28.7% of the total, and that by wife being less than half the assessee's. We have already noted that the same in any case would not prove the sale as being by an agricultural producer. As observed during hearing, why could not one trade therein. The assessee was, during hearing, specifically required to produce the sale

bills since 2008, which he failed to. In fact, the assessee has not been able to, despite being called upon to by the AO, nay, at any stage, demonstrate the necessary infrastructure for heating and processing cardamom products, which plays a vital role in the ultimate quality of the yield, impacting in turn the price fetched.

9.3 In the absence of any credible material to exhibit and prove the agricultural income, we consider it appropriate that the income, for each year, be adopted on the basis of the estimate of agricultural income on cardamom as provided by the State Agricultural Board or University or that adopted by the bank while processing and advancing agricultural loans for cardamom plantation. That is, and, further, for the category (A,B, or C) of the land/s owned by the assessee at Anaviratty and Chakkupallom villages in Idduki District. Needless to add, the income shall correspond with the harvest period; the Anaviratty village land having been sold on 02.12.2010. Of course, where the assessee is also an assessee under the State Agricultural Income Tax, the income assessed under the said Act or, in its absence, returned there-under, shall be adopted for the purpose of assessment of agricultural income arising to the assessee and his wife, subject, of course, to the extent reported. The excess, if any, and that ascribed to brother, shall be taxed as unexplained money. We decide accordingly.

10. The next addition being agitated by the assessee is in respect of sale of agricultural land, that is, to the extent of 1.74 acres of land (out of 8.74 acres cardamom plantation), sold separately to one, Nikhil John, for Rs.16,81,800 on 17.12.2010. The sale document assigning separate consideration for land and building (along with shed), i.e., at Rs.10,60,800 and Rs.6,21,000 respectively, was not regarded by the AO as agricultural land, which claim was admitted only for the balance 7 acres of the Anaviratty land sold by the assessee, working the impugned long term capital gain at Rs.7,38,244, quantum of which is not in dispute.

10.1 The assessee's case before us, making reference to the definition of agricultural income u/s. 2(1A) of the Act, was that buildings are a part of agricultural land. Nothing as such turns on the separate consideration being specified in the sale document for the building, and which has guided; rather, mislead the Revenue authorities in not regarding it as sale of agricultural land.

10.2 Our first observation in the matter is that the issue arising, given the clear law in the matter, i.e., s. 2(1A) r/w s. 10(37) of the Act, is principally factual, i.e., whether what has been sold was an agricultural land, in which case the building thereon, including the shed, becomes an integral part thereof, even if also used for his residence by the cultivator of land, so that specification of separate consideration in its respect would be of no moment. We find no such case made out by the assessee before the Revenue authorities, i.e., besides stating the primary facts, on which there is no dispute; the finding by the Id. CIT(A) being as under: (at pg. 22)

“1. The submission made is carefully considered. In the present case, according to the registered sale deed, *a property consisting of building and the appurtenant land was transferred*. The appurtenant land was integral part of the property that is transferred. In the present case, the land is valued at Rs 6,21,000/- out of total consideration of Rs 16,81,800/-, which is about 37% of the total consideration. The provisions of 10(37) are applicable in case of agricultural lands. But in the present case, the property under transfer is a building with the appurtenant agricultural land. Hence the appellant's ground is rejected and the addition made by the Assessing Officer is upheld for the A.Y 2011-12.”

(emphasis, ours)

10.3 Even before us there has been no improvement in his case by the assessee who, apart from reiterating the law, on which there is no, nor could be, any quarrel, has not brought any material on record. The issue, as apparent, is whether what has been sold is a house property, with land appurtenant thereto, or agricultural land on which there is an out-house, being, as stated – before the Id. CIT(A) for the first time, and without any evidence, a smoke house. There is thus, even at the second appellate stage; being not explained even before us, no clarity on the nature of the building, and the purpose for which it, as indeed the land, was being put to use, with the Revenue relying on the

sale document. We further observe that while the agricultural land sold by the assessee's brother and wife, as again 7 acres by him, at Anaviratty, is at Rs.3 lac per acre, the land under reference has, at the same time, yielded over twice as much, i.e., over Rs. 6 lac per acre (Rs.10,60,800/1.74 acres). Why? There is again no explanation. The premium, inferably, is only be on account of it being, even as held by the Id. CIT(A), a land appurtenant to a house property.

We are conscious, we may clarify, that the Id. CIT(A) has, in computing the % age of total consideration ascribed to land, being in fact at 63%, wrongly worked it at 37%, which is in fact for building. The same would not, however, in any manner, impact the final conclusion, which is based on, firstly, the assessee's case being wholly unproved and, two, of land, forming the major proportion of the total consideration, fetching over twice its regular price. Building, a depreciable asset, its valuation at 37% of the total consideration, as pointed out by the AO, is significant. Adjusting it for the land value, being over twice the normal, i.e., reckoned w.r.t. the normative land rate, the same would be, over 55%, reinforcing the inference drawn of the land sold being, as described in the sale document, appurtenant thereto.

Under the circumstances, we find no reason for interference and, accordingly, decline to. We decide accordingly.

B. AY 2012-13

1. The background facts of the case, the nature of additions made, and indeed the respective cases of both the parties, are same as for AY 2011-12, which stands adjudicated by us per Para I (A1 to A10) of this order. The same shall therefore equally apply for the current year as well. We shall, nevertheless, briefly discuss each of the two additions made in assessment and under appeal.

2.1 The first, at Rs.24,79,880, is in respect of investment in land at Meenachil Village, Pala. The assessee, along with two others, i.e., Sh. V.D. Devasia, the other appellant before us, and Shri V.M. Ansari, purchased 177.44 cents of land at Pala vide

sale agreement dated 14.06.2011 for Rs.358.25 lakhs, in which the assessee's share is admittedly 68.44 cents. The AO determined the cost of the assessee's land on prorata basis, i.e., by applying the average rate arrived at, being Rs.2,02,000 per cent. The investment in land by the assessee was thus reckoned at Rs.1.38,24,860, against which the assessee had though reflected Rs. 113.45 lakhs in his CFS. The balance Rs.24.80 lakhs was accordingly brought to tax as unexplained investment u/s. 69B.

2.2 Before us, the assessee, as before the Revenue authorities, though disputes the addition, has not made out any case *qua* his claim that he had correctly recorded the investment made by him, i.e., in the CFS. It was though admitted by Shri Markose during hearing that the same uniform rate had been applied by the AO in the case of Shri Devasia as well.

2.3 We have considered the rival contentions, and perused the material on record. The basis of the addition is the Agreement dated 14.6.2011, found and seized during the search on 25.9.2014. Besides attracting the statutory presumption as to the truthfulness of its contents u/s. 292C of the Act, the same is admitted as true by Shri Devasia vide his deposition u/s.132(4) dated 25.9.2014. The same, an unregistered document, executed on stamp papers of Rs.100, has in fact been acted upon; being also attended by advance payment of Rs.50 lakhs, mentioned therein, followed by registered sale deeds in favour of the three buyers between December, 2011 and February, 2012, for an aggregate of Rs.93.25 lakhs. The investment is in fact admitted, and the issue before us is the valuation of assessee's share, claimed, without any material, even if indirect or corroborative, of the assessee's share being, in value, lower than per the average rate. The agreement, reproduced in the assessment order, speaks of a gross consideration for the entire 177.44 cents of land sold by 20 persons. That apart, the other two buyers have also claimed their investment as per the average rate. Under the circumstances, we find no infirmity in bringing the shortfall in investment to tax. We decide accordingly.

3.1 The second and the only other addition in the instant case is for Rs.73,96,704, is toward agricultural income, being reflected at Rs.76,94,700 in the CFS, i.e., as against the returned income of Rs.2,94,720. The same is claimed to be on cardamom plantation. The assessee having sold the entire of the said plantation, i.e., save for 4.33 acres at Chakkupallom village, claims agricultural income on the basis of closing stock, and toward which he relies on stock register as well as sale bills issued by the Kerala Cardamom Processing & Marketing Co. Ltd. and The Cardamom Planter's Marketing Co-op. Society Ltd., both claimed as independent agencies. The assessee's case only needs to be stated to be rejected. To begin with, the income, though exempt from tax, had not been disclosed; the assessee returning Rs.2,78,810, along with agricultural income at Rs.2.95 lakhs. Why? *This is quizzical, considering the said stock register and, more pertinently, the income being exempt?* What better proof of the stock register being an after-thought and, manipulated. The assessee does not maintain any accounts, either for his taxable – stated as commission agency in timber business, or non-taxable income, a finding that has not been controverted at any stage, despite he being in business, and indeed an agriculturist, for long. Maintenance of accounts for agricultural income assumes significance also in view of it being taxable under State legislation; inclusion under the Act for rate purposes; and, further, the massive investments being ascribed to the said income. There is no reference, at any stage, to the per acre yield arising vis-a-vis per that regarded as normative. Why, the assessee could not even exhibit the infrastructure facilities for heating and processing cardamom products, nor indeed the storage facility, despite being called upon by the AO to.

3.2 We have, while deciding the same issue for AY 2011-12, also discussing the evidence in the form of sale bills, held for adoption of any of the standard and accepted methods for determination of agricultural income vis-a-vis land holding on cardamom, as also the circumstances in which that arising on the land holding in his

wife's name is to be included in the assessee's income. Reference could be made to the norms, if any, adopted under State enactment. We decide likewise.

C. AY 2014-15

1. We may take up each of the three additions for this year in seriatim.

2.1 Rs.28,34,765/-: The same represents the short fall in the cash balance, i.e., upon excluding Rs.46.57 lakhs (which includes Rs. 46.35 lakhs shown as received by the assessee from his brother-in-law, Shri Baby John, on 18.04.2013) and Rs.18.23 lakhs (including Rs.15.50 lakhs invested in purchase of land by his wife, Mercy Kurian, on 15.06.2011), i.e., netting the two. We have, reversing the impugned order to that extent, considered as valid the assessee's explanation as to the source of funds arising to him on sale of land by his wife (refer paras I(A)(8.3)(9-9.3) of this order). There shall, accordingly, be no reduction for Rs.15.50 lakhs. For the balance adjustment of Rs.2,50,235, being in respect of the balances; source/s and application/s of funds in respect of assessee's wife and brother, only that *qua* brother shall obtain, while that for wife shall be subject to decision per the paras afore-noted. As regards the sum stated as receive from Shri Baby John, the same stands accepted rs. 29.35 lakhs, received by way of bank transfer, by the ld. CIT(A), which stands since allowed vide rectification order dated 15.02.2022 (copy on record).

2.2 No improvement in his case stands made by the assessee before us. Under the circumstances, except for bringing the additions under reference in conformity with our adjudication *qua* the same issue for the other years, no further modification is called for. We decide accordingly.

3. Rs.10,18,925: The second addition being agitated is *qua* agricultural income on cardamom (i.e., receipt: Rs.12,18,925, less expenses: Rs. 2,00,000). The same arising wholly out of opening stock, i.e., on the basis of the stock register, rejected by us in the preceding paras of this order, we confirm the addition.

4. Rs.1,01,900: This sum, being 35 percent. of the income of Rs.2,91,144 stated to arise on sale of latex, arises on application of r. 7A of the Income Tax Rules, 1962 ('the Rules'). The said rule is applicable only for manufacture of rubber, and not for sale of latex, the whole of which is to be regarded as agricultural income. The assessee, relying for the purpose on sale bills, has, however, not produced the same at any stage; rather, taking a different stand before the Id. CIT(A). The assessee's claim is allowed subject to production of the sale bills for the relevant year. The assessee is also at liberty to exhibit before the AO, i.e., while giving appeal-effect to this order, that agricultural income of Rs.10.19 lacs includes the impugned income of Rs.2.91 lacs, i.e., as stated before the Id. CIT(A), inasmuch as he has not adjudicated thereon. The onus though would be on the assessee. On the flip side, that would though mean that the assessee has no explanation for the source of rs. 2.91 lacs found credited separately in his bank account. Also, we observe, non-deduction of the corresponding expenditure, which would need to be explained or, as the case may be, estimated.

II. Shri. V.D. Devasia:

1. The facts and circumstances of the case are the same as for Shri C.T. Kurian, posted and heard along with. The opposing cases, as well as the findings by the Revenue authorities under challenge, are also the same. This was also the common ground of the parties before us. The disputed additions, as for Sh. Kurian, are:

- (a) sale of cardamom plantation in the name of wife, Smt. Gracie Joseph;
- (b) agricultural income from cardamom in the name of Smt. Gracie Joseph;
- (c) shortage of funds on excluding income of Smt. Gracie Joseph;
- (d) sale of latex, on applying r. 7A of the Rules; and
- (e) scrap from Greenland Rubbers (AY 2013-14).

2.1 As would be readily seen, all the additions, except at 1(e) above, are common. Our adjudication in their respect in case of Sh. Kurian shall, accordingly, equally

apply for these disputed additions as well, and for which we, for ready reference, also make a mention of the para numbers applicable for the different additions, as under: -

- (a): Paras I(A)(8), I(B)(2)
- (b): Paras I(A)(9), I(B)(3), I(C)(3)
- (c): Paras I(A)(8), I(C)(2)
- (d): Para I(C)(4)

2.2 Before proceeding to discuss the addition at 1(e) above, we may the argument advanced specific to this case. Sh. Markose would emphasize that the cardamom sale bills stand accepted by the Id. CIT(A) in the assessee's case for AY 2010-11, which would preclude the Revenue from taking a contrary stand for other years inasmuch as it had not appealed against the order dated 21.12.2021 by the first appellate authority. The argument advanced, without reference to any case law, is fallacious, both on facts and in law. To begin with, the said order is not on record, for us to take cognizance thereof. Two, the issue here is not a question of law, answered by the Id. CIT(A), which it is claimed shall bind the Revenue, but a matter of fact, defeating the very premise of the argument. The Revenue has taken a consistent stand across all the years, for both the assessees before us, and which shall not get annulled or mitigated except by following the due process of law, i.e., on the assessee preferring an appeal there-against and obtaining a favourable verdict from a higher forum, with, in fact, the Tribunal, per the appeals under reference, being seized of the matter. As opined by us, what value the sale bills when neither they prove the capacity in which the agricultural produce is sold, i.e., as a cultivator or otherwise, nor the ownership of the said produce, with there further being no correspondence between the landholding and the sale of cardamom. This finding of fact shall equally apply for AY 2010-11 as well, i.e., where the same is raised before the Tribunal. The non-challenge by the Revenue could be for several reasons, including the legal bar u/s. 268A of the Act.

The same though protects the Revenue, both in respect of filing appeals for other years, which, where so, are to be decided on merits, i.e., uninfluenced by the fact of non-filing of appeals for other years [s. 268A(2)/(3)]. On the broader principle, to which we advert to for the sake of completeness of the discussion, we may; there being no estoppel against law, refer, *inter alia*, to decisions in *CIT vs. Goodwill Theatres* [2018] 400 ITR 566 (SC); *Catholic Syrian Bank Ltd. vs. CIT* [2012] 343 ITR 270 (SC); *C.K. Gangadharan vs. CIT* [2008] 304 ITR 61 (SC); the latter two being by the larger benches of the Apex Court. In all these cases, the Revenue's right to question, despite failure to challenge an adverse order earlier, the correctness of such an order, is not precluded, particularly when it involved a question of law.

3. Coming to the addition at II(1)(e) above, the same is for Rs.3,20,000, claimed to have been received by way of sale of scrap of fixed assets, viz., furniture, machinery, etc. belonging to a firm, Greenland Rubbers, brought to tax under s. 56(1) of the Act. The ld. CIT(A), in appeal, directed the reduction of the said amount from the relevant block/s of assets where depreciation has been claimed thereon. It is this condition that is the cause of the assessee's grievance. The ld. CIT(A) has, as apparent, agreed with the assessee in principle, i.e., of it being a capital receipt. The rider that the depreciation should have been claimed and allowed is not necessary. This is as the reduction is to be only from the written down value (WDV) of the relevant block/s of assets, which would, in case of claim of depreciation, have the effect of reducing its WDV. Only the excess realised over the WDV is assessable as a short-term capital gain u/s. 50 of the Act. The assessee has nowhere stated the WDV of the relevant block/s of assets. The impugned receipt is thus taxable where and to the extent it exceeds the same. The onus to exhibit the WDV of the relevant block/s of assets is on the assessee. We decide accordingly.

III. Common for both the Assessee-appellants: We may, before parting with this order, dwell, once again, on the issue of only an addition having its basis in the

incriminating material found and seized in search as being maintainable section 153A proceedings. *No other legal ground, we clarify, was raised before us.* Both the appellants are maintaining several bank accounts and, at the same time, not maintaining any accounts for any of their incomes/receipts. On investment in immovable property/s being found in search, corroborated by statements on oath u/s. 132(4) of the Act, CFS for different years were submitted in explanation. All the additions arise on account thereof. The investment in Pala property is during fy 2011-12, relevant to AY 2012-13. The same, therefore, where not satisfactorily explained, is to be assessed only for that year. The assessee/s, however, in a bid to explain the same, has built-up cash from an earlier period. Where and to that extent, therefore, the receipts are shown to arise during the earlier period, their taxability under the Act has to be with reference to the provisions applicable for that year, i.e., to the extent found taxable, and taxed for that year. The incriminating material found for a period could result in assessment of income for more than one year. However, where and to the extent the Revenue does not admit a receipt, the same has to be excluded from the cash flow for that year, and only the closing balance so arrived at carried forward to the following year, determining the short-fall, if any, for the year for which the investment/s has been found to be made. Where the closing, or for that matter, cash balance during the year, is negative, no addition shall arise for that year in the absence of any incriminating material for that year, and the cash balance carried forward to the following year would be nil. This negative balance can be taxed only in regular assessments or s. 147 assessment for that year. The AO shall, nevertheless, verify and determine the CFS, prepared date-wise, considering all the bank accounts, duly verified, for each of the years under reference, including the intervening years (viz. AY 2013-14 in case of Shri Kurian), carrying forward the closing cash as determined, where positive, or, as the case may be, at nil. The Revenue has also subject years subsequent to AY 2012-13 to s. 153A assessment. The same shall survive only where material in the form of investment in property; deposit in

bank;(re)payment of bank loan/bank interest; bank balance, etc., warranting explanation, has been found in search, else not. This shall equally apply for the earlier years as well. Payment of income tax, inasmuch as the same is already in the know of the Revenue, where apparently not explained on the basis of the disclosed income, can also lead to s. 153A assessment, though, in absence of any other material, limited to the assessment, in whole or in part, for the said sum only.

IV. Decision: The assessments are, accordingly, setting aside the impugned orders in part, set aside to the file of the AO to re-work the additions, if any, for the years subject to s.153A assessment. *He shall, in this, be guided by our adjudication herein.* The assessee/s shall furnish all the information and workings as required by the AO and, further, within a reasonable time, i.e., participate and cooperate in the proceedings. Even otherwise incumbent, this becomes mandatorily so in view of the directions by the Hon'ble High Court, so that the proceedings are completed in a time bound manner. Needless to add, adverse inference/s, as permissible under law, shall arise in case of non-cooperation by the assessees. The corresponding stay applications are, in view of our adjudication, rendered infructuous. We decide accordingly.

V. In the result, the appeals by the assessees are partly allowed and partly allowed for statistical purposes.

Order pronounced in the open court on September 29, 2023 under Rule 34 of The Income Tax(Appellate Tribunal) Rules, 1963.

Sd/-
(Manomohan Das)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin, Dated: September 29, 2023

n.p. Copy to:

1. The Appellants
2. The Respondents
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File
- 6.

By Order
Assistant Registrar
ITAT, Cochin