

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

Before Shri Satbeer Singh Godara, Judicial Member and  
Shri Amarjit Singh, Judicial Member

**ITA No. 880/Coch/2023**  
(Assessment Year: 2018-19)

Thomas Chandy Karimpanal, Vizhikkithode Kanjirapally, Kottayam 686507 [PAN: ADZPC3009P]	vs.	DCIT, Circle TPS Public Library Building Sashri Road Kottayam 686001
(Appellant)		(Respondent)

Appellant by:	Shri R. Krishnan, CA
Respondent by:	Dr. S. Pandian, CIT-DR

Date of Hearing:	19.08.2024
Date of Pronouncement:	23.10.2024

**ORDER**

Per Bench

This assessee's appeal for A.Y. 2018-19 arises against the National Faceless Appeal Centre, Delhi [CIT(A)]'s DIN & Order No. ITBA/ NFAC/S/250/2023-24/1059988854(1) dated 22.01.2024 in proceedings u/s. 250 of the Income Tax Act, 1961 (the Act).

Heard both parties at length. Case file perused.

2. It emerges at the outset that both the learned lower authorities have added "protective" long term capital gain amounting to Rs. 3,70,48,888/- in assessee's hands followed by the very income assessed on substantive for the assessment year 2012-13. Meaning thereby that it is assessee only in whose hands both these substantive and protective assessments have been framed regarding the very impugned long term capital gain addition. That being the clinching case, we quote

hon'ble apex court's landmark decision in [1961] 43 ITR 387 (SC) Lalji Haridas vs. ITO, setting the law of such a protective assessment framed on ex abundanti cautela i.e., "out of an abundant caution:" reading as follows:

*"In cases where it appears to the income tax authorities that certain income has been received during the relevant previous year but it is not clear who has received the income and prima facie it appears that the income may have been received either by A or B or by both together, it would be open to the relevant income tax authorities to determine the said question by taking appropriate proceedings both against A and B."*

3. We conclude in these facts that once such a concept of "protective" addition is not maintainable in the same assessee's hands in different assessment years going by "A and B" principle, the impugned long term capital gains assessed in his hands deserve to be deleted. Ordered accordingly.

3. This assessee's appeal is allowed in above terms.

Order pronounced in the open court on 23<sup>rd</sup> October, 2014.

Sd/-  
(Amarjit Singh)  
Accountant Member

Sd/-  
(Satbeer Singh Godara)  
Judicial Member

Cochin, Dated: 23<sup>rd</sup> October, 2024

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

Assistant Registrar  
ITAT, Cochin