

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

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

ITA No. 116/Coch/2020
(Assessment Year: 2014-15)

ITO, Corporate Ward 2(2) 5th Floor, C.R. Building I.S. Press Road, Kochi 682018 [PAN: AADCR1354A]	vs.	Reality Projects and Entertainments Pvt. Ltd. 17, Kamaraj Salai Puducherry 605011
(Appellant)		(Respondent)

Appellant by:	----- None -----
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. 2014-15 arises against the order of the CIT(A)-1, Kochi in ITA(A)-140/CIT I/2017-18 dated 06.12.2017, in proceedings u/s. 143(3) of the Income Tax Act, 1961 (the Act).

Case called twice. None appears at assessee's behest. We accordingly proceed exparte against the assessee.

2. The Revenue raises the following substantive grounds in the instant appeal: -

- “1. *The orders of the Commissioner of Income Tax (Appeals)-1, Kochi are opposed to the facts and circumstances of the case.*
2. *That on the facts and circumstances of the case, the Ld.CIT(A) has erred in deleting the addition of Rs. 28,31,26,944/ made by the Assessing Officer as business income u/s 28(i) of the IT Act.*

3. *The Ld.CIT(A) failed to consider the fact that the in the assessee's Balance as at 31/03/2014, there is an increase in liability to the tune of Rs.157777550/- with a narration 'advance received on sale', but no income was seen credited to the P & L account during the relevant Previous Year.*
4. *The Ld.CIT(A) decided the case based on the additional evidence which is not in line with section 46A of the IT Rules.*
5. *Whether on the facts & in the circumstances of the case, and in the light of law relating to Part Performance(Sec. 2(47)(v) of the Income Tax Act read with section 53A of the TP Act) the Ld.CIT(A) is right in law to have considered the year of transfer of property is FY 2018-19, whereas the possession of property & advance payment received from the Apl. Tahsildar was during the FY 2013-14.*
6. *The Ld.CIT(A) failed to consider that on the effective date of transfer the Land Acquisition Act, 1894 was in force and not the RFCTLARR Act.*
7. *The CIT(A) failed to consider that CBDT circular No.36/2016 is not applicable in the instant case.*
8. *It is prayed that the orders of the learned Commissioner of Income Tax (Appeals)-1, Kochi be reversed and that of the Assessing Officer restored.*
9. *For these and other grounds that may be urged at the time of hearing, it is prayed that the order of the Commissioner of Income Tax(Appeals) may be set aside and that of the Assessing Officer restored.”*

3. Mr. Pandian, takes us to the CIT(A)'s impugned lower appellate discussion allowing the assessee's appeal as under: -

“5. During the course of appellant proceedings the learned counsel of the appellant relied on the detailed grounds of appeal, and placed oral arguments, which can be summarized as under:

- (i) *The land has been compulsorily acquired by the Government and as per CBDT circular No. 36/2016, para 2, the gain arising on compulsory acquisition of land under RFCTLARR, is exempted from the incidence of tax.*
- (ii) *No agreement for sale was made during the year under consideration and the amount received (about Rs.15 Crore) represents the advance only and therefore, since the transaction was not complete, the amount received as advance can not be taxed as income.*

In view of the arguments of the learned counsel, he was requested to furnish the following documents:

- i) *Copy of Agreement between Government of Kerala and the Appellant.*
- ii) *Copy of the Balance Sheet of Appellant Company.*
- iii) *Date wise details of payments received from the Government of Kerala.*

iv) *Case papers showing that the amount of consideration receivable from the Government of Kerala was not finalized.*

In response, the appellant submitted the details called for. I have gone through them. On the basis of these documents, the factual position can be summarized as under:

- i) *Major considerations were received in F.Y.2013-14 4 (Rs. (15,77,77,550/-), F.Y. 2015-16 (Rs.3,91,99,345/-), F.Y. 2016-17 (Rs.1,72,25,601/-) and 2018-19 (Rs.10,19,57,581/-).*
- ii) *Proceedings of the Special Tahsildar (LA), Kochi Corporation dated 06.06.2018.*
- iii) *A.O's Notice issues u/s. 226(3) to the Special Tahsildar (LA), Kochi Corporation, Vytilla, Kochi, directing the Tahsildar to pay the tax due from appellant, providing that full consideration was not paid to the appellant.*
- iv) *Copy of Agreement for sale between Govt. of Kerala and the Appellant dated 27.06.2018.*

I have gone through the Assessment order, submission of the appellant and perused the relevant details and documents. There is no dispute about the fact the land has been compulsorily acquired and the Agreement for sale has been signed on 27.06.2018 and possession of property was also not given till that date. There is no dispute that by 27.06.2018 the RFCTLARR was in force and CBDT circular No. 36/2016 was applicable. Less than 50% of the agreed sale consideration was received during the year under consideration and the balance more than 50% has been received subsequently. I have also verified the Balance-Sheet of the Appellant for F.Y. 2013-14 relevant to AY 2014-15 and found that amount received has been reflected as Advance received by the Appellant.

In view of all the undisputed facts mentioned above, it is absolutely clear that the transaction was covered by CBDT Circular No. 36/2016 and mainly, by no stretch of imagination, it can be held that the transaction was complete in AY 2014-15, when less than 50% of consideration was received, possession of property was not handed over to the Govt., the acquirer and Agreement for the sale was not entered into. The addition made by the AO can not be sustained and the same is hereby deleted.”

4. We are of the considered view that Revenue’s instant sole substantive grievance seeking to revive the Assessing Officer’s action holding the assessee’s land acquisition “advance” compensation amount; be that actual receipt of Rs.15,77,77,550/- in F.Y. 2013-14 or cash basis or the entire sum of Rs.28,31,21,949/- on accrual basis, as the case may be, carries no merit for the precise reason that although the land acquisition process had been initiated on 04.09.2013 under Land Acquisition Act, 1894, the fact remains that the corresponding agreement to this effect took place on 27.06.2018 followed by delivery of possession in said latter assessment year only. Learned CIT-

DR sought to buttress the point that given the fact that the assessee had received half of the advance compensation in F.Y. 2013-14 and the remaining sums up-to F.Y. 2018-19, the same is taxable qua the entire remaining sum as well in the impugned assessment year as per mercantile system of accounting. We note in these facts merely such an advance amount; without actual transfer or possession of the land, could not be taxable as sec.28(1) business income, on mercantile basis, since lacking reasonable certainty, in light of *Chainrup Sampatram vs. CIT* [1953] 24 ITR 481 (SC) settling the law long back that no anticipated profits be treated as income unless the profits therefrom are realized.

5. All this is indeed coupled with the fact that although there is very serious issue between the parties as to whether the assessee's impugned compensation is covered by the old Land Acquisition Act, 1894 giving by the date of notification dated 04.09.2013 or as per the "RFCTLAR" Act applicable w.e.f. 01.01.2014, the CIT(A)'s lower appellate discussion hereinabove has applied the latter provision only in assessee's favour after considering all the subsequent developments taking place in the year 2018. We notice that sec.24(1)(a) & (b) of the "RFCTLAR" law treats an award u/s.11 of the Land Acquisition Act, 1894, by the Collector as the decisive factor i.e., if no award has been made, this law applies and if such an amount has been paid i.e., before the cut-off date, the old law of 1894 Act shall hold the field. We emphasize here that there is no indication in the Revenue's above extracted grounds that the assessee's case is not covered u/sec.24(1)(a) of the "RFCTLAR" law and therefore, we conclude that the impugned compensation is covered u/sec.96 exemption from assessment in light of the CBDT's twin Circular nos.36/2018 dated 25.10.2016 and circular no.2/2018 dated 15.02.2018; respectively. We accordingly hold that the learned CIT(A)'s impugned findings deserve to be upheld in very terms. Ordered accordingly.

6. We wish to make it clear before parting that Revenue's ground seeking to invoke sec.2(47)(v) of the Act deserve to be rejected once the assessee had held it's lands acquired as stock-in-trade followed by the impugned sec.28(i) business income addition.

7. All other pleadings herein stand rendered academic.

8. This Revenue's appeal is dismissed in above terms.

Order pronounced in the open court on 23rd October, 2024.

Sd/-
(Amarjit Singh)
Accountant Member

Sd/-
(Satbeer Singh Godara)
Judicial Member

Cochin, Dated: 23rd October, 2024

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Copy to:

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

By Order

Assistant Registrar
ITAT, Cochin