

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH : COCHIN

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA.No.591/COCH./2023
ALONG WITH
Stay Application No.147/Coch./2023
Assessment Year 2017-2018

Janardhanan Nair Narayanan, House No.A/4-2, Sri Chitra Nagar, Karavila Road, Pangode, THIRUVANANTHAPURAM. PIN – 695 006 PAN AMLPN4343C KERALA.	vs.	The Asst. Commissioner of Income Tax, DCIT, Circle, INTL. TXN, THIRUVANANTHAPURAM. KERALA. Pin – 695 003.
(Appellant/Applicant)		(Respondent/Respondent)

For Assessee :	Shri Suresh Kumar, CA
For Revenue :	Smt. V. Swarnalatha, Sr. DR

Date of Hearing :	20.08.2024
Date of Pronouncement :	07.11.2024

ORDER

PER BENCH :

This assessee's appeal ITA.No.591/COCH./2023 along with stay application SA.No.147/Coch./2023, for the assessment year 2017-2018, arise against the Commissioner of Income-tax (Appeals)-12, Bengaluru, Bengaluru's Order ITA.No.10894/

CIT(A)-12/2019-20, dated 25.01.2023, , in proceedings u/s.143(3) of the Income-tax Act, 1961; in short [“the Act”].

Heard both the parties. Case file perused.

2. The assessee pleads the following substantive grounds in the instant appeal “

1. *“The order of the learned CIT (Appeals) and the assessing officer is opposed to law, facts and circumstances of the case.*
2. *The learned assessing officer totally ignored the fact that the appellant's land is located at Kowdiar which is one of the most prime locations in Trivandrum city. The property is situated between Kowdiar and Vellayambalam. The value taken from the Sub-Registrar's office are for lands located far away from the appellant's property.*
3. *The first appellate authority also merely relied on the findings in the assessment order without considering the contentions raised by the appellant. The appellant had clearly explained the reasons behind the cost of acquisition taken at Rs.55,000/-*
4. *Even though the decision of Hon'ble ITAT in Leela Muralidharan v. Income Tax Officer, Thiruvananthapuram,*

I.T.A. No 137/Coch/2013 was placed before the first appellate authority, same was also overlooked.

- 5. The learned assessing officer has estimated the value of building at Rs.91,500/- for the 5464 Sq.ft building. As per the learned assessing officer, the construction cost works out to Rs. 16.74. Per Sq.ft only. The appellant had claimed Rs.229/- per Sq.ft as the construction cost which is lower than CPWD rates.*
- 6. The building fetched a value of Rs.1.50 crores. This was because of the improvements carried out in the building.*
- 7. The amount of Rs.58,40,000/- paid to Mr. Shibu Thomas consists of brokerage and cost of improvements made to the building.*
- 8. The property is not registered in the name of Mr. Shibu Thomas but in the name of M/s. Love India Ministries and therefore it is vivid that Mr. Shibu Thomas is an intermediary in the transaction. Therefore the claim of the appellant that brokerage was paid to Mr. Shibu Thomas is justifiable.*
- 9. Disallowance of the amount of Rs.58,40,000/- merely because the appellant is unaware of the breakup of brokerage and cost of improvements made to the building is not justifiable.”*

3. Both the learned representatives next invited our attention to the learned CIT(A)'s impugned lower appellate discussion affirming the assessment findings making long term capital gains addition in assessee's hands to the tune of Rs.2,80,46,973/- as follows :

“5. *FINDING AND DECISION:*

5.1. *I have considered the facts of the case, the AO's findings as well as the submissions of the appellant. The appellant has contended that the cost of acquisition as on 1.4.1981 in respect of his property was Rs.55,000/- per cent. In support of his contention, he has emphasized the prime location of the property, stating that the area of Kowdiar and the location of the property at close proximity to various important buildings like the Raj Bhavan, etc. enhanced the value of the property. Per contra the AO has relied on the records of the SRO for the value of sale of comparably located properties. Further, the value of the property as recorded in the partition deed vide which the appellant inherited the property also accords with the values obtained from the SRO. The appellant has not given any explanation whatsoever as to why he has adopted a higher cost of acquisition as*

compared with his brother for the same extent of property. Given the above facts, there is no reasonable cause to disturb the findings of the AO. The appellant has relied upon the case of Leela Muralidharan us. Income Tax Officer, Thiruvananthapuram I.T.A No. 137/Coch/2013), wherein the Hon'ble ITAT, Cochin had adopted the fair market value of a property located at Kowdiar at Rs 20,000/- per cent. In that case, the Tribunal had observed that Assessing Officer had taken only some comparative cases from the registered sale deeds which are claimed to be nearer to the vicinity. The other factors such as available infrastructure, access to the infrastructure, commercial importance etc., were not taken into consideration. However, the facts of the appellant's case are on a slightly different footing. In the present case, the AO has documented the lesser commercial importance of the location of the appellant's property and the fact that the property prices in the area had increased only from 1984. The appellant's reliance on the above decision therefore does not help his case. In view of the same, the ground of appeal no.1 relating to the cost of acquisition of the land is dismissed.

5.2. Similarly, the appellant has not adduced any evidence in support of his claim for the cost of acquisition of the building, claimed at Rs.6,25,000 as on 1.4.1981. All that the appellant has stated is that this figure is a very lenient valuation. He has again not explained as to why he has taken the cost of acquisition of the building separately, which has not been similarly done by his brother for the same property. The AO has relied on the market value of the property as mentioned in the partition deed that was drawn up in 1996. Having ruled in para 5:1 (supra) that the AO's finding regarding the cost of acquisition of the land is in order, I further uphold the disallowance made by the AO with respect to the cost of acquisition of the building. Ground-of-appeal no.2 is also dismissed.

5.3. The last issue for adjudication is the payment of Rs.58,40,000/- to Mr. Shibu Thomas. During the assessment proceedings, the appellant initially claimed this amount as brokerage: Later he filed a submission before the AO, stating that the amount was towards cost of improvement of the property. The appellant has claimed that this amount was paid to Mr. Thomas as part of an oral agreement between the

appellant's brother and Mr. Thomas. There is, as much to documentary basis for the payment of such a sum. There was also no response by Mr. Thomas to the enquiries made by the AO. Now, during the appellate proceedings, the appellant is again claiming this amount of brokerage, stating that it is a reasonable percentage of the total transaction cost. If, as the appellant has claimed, the money was paid to Mr. Thomas towards improving the condition of the property in order to make it saleable, then the appellant should have provided documentary evidence of expenses so incurred. No evidence has been provided. Therefore, in the absence of evidence of the nature of the payment claimed, the stand of the AO in disallowing the expense of Rs.58,40,000/- is endorsed. The appellant has relied on the decision of the Hon'ble Chennai ITAT in the case of Smt. S. Sudha vs. Assistant Commissioner of Income Tax wherein the Tribunal had held that the exclusion of brokerage and advocate fees from the cost of acquisition of the new property is not justified. However, in the present case, the appellant has stated before the AO that the payment of Rs.58,40,000/- was towards cost of improvement and subsequently changed his stance to claiming it as brokerage, hence the decision relied

upon him is not applicable to the facts of his case. In the light of the foregoing discussion, the Ground of appeal no 3 is also disallowed.

5.4 Ground of appeal no.4, being general in nature, requires no specific adjudication.”

4. It is in this factual backdrop that we proceed to deal with the assessee's first and foremost substantive ground seeking to adopt cost of acquisition of his capital asset as on 01.04.1981 as Rs.55,000/- per cent. The Revenue placed vehement reliance on both the learned lower authorities respective findings that the same has been rightly declined going by details coming from the Sub-Registrar's office as well as all other information available in the case file. We note in this factual backdrop that the assessee's stand from the very beginning quotes this tribunal's order in *Leela Muralidharan vs. ITO ITA.No.137/Coch./2013* wherein the earlier learned coordinate bench had adopted cost of acquisition in the very locality @ Rs.20,000/- per cent.

5. Faced with this situation, both the learned representatives reiterated their respective stand that such a valuation could not be adopted on mere estimation basis. We are

of the considered view that once the learned coordinate bench has already discussed the entire facts, it would indeed be in the larger interest of justice in case we proceed to adopt the said valuation @ Rs.20,000/- per cent for the purpose of computing the assessee's long term capital gains. We order accordingly. the assessee's instant first and foremost substantive ground stands partly accepted in above terms.

6. Learned counsel next submitted that both the lower authorities have erred in law and on facts in rejecting the assessee's remaining claim(s) of Rs.6,25,000/- as on 01.04.1981 representing building construction and payment of Rs.58.40 lakhs to Mr. Shibu Thomas.

7. We note with the able assistance coming from the department side that the assessee has all along has not been able to plead and prove all the relevant facts regarding both the impugned claims right from assessment to till date. We thus deem it as a fit case to affirm the learned lower authorities action on both these counts in very terms. The assessee's vehement contentions in support of his instant twin claims fail accordingly. Ordered accordingly.

8. This assessee's appeal ITA.No.591/Coch./2023 is partly allowed in above terms and his stay application SA.No.147/Coch./2023 has become infructuous and dismissed. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 07.11.2024.

Sd/-

[AMARJIT SINGH]
ACCOUNTANT MEMBER

Sd/-

[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Cochin, Dated 7th November, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The CIT(A) concerned.
4.	The CIT concerned
5.	The D.R. ITAT, Cochin Bench, Cochin.
6.	Guard File.

//By Order//

//True copy//

Sr. Private Secretary, ITAT, Cochin Bench,
Cochin