IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

Before Shri Inturi Rama Rao, Accountant Member
&
Shri Prakash Chand Yadav, Judicial Member

ITA No.207/Coch/2019 : Asst.Year 2009-2010

Smt.Reena Jose Padijareveettil Puthenveedu Kannamkode, Adoor PO Pathanamthitta – 691 523 **PAN : AESPJ7479Q.**	v.	The Dy.Commissioner of Income-tax, Central Circle, Kottayam.
(Appellant)		(Respondent)

ITA No.208/Coch/2019 : Asst.Year 2009-2010
ITA No.209/Coch/2019 : Asst.Year 2010-2011

Smt.Gracy Babu Padijareveettil Puthenveedu Kannamkode, Adoor PO Pathanamthitta – 691 523 **PAN : AHTPB7949R.**	v.	The Dy.Commissioner of Income-tax, Central Circle, Kottayam.
(Appellant)		(Respondent)

ITA No.211/Coch/2019 : Asst.Year 2009-2010
ITA No.212/Coch/2019 : Asst.Year 2010-2011

Sri.Jose Thomas Padijareveettil Puthenveedu Kannamkode, Adoor PO Pathanamthitta – 691 523 **PAN : ADCPT9216G.**	v.	The Dy.Commissioner of Income-tax, Central Circle, Kottayam.
(Appellant)		(Respondent)

Appellant by : Sri.Anil D.Nair, Advocate
Respondent by : Sri.Sundarasan S, CIT-DR

Date of Hearing : 21.05.2025.		**Date of Pronouncement : 22.05.2025**

O R D E R

Per Prakash Chand Yadav, JM :

All these appeals are arising from the order of the Hon'ble High Court dated 3rd April, 2024. Before the Hon'ble High Court these appeals were listed as under:-

Sl. No.	Appeal before the ITAT	Assessee	Asst.Year	ITA No.
1.	208/2019	Smt.Gracy Babu	2009-2010	48/2020
2.	211/2019	Sri.Jose Thomas	2009-2010	46/2020
3.	207/2019	Smt.Reena Jose	2009-2010	47/2020
4.	209/2019	Smt.Gracy Babu	2010-2011	49/2020
5.	212/2019	Sri.Jose Thomas	2010-2011	51/2020

2. Brief facts as noted by the Hon'ble High Court are as under:-

2.1 The Carmel Educational Trust, Adoor was constituted by a registered trust deed dated 14.08.2001. It is engaged in running educational institutions imparting education in the subjects of Engineering and Management. The 12 trustees of the Trust belong to three closely related family groups, present assessees are one of them and their details are as follows:

(1) Sri.Babu P. Thomas, his wife Smt. Gracy Babu and their two major sons.

(2) Sri.Jose Thomas, his wife Smt. Reena Jose and their major son and daughter.

(3) Sri.P.J.Paulose, his wife Smt. Lizzy Paulose and their two major daughters.

2.2 Due to difficulties in managing the College, and also due to the personal differences, the trustees decided to discontinue

the business and entered into an agreement with the Believers Church on 10.03.2009, whereby, all the existing trustees resigned from their trusteeship and simultaneously, new trustees nominated by the Believers Church were inducted. The agreement between the parties also provided for payment of Rs.37.5 crores to the erstwhile trustees for settling their liabilities as well as completing certain construction activities which activities had been commenced by them prior to the agreement. The agreement also provided for sale of 55.15 acres of land belonging to some of the erstwhile trustees for a consideration of Rs.12.50 crores.

2.3 A search under Section 132 of the Income Tax Act [hereinafter referred to as the "I.T. Act"] was conducted at the residence of the Sri Jose Thomas, Smt.Gracy Babu and Sri.P.J.Paulose on 04.03.2009 and certain documents were seized. An unsigned draft agreement dated 23.02.2009 was found which indicated that the amount envisaged for settlement of liability was Rs.43.50 crores and that the value of the rubber estate extending to 55.15 acres of land was Rs.6.50 crores. Certain other documents relating to fee collection from students in excess of what was fixed by the Government, and investment details of trustees etc. were also seized, but those particulars are not of any concern to us in these appeals.

2.4 Assessments were completed under Section 143(3) read with Section 153A for the assessment years 2003-04 to 2008-09 and under Section 143(3) for the assessment year 2009-10

in relation to the persons who were searched, namely, Gracy Babu, Jose Thomas and P.J. Paulose, who were the heads of the respective trustee families. No assessments in consequence to search were made in relation to other family members who were trustees by invoking provisions of Section 153C of the 1.T. Act. Placing reliance on the seized documents, the Assessing Authority found that the erstwhile trustees had in fact received approximately Rs.37.5 crores towards consideration for relinquishing their trusteeship but they had camouflaged these receipts under different heads by showing the receipt of Rs.14.55 crores towards reimbursement of amounts paid by assessees for clearing outstanding debts and liabilities of the Trust as on the date of the agreement, and also for completing certain ongoing constructions that had been undertaken by them. An amount of Rs.12.5 crores was shown as received by way of consideration for sale of approximately 56 acres of rubber plantation to the Believers Church.

3. When the matter listed before the High Court in the above backdrop, the Assessing Officer as well as the Appellate Authority have held that the excess sale consideration received by the assessee from Belivers Church in lieu of their right as a trustee in Carmal Education Trust was liable to be assessed in their hands, and hence, the AO as well as the CIT(A) taxed these receipts in the hands of the assessees. However, the ITAT vide its order dated 03.09.2019, held that the amount received by these assessees in excess to the sale consideration for relinquishment of their rights from the trustship in Carmel

Education Trust is a capital receipt and not taxable in the hands of the present assessees. On appeal of the Revenue, the Hon'ble High Court discussed this issue from para 7 onwards, which reads as under:-

> *"7. The additions to the income of the trustees by way of excess consideration received for the sale of the rubber plantation was made in relation to Jose Thomas, Gracy Babu and Reena Jose for the assessment years 2009-10 [for all three] and 2010-11 [for Jose Thomas and Gracy Babu]. While the Assessing Authority and the First Appellate Authority had found that the excess sale consideration received by the said assessees was in fact amounts towards consideration paid by the Believers Church for their relinquishment of their trusteeship in the Carmel Educational Trust and was liable to be assessed in their hands, the Tribunal, in the order impugned in these appeals, found otherwise. The reasoning of the Tribunal is found in paragraphs 11.4 to 11.8, which read as follows:*
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> *"11.4 We have heard the rival submissions and perused the record. In the present case, there was unsigned Agreement dated 23/02/2009 wherein the sale consideration was shown at Rs.6.5 crores for sale of rubber plantation. Later as per registered agreement, royed deed, it was changed to Rs.12.5 crores. In other words, in draft the sales consideration was at Rs. 15 lakhs per acre. However, in the deed the sales consideration was shown at Rs 25,40,400/- per acre. Thus there was different of amount of Rs.15 lakhs per acre. This difference cannot be considered as a receipt for sale of agricultural property since a similar property was sold by trustees at around Rs.15 lakhs per acre. According to the Department, the assessee adopted colourable devices to receive the amount from Believers Church by way of inflating the value of rubber estate in the sale deed executed by the assesses since the sale of rubber plantation, being agricultural land is exempted from tax. The Ld..AR made an alternative argument that even if it is presumed that the consideration was received from Believers Church which was for relinquishment of trusteeship in the Trust wherein these persons were trustees, it is exempted and not taxable in the hands of the trustees. In our opinion, there is merit in the argument of the Ld. AR that even if it is a capital receipt, it is to be treated as consideration for relinquishment of trusteeship in the Trust and the cost of acquisition is nil and hence, the gain is not taxable on its transfer. The assesses are life time trustees in Carmel Educational Trust which is a public charitable trust. This Trust was taken over by Believers Church, Thiruvalla vide agreement dated 23/02/2009 and*

by that agreement all the assets and liabilities of Carmel Educational Trust were transferred to Believers Church and the assesses ceased to be the trustees of Carmel Educational Trust. According to the CIT(A), the right of trusteeship is not legally enforceable right and it cannot be brought into the ambit of definition of "capital asset" and the consideration received on transfer cannot be treated as 'income from capital gain'. The CIT(A) treated it as "income from other sources" so as to tax the same. This finding of the CIT(A) is not proper. The assesses herein were holding trusteeship in the Carmel Educational Trust which was relinquished in favour of trustees of Believers Church, and this right is nothing but a capital asset. Had the Carmel Educational Trust survived as it is, then they have the right to continue as a Trustee throughout their life time. Once it has ceased to exist and relinquished the right of trusteeship in favour of the new trustees in Believers Church, the consideration received for such relinquishment is nothing but a capital receipt and gain on such transaction cannot be considered as "income from other sources".

11.5 The contention of the Ld. AR is that since there is no cost of acquisition, it is not possible to compute capital gain as section 55(2) of the I.T. Act does not include this kind of asset as capital asset. For better understanding, we will examine the provisions of section 55(2) of the I.T. Act.

S. 55 (2) For the purposes of sections 48 and 49, "cost of acquisition",-

(a) in relation to a capital asset, being goodwill of a business or a trade mark or brand name associated with a business or a right to manufacture, produce or process any article or thing or right to carry on any business, tenancy rights, stage carnage permits or loom hours -

(1) in the case of acquisition of such asset by the assessee by purchase from a previous owner, means the amount of the purchase price: and in any other case not being a case falling under sub-clauses (i) to (iv) of sub-section (1) of section 49shall be taken to be nil;

(aa) in a case where, by virtue of holding a capital asset, being a share or any other security, within the meaning of clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) (hereafter in this clause referred to as the financial asset), the assessee-

(A) becomes entitled to subscribe to any additional financial asset; or

(B) is allotted any additional financial asset without any payment, then, subject to the provisions of sub-clauses (i) and (ii) of clause (b) -

(i) in relation to the original financial asset, on the basis of which the assessee becomes entitled to any additional financial asset, means the amount actually paid for acquiring the original financial asset;

(ii) in relation to any right to renounce the said entitlement to subscribe to the financial asset, when such right is renounced by the assessee in favour of any person shall be taken to be nil in the case of such assessee;

(iii) in relation to the financial asset, to which the assessee has subscribed on the basis of the said entitlement, means the amount actually paid by him for acquiring such asset; and

(iiia) in relation to any financial asset purchased by any person in whose favour the right to subscribe to such asset has been renounced, means the aggregate of the amount of the purchase price paid by him to the person renouncing such right and the amount paid by him to the company or institution, as the case may be, for acquiring such financial asset;

(ab) in relation to a capital asset, being equity share or share allotted to a shareholder of a recognised stock exchange in India under a scheme for demutilisation or corporatisation approved by the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), shall be the cost of acquisition of his original membership of the exchange:

Provided that the cost of a capital asset, being trading or clearing rights of the recognised stock exchange acquired by a shareholder who has been allotted equity share or shares under such scheme of demutualisation or corporatisation, shall be deemed to be nil;

(b) in relation to any other capital asset -

(i) where the capital asset become the property of the assessee before the 1" day of April, 1981, means the cost of acquisition of the asset to the assessee or the fair market value of the asset on the 1 st day of April, 1981, at the option of the assessee;

(ii) where the capital asset became the property of the assessee by any of the modes specified in sub-section (1) of section 49, and the capital asset became the property of the previous owner before the 1 day of April, 1981, means the cost of the capital asset to the previous owner or the fair market value of the asset on the 1 day of April, 1981, at the option of the assessee;

(iii) where the capital asset became the property of the assessee on the distribution of the capital asset of a company on its liquidation and the assessee has been assessed to income tax under the head "Capital gains" in respect of that asset under section 46, means the fair market value of the asset on the date of distribution;

(v) where the capital asset, being a share or a stock of a company, became the property of the assessee on

*(a) the consolidation and division of all or any of the share capital of the company into shares of larger amount** ** **

11.6 A bare reading thereof would indicate how the legislature contemplates that come chargeable under head "capital gains" has to be computed. The mode of computation is laid down by section 48, whereas by section 49, the cost with reference to certain modes of acquisition has been set out. For the purposes of both sections, the legislature has devised the scheme in section 55 and sub- section (2) thereof clarifies that for the purposes of sections 48 and 49. "cost of acquisition" in on to a capital asset, being goodwill of a business or a trade mark or brand name associated with a business or a right to manufacture, produce or process any article or thing or right to carry on any business, tenancy rights, stage carriage permits or loom hours has to be computed. In this case, the assessee stated that nothing of these things would cover the relinquishment of trusteeship and in the absence of a specific provision, the income shall be taken as Nil.

11.7 In the case of Cadell Weaving Mill Co. (P.) Ltd. (273 ITR 1), the argument before the Supreme Court was arising out of the return of income of the assessee. The amount received by the asessee on surrender of tenancy right, whether liable to capital gains under section 45 of the Income Tax Act, 1961 was involved in that appeal before the Supreme Court. There was a lease agreement entered into in the year 1959 for 50 years, under which, the annual rent was paid by the Lessee to the Lessor. The lease would have continued till 2009. However, during the relevant previous year i.e. in March, 1986, the Assessee surrendered tenancy rights prematurely and received a sum of 35 lacs. That sum was credited to the reserve and surplus account, which was disallowed by the Assessing Officer, holding that it was income from other sources. The assessee appealed to the Commissioner, who came to the conclusion that the assessee was liable to pay tax on capital gains on the amount of Rs.35 lacs after deducting an amount of Rs.7 lacs as cost of acquisition. The Department and assessee challenged the decision before the Tribunal and the Tribunal relied upon the Judgment of the Supreme Court in the case of CIT v. B.C. Srinivasa Shetty [1981] 128 ITR and the amendment to section 55(2) of the Income Tax Act and held that the assessee did not incur any cost to acquire the leasehold

rights and that if at all any cost had been incurred it was incapable of being ascertained. It was therefore held that since the capital gains could not be computed as envisaged in section 48 of the Income Tax Act, therefore, capital gains earned by the assessee, if any, was not exigible to tax. The Department's Appeal to the High Court was dismissed and that is how it approached the Hon'ble Supreme Court. In dealing with the rival contentions, the Hon'ble Supreme Court held as under:

'(8) In 1981 this court in CIT v. B.C. Srinivasa Shetty(1981) 128 ITR 294; (1981) 2 SCC 460 held that all transactions encompassed by section 45 must fall within the computation provisions of section 48. If the computation as provided under section 48 could not be applied to a particular transaction, it must be regardedas "never intended by section 45 to be the subject of the charge". In that case, the court was considering whether a firm was liable to pay capital gains on the sale of its goodwill to another firm. The court found that the consideration received for the sale of goodwill could not be subjected to capital gains because the cost of its acquisition was inherently incapable of being determined. Pathak J. as his Lordship then was, speaking for the court said (page 300)

"what is contemplated is an asset in the acquisition of which it is possible to envisage a cost. The intent goes to the nature and character of the asset, that it is an asset which possess the inherent quality of being available on the expenditure of money to a person seeking to acquire it. It is immaterial that although the asset belongs to such a class it may, on the facts of a certain case, be acquired without the payment of money"

(9) In other words, an asset which is capable of acquisition at a cost would be Included within the provisions pertaining to the head "Capital gains" as opposed with the acquisition of which no cost at all can be principle propounded in B.C. Srinivasa Shetty (1981) 128 ITR 294 (SC)has been allowed by several High Courts with reference to Surrender of tenancy rights, the consideration received on (see among others Bawa Shiv Charan Singh v. CIT (1984) 149 ITR 29 (Delhi); CIT v. Mangtu Ram Jaipuria (1991) 192 ITR 533 (Cal); CIT v., Joy Ice-Creams (Bangalore) P. Ltd. (1993) 201 ITR 894 (Karn.); CIT v. 987) 165 ITR 386 (AP); CIT v. Markapakula Agamma (1987) Merchandisers P. Ltd. (1990) 182 ITR 107 (Ker.) In all these decisions, the several High Courts held that if the cost of acquisition of tenancy rights cannot be determined, the consideration received by reason of surrender of such tenancy rights could not be subjected to capital gains tax.

(10) According to a circular issued by the Central Board of Direct Taxes (Circular No. 684 dated 10th June, 1994-(1994) 208 ITR (St.) 8 it was to meet the situation created by the decision in B.C. Srinivasa

Shetty (128 ITR 294) (SC) and the subsequent decisions of the High Court that the Finance Act, 1994, amended section 55(2) to provide that the cost of acquisition of, inter alia, a tenancy right. would be taken as nil. By this amendment, the judicial interpretation put on capital assets for the purposes purp of the provisions relating to capital gains was met. In other words, the cost of acquisition would be taken as determinable but the rate would be nil.

(11) The amendment took effect from 1 April, 1995 and accordingly applied, in relation to the assessment year 1995-96 and subsequent years. But till that amendment in 1995, and therefore covering the assessment year in question, the law as perceived by the Department was that if the cost of acquisition of a capital asset could not in fact be determined, the transfer of such capital asset would not attract capital gains. The appellant now says that CIT v. B.C. Srinivasa Shetty's case [1981] 128 ITR 294 (SC) would have no application because a tenancy right cannot be equated with goodwill. As far as goodwill is concerned, it is impossible to specify a date on which the acquisition may be said to have taken place. It is built up over a period of time. Diverse factors which cannot be quantified in monetary terms may go into the building of the goodwill, some tangible some intangible. It is contended that a tenancy right is not a capital asset of such a nature that the actual cost on acquisition could not be ascertained as a natural legal corollary.

(12) In A. R. Krishnamurthy v. CIT (1989) 176 ITR 417 this court held that it cannot be said conceptually that there is no cost of acquisition of grant of the lease. It held that the cost of acquisition of leasehold rights can be determined. In the present case, however, the Department's stand before the High Court was that the cost of acquisition of the tenancy was incapable of being ascertained. In view of the stand taken by the Department before the High Court, we uphold the decision of the High Court.

(13) In United Commercial Bank Ltd. v. CIT (1957) 32 ITR 688 (SC), it was held that the heads of income provided for in the sections of the Indian Income Tax Act, 1922 are mutually exclusive and where any item of income falls specifically under one head, it has to be charged under that head and no other. In other words, income derived from different sources falling under a specific head has to be computed for the purposes of taxation in the manner provided by the appropriate section and no other. It has been further held by this court in East India Housing and Land Development Trust Ltd. v. CIT (1961) (42 ITR 49) that if the income from a source falls within a specific head, the fact that it may indirectly be covered by another head will not make the income taxable under the latter head. (See also CIT v. Chugandas and Co. (1965) 55 ITR 17 (SC).

(14) Section 14 of the Income Tax Act, 1961 as it stood at the relevant time similarly provided that "all income shall for the purposes of charge of income tax and computation of total income be classified under six heads of income," namely:-

A. Salaries;
B. Interest on Securities;
C. Income from house property;
D. Profits and gains of business or profession;
E. Capital gains;
F. income from other sources unless otherwise, provided in the Act.

(15) Section 56 provides for the chargeability of income of every kind which has not to be excluded from the total income under the Act, only if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E. Therefore, if the income is included under any one of the heads, it cannot be brought to tax under the residuary provisions of section 56.

(16) There is no dispute that a tenancy right is a capital asset the surrender of which would attract section 45 so that the value received would be a capital receipt and assessable if at all only under item E of section 14. That being so, it cannot be treated as a casual or non-recurring receipt under section 10(3) and be subjected to tax under section 56. The argument of the appellant that even if the income cannot be chargeable under section 45, because of the inapplicability of the computation provided under section 48, it could still impose tax under the residuary head is thus unacceptable. If the income cannot be taxed under section 45, it cannot be taxed at all. (See S. G. Mercantile Corporation P. Ltd. v. CIT (1972) 83 1TR 700 (SC).

(17) Furthermore, it would be illogical and against the language of section 56 to hold that everything that is exempted from capital gains by the statute could be taxed as a casual or non-recurring receipt under section 10(3) read with section 56. We are fortified in our view by a similar argument being rejected in Naliníkant Ambalal Mody v. S.A.L. Narayan Row,CIT (1966) 61 ITR 428 (SC)".

11.8 Thus, the conclusion of the Supreme Court is that an asset which is capable of acquisition at a cost would be included within the provisions pertaining to the head "Capital gains" as opposed to assets in the acquisition of which no cost at all can be conceived. There was no cost of acquisition, which was determined and on the basis of which the Assessing Officer could have proceeded to levy and assess the gains derived as capital gains. Sub-section (2) of section 55 clause (a) having been amended, there is no stipulation with regard, to relinquishment of trusteeship. However, even in the

case of tenancy right, the view taken by the Supreme Court, after the provision was substituted w.e.f. 1st April, 1995, is as above, which is squarely applicable to the assessees' case also. The further argument of the Ld. AR is that the relinquishment of trusteeship cannot be brought within the tax net though it was capable of being transferred. The Supreme Court held that it must be capable of being acquired at a cost or that has to be ascertainable, then only transfer of capital asset is subject to tax. A specific insertion would therefore be necessary so as to ascertain its case for computing the capital gains. Since the assessee had not incurred any cost of acquisition in respect of gain on account of relinquishment of trusteeship in Carmel Educational Trust, it cannot be brought to tax as capital gains. Accordingly, we hold that capital receipt accrued to the assessee in AY 2009-10 and in that assessment year on relinquishment of trusteeship, which being a capital asset was acquired without any cost of acquisition, the same cannot be brought to tax as held by the Supreme Court in the case of B.C. Srinivasa Shetty (supra). This ground of appeal of the assesses is allowed."

8. We find ourselves unable to accept the finding of the Tribunal that the amounts received by the assessees as consideration for relinquishment of their trusteeship would qualify as a capital receipt for the purpose of the I.T. Act, and further that in the absence of any statutory provision under the I.T. Act that provides for a determination of the cost of acquisition of the asset, the capital gains cannot be assessed. A perusal of the trust deed in the instant cases does not indicate that any power was conferred on the trustees to relinquish their position as trustees en banc. Rather, as noticed by the Supreme Court in Sheikh Abdul Kayum and Others v. Mulla Alibhai and Others and Others - [AIR 1963 SC 309], a person who is appointed as trustee is not bound to accept the trust, but having once entered upon the trust he cannot renounce the duties and liabilities except with the permission of the court or with the consent of the beneficiaries or by the authority of the trust deed itself. The relevant portion of the said decision reads as under:

(16) There cannot, in our opinion, be any doubt about the correctness of the legal position that trustees cannot transfer their duties, functions & powers to some other body of men and create them trustees in their own place unless this is clearly permitted by the trust deed, or agreed to by the entire body of beneficiaries. A person who is appointed a trustee is not bound to accept the trust; but having once entered upon the trust he cannot renounce the duties and liabilities except with the permission of the Court or with the consent of the beneficiaries or by the authority of the trust deed itself. Nor can a trustee delegate his office or any of his functions except in some specified cases. The rules against renunciation of the trust by a trustee and against delegation of his functions by a

trustee are embodied, in respect of trusts to which the Indian Trusts Act applies, in Ss.46 and 47 of that Act.

These sections run thus:-

"46. A trustee who has accepted the trust cannot afterwards renounce it except (a) with the permission of a principal Civil Court of Original Jurisdiction, or (b) if the beneficiary is competent to contract, with his consent, or (c) by virtue of a special power in the instrument of trust.

47. A trustee cannot delegate his office or any of his duties either to a co- trustee or to a stranger, unless (a) the instrument of trust so provides, or(b) the delegation is in the regular course of business, or (c) the delegation is necessary, or (d) the beneficiary, being competent to contract, consents to the delegation."

(17) It is true that S. 1 of the Indian Trusts Act makes provisions of the Act inapplicable to public or private religious or charitable endowments; and so, these sections may not in terms apply to the trust now in question. These sections however embody nothing more or less than the principles which have been applied to all trusts in all countries. The principle of the rule against delegation with which we are concerned in the present case, is clear; a fiduciary relationship having been created, it is against the interests of society in general that such relationship should be allowed to be terminated unilaterally. That is why the law does not permit delegation by a trustee of his functions, except in cases of necessity or with the consent of the beneficiary or the authority of the trust deed itself; apart from delegation "in the regular course of business", that is, all such functions which a prudent man of business would ordinarily delegate in connection with his own affairs.

(18) What we have got in the present case is not delegation of some functions only, but delegation of all functions and of all powers and is nothing short of abdication in favour of a new body of men. Necessarily there is also the attempt by the old trustees to divest themselves of all properties vested in them by the settlor and vesting them in another body of persons. We know of no principle of law and of no authority which permits such abdication of trust in favour of another body of persons.

(19) In the deed itself there is no thing which contemplates or allows such an abdication and the substitution of the old trustees by a new body of trustees. It is necessary in this connection to consider the terms of Cl. 5 of the trust deed, That clause is in these words:-

"5. All the aforesaid trustees shall be entitled to govern, manage and administer the affairs of the school above. These trustees shall have

the power of framing rules and regulations from time to time for the benefit and the efficient running of the school, and they shall have the power to appoint new trustees from time to time in accordance with the rules and regulations on behalf hereof. All the movable and immovable properties connected with the said school shall come to vest in the trustees and they shall be managed and administered in accordance with the rules and regulations framed on that behalf. The trustees for the time being shall have the power to alter and cancel the rules and regulations and to frame new ones instead thereof at the time when necessary. The treasurer shall have the power to open the cash account in some reliable bank and he shall always arrange for cash dealings to the benefit of the said school in accordance with the holy law of Islam. (Shariat)."

(20) The provision for the appointment of new trustees cannot by any stretch of imagination be held to mean the substitution of the old body of trustees by a new body. That provision only permits the old trustees to add to their number. Nor does the power to frame rules and regulations for the benefit and efficient running of the school authorise the trustees to give up the management of the school themselves or to divest themselves of the properties entrusted to them by the trust deed and vest them in other persons. We are satisfied therefore that Cl. 5 of the trust deed does not in any manner authorise the trustees appointed by deed to abdicate in favour of another body of persons or to constitute that body as trustees in their own place. (emphasis supplied)

(21) There is no question here also of the beneficiary, i.e., the school consenting to such abdication. There is therefore no escape from the conclusion that the act of the trustees, who were appointed by the trust deed, in handing over the management of the school to the Hakimia Society and the properties of the school to the members of the governing body of the Hakima Society was illegal and void in law. The members of the Society or the members of the governing body did not therefore become trustees in respect of the properties which are covered by the Burhanpur trust."

9. We are therefore of the view that the en banc resignation/relinquishment by the assessees, of their position as trustees of the Carmel Educational Trust, that too for a consideration, cannot get the imprimatur of this Court. The consideration received by them for such relinquishment cannot be treated as a capital receipt for the purposes of assessing the same under the head of capital gains. The consideration will have to be treated as the individual income of the assessees and assessed accordingly under the appropriate head. We therefore set aside the said findings in the impugned order of the appellate tribunal and remand the matter back to the tribunal to pass a fresh order on this issue in the light of our findings above."

4. Perusal of the above findings of the Hon'ble jurisdictional High Court would show that the Hon'ble High Court was pleased to hold that the receipts were not capital receipts rather chargeable under Income Tax Act in the hands of the assessees. Hon'ble High Court further held that the matter requires fresh consideration at the end of the ITAT to decide the head of income under which these receipts would be taxable under the Income-tax law.

5. The learned Counsel appearing on behalf of the assessee while appraising the facts, argued that the impugned receipts are not taxable under the head income from other sources inasmuch as the AO initially taxed these receipts under the head income from other sources and had the High Court would have been of the view that these receipts are taxable under the head income from other sources, then the Hon'ble High Court would not have restored the matter to the file of the ITAT rather would have affirmed the order of AO.

6. The learned CIT-DR relied upon the authorities below as well as the order of the Hon'ble High Court and pointed out that the limited issue which has been restored to the file of the ITAT is the taxability of the amount under the head is correct head.

7. We have heard the rival submissions and perused the material available on record. So far as the contention of the learned Senior Counsel for the assessee that initially the AO

has also taxed this amount as income from other sources is no more relevant inasmuch as the order of the AO got merged in the order of the Hon'ble ITAT and it is that order of ITAT, which was impugned before the High Court by the department. As per the principle of doctrine of merger the order of the lower court would get merged into the order of higher court, and therefore, we do not find any force in the argument of the learned Senior Counsel. Further, perusal of the assessment order would show that while computing the income of these assessees, finally, the AO has nowhere mentioned the amount taxable as income from other sources rather the AO has taxed the amount as unexplained receipts from Carmel Education Trust. Nowhere the AO as even whisper this receipts is taxable under the head income from other sources. Therefore, the contention of the learned Senior Counsel has no legs to stand. Under the provisions of Income Tax section 14 describes about the five heads of Income i.e. a) salary b) Interest on securities{ no more in the statute} c) Income from House Property d) Profits of Business and Profession e) Capital gains f) Income from other sources. In first round of the proceedings the ITAT has held that these are capital receipts, which findings of the ITAT have been overturned by the Hon'ble High Court. When we examine the facts of these cases on the touchstone of the heads of income we came to a conclusion that the receipts does not fall under any four heads and covered by the residual head of income i.e. "income from other sources" and therefore we are of the firm opinion that the amount received by the assessees in respect of relinquishment of their shares of Carmel

Education Trust is taxable under the head "income from other sources". Taxability of Income from other sources has been prescribed under section 56 of the Act.

8. Our observations in the case of Reena Jose in ITA No.207/Coch/2019, as stated hereinabove, is applicable *mutatis mutandis* to the other appeals, i.e., ITA Nos.208 & 209/Coch/2019 for A.Ys 2009-2010 and 2010-2011, in case of Smt.Gracy Babu, and ITA Nos.211 & 212/Coch/2019 for A.Ys 2009-2010 and 2010-2011 in case of Sri.Jose Thomas, as well.

9. In the result, all the appeals filed by the assessee are dismissed.

Order pronounced on this 22nd day of May, 2025.

Sd/-	**Sd/-**
(Inturi Rama Rao)	**(Prakash Chand Yadav)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Cochin; Dated : 22nd May, 2025.
Devadas G*

Copy to :
1. The Appellant.
2. The Respondent.
3. The CIT, Cochin.
4. The DR, ITAT, Cochin.
5. Guard File.

Asst.Registrar/ITAT, Cochin