

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

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

ITA No.53/Coch/2024 : Asst.Year 2013-2014

Geotech Foundation and Constructions KSHB Building, Panampilly Nagar Cochin – 682 036. PAN : AACFG2516R.	v.	The Income Tax Officer Non Corporate Ward 1(2) Kochi.
(Appellant)		(Respondent)

Appellant by : Sri.P.M.Veeramani, CA
Respondent by : Sri.Sundarasan S, CIT-DR

Date of Hearing : 22.05.2025.	Date of Pronouncement : 26.05.2025
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ORDER

Per Prakash Chand Yadav, JM :

The present appeal of the assessee is arising from the order of the National Faceless Appeal Centre / learned Commissioner of Income-tax (Appeals) [“CIT(A)” for short] dated 03.01.2024, having DIN & Order No.ITBA/NFAC/S/250/2023-24/1059340417(1) and relates to the assessment year 2013-2014.

2. The brief facts of the case as coming out of the orders of the lower authorities are that the assessee is a partnership firm engaged in civil contracts, filed its return of income declaring taxable income of Rs.1,84,051. The case of the

assessee was selected for scrutiny. During the course of assessment proceedings, the Assessing Officer observed that there was capital gain of Rs.169282551, which has not been offered for taxation by the assessee, on the ground that the entire amount has been taken away by South Indian Bank Limited. It has further explained by the assessee that the assessee stood as guarantor one M/s.Geotech Construction Company Limited, which was the sister concern of the assessee. It is further submitted that the land of the assessee was compulsorily acquired by the Government and the sale proceeds were apportioned by South Indian Bank Limited (SBIL) towards the liability of the private limited company, ie., the sister concern of the assessee, and hence, no capital gain would arise to the assessee. However, the A.O. could not find any force in the arguments of the assessee and made the addition in the hands of the assessee.

3. Aggrieved with the order of the A.O., the assessee preferred an appeal before the CIT(A) and assailed the order of the A.O. However, the CIT(A) also could not find any force in the arguments of the assessee and affirmed the view of the A.O. distinguishing the judgment of the Hon'ble jurisdictional High Court in the case of CIT v. Smt.Thressiamma Abraham 227 ITR 802.

4. Aggrieved with the order of the CIT(A), the assessee has come up in appeal before us. The learned Counsel for the assessee at the outset argued that since the assessee was a

guarantor and the sale proceeds were taken away by SBIL, it is a case where income has been diverted because of overriding title of SBIL.

5. The learned CIT-DR relied upon the orders of the authorities below and pointed out that the facts of the case of Smt.Thressiamma Abraham (supra) are entirely on different footing and hence not applicable to the present case.

6. After considering the rival submissions, we observe that there are certain crucial facts coming out from the orders of the CIT(A), which facts goes to the root of the matter. For the sake of convenience, we reproduce these facts herein below:-

“I find that an amount of Rs. 12,36,84,422/- was deposited in the appellant's account on 17.01.2013 vide Bill No. 4671399, 4671400 and 4671401 and the same was transferred to the overdraft bank account of the GTCCPL in South Indian Bank Ltd. The entries in the bank statement clearly shows that the sales proceeds were first credited into the account of the appellant firm with the bank and then debited to transfer the money to the overdraft account of GTCCPL. Further, the AO has pointed out one main aspect saying that the appellant firm has shown loan to the GTCCPL as creditor under the head "long term liabilities" in the balance sheet as on 31.03.2013 to the extent of Rs. 12,49,46,380/- but the appellant didn't controvert this fact during the appellate proceedings. Further, I find that the property was given as collateral security against the overdraft facility granted to GTCCPL and in the event of compulsory acquisition of the said land, the bank had to release the documents so it had demanded the repayment before releasing the document. Under these circumstances, the bank agreed to release the documents on the condition that the receipts of the compensation shall be firstly adjusted against the outstanding loan and the balance shall be released to the appellant (refer para 4 of letter dated 07.08.2013 of South Indian Bank addressed to the Special Tahsildar). It is also pertinent to note that the appellant didn't file any evidence such as recovery communication from the bank on default to show that the

GTCCPL was defaulted in repayment of loan and therefore, the property kept as collateral security was sold by the bank for recovering the outstanding loan by invoking the clauses of overriding title of the loan agreement. Thus, it is not a case of sale of mortgaged property by bank to recover the loan of defaulted loanee by invoking the clauses of overriding title.”

7. A perusal of the above facts would show that it is not a case where the sale proceeds were directly credited to the account of SBIL, rather it is a case where the sale proceeds were first credited to the account of the assessee and then transferred to the account of SBIL in order to discharge the overdraft facility taken by the sister concern. Therefore, it is not a case where any loan has been taken in lieu of mortgage of some property rather a case where overdraft facility has been obtained by the sister concern by putting the property of the assessee as collateral security. It is further relevant to note down that the assessee has also claimed the benefit of TDS amounting to Rs.1,37,68,314 deducted by the Government in lieu of the acquisition of the land. Therefore, we are of the view that the present case is different from the case of Smt.Thressiamma Abraham (supra) and hence it is a case of application of income and not diversion of income by overriding title. Before parting, we would further like to observe that the assessee firm has shown loan to the sister concern as creditor under the had “long term capital liabilities” which fact has not been refuted by the Counsel for the assessee. With these observations, we hereby dismiss the present appeal of the assessee.

8. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on this 26th day of May, 2025.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

Sd/-
(Prakash Chand Yadav)
JUDICIAL MEMBER

Cochin; Dated : 26th 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