

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

**BEFORE SHRI INTURI RAMA RAO, AM
AND SONJOY SARMA, JM**

**ITA No.04/Coch/2025
Assessment Year:2013-14**

Konuparamban Ouseph Ittoop Appellant
Potta, Thrissur – 680722.
PAN: AACPI9545G

vs.

DCIT Respondent
Thrissur.

**ITA No.257/Coch/2025
Assessment Year:2013-14**

DCIT Appellant
Circle-1(1) & TPS,
Thrissur.

vs.

Konuparamban Ouseph Ittoop Respondent
Potta, Thrissur – 680722.
PAN: AACPI9545G

Assessee by: Shri Sathish John Kanichai, CA
Revenue by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 02.06.2025
Date of Pronouncement: 15.07.2025

ORDER

Per: Inturi Rama Rao, AM

These are the cross appeals filed by the assessee as well as the Revenue directed against the order of the Learned Commissioner of Income Tax (Appeals)-3, Kochi (in short "CIT(A)") dated 20/12/2024, for the Assessment Year (AY 2013-14).

2. Since these appeals pertain to the same assessee and the issues are inter-connected, both these appeals are clubbed, heard together and disposed of in this consolidated order.

3. Briefly the facts of the case are that the appellant is an individual engaged in the business of dealing in edible oils and investment in the immovable properties. The Return of Income for the AY 2017-18 was filed on 16/12/2013 disclosing an income of Rs. 1,09,09,320/-. the same revised on 31/03/2015 admitting a total income of Rs. 1,29,09,320/-. Against the said return of income, the assessment was completed by the AO on 29/03/2016 at a total income of Rs. 1,79,09,320/-. The said assessment order attained finality as the appeal filed before the CIT(A) was dismissed as not pressed.

4. Subsequently, the Principal Commissioner of Income Tax (in short "PCIT") in exercise of power vested on him U/s. 263 of the Income Tax Act,

1961 (in short “the Act”), set-aside the assessment order dated 29/08/2017 for the purpose of verification by the following items:

“a. Examine and act as statutorily appropriate all of the component amounts that constitute the investments totalling Rs. 1,79,18,520/- made by the assessee during the impugned FY 2012-13, in respect of their sources, genuineness and the taxability.

b. Examine whether the costs totalling Rs. 34,25,500/- that had been incurred by the assessee towards improvements of his immovable properties are verifiably substantiated / supported by bills, invoices and other relevant documents, and act thereupon as statutorily appropriate;

c. Examine whether assessee, as the part-owner of the immovable property under consideration / reference, is liable to be taxed for the capital gains generated upon the sale transaction, and act thereupon as statutorily appropriate;

d. Examine whether the investments made by the assessee in the flats for the FY 2012-13 of Rs. 14,49,526/- is to be supplanted by the increased value of Rs. 35,27,392/- arrived at by the DVO, and act thereupon as statutorily appropriate on the question of bringing to tax the differential amount of Rs. 20,77,866/-.

e. Examine the entry of Rs. 261,63,63,000/- made as on 16/01/2013 in the diary being part of the impounded documents in the light of, inter alia, the question and answer number 14 in the sworn statement recorded in the time of survey, and act thereupon as statutorily appropriate.”

The said order passed U/s. 263 of the Act was attained finality as the appellant had not preferred any appeal before the Tribunal. The DCIT, Circle 2(1), Thrissur (hereinafter referred to as “AO”) passed the consequential order to the order U/s. 263 of the Act, vide order dated 29/12/2018 at a total income of Rs.5,20,71,970/-.

5. While doing so, the AO made addition of Rs. 3,33,94,646/- as unexplained investment as detailed in page 7 and 8 of the assessment order, by alleging that the appellant failed to explain the source of said investment.

6. The AO also made an addition of Rs. 20,77,866/- as unexplained investment in construction of flat based on the DVO report. The AO also made addition of Rs.51,37,500/- under the head capital gains.

7. Being aggrieved by the above assessment order, an appeal was filed before the CIT(A) contesting the above additions, who vide the impugned order had deleted the addition on account of undisclosed investment of Rs. 3,33,94,646/- considering the explanation of the appellant that the investments are made out of the sale consideration received against the sale of property of Rs. 1,23,43,000/- and Rs. 1,20,00,000/- from sale proceeds of land sold in the earlier years and also an amount of Rs. 1,06,14,500/- was out of drawings from M/s.Konuparamban Traders and amount of Rs. 1,04,07,046/- on account of M/s. Konuparamban Traders Account; Rs. 24.50 lakhs refund of unsecured loan from M/s. Manko and borrowings of Rs. 1,28,00,000/-. Based on the explanation of the appellant, the CIT(A) deleted the addition. However, the CIT(A) confirmed the addition of Rs. 20,77,866/- on account of unexplained investment in construction of flat based on the DVO report. As regards the addition on account of development expenditure of Rs.51,37,500/-, the CIT(A) directed the AO to allow the benefit of cost of

improvement as per the details submitted by the assessee and also grant benefit of indexation by giving the credit of additional income declared during the course of the survey proceedings. Thus, the appeal filed by the assessee was partly allowed by the CIT(A).

8. Being aggrieved by that part of the order of the CIT(A), in deleting the additions, the Revenue is in appeal before this Tribunal vide ITA No. 257/Coch/2024 and being aggrieved by that part of the order of the Ld.CIT(A), in confirming the additions, the assessee is in appeal before this Tribunal in ITA No. 04/Coch/2025.

9. Now, we shall take up the appeal filed by the assessee in ITA No. 04/Coch/2025 wherein the assessee challenges the disallowance of development expenditure of Rs. 51,37,500/- as confirmed by the CIT(A).

10. On perusal of the assessment order, it would reveal that the addition of Rs.51,37,500/- was made by disallowance of cost of improvement while computing capital gains on sale of immovable property. On appeal before the CIT(A), CIT(A) remanded the matter back to the file of the AO with a direction to give the benefit of cost of improvement based on the evidence produced by the assessee and also grant the benefit of indexation of cost of improvement and also to give the credit of Rs. 20 lakhs being the income declared during the course of the survey proceedings. We do not find any illegality in the directions of the CIT(A) in remanding the matter to the file of

the AO. Thus, the Grounds of Appeal No.1 filed by the assessee stands dismissed.

11. The Grounds of Appeal No.2 challenges the addition of Rs. 20,77,866/- made on account of unexplained investment in construction of flat based on the DVO report. The AO without rejecting the books of accounts maintained by the appellant made addition of Rs. 20,77,866/- on account of unexplained investment in cost of the flat. The Hon'ble Supreme Court in the case of Sargam Cinema vs. CIT (2011) 241 CTR (SC) 179 had categorically held that without rejection of books of account, reference to DVO cannot be made for the purpose of estimating the cost of construction. Thus, the very reference made by the AO to DVO is illegal and the consequent addition made cannot be sustained in the eyes of law. Accordingly, the Grounds of Appeal No.2 stands allowed.

12. In the result, appeal filed by the assessee is partly allowed.

ITA No. 257/Coch/2025 (By Revenue)

13. This appeal filed by the Revenue challenging the directions of the CIT(A) to delete the addition of Rs. 3,33,94,646/- made on account of unexplained investment.

14. The AO made addition of Rs. 3,33,94,646/- based on the cash flow statement recast by the Assessing Officer. The correctness of the cash flow

statement recast by the AO was challenged before the CIT(A). The CIT(A) vide para 4.7 of his order deleted the addition by recording following findings of facts:

“4.7. I have carefully considered the submissions made by the appellant / AR of the appellant and the observations made by the AO in the assessment order. During the course of appellate proceedings, the appellant submitted the cash flow statement for the financial year relevant to the AY under consideration. It is seen from the cash flow that during the year, the appellant had received an amount of Rs. 1,23,43,000/- towards sale of property and Rs.1,20,00,000/- from earlier years land dealings. The appellant has also shown Rs.1,06,14,500/- towards drawings from M/s. Konuparamban Traders – KOI Books of accounts and Rs. 1,04,07,046/- on account of drawings from M/s. Konuparamban Traders account. Further, the appellant has shown refund of unsecured loan from M/s. Manko of Rs. 24.50 lakhs and borrowings of Rs. 1,28,00,000/-. The cash out flow also reveals that the appellant has repaid the drawings to M/s. Konuparamban Traders of Rs. 52.67 lakhs and Rs. 24.50 lakhs and had invested an amount of Rs. 2.48 crores in BRD. The AO should have investigated the matter mentioned in the cash flow statement thoroughly rather than drawing new cash flow statement on his own. The appellant also submitted evidence like bank statements of lender and confirmation statements from the lender which were also submitted before the AO during the assessment proceedings. Considering the above and the cash flow statement furnished by the appellant for the investments made during the year, the addition made by the AO is deleted.”

15. The Revenue had not brought any evidence on record to controvert the above findings of the CIT(A) and therefore, we do not find any illegality in the order of the CIT(A). Accordingly, the Grounds of Appeal Nos 1 and 2 raised by the Revenue stand dismissed.

16. Grounds of Appeal No. 3 challenges the direction of the CIT(A) in remitting the matter back to the file of the AO for due verification and computation of the Short Term Capital Gains by giving credit of Rs. 20 lakhs being additional income disclosed by the assessee during the course of the

survey proceedings and also computing the income under the head 'long term capital gains' by granting benefit of indexation of long term benefits. Nothing illegality / perversity in the findings of the CIT(A). Accordingly, this Ground of Appeal is dismissed.

17. In the result appeal filed by the Revenue stands dismissed.

Order pronounced in the open court on 15th July, 2025.

Sd/-

(SONJOY SARMA)
JUDICIAL MEMBER

Sd/-

(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 15th July, 2025

okk sps

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

Assistant Registrar
ITAT, Cochin