

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

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

**ITA No. 214/Coch/2025  
Assessment Year: 2016-17**

Giju Purapadathil Mathai ..... Appellant  
5-B Parambil Thara Corss Road, Ivory Heights  
Panampilly Nagar, Ernakulam 682036  
[PAN: AHOPM6606R]

vs.

ACIT, Corporate Ward- 2(1), Kochi ..... Respondent

Assessee by: Smt. Parvathy Ammal, CA  
Revenue by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 09.06.2025  
Date of Pronouncement: 05.08.2025

**ORDER**

**Per: Inturi Rama Rao, AM**

This appeal filed by the assessee is directed against the order of the National Faceless Appeal Centre, Delhi [CIT(A)] dated 30.01.2025 for Assessment Year (AY) 2016-17.

2. Brief facts of the case are that the appellant is an individual. No return of income was filed under the provisions of section 139(1) of the Income Tax Act, 1961 (the Act) for AY 2016-17. However, based on the information available with the department that the appellant sold immovable property for a consideration of Rs.

86,20,665/-, the National Assessment Unit (hereinafter called "the AO") formed an opinion that income escaped assessment to tax. Accordingly, a notice u/s. 148 was issued on 07.03.2023. The appellant neither complied with the notice issued u/s. 148 nor notices issued u/s. 142(1) of the Act and hearing notices. Under the circumstance, the AO passed assessment vide order dated 19.03.2024 passed u/s. 147 r.w.s. 144B of the Act at a total income of Rs. 90,84,271/-

3. Being aggrieved, an appeal was filed before the CIT(A) contending that the property in question was sold by South Indian Bank under the provisions of SARFAESI Act. It was stated that the property was mortgaged with South Indian Bank for availing loan by M/s. P.T. Mathai Construction Co. Pvt. Ltd. in which the appellant was a Director. It is submitted, placing reliance on the decision of the Hon'ble Kerala High Court in the case of CIT v. Thressiamma Abraham 227 ITR 802, that no income accrued in the hands of the mortgager, when the mortgaged property is sold by the financial institution. However, the learned CIT(A) rejected the above contention placing reliance on the judgement of the Hon'ble Supreme Court in the case of CIT v. Attili N. Rao [2022] 252 ITR 880. Accordingly, confirmed action of the AO.

4. Being aggrieved, the appellant is in appeal before this Tribunal in the present appeal.

5. The learned counsel for the assessee submits that the property in question was taken over by South Indian Bank under the provisions of SARFAESI Act. The appellant would not receive any amount on sale of the said property. It is submitted that the facts of the case are similar to the one decided by the Hon'ble Kerala High Court in the case of Thressiamma Abraham (supra) wherein it was held that the question of capital gain does not arise in such situations.

6. On the other hand, the learned Sr. DR, placing reliance on the decision of the CIT(A), submits that no interference is called for and the ratio of the decision in the case of Attili N. Rao (supra) is squarely applicable.

7. We have heard the rival contentions and perused the material available on record. The question that arises for our determination is whether or not capital gain accrues in case of the appellant on sale of property mortgaged to South Indian Bank. The undisputed facts of the case are that the appellant mortgaged the property in question to South Indian Bank to enable P.T. Mathai Construction Co. Pvt. Ltd., in which the appellant was a Director, to avail credit facility. As the said company defaulted in repayment of the loan availed from South Indian Bank, the bank sold the property under the provisions of SARFAESI Act and adjusted the sale proceeds toward the loan. The issue is no longer *res integra* as it stands settled by the decision of the Hon'ble Apex Court in the case of Attili N. Rao (supra) wherein it was held as under: -

*“We are of the view that the Tribunal and the High Court were in error. What was sold by the State at the auction was the immovable property that belonged to the assessee. The price that was realised therefor belonged to the assessee. From out of that price, the State deducted its dues towards “kist” and interest due from the assessee and paid over the balance to him. The capital gain that the assessee made was on the immovable property that belonged to him. Therefore, it is on the full price realised (less admitted deductions) that the capital gain and the tax thereon has to be computed.”*

8. In view of the above judgement of the Hon'ble Supreme Court, the decision of the Hon'ble Kerala High Court does not hold good.

9. In the result, the appeal filed by the assessee stands dismissed.

Order pronounced in the open court on 5<sup>th</sup> August, 2025.

Sd/-  
**(SONJOY SARMA)**  
**JUDICIAL MEMBER**

Sd/-  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

Cochin, Dated: 5<sup>th</sup> August, 2025  
n.p.

Copy to:

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

Assistant Registrar  
ITAT, Cochin