

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

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

**ITA Nos. 778 to 780/Coch/2024
Assessment Years: 2004-05, 2005-06 & 2007-08**

Gomathy Jalaja Appellant
T.C. 55/295(2), 'Mohanam', Amritha Nagar
Kaimanam, Pappanamcode P.O., Thiruvananthapuram
[PAN: ANBPJ8795P]

vs.

DCIT, Central Circle, Thiruvananthapuram Respondent

Appellant by: Ms. Anoop M.J., Advocate
Respondent by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 13.06.2025
Date of Pronouncement: 31.07.2025

ORDER

Per: Inturi Rama Rao, AM

These appeals filed by the assessee are directed against different orders of the Commissioner of Income Tax (Appeals)-3, Kochi [CIT(A)] dated 27.03.2024 for Assessment Years (AY) 2004-05, 2005-06 and 2007-08.

2. Since identical issues and facts are involved in these appeals, they are heard together and disposed of by this common order.

3. For the sake of convenience and clarity the facts relevant to the appeal bearing ITA No. 778/Coch/2024 for AY 2004-05 are stated herein.

4. Brief facts of the case are that the appellant is an individual. During the course search and seizure operations conducted under the provisions of section 132 of the Income Tax Act, 1961 (the Act) in the case of M/s. Parthas Infopark Pvt. Ltd., Thiruvananthapuram and Shri Mohanan Nair, husband of the assessee, certain incriminating documents in relation to the appellant were found and seized. Accordingly, a notice u/s. 153C of the Act was issued to the appellant on 20.03.2009. The appellant neither responded to the notice issued u/s. 153C nor notices u/s. 142(1) of the Act. In the circumstances assessment came to be completed vide order dated 30.12.2019 passed u/s. 144 r.w.s. 153C of the Act at a total income of Rs. 16,50,000/- treating the cash deposit made in the bank account as unexplained money of the appellant.

5. Being aggrieved, an appeal was filed before the CIT(A), who vide the impugned order partially granted relief by restricting the addition to the extent of Rs. 9,00,000/-.

6. On further appeal before this Tribunal, the Tribunal vide order dated 22.05.19 in ITA No. 42 to 44 /Coch/2019 for assessment years 2004-05, 2005-06 and 2007-08 remanded the issue to the file of the AO with following directions: -

"We have heard the rival submissions and perused the record. For all the assessment years, the CIT(A) had considered the additional ground with regard to jurisdiction in framing the assessment under section 153 of the Act which was remitted to him by the Tribunal for fresh consideration. The CIT(A) observed that there was incriminating information obtained from the bank statements of the assessee unravelled during the search under section 132 of the Act in the relevant assessment years. In view of the above facts, the CIT(A) confirmed the initiation of assessment proceedings under section 153C of the Act-in-all-the-assessment years. However, he has not at all adjudicated the additions made by the Assessing Officer on merits. Hence, we are inclined to remit the issue to the file of the Assessing Officer for fresh consideration in all the three assessment years as the order of the Assessing Officer was passed ex parte under section 144 of the Act. The appeals of the assessee are partly allowed for statistical purposes."

7. The AO, pursuant to the order of remand made by the Tribunal, had passed fresh assessment order dated 30.09.2021 passed u/s. 143(3) r.w.s. 254 of the Act reiterating the addition of Rs. 9,00,000/- treating the cash deposit made on 10.10.2003 as unexplained money of the assessee rejecting the explanation of the appellant that the said deposits were made out of the amount given by one Smt. Kalpana out of land compensation of Rs. 8,26,228/- and the amount of Rs. 73,772/- received from her husband Shri Radhakrishnan. In support of this the appellant also filed confirmation from Shri Radhakrishnan and Smt. Kalpana by making the following observation: -

“(ii) However, on verification of the submission given by Shri Mohanan Nair, assessee's husband for A Y 2006-07, it was noticed that Shri Mohanan Nair explained the source for Rs.5,00,000/-out of Rs.25,00,000/- advanced to Shri C P Narayanan Nair as the amount received from Shri Radhakrishnan, husband of Smt Kalpana. In the confirmation given by Shri Radhakrishnan, it was stated that the amount of Rs.5,00,000/- was received from his wife Kalpana out of the amount she received as compensation of land acquisition from Sub Treasury, Neyyattinkara on 02.09.2003.”

8. Being aggrieved, an appeal was filed before the CIT(A), contesting that the order of assessment passed u/s. 153C is not valid in law. The AO ought not to have rejected the explanation given in support of his contention. The CIT(A) rejected the contentions raised on the validity of section 153C of the Act as the same was not alive in the remand proceedings as it stands rejected by the CIT(A) as confirmed by the Tribunal in first round of proceedings. On merits, the CIT(A) noticed the contradictions in the explanation offered in support of cash deposit of Rs. 9,00,000/-, therefore, confirmed the action of the AO and also observed that the cash deposit was made after lapse of more than a month after receipt of money by her sister-in-law Smt. Kalpana on 20.09.2003 and the said money was also said to have been used for advancing money by her husband Shri Mohanan Nair.

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

10. The learned counsel for the assessee submitted that the CIT(A) had failed to adjudicate the ground relating to the validity of the assessment made u/s. 153C in the absence of any incriminating material. It is further submitted that since the appellant had offered a plausible explanation for source of cash deposit no addition is required to be made, therefore, the matter may be sent back to the CIT(A).

11. On the other hand, learned Sr. DR, placing reliance on the orders of the learned lower authorities submits that the order passed by the CIT(A) is a speaking one and on the issue of section 153C, it is not open before the learned lower authorities, as it stood adjudicated in the first round of proceedings and in view of the contradiction in the explanation offered for source of cash deposit made on 10.10.2003, the addition was rightly confirmed by the learned CIT(A). Therefore, no interference is called for.

12. We have heard the rival contentions and perused the material available on record. The issue of jurisdiction to make assessment u/s. 153C is not open before the AO as rightly observed by the CIT(A) that the issue of jurisdiction stands settled by the decision of the ITAT confirming the order of the CIT(A) on jurisdictional issue in the original proceedings. As regards merits of addition, no doubt, the appellant offered an explanation in support of the source of cash deposit made on 10.10.2003. However, the AO had observed certain contradictions in the explanation offered by the appellant. These

contradictions were not rebutted by the appellant either before the AO or before the CIT(A) and no attempt was made even before us rebutting the contradiction noted by the AO in the explanation. In the circumstance we are of the considered opinion that the CIT(A) had rightly confirmed the addition of Rs. 9,00,000/- made by the AO. Appeal stands dismissed.

ITA No. 779/Coch/2024 – AY : 2005-06

13. Brief facts of the case are that the appellant is an individual. During the course search and seizure operations conducted under the provisions of section 132 of the Income Tax Act, 1961 (the Act) in the case of M/s. Parthas Infopark Pvt. Ltd., Thiruvananthapuram and Shri Mohanan Nair, husband of the assessee, certain incriminating documents in relation to the appellant were found and seized. Accordingly, a notice u/s. 153C of the Act was issued to the appellant on 20.03.2009. The appellant neither responded to the notice issued u/s. 153C nor notices u/s. 142(1) of the Act. In the circumstances assessment came to be completed vide order dated 30.09.2019 passed u/s. 144 r.w.s. 153C of the Act at a total income of Rs. 29,31,500/- treating the cash deposit made in the bank account as unexplained money of the appellant.

14. Being aggrieved, an appeal was filed before the CIT(A), who vide the impugned order partially granted relief by restricting the addition to the extent of Rs. 9,00,000/-.

15. On further appeal before this Tribunal, the Tribunal vide order dated 22.05.19 in ITA No. 42 to 44 /Coch/2019 for assessment years 2004-05, 2005-06 and 2007-08 remanded the issue to the file of the AO with following directions: -

"We have heard the rival submissions and perused the record. For all the assessment years, the CIT(A) had considered the additional ground with regard to jurisdiction in framing the assessment under section 153 of the Act which was remitted to him by the Tribunal for fresh consideration. The CIT(A) observed that there was incriminating information obtained from the bank statements of the assessee unravelled during the search under section 132 of the Act in the relevant assessment years. In view of the above facts, the CIT(A) confirmed the initiation of assessment proceedings under section 153C of the Act-in-all-the-assessment years. However, he has not at all adjudicated the additions made by the Assessing Officer on merits. Hence, we are inclined to remit the issue to the file of the Assessing Officer for fresh consideration in all the three assessment years as the order of the Assessing Officer was passed ex parte under section 144 of the Act. The appeals of the assessee are partly allowed for statistical purposes."

16. In the remand proceedings the AO made addition of Rs. 29,22,500/- under capital gains on sale of 9.21 cents of land on 31.03.2005 rejecting the contention of the appellant that the actual consideration received is only Rs. 19,50,000/- as against Rs. 35,00,000/- disclosed during the course of sworn in statement recorded from the assessee and also not granted cost of improvement of Rs. 14,50,000/- as the appellant had failed to

discharge the onus of producing evidence in support of incurring cost of improvement of Rs. 14,50,000/-.

17. Being aggrieved, an appeal was filed before the CIT(A), who vide the impugned order confirmed the action of the AO.

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

19. On a careful perusal of the order of the learned CIT(A) it is clear that the appellant had not challenged the addition on capital gains on merits, only challenged the very validity of the assessment order on jurisdictional issue. The jurisdictional issue, as held by us in assessee's appeal for AY 2004-05, was not open before the AO in the remand proceedings, as it stands concluded in the original round of proceedings. The appeal stands dismissed.

20. Since identical issues and facts are involved in assessee's appeal ITA No. 780/Coch/2024, our findings in ITA No. 779/Coch/2024 shall apply mutatis mutandis to this appeal also.

21. In the result, the appeals filed by the assessee stand dismissed.

Order pronounced in the open court on 31st July, 2025.

Sd/-

(SONJOY SARMA)
JUDICIAL MEMBER

Cochin, Dated: 31st July, 2025

n.p.

Sd/-

(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Copy to:

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

By Order

Assistant Registrar
ITAT, Cochin