

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

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.236/Coch/2018 : Asst.Year 2012-2013

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| The Income Tax Officer Ward 1 (4) Trivandrum. | Vs. | Smt.Girijakumari M. PP 14/432, Vrindavan Poovachal P.O. Veeranakavu, Trivandrum - 695 575. PAN : AYMPG3155E |
| (Appellant) | | (Respondent) |

CO No.50/Coch/2018 : Asst.Year 2012-2013

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| Smt.Girijakumari M. PP 14/432, Vrindavan Poovachal P.O. Veeranakavu, Trivandrum - 695 575. | Vs. | The Income Tax Officer Ward 1 (4) Trivandrum. |
| (Appellant) | | (Respondent) |

Revenue by : Smt.A.S.Bindhu, Sr.DR
Assessee by : Sri. G.Surendranath Rao

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| Date of Hearing : 08.10.2018 | Date of Pronouncement : 10.10.2018 |
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ORDER

Per George George K., JM

This appeal at the instance of the Revenue and the Cross Objection preferred by the assessee are directed against the Commissioner of Income-tax (Appeals)'s order dated 26.03.2018. The relevant assessment year is 2012-2013.

2. In the Revenue's appeal, the solitary issue that was raised is, whether land that was acquired, was entitled to the benefit of section 10(37) of the Income-tax Act?

3. Brief facts of the case are as follows:-

The assessee was in possession of 70 cents of land at Vizhinjam village. The same was sold by executing a sale deed in favour of Vizhinjam International Seaport for a total consideration of Rs.1,32,81,555. For the assessment year 2012-2013, the assessee filed return of income claiming the entire sale consideration received as exempt from tax. It was claimed that the said property, which was taken over by Vizhinjam International Seaport, was an agricultural land and was compulsorily acquired by the Government of Kerala. Therefore, it was submitted that the assessee was entitled to provisions of section 10(37) of the I.T.Act. The Assessing Officer, however, rejected the contentions of the assessee and completed the assessment u/s 143(3) r.w.s. 147 of the I.T.Act, vide order dated 31.03.2015, wherein the A.O. had worked out the long term capital gains at Rs.1,02,65,858. It was held by the A.O. that the land transferred falls within the limit of Trivandrum Municipal Corporation and the assessee's claim for exemption u/s 10(37) of the I.T.Act was not admissible for the reason that it was not a compulsory acquisition, but a sale through negotiated settlement.

4. Aggrieved by the assessment order, the assessee preferred an appeal to the first appellate authority. The CIT(A), by following the judgment of the Hon'ble Apex Court in the case of *Balakrishnan v. Union of India [(2017) 391 ITR 178 (SC)]*, held that the assessee was entitled to the benefit of section 10(37) of the I.T.Act, and hence, would not be liable

for long term capital gains on the acquisition of the impugned land.

5. The Revenue being aggrieved, has filed the present appeal before the Tribunal. The learned Departmental Representative strongly relied on the assessment order. The learned AR, on the other hand, submitted that land which was acquired by the Vizhinjam International Seaport, was admittedly agricultural land. It was submitted that the Assessing Officer had granted the benefit of deduction u/s 54B of the I.T.Act for sale proceeds of impugned land. It was stated that the only reason for the Assessing Officer to deny the benefit of section 10(37) of the I.T.Act was that the land in question was not compulsorily acquired, but by executing a sale deed in favour of Vizhinjam International Seaport. In this context, the learned AR submitted that the issue was squarely covered in favour of the assessee by the judgments of the Hon'ble Apex Court in the case of *Balakrishnan v. Union of India [(2017) 391 ITR 178 (SC)]* and *Union of India v. Infopark Kerala [81 Taxmann.com 51 (SC)]*. It was contended that the Hon'ble Apex Court in above cases had clearly held that since the entire procedure fixed under Land Acquisition Act was followed, the character of acquisition from that of compulsory acquisition to voluntary sale would not change though the price was fixed on negotiated settlement.

6. We have heard the rival submissions and perused the material on record. The assessee's 70 cents of land at Vizhinjam Village was notified for compulsory acquisition by

Government of Kerala for developing Vizhinjam International Seaport. Though the acquisition proceedings were taken under the Land Acquisition Act, the final price was fixed upon negotiated sale agreement. The Assessing Officer has allowed the claim of the assessee for deduction u/s 54B of the I.T.Act. Section 54B of the I.T.Act provides for a deduction on account of transfer of land used for agricultural purpose and for purchase of another agricultural land. Therefore, admittedly, when deduction has been granted u/s 54B of the I.T.Act, the A.O. also categorically admitted that the land sold was an agricultural land. The A.O., however, noticed that the land was within Trivandrum Municipal Corporation, and therefore, would be an urban agricultural land falling within the provisions of section 2(14)(iii) of the I.T.Act. The only reason for the A.O. to deny the benefit of section 10(37) was that the impugned land was acquired by executing a sale deed in favour of Vizhinjam International Seaport and it was not a case of compulsory acquisition. The Hon'ble Apex Court in the case of *Balakrishnan v. Union of India & Others (supra)* had categorically held merely because the sale price was fixed through a negotiated settlement, the character of acquisition would still remain compulsory. The relevant finding of the Hon'ble Apex Court reads as follows:-

"8. In our view, insofar as acquisition of the land is concerned, the same was compulsorily acquired as the entire procedure prescribed under the LA Act was followed. The settlement took place only qua the amount of the compensation which was to be received by the appellant for the land which had been acquired. It goes without saying that had steps

not been taken by the Government under Sections 4 and 6 followed by award under Section 9 of the LA Act, the appellant would not have agreed to divest the land belonging to him to Techno Park. He was compelled to do so because of the compulsory acquisition and to avoid litigation entered into negotiations and settled the final compensation. Merely because the compensation amount is agreed upon would not change the character of acquisition from that of compulsory acquisition to the voluntary sale. It may be mentioned that this is now the procedure which is laid down even under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 as per which the Collector can pass rehabilitation and resettlement award with the consent of the parties / landowners. Nonetheless, the character of acquisition remains compulsory."

6.1 In the instant case, the entire procedure prescribed under the Land Acquisition Act was followed, only price was fixed upon a negotiated settlement. Therefore, in view of the above judgment of the Hon'ble Apex Court (supra), we hold that the acquisition of the urban agricultural land was a compulsory acquisition and the same would be entitled to the benefit enumerated in section 10(37) of the I.T.Act. It is ordered accordingly.

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7. The only ground raised in the CO filed by the assessee is that the fair market value as on 01.04.1981 fixed for the purpose of computation of long term capital gains, is low. Since we have already dismissed the Revenue's appeal, the computation aspect which is raised in the CO is rendered

infructuous, and hence, the CO is dismissed as infructuous.
It is ordered accordingly.

8. In the result, the appeal filed by the Revenue and CO preferred by the assessee are dismissed.

Order pronounced on this 10th day of October, 2018.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin ; Dated : 10th October, 2018.
Devdas*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT (A) Trivandrum.
4. The CIT Trivandrum.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin