



ITA NO. 9 OF 2024

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2025:KER:43849

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE P.M.MANOJ

THURSDAY, THE 19TH DAY OF JUNE 2025 / 29TH JYAISHTA, 1947

ITA NO. 9 OF 2024

AGAINST THE ORDER DATED 19.12.2022 IN ITA NO.634/COCH/2002 OF
2022 OF INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH

APPELLANT/RESPONDENT:

THE PRINCIPAL COMMISSIONER OF INCOME TAX,
KOCHI-I, KOCHI, CENTRAL REVENUE BUILDING,
I. S. PRESS ROAD, KOCHI, PIN - 682018

BY ADVS.

SHRI.JOSE JOSEPH

SRI.P.K.RAVINDRANATHA MENON (SR.)

RESPONDENT/APPELLANT:

M/S. AYYAPPA ROLLER FLOUR MILLS LTD,
DOOR NO.V 679-C, INDUSTRIAL DEVELOPMENT AREA,
MUPPATHADOM (PO), EDAYAR, KOCHI, PIN - 683110

BY ADVS.

SHRI.P.SATHISAN

SHRI.JAVED HAIDER

SHRI.ABHIRAM SUNISH

SHRI.BIJU P.PAUL

SHRI.SHIBU B.S

THIS INCOME TAX APPEAL HAVING COME UP FOR ADMISSION ON
19.06.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

Dr. A.K.Jayasankaran Nambiar, J.

This Income Tax Appeal preferred by the Revenue impugns the order dated 19.12.2022 of the Income Tax Appellate Tribunal, Cochin Bench in ITA No.634/Coch/2022, pertaining to the assessment year 2011-2012.

2. The brief facts necessary for the disposal of this Income Tax Appeal are as follows:

The respondent assessee had entered into an agreement for the sale of 179.88 Cents of land on 10.11.2010, and had immediately thereafter put the intended purchaser of the land in possession of the property. The sale deed was executed only on 28.09.2011 followed by a correction deed that was executed for the purposes of including an extent of land which was left out of the sale deed that was executed. Although the sale deed and the correction deed were executed in the financial year 2011-2012, and under normal circumstances the assessment to capital gains in respect of the said transactions would have featured only in the assessment orders for the year 2012-2013 under the Income Tax Act, the assessment of the assessee to capital gains in the instant case was completed in the assessment year 2011-2012 by invoking the provisions of Section 2(47) of the Income Tax Act read with Section 53A of the Transfer of Property Act. The Assessing Officer arrived at a figure of Rs.38,84,99,952/-.



3. In an appeal carried by the assessee against the said order of the Assessing Officer, the First Appellate Authority found the computation of capital gains by the Assessing Officer to be wrong and directed the cost of acquisition of the land for the purposes of the said computation of capital gain to be determined based on the fair market value of the land as on 01.04.1981. Taking note of the said direction of the First Appellate Authority, the Assessing Officer once again passed Annexure-C order, this time computing the capital gains at a figure of Rs.38,09,53,320/-.

4. The assessee once again carried the matter in appeal before the First Appellate Authority. This time around the First Appellate Authority directed to fix the land value at Rs.50,000/- per Cent and remitted the matter back to the Assessing Officer for a fresh computation of capital gains. The Revenue, however, filed an appeal against the said order of the First Appellate Authority before the Appellate Tribunal. The Tribunal on its part vacated the findings of the authorities below and held that the fair market value had to be arrived at after ascertaining the views of the Department Valuation Officer (D.V.O). Thus the matter was referred to the D.V.O by the Assessing Officer to whom the matter now stood remanded. The report of the D.V.O was furnished on 06.12.2019 as is evident from Annexure-F communication produced along with the appeal memorandum. The said report fixes the fair market value of the land as on 01.04.1981 at Rs.49,650/- per cent. Based on the said report received from the D.V.O, the Assessing Officer proceeded to pass orders giving effect to the order of the Appellate Tribunal on 06.05.2020 by taking note of the fair market value fixed in Annexure-F report and completing the



assessment to capital gains on the assessee.

5.It would appear that in the meanwhile, the Assistant Engineer of the Valuation Cell, by Annexure-G letter dated 21.01.2020 addressed to the D.V.O, expressed reservations regarding the manner in which the D.V.O had computed the fair market value in respect of the property. An explanation was therefore called from the D.V.O and the Assessing Officer was requested to keep the assessment proceedings in abeyance pending receipt of a report from the Assistant Engineer. As already noticed, the Assessing Officer had given effect to the Appellate Tribunal order by passing the necessary consequential orders adopting the value fixed by the D.V.O.

6. Finding the assessment completed by the Assessing Officer to be erroneous and prejudicial to the Revenue, the Commissioner invoked his powers under Section 263 of the Income Tax Act and issued a show cause notice dated 08.02.2021 to the assessee. The proceedings that ensued culminated in Annexure-I order dated 25.03.2022 setting aside the order dated 06.05.2020 of the Assessing Officer, that gave effect to the Appellate Tribunal order, and directing the Assessing Officer to pass a speaking order in accordance with law, after affording an opportunity to the assessee. It was this order of the Commissioner under Section 263 of the Income Tax Act that was carried by the assessee in a further appeal before the Appellate Tribunal, which allowed the appeal by Annexure-K order impugned before us in this appeal preferred by the Revenue.



7. In the appeal, the Revenue raises the following substantial questions of law:

(1) Whether on the facts and in the circumstances of the case, the Tribunal is right in law and fact in interfering with the revisional order?

(2) Whether on the facts and in the circumstances of the case, if the answer is in the negative, will not the reports revive and be relevant?

(3) Whether on the facts and circumstances of the case, is the Tribunal right in law in quashing the order passed u/s. 263 of the Act.

(4) Whether on the facts and circumstances of the case, is the tribunal right in law in relying upon a judgement in Dr. Indira Bhatnagar [2013] 30 taxmann.com 293 (Allahabad), which has no relevance with the facts of this case.

8. We have heard Sri.Jose Joseph, the learned Senior Standing counsel for the Income Tax Department, and Sri.P. Sathisan, the learned counsel for the respondent assessee.

9. On a consideration of the rival submissions, we find ourselves agreeing with the findings of the Appellate Tribunal, which read as follows:

“3. It emerges at the outset that the instant assessee's appeal hardly requires us to deal with the relevant factual matrix at length. Suffice to say, the learned PCIT's revision directions herein holds the Assessing officer's corresponding assessment order dated 06.05.2020 as an erroneous one causing prejudice to the interest of revenue followed by his further direction to frame a fresh assessment.



4. Learned CIT-DR vehemently argued that although the Assessing Officer's impugned assessment had been completed in light of this tribunal's directions in ITA No. 548/Coch.2018 dated 09.05.2019 that the fair market value in issue ought to be computed as per the DVO's report dated 06.12.2019, the latter's report in issue stood revised by the departmental authorities and, therefore, the impugned assessment has been rightly subjected to section 263 jurisdiction.

5. All these Revenue arguments fail to evoke our concurrence. We make it clear that once the DVO had submitted its valuation report which stood accepted by the Assessing Officer, its later revision at administrative/ departmental level would hardly have any adverse impact on assessment. Case law CIT vs. Dr. Indira Bhatnagar (2013) 30 taxmann.com 293 (Allahabad) holds that the DVO's computation indeed binds the Assessing Officer. Faced with this situation we reverse the PCIT's order in issue and restore the impugned assessment herein dated 06.05.2020 as the necessary corollary."

As rightly observed by the Appellate Tribunal, once it was clear that the Assessing Officer had complied with the directions issued by the Appellate Tribunal, and had adopted the value as fixed by the D.V.O for the purposes of completing the assessment in relation to the assessee, it was not open to the Commissioner of Income Tax to invoke the powers under Section 263 for *suo motu* revising the order of the Assessing Officer under the Income Tax Act, more so when the real reason for invoking his power under Section 263 was only that there was a doubt raised by the Assistant Engineer of the Valuation Cell as regards the fixation of the fair market value by the D.V.O. That apart, we also find that, at any rate, the clarifications sought for by the Assistant Engineer, Valuation Cell in Annexure-G letter were not sent to that office, and a final determination as to whether or not the queries raised merited consideration, was not obtained at any time before the issuance of a show cause notice dated 08.02.2021 invoking the powers under Section 263 of the



Income Tax Act. Thus, as on the date of invoking his power under Section 263 of the IT Act, the Commissioner could not have had a 'reason to believe' that the assessment was erroneous and prejudicial to the interest of the Revenue since the material to inform that 'reason to believe' did not exist on the date of issuance of the show cause notice. His exercise of power under S.263 was therefore clearly unjustified. Thus, we do not find any reason to interfere with the impugned order of the Appellate Tribunal. The I.T Appeal, therefore, fails and is accordingly dismissed by answering the questions of law raised against the Revenue and in favour of the assessee.

Sd/-

DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
P.M.MANOJ
JUDGE

mns

APPENDIX OF ITA 9/2024

PETITIONER ANNEXURES

Annexure A	TRUE COPY OF THE ORDER PASSED U/S.143(3) DATED 27-03-2014
Annexure B	TRUE COPY OF THE ORDER DATED 4-8-2016 PASSED BY THE COMMISSIONER OF INCOME TAX (APPEALS)
Annexure C	TRUE COPY OF THE ORDER GIVING EFFECT TO THE ORDER OF COMMISSIONER OF INCOME TAX (APPEALS) DATED 31-3-2017
Annexure D	TRUE COPY OF THE ORDER DATED 23-07-2018 OF THE COMMISSIONER OF INCOME (APPEALS) -1, KOCHI.
Annexure E	TRUE COPY OF THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL IN ITA. NO. 458/COCH/2018 DATED 09-05-2019
Annexure F	TRUE COPY OF THE VALUATION REPORT DATED 6-12-2019
Annexure G	TRUE COPY OF THE LETTER FROM OFFICER OF THE CHIEF ENGINEER (VALUATION), CHENNAI.
Annexure H	TRUE COPY OF THE ORDER DATED 6-5-2020 GIVING EFFECT TO THE ORDER OF THE ITAT, COCHIN BENCH
Annexure I	TRUE COPY OF THE ORDER PASSED UNDER SEC.263 DATED 25-03-2022.
Annexure J	COPY OF THE ORDER OF THE HON'BLE HIGH COURT OF ALLAHABAD IN CIT VS INDIRA BHATNAGAR (2013) 30 TAXMANN.COM 293
Annexure K	CERTIFIED COPY OF THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL IN ITA. NO. 634/COCH/2022 DATED 19-12-2022
Annexure L	COPY OF THE REVISED VALUATION REPORT IN AE(V)/TVM/CG 07/2022 DATED 17-08-2022 OF ASST. VALUATION OFFICER, VALUATION CELL, TRIVANDRUM -2022