IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

TUESDAY, THE 4TH DAY OF MARCH 2025 / 13TH PHALGUNA, 1946

ITA NO. 1 OF 2024

APPELLANT(S)/RESPONDENT/ASSESSEE :

***1 M J GEORGE, [DIED]**
AGED 86 YEARS
MUKKADAYIL HOUSE, KRISHNASWAMY CROSS ROAD,
ERNAKULAM, KOCHI, PIN - 682035

****ADDITIONAL APPELLANTS 2 TO 6 IMPLEADED**

ADDL.P2 SHRI.GIJO GEORGE, AGED 49 YEARS ,
S/O LATE M J GEORGE,1084 MUKKADAYIL HOUSE,
C P UMMER ROAD, KOCHI-682035

ADDL.P3 MINI TONY THOMAS, AGED 57 YEARS,
D/O LATE M J GEORGE, KARIPPAPARAMBIL HOUSE,
VADAVATHOOR P.O, KOTTAYAM-686010

ADDL.P4 JOHNNY GEORGE , AGED 55 YEARS
S/O LATE M J GEORGE, 8A HYBREASAL APARTMENT,
PANDIT KARUPPAN ROAD, THEVARA, ERNAKULAM
KERALA-682013.

ADDL.P5 MIGI JOSE, AGED 53 YEARS, D/O LATE M J GEORGE
THUMPASSERY, ATHIRAMPUZHA P.O., KOTTAYAM-686562

ADDL.P6 JERRY GEORGE, AGED 47 YEARS, S/O LATE M J GEORGE
1084 MUKKADAYIL HOUSE, C P UMMER ROAD, KOCHI-682035

ADDITIONAL APPELLANTS 2 TO 6 ARE IMPLEADED AS PER ORDER DATED 4.3.2025 IN IA NO.1 OF 2025.

BY ADV NISHA JOHN

RESPONDENT(S)/APPELLANT/REVENUE :

1 DEPUTY COMMISSIONER OF INCOME TAX,
CIRCLE – 2(1), RANGE – 2, KOCHI,
CENTRAL REVENUE BUILDING, I.S. PRESS ROAD,
KOCHI, PIN - 682018

2 INCOME-TAX OFFICER,
WARD 2 (2), ERNAKULAM, CENTRAL REVENUE BUILDING,
I.S. PRESS ROAD, KOCHI, PIN - 682018

BY ADV. SRI JOSE JOSEPH, SC

THIS INCOME TAX APPEAL HAVING COME UP FOR HEARING ON 04.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dr. A.K. Jayasankaran Nambiar, J.

The appellant/assessee is before us through this IT Appeal impugning the order dated 31.10.2023 of the Income Tax Appellate Tribunal, Cochin Bench in I.T.A. No.525/Coch/2011 pertaining to the assessment year 2006-2007.

2. The brief facts necessary for disposal of this I.T. appeal are as follows:

The appellant had returned his income for the assessment year 2006-2007 at Rs.63,420/- (Rupees Sixty Three Thousand Four Hundred and Twenty only). In as much as he was found to have credit of Rs.899.10 Lakhs in his bank account on 14.2.2006, a query was raised by the department, to which the appellant explained that he had sold an extent of 5.21 Acres of land at Kakkanad village for Rs.977.10 Lakhs vide registered Sale Deed dated 13.2.2006. It was the stand of the appellant that inasmuch as this was a sale of agricultural land, it was deemed to be not a ‘capital asset’ in terms of Section 2(14)(iii) of the Income Tax Act and therefore not liable to tax under the Income Tax Act. The said explanation of the assessee was not accepted by the assessing authority who proceeded to assess the appellant in the said amount under the head of capital gains.

3. In an appeal preferred by the appellant before the First Appellate Authority, the First Appellate Authority found in favour of the appellant based solely on the certificates issued by the Village Officer, which suggested that the land sold by the assessee was shown as agricultural land in the revenue records. Aggrieved by the said finding of the First Appellate Authority, the revenue preferred an appeal before the Income Tax Appellate Tribunal.

4. The appellate tribunal, after hearing the appeal for some time, set aside the order of the First Appellate Authority and remitted the matter to the assessing authority to reconsider the factual question as to whether the land in question was within 8 Kms limits of the Cochin Municipality.

5. Against the said order of the appellate tribunal, the revenue approached this Court through I.T. Appeal No.117 of 2013, which was disposed by a Division Bench of this Court by judgment dated 3.7.2015. This Court found that inasmuch as the appellate tribunal had itself found that the land in question was situated beyond 8 Kms, they did not have to remit the case for examining issues on which parties were not at variance and ought to have considered the evidence on record to determine the question as to whether the land was agricultural land or otherwise. The impugned order of the appellate tribunal was therefore

set aside and the matter was remitted to the appellate tribunal for fresh consideration based on the evidence on record.

6. Pursuant to the remand, the appellate tribunal proceeded to consider the matter afresh and passed an order dated 31.10.2023 which is impugned before us in this I.T. Appeal preferred by the assessee by raising the following questions of law:

(i) Did not the Tribunal err in law in restoring the assessment of Capital Gains on sale of assessees' agricultural property, even when a finding was entered into by AO and the Tribunal that the land does not fall within the Corporation or Municipal limits nor does it fall in the notified area to be qualified as a 'Capital Asset';

(ii) Did not the Tribunal err in deciding the factum of cultivation without having regard to the evidence produced and relying solely on the GCDA Town Planning Scheme;

(iii) Did not the Tribunal err in interpreting the meaning of 'purayidom' as plain land?

(iv) Did not the Tribunal err in placing reliance on the use of land by the buyer and not on the use by the seller?

(v) Did not the Tribunal err in law in deciding the legality of assessment on the basis of aspects not directed to be considered by this Hon'ble High Court?

(vi) Did not the Tribunal err in not finding that the land was under cultivation and continued to be so even at the time of sale?

(vii) Did not the Tribunal err in considering the sale price of land for deciding the nature of the land?

(viii) Did not the Tribunal err in law in not considering Rs.19,84,200/- paid towards brokerage as allowable expenditure on transfer?

(ix) Did not the Tribunal err in law in not allowing the expenditure incurred in developing the property towards cost of acquisition?

7. We have heard Smt. Nisha John, the learned counsel appearing for the appellant and Sri. Jose Joseph, the learned Standing Counsel appearing for the respondents.

8. On a consideration of the rival submissions, we find that the appellate tribunal has gone into the factual issues at length and determined the issue as to whether or not the land sold by the appellant was agricultural land or not, based on the facts and evidence available before it, examined in the backdrop of the legal position that obtains from the precedents on the point. It is significant in this regard to observe that the claim of the appellant/assessee, being for exemption from the levy of income tax as applicable to capital gains, the burden of proof was on the assessee to show that he was entitled to exemption by virtue of the land sold by him being in the nature of agricultural land.

We find that, towards that end, the assessee did not produce any evidence other than a certificate from the Village Officer that the land in question was agricultural land, which certificate went against the revenue records itself that pointed to the land being in the nature of 'Purayidam' which translates as dry land suitable for construction of houses. In addition to that, the assessee also produced copies of some returns that showed that he had returned an amount slightly over Rs.1 lakh as agricultural income obtained from the property over many years prior to the sale of the land. The appellant, however, did not produce any other cogent evidence such as wages paid to agricultural labourers, purchase invoices in respect of manure, fertilizers etc., purchase invoices pertaining to agricultural implements, if any, used in connection with the agricultural operations, the details regarding the source of water for irrigation purposes, etc. all of which would have been available with the assessee, if in fact he was engaged in agricultural operations on the land in question.

9. It is on account of the absence of any cogent evidence adduced by the appellant that the appellate tribunal proceeded to hold, based on the evidence on record, that the appellant/assessee had not established that the land sold by him was agricultural in nature. The above findings of the appellate tribunal being entirely factual and, in the absence of any evidence adduced by the assessee, cannot be said to be arbitrary or

perverse for the purposes of maintaining an I.T. Appeal under Section 260A of the Income Tax Act. We, therefore, are of the view that no substantial question of law arises for determination in this I.T. Appeal.

The I.T. Appeal fails and is accordingly dismissed.

Sd/-
DR. A.K. JAYASANKARAN NAMBIAR
JUDGE

Sd/-
EASWARAN S.
JUDGE

NS

APPENDIX OF ITA 1/2024

PETITIONER ANNEXURES

Annexure A	**TRUE COPY OF THE ASSESSMENT ORDER DT. 31.12.2008 BY THE INCOME-TAX OFFICER, WARD 2(2) ERNAKULAM**
Annexure B	**TRUE COPY OF THE JUDGEMENT OF THE HON'BLE HIGH COURT DT. 03.07.2015 IN ITA NO. 117/2013**
Annexure C	**CERTIFIED COPY OF THE ORDER DT. 31.10.2023 OF THE ITAT IN ITA NO. 525/COCH/2011**
Annexure D	**TRUE COPIES OF THE DOCUMENTS TO PROVE THE LAND AS AGRICULTURAL**