

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

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

ITA No.207/Coch/2017 : Asst.Year 2012-2013  
&  
CO No.29/Coch/2017 : Asst.Year 2012-2013

The Income Tax Officer Ward 1(4) Thiruvananthapuram.	Vs.	Sri.Harimurali Sreedhara Panickar, Brindavan Thycaud, Trivandrum – 695 014. <b>PAN : AGLPP7879M</b>
(Appellant)		(Respondent)

Appellant by : Smt.A.S.Bindhu, Sr.DR  
Respondent by : Sri. T.M.Sreedharan

<b>Date of Hearing : 05.02.2019</b>	<b>Date of Pronouncement : 05.02.2019</b>
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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 13.03.2017. The relevant assessment year is 2012-2013.

2. The solitary issue raised in this appeal is whether the assessee is entitled to benefit of section 10(37) of the I.T.Act in respect of the land which was acquired?

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

The assessee was in possession of two pieces of land, i.e. 65.08 Ares (160.748 cents) and 2.4 Ares (5.928 cents) in

Vizhinjam village. The said properties were notified by the Government of Kerala for acquisition under the Land Acquisition Act, 1894. Subsequently, after discussion and negotiations with the Government, a sale deed was executed, whereby the properties were sold to Vizhinjam International Seaport Limited for a total consideration of Rs.4,69,13,272. For the assessment year 2012-2013, the return of income was filed on 01.02.2014 declaring total income of Rs.2,61,530, which was subsequently revised to Rs.3,85,530.

3.1 Thereafter notice u/s 148 of the I.T.Act was issued on 03.12.2013. Notice u/s 148 of the I.T.Act was issued for the reason that the assessee had not disclosed capital gains tax for land sold to Vizhinjam International Seaport Limited. The assessee filed letter stated that the original return filed may be taken as one filed in response to notice u/s 148 of the I.T.Act. During the course of reassessment proceedings, the assessee had stated that the land was compulsorily acquired and the same being an agricultural land, coming within the notified area, was entitled to the benefit u/s 10(37) of the I.T.Act. The contention of the assessee was rejected by the Assessing Officer, solely for the reason that the land in question was not compulsorily acquired but was transferred by executing a sale deed. Therefore, it was concluded by the Assessing Officer that the assessee was not entitled to the benefit of section 10(37) of the I.T.Act.

4. Aggrieved by the reassessment order, the assessee filed 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 Limited, was admittedly agricultural land and the assessee carried out coconut plantation and certain other crops. The solitary reason for denying the benefit of section 10(37) of the I.T.Act was that the impugned land was not compulsorily acquired, but by executing a sale deed in favour of Vizhinjam International Seaport Limited. In this context, the learned AR submitted that the issue is squarely covered in favour of the assessee by the judgment of the Hon'ble Apex Court in the case of *Balakrishnan v. Union of India (supra)* 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 solitary reason for not granting of

benefit of section 10(37) of the I.T.Act in respect of acquisition of urban agricultural land was that it was not a compulsory acquisition, but only executed through a negotiated sale deed. The Hon'ble Apex Court in the case of *Balakrishnan v. Union of India & Others (supra)* had categorically held merely because the sale price is fixed through a negotiated settlement will not take away the proceedings from the Land Acquisition Act when the relevant provision of the Act are invoked. 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.

7. The Cross Objection filed by the assessee is only supporting the CIT(A)'s order. Since we have disposed off the Revenue's appeal, the CO is dismissed as infructuous.

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

Order pronounced on this 05<sup>th</sup> day of February, 2019.

Sd/-  
**(Chandra Poojari)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(George George K.)**  
**JUDICIAL MEMBER**

Cochin ; Dated : 05<sup>th</sup> February, 2019.  
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**