

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

I.T.A. Nos. 539 to 543/Coch/2013
Assessment Years : 2002-03 to 2006-07

The Deputy Commissioner of Income-tax, Central Circle, Thrissur.	Vs.	M/s. New Kerala Investments, Annamanada, Palayamparambu P.O., Thrissur-680 741. [PAN:AAEFN 0017C]
(Revenue-Appellant)		(Assessee-Respondent)

I.T.A. Nos. 532 to 535/Coch/2013
Assessment Years : 2002-03 to 2005-06

The Deputy Commissioner of Income-tax, Central Circle, Thrissur.	Vs.	E.T. Devassy & Sons, Edassery Jewellers, R.S. Road, Chalakudy, Thrissur-680 697. [PAN:AABFE 0977B]
(Revenue-Appellant)		(Assessee-Respondent)

I.T.A. Nos.525 to 529/Coch/2013
Assessment Years : 2002-03 to 2006-07

The Deputy Commissioner of Income-tax, Central Circle, Thrissur.	Vs.	St, Francis Clay Works, Palayamparambu P.O., Thrissur-680 307. [PAN: AAFLS 1105M]
(Revenue-Appellant)		(Assessee-Respondent)

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I.T.A. Nos. 594 to 597/Coch/2013
Assessment Years : 2002-03 to 2005-06

The Deputy Commissioner of Income-tax, Central Circle, Thrissur.	Vs.	M/s. Edassery Ceramics, Palayamparambu P.O., Thrissur-680 741. [PAN: AAAFE 9254G]
(Revenue-Appellant)		(Assessee-Respondent)

I.T.A. Nos. 587 to 589/Coch/2013
Assessment Years : 2004-05 to 2006-07

The Deputy Commissioner of Income-tax, Central Circle, Thrissur.	Vs.	M/s. St. Francis Clay Décor Tiles, Thekkumuri, Cheruvaloor P.O., Thrissur-680 321. [PAN: ABKFS 6632H]
(Revenue-Appellant)		(Assessee-Respondent)

Revenue by	Shri Shantam Bose, CIT(DR) DR
Assessee by	Shri Jose Kappen, CA

Date of hearing	26/06/2019
Date of pronouncement	26/06/2019

ORDER

Per CHANDRA POOJARI, AM:

Brief facts of the case are that a search u/s, 132 of the Income Tax Act was conducted on 26.03.2008 in the premises of the firms and in the residence of the partners of E T Devassy Group.

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2.1 Consequent to the search the Assessing Officer issued notice under Section 153A of the Income Tax Act for the Asst. Years 2002-03 to 2007-08 and issued notice under section 142(1) for the Assessment year 2008-09.

2.2 The Assessee filed return of income and the assessing officer completed the assessment under section 153A vide order dated 29.12.2009 in respect of the Asst. Years 2002-03 to 2007-08 and u/s. 143(3) in respect of Asst. Year 2008-09 in respect of the following 84 cases in respect of 13 Assessee.

1. M/s New Kerala Investments (Asst Years 2002-03 to 2008-09)
2. M/s E T Devassy & Sons, Edassery (Asst Years 2002-03 to 2008-09)
3. St. Francis Tile Industries (Asst Years 2007-08 to 2008-09)
4. St. Francis Clay Decor Tiles (Asst Years 2004-05 to 2008-09)
5. St. Francis Clay Works (Asst Years 2002-03 to 2008-09)
6. Edassery Ceramics (Asst Years 2002-03 to 2008-09)
7. E.T. Devassy (Asst Years 2002-03 to 2008-09)
8. E.D.Jaison (Asst Years 2002-03 to 2008-09)
9. E.D. Sabu Asst Years 2002-03 to 2008-09)
10. E.D Benny (Asst Years 2002-03 to 2008-09)
11. K.D Lilly (Asst Years 2002-03 to 2008-09)
12. E.D. Shaju (Asst Years 2002-03 to 2008-09)
13. E. D. Salu (Asst Years 2002-03 to 2008-09)

2.3 Against the above orders, appeals were filed by the Assessee before the CIT(A), Kochi. The Commissioner of Income tax (Appeals) allowed the appeal, by accepting fresh/ new evidences. Against the order of the CIT(A), Department filed 84 appeals before the Tribunal. The respondents also filed cross objections before the Tribunal. The Tribunal vide common order dated 10.10.2014 dismissed the entire appeals.

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2.4 Against the above order, the Department again filed appeals, before the Hon'ble Kerala High Court. The Hon'ble High Court vide judgment in ITA 169/2015 dated 17/08/2015 decided the case in favour of the Assesseees and against the department.

2.5 Subsequently the department filed a review petition before the High Court in respect of 21 cases out of 84 cases, mentioned below, on the only ground that questions of law regarding "the appreciation of documents under Sec.153A of the I.T. Act" were not considered in the above order.

Details of cases for which department filed Review Petitions are :

Sl No.	Name of assesseees	Asst. Years	ITA Nos.
1.	M/s. New Kerala Investments	2002-03 to 2006-07	169, 223,194,
2.	M/s. E.T. Devassy and Sons, Edassery Jewellers	2003 to 2005-06	141,171,216, 110,103,150
3.	M/s. St. Francis Clay Works	2002-03 to 2006-07	134,222,211
4.	M/s. Edassery Ceramics	2002-03 to 2005-06	240,210,148
5.	M/s. St. Francis Clay Décor Tiles	2004-05 to 2006-07	234,193,104, 239 and 157/2015

2.6 The high Court admitted the review petition in R.P. No. 1123/2015 and remanded back the above 21 cases out of 84 cases to the Tribunal for fresh consideration, vide order dated 22.03.2016, with the following observation:

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"Therefore we set aside the order passed by the tribunal in the above appeals and remand the cases to the Tribunal to re-consider the question raised in these appeals by taking into account the principles laid down in the judgment cited by the Revenue as well as the assessee or any other principles of law laid down by competent courts of law and take a decision on merits in accordance with law. The question framed is answered in favour of revenue to the extent indicated above. However we make it clear that the common question with regard to the power of the Appellate Authority with respect to receipt of evidence in appeal and its application concluded by the tribunal in 84 cases and upheld by this court, will remain undisturbed"

2.7 Now the above referred 21 appeals were once again heard before the Tribunal.

3. At the time of hearing, the Ld. AR submitted that the tax effect in all these appeals is less than Rs.20 lakhs as follows:

Details of Disputed Income and Disputed Tax

The Deputy Commissioner of Income Tax Central Circle Thrissur (Appellant)			Vs	Mis New Kerala Investments Annamanada,Palayamparambu P.O Thrissur 680 741 539 to 543/Coch/2013 (Respondent)		
A	B	C	D	E	F	G
	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
Asst Year	Income Returned(As per Assessment Order)	Income Assessed(As per Assessment Order)	Disputed Income	Tax on x Assessed Income(As Assessment Order)	Tax on returned income(A Scheduled Income Tax)	Tax on disputed income
A	B	C	(C-B)	E	F	(E-F)
2002-03	17,380	29,99,025	29,81,645	10,70,652	6,205	10,64,447
2003-04	65,130	38,13,954	37,48,824	14,01,628	23,366	13,78,262

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2004-05	1,03,010	47,53,658	46,50,648	17,05,275	36,955	16,68,320
2005-06	1,41,155	47,18,031	45,76,876	17,26,444	51,651	16,74,793
2006-07	8,10,710	66,91,429	58,80,719	22,52,332	2,72,885	19,79,447

The Deputy Commissioner of Income Tax Central Circle Thrissur (Appellant)			Vs	M/s. E T Devassy & Sons Edassery Jewellers R S Road, Chalakudy Thrissur 680 697 532 to 535/Coch/2013 (Respondent)		
A	B	C	D	E	F	G
	Rs	Rs	Rs	Rs	Rs	Rs
Asst Year	Income Returned(As per Assessment Order)	Income Assessed(As per Assessment)	Disputed Income	Tax on Assessed Income(As per Assessment Order)	Tax on returned income(As per Scheduled Income Tax)	Tax on disputed income
A	B	C	(C-B)	E	F	(E-F)
2002-03	15,342	21,99,125	21,83,783	7,85,088	5,504	7,79,584
2003-04	20,289	26,52,145	26,31,856	9,74,663	7,279	9,67,384
2004-05	33,044	31,98,485	31,65,441	11,47,456	11,854	11,35,602
2005-06	39,370	38,57,373	38,18,003	14,11,509	14,408	13,97,101

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The Deputy Commissioner of Income Tax Central Circle Thrissur (Appellant)			Vs	M/s. St.Francis Clay Works, Palayamparambu P.O Thrissur 680 307 Nos.525 to 529/2013 (Respondent)		
A	B	C	D	E	F	G
	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
Asst Year	Income Returned(As per Assessment Order)	Income Assessed(As per Assessment Order)	Disputed Income	Tax on Assessed Income(As Assessment Order)	Tax on income(A Scheduled Income Tax)	Tax on disputed income
A	B	C	(C-B)	E	F	(E-F)
2002-03	13,335	1,81,113	1,67,778	64,658	4,784	59,874
2003-04	14,292	1,94,111	1,79,819	71,336	5,127	66,209
2004-05	24,276	3,29,712	3,05,436	1,18,284	8,709	1,09,575
2005-06	88,625	12,03,687	11,15,062	4,31,822	32,430	3,00,392
2006-07	1,64,636	22,36,053	20,71,417	7,52,654	55,418	6,97,236

The Deputy Commissioner of Income Tax Central Circle Thrissur (Appellant)			Vs	M/s. Edassery Ceramics Palayamparambu P.O Thrissur 680 741 594 to 597/Coch/2013 (Respondent)		
A	B	C	D	E	F	G
	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
Asst Year	Income Returned(As per Assessment Order)	Income Assessed(As per Assessment Order)	Disputed Income	Tax on Assessed Income(As Assessment Order)	Tax on income(A Scheduled Income Tax)	Tax on disputed income
A	B	C	(C-B)	E	F	(E-F)
2002-03	8,245	1,92,320	1,84,075	68,658	2,976	65,682
2003-04	26,639	6,21,373	5,94,734	2,28,354	9,556	2,18,798

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2004-05	14,945	3,48,603	3,33,658	1,25,061	5,361	1,19,700
2005-06	58,842	13,72,530	13,13,688	5,02,244	21,531	4,80,713

The Deputy Commissioner of Income Tax Central Circle Thrissur (Appellant)			Vs	M/s. St. Francis Clay Décor Tiles Thekkemuri, Cheruvalloor P.O. Thrissur 680 321 587 to 589/Coch/2013 (Respondent)		
A	B	C	D	E	F	G
	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
Asst Year	Income Returned(As per Assessment Order)	Income Assessed(As per Assessment Order)	Disputed Income	Tax on Assessed Income(As Assessment Order)	Tax on income(A Scheduled Income Tax)	Tax on disputed income
A	B	C	(C-B)	E	F	(E-F)
2004-05	19,631	7,03,143	6,83,512	2,52,253	7,043	2,45,210
2005-06	27,715	9,92,696	9,64,981	3,63,253	9,410	3,53,843
2006-07	48,261	17,28,612	16,80,351	5,81,850	16,245	5,65,605

3. Accordingly, the Ld. AR placed reliance on the CBDT Circular No.3/2018 dated 11/07/2018. He submitted that these appeals are governed by the above CBDT Circular and the Department cannot file appeals before this Tribunal as the tax effect in these appeals is less than Rs.20 lakhs.

3.1 The Ld. DR submitted that he wants to take instructions from the concerned CIT to withdraw the appeals.

4. We have heard the rival submissions and perused the record. In our opinion, there is merit in the argument of the Ld. AR. We deem it appropriate to first refer to section 268A of the Income Tax Act, 1961 which was inserted by the Finance Act, 2008 with retrospective effect from 01/04/1999 which reads as under:

"268A (1) The Board may, from time to time issue orders, instructions or directions to other income tax authorities fixing such monetary limits as it may deem fit for the purpose of regulating filing of appeal or application for reference by any income tax authorities under the provisions of this Chapter.

(2) Where, in pursuance of the orders, instructions or directions issued under sub-section (1), an income tax authority has not filed any appeal or application for reference on any issue in the case of an assessee for any assessment year it shall not preclude such authority from filing an appeal or application for reference on the same issue in the case of –

- (a) the same assessee for any other assessment year, or*
- (b) any other assessee for the same or any other assessment year.*

(3) Notwithstanding that no appeal or application for reference has been filed by an income-tax authority pursuant to the orders or instructions or directions issued under sub-section(1), it shall not be lawful for the assessee, being a party in any appeal or reference, to contend that the income-tax authority has acquiesced in the decision on the disputed issue by not filing an appeal or application for reference in any case.

(4) The Appellate Tribunal or Court hearing such appeal or reference, shall have regard to the orders, instructions or directions issued under sub-section (1) and the circumstances under which such appeal or application for reference was filed or no filed in respect of any case.

(5) Every order, instruction or direction which has been issued by the Board fixing monetary limits for filing an appeal or application for reference shall be deemed to have been issued under sub-section (1) and the provisions of sub-section (2), (3) and (4) shall apply accordingly."

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4.1 Relevant extracts (paras 1 to 13) from the aforesaid CBDT Circular No. 3/2018 dated 11/07/2018 is also reproduced hereunder for ready reference:

“Subject: Revision of monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and LPs/appeals before Supreme Court-measures for reducing litigation-Reg.

Reference is invited to Board's Circular No. 21 of 2015 dated 10.12.2015 wherein monetary limits and other conditions for filing departmental appeals (in Income-tax matters) before Income Tax Appellate Tribunal, High Courts and SLPs/ appeals before Supreme Court were specified.

2. In supersession of the above Circular, it has been decided by the Board that departmental appeals may be filed on merits before Income Tax Appellate Tribunal and High Courts and SLPs/ appeals before Supreme Court keeping in view the monetary limits and conditions specified below.

3. Henceforth, appeals/ SLPs shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder:

<i>S. No.</i>	<i>Appeals/SLPs in Income-tax matters</i>	<i>Monetary Limit (Rs)</i>
<i>1.</i>	<i>Before Appellate Tribunal</i>	<i>20,00,000/-</i>
<i>2.</i>	<i>Before High Court</i>	<i>50,00,000/-</i>
<i>3.</i>	<i>Before Supreme Court</i>	<i>1,00,00,000/-</i>

It is clarified that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed above. Filing of appeal in such cases is to be decided on merits of the case.

4. For this purpose, 'tax effect' means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issues against which appeal is intended to be filed (hereinafter referred to as 'disputed issues'). Further, 'tax effect' shall be tax including applicable surcharge and cess. However, the tax will not include any interest thereon, except where

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chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect. In cases where returned loss is reduced or assessed as income, the tax effect would include notional tax on disputed additions. In case of penalty orders, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against.

5. The Assessing Officer shall calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every assessee. If, in the case of an assessee, the disputed issues arise in more than one assessment year, appeal can be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the monetary limit specified in para 3. No appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in para 3. In other words, henceforth, appeals can be filed only with reference to the tax effect in the relevant assessment year. However, in case of a composite order of any High Court or appellate authority, which involves more than one assessment year and common issues in more, than one assessment year, appeals shall be filed in respect of all such assessment years even if the tax effect is less than the prescribed monetary limits in any of the years(s), if it is decided to file appeal in respect of the year(s) in which tax effect exceeds the monetary limit prescribed. In cases where a composite order/judgment involves more than one assesses, each assessee shall be dealt with separately,

6. Further, where income is computed under the provisions of section 115JB or section 115JC, for the purposes of determination of 'tax effect', tax on the total income assessed shall be computed as per the following formula:-

(A — B) + (C — D) where,

A = the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (herein called general provisions);

B = the total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of the disputed issues under general provisions;

C = the total income assessed as per the provisions contained in section 115JB or section 115JC;

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D = the total income that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC was reduced by the amount of disputed issues under the said provisions:

However, where the amount of disputed issues is considered both under the provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D.

7. In a case where appeal before a Tribunal or a Court is not filed only on account of the tax effect being less than the monetary limit specified above, the Pr. Commissioner of Income-tax/ Commissioner of Income Tax shall specifically record that "even though the decision is not acceptable, appeal is not being filed only on the consideration that the tax effect is less than the monetary limit specified in this Circular". Further, in such cases, there will be no presumption that the Income-tax Department has acquiesced in the decision on the disputed issues. The income-tax Department shall not be precluded from filing an appeal against the disputed issues in the case of the same assessee for any other assessment year, or in the case of any other assessee for the same or any other assessment year, if the tax effect exceeds the specified monetary limits.

8. In the past, a number of instances have come to the notice of the Board, whereby an assessee has claimed relief from the Tribunal or the Court only on the ground that the Department has implicitly accepted the decision of the Tribunal or Court in the case of the assessee for any other assessment year or in the case of any other assessee for the same or any other assessment year, by not filing an appeal on the same disputed issues. The Departmental representatives/counsels must make even effort to bring to the notice of the Tribunal or the Court that the appeal in such cases was not filed or not admitted only for the reason of the tax effect being less than the specified monetary limit and, therefore, no inference should be drawn that the decisions rendered therein were acceptable to the Department Accordingly, they should impress upon the Tribunal or the Court that such cases do not have any precedent value and also bring to the notice of the Tribunal/ Court the provisions of sub section (4) of section 268A of the Income-tax Act, 1961 which read as under :

"(4) The Appellate Tribunal or Court, hearing such appeal or reference, shall have regard to the orders, instructions or directions issued under sub-section (1) and the circumstances under which such appeal or application for reference was filed or not filed in respect of any case."

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9. *As the evidence of not filing appeal due to this Circular may have to be produced in courts, the judicial folders in the office of Pr.CsIT/ CsIT must be maintained in a systemic manner for easy retrieval.*

10. *Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect:*

(a) Where the Constitutional validity of the provisions of an Act or Rule is under challenge, or

(b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or

(c) Where Revenue Audit objection in the case has been accepted by the Department, or

(d) Where the addition relates to undisclosed foreign assets/ bank accounts.

11. *The monetary limits specified in para 3 above shall not apply to writ matters and Direct tax matters other than income tax. Filing of appeals in other Direct tax matters shall continue to be governed by relevant provisions of statute and rules. Further, in cases where the tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions under section 12A/12AA of the IT Act, 1901 etc., filing of appeal shall not be governed by the limits specified in para 3 above and decision to file appeals in such cases may be taken on merits of a particular case.*

12. *It is clarified that the monetary limit of Rs. 20 lakhs for filing appeals before the ITAT would apply equally to cross objections under section 253(4) of the Act. Cross objections below this, monetary limit, already filed, should be pursued for dismissal as withdrawn/not pressed. Filing of cross objections below the monetary limit may not lie considered henceforth. Similarly, references to High Courts and SLPs/ appeals before Supreme Court below the monetary limit of Rs. 50 lakhs and Rs.1 Crore respectively should be pursued for dismissal as withdrawn/not pressed. References before High Court and appeals below these limits may not be considered henceforth.*

13. *This Circular will apply to SLPs/appeals/cross objections/references to be filed henceforth in SC/HCs/Tribunal and it shall also apply retrospectively to*

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pending SLPs/appeals/cross objections/references. Pending appeals below the specified tax limits in para 3 above may be withdrawn/ not pressed."

4.2 We have seen that the monetary limits have been made applicable retrospectively by the CBDT in the said Circular as would be evident from the following extract:

13. This Circular will apply to SLPs/appeals/cross objections/references to be filed henceforth in SC/HCs/Tribunal and it shall also apply retrospectively to pending SLPs/appeals/cross objections/references. Pending appeals below the specified tax limits in para 3 above may be withdrawn/ not pressed."

4.3 We have heard the submissions of the Ld. DR. The Ld. DR submitted that he wants to take instructions from the concerned CIT to withdraw the appeals. In our considered view, there is no necessity for adjourning the appeals as the tax effect involved in the present appeals of the Revenue is less than Rs.20 lakhs and accordingly, the request for adjournment is rejected.

4.4 Further, the Ld. DR was not able to show that the cases of the assesseees are governed by any of the following exceptions:

- 1) where the constitutional validity of the Act or Income Tax Rules, 1962 is under challenge, or.
- 2) where the CBDT Order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or
- 3) where the revenue audit objections in the case of the assessee has been accepted by the Department, or
- 4) where the addition relates to undisclosed foreign assets/bank accounts.

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Being so, the assessee's cases are governed by the above CBDT circular. Hence, the Department is disentitled to file appeals before the Tribunal in respect of these assessee's. However, by way of abundant caution, liberty is granted to the Revenue to file Miscellaneous Petition if the assessee's cases fall under any of the exceptions mentioned above or if the Department is able to show that the tax effect in these cases is more than Rs.20 lakhs as prescribed in above CBDT Circular. Thus, the appeals of the Revenue are dismissed.

5. In the result, the appeals of the Revenue are dismissed.

Order pronounced in the open Court on this 26th June, 2019

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER
Place: Kochi
Dated: 26th June, 2019
GJ

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Copy to:

1. M/s. New Kerala Investments, Anammanada, Palayamparambu P.O., Thrissur-680 741.
2. E.T. Devassy & Sons, Edassery Jewellers, R.S. Road, Chalakudy, Thrissur-680 697.
3. M/s. Edassery Ceramics, Palayamparambu P.O., Thrissur-680 741.
4. M/s. St. Francis Clay Décor Tiles, Thekkumuri, Cheruvaloor P.O., Thrissur-680 321.
5. St. Francis Clay Works, Palayamparambu P.O., Thrissur-680 307.

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6. The Deputy Commissioner of Income-tax, Central Circle, Thrissur.
7. The Commissioner of Income-tax(Appeals)-V, Kochi.
8. The Commissioner of Income-tax, Central, Kochi.
9. D.R., I.T.A.T., Cochin Bench, Cochin.
10. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin