IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

Before Shri Sanjay Arora, Accountant Member and
Shri Sandeep Gosain, Judicial Member

ITA No. 25/Coch/2017
(Assessment Year: 2011-12)

Kings Infra Ventures Ltd. A-1, 1st Floor, Atria Apartment Opp. Gurudwara Temple Perumanur Road Thevara, Kochi [PAN:AACCV3411D]	vs.	Asstt. Commissioner of Income Tax, Circle - 1(2) Kochi
(Appellant)		**(Respondent)**

Appellant by: Shri Joseph Markose, Sr. Advocate
Respondent by: Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing: 02.02.2023
Date of Pronouncement: 24.04.2023

O R D E R

Per Bench

This is an Appeal by the Assessee agitating the order by the Commissioner of Income Tax (Appeals)-1, Kochi ('CIT(A)', for short)dated 24/11/2016, dismissing the assessee's appeal contesting its assessment u/s. 143(3) of the Income Tax Act, 1961 ('the Act' hereinafter) dated 25/02/2014 for Assessment Year (AY) 2011-12.

2. It would be relevant to traverse the facts of the case, i.e., to the extent relevant. The assessee, incorporated as '*Victory Aqua Farm Ltd.*' under the Companies Act and engaged in Aqua Farm culture business, discontinued the same during financial year (fy) 1996-97 (AY 1997-98) consequent to the judgment by the Hon'ble Supreme Court banning the said activity. It remained defunct for several years, after which it ventured into construction business in 2007, with a concomitant change of name. For the year under consideration, it returned business income at Rs. 35,85,037, which was

adjusted in full against unabsorbed depreciation, claimed at Rs. 1,88,52,496, returning thus nil income on 30/09/2011, claiming carry forward of the balance unabsorbed depreciation (UAD), working to Rs. 1,52,67,459. The Assessing Officer (AO) noting that the assessee's business is of a Builder, disallowed the said claim, holding that there was no business (of Aqua Farm Culture), income of which could be computed. Relying on *Perfect Pottery Co. Ltd. v. CIT* [1987] 166 ITR 196 (Ker);*S.P.V. Bank Ltd. v. CIT* [1980]126 ITR 773 (Ker); and *International Marketing Ltd. v. ITO* [2007] 292 ITR 504 (Del), he held that it is only where a business is in existence that it's profits and gains, allowing expenditure incurred for it's purposes, could be computed. Income, accordingly, was assessed at Rs. 35,85,037, i.e., without allowing any claim *qua* unabsorbed business loss or depreciation. In appeal, the ld. CIT(A) upheld the same in principle, holding as under after a detailed discussion on the various aspects of the matter, allowing part relief:

> "7. In sum, the Appeal for the impugned A.Y. 2011-12 is partly allowed. *The amounts of unabsorbed depreciation brought forward from the AYs 1996-97 and 1997-98 (Rs. 34,29,210 and Rs. 28,36,165 respectively) are allowed to be set off against the taxable incomes of the AYs 2010-11, 2011-12 (the impugned Assessment Year) and following years.* The remainder amounts that relate to the AYs 1998-99 to 2009-10 are disallowed from being brought forward and set off in the AY 2010-11, the impugned AY 2011-12 and for the succeeding AYs 2012-13 onwards untill (as stated above based on the information as extracted from the Annual Reports, and contestable on the basis of evidences of commencement of aqua farm business activity) the FY 2015-16. *The AO may take the necessary actions to reopen the assessment proceedings for the assessment years impacted*. Besides, and needless to say, if the assessment or re-assessment for the preceding AY 2010-11 serves to disallow any concurrent claim of the unabsorbed depreciation losses of Rs. 26,89,338/- relating to the AY 1997-98 as above, the necessary adjustment will need to be made to disallow any such equivalent value in the impugned AY 2011-12 and succeeding assessment years, as applicable. Also, needless to say, the AO may examine <u>whether for each of the AYs 1996-97 to 2009-10</u> as well as 2010-11 onwards, the Appellant has filed its Returns of Income within the timeframes stipulated u/s. 139(1) of the Act, and take necessary actions in respect of the disallowances of losses carried/brought forward and set off, if and as needed."

The Tribunal vide order dated 14/7/2017 confirmed the same, holding as under:

> "6.3 The above factual finding of the CIT(A) that the asset in question was not kept ready for use condition and there was no passive use of the same for the assessment years 1999-2000 to 2009-10, has not been dispelled by the assessee by placing any contrary evidence before the Tribunal. Therefore, I confirm the order of the CIT(A).
>
> 6.4 As regards the assessee's contention that the CIT(A) has exceeded his jurisdiction by giving direction to the Assessing Officer *to make remedial measures to withdraw set off unabsorbed depreciation* for the assessment year 2010-11 and the assessment years 2012-13 onwards, I am of the view the assessee has to challenge the order of the Assessing Officer when remedial measures are taken by the AO for the respective AY 2010-11 and AY 2012-13 onwards. The Tribunal has to confine itself to examination of the issue concerning the current year, namely AY 2011-12." (*emphasis, supplied*)

That is, it found absence of any material on record to dispel the factual finding by the ld. CIT(A), as well as absence of any grievance arising out of his direction to the AO for taking remedial course for the years,other than the year before him, impacted, i.e., AY 2010-11, and AY 2012-13 onwards. The matter, at the assessee's instance, was carried before the Hon'ble High Court which, vide it's judgment dated 17/11/2021 (in ITA No. 11/2018), set aside the Tribunal's order, holding as under:

> "11. We have anxiously considered the rival submissions made at the Bar. On going through Annexure – D, it is evident that the appellant challenges the order of the first appellate authority on the ground that the first appellate authority exceeded its jurisdiction which was limited to the assessment year 2011-12 and by giving direction or (of) re-opening the assessment for the years 2010-11 and 2012-13 onwards, was without jurisdiction. On going through the order of the Tribunal, we have noted that the grounds raised by the appellant mentioned above was taken note of, but the said contention was not answered by the Tribunal for the reason that the issue before the Tribunal was only in respect of the assessment year 2011-12. The Tribunal did not go into the grounds raised by the appellant in respect of the direction given by the first appellate authority to the Assessing Officer to re-open the assessment for the years 2010-11 and 2012-13 onwards. According to us, the Tribunal ought to have answered the said question, but failed to do so. The learned senior counsel Shri P K R Menon appearing for the Revenue also agrees that the Tribunal has not properly considered all of the relevant questions raised by assessee. He, however, suggests persuasively that this court ought not examine all the aspects afresh. We are in total agreement with him, after reading the order of the Tribunal and we are of the view that the matter requires re-consideration by the Tribunal in respect of the

issue regarding the direction given by the 1st appellant authority to the Assessing Officer to re-open the assessment for the years 2010-11 and 2012-13 onwards. The questions are answered accordingly.

In the result, this Income Tax Appeal is allowed, setting aside the order of the Tribunal dated 14/07/2017 and remitting back for fresh consideration, in accordance with law, after giving both the parties opportunity of hearing, at any rate, within a period of three months from the date of receipt of a certified copy of this judgment.

Needless to state, that we are not gone into the merits of the contentions raised by either of the parties. The Tribunal is free to look into the issue afresh and pass fresh final orders as directed above."

3. Before us, the assessee-appellant, represented by Shri Joseph Markose, Senior Advocate, would assail the appellate order only on the aspect of the ld. CIT(A) having exceeded his jurisidction in directing the AO for the years impacted by the claim for depreciation by the assesseefor AYs. 1998-99 to 2009-10. The jurisidction of the ld. CIT(A),though coterminus with that of the assessing authority, would extend only to the years before him. That apart, he would continue,howcould assessment for preceding years, since finalised, be revisited? On the Bench observing of a decision by the Hon'ble Apex Court to the effect that the right to challenge an assessment arises to the assessee only for the year for which the grievance by way of disallowance (adjustment to the returned income) is caused, and not the year for which the finding in respect thereof is made, he would, while agreeing, seek time to locate the said decision/s,whereupon he would place on record the decision in *CIT v. Manmohan Das (Decd.)* [1965] 59 ITR 699 (SC).

4. We have heard the parties, and perused the material on record.

4.1 The short question that arises in the instant case is if the appellate authority, in directing the AO to consider reopening the assessment for years other than the current assessment year, i.e., the years impacted by the assessee's claim of unabsorbed depreciation, being AY 2010-11, and AY 2012-13 onwards, had exceeded his jurisdiction?

4.2 Our first observation in the matter is that there is nothing on record; in fact, not even a contention to that effect at any stage, of the assessee having returned the income for the intervening years, i.e., prior to AY 2010-11, for it to contend that the ld. CIT(A) could not havegiven a finding for the AO to reopen assessments which had attained finality. The merits of the argumentapart, it is made without any factual basis. This is as only a regular assessment or processing u/s. 143(1) of the Act for the intervening years, to which the claim pertains, would justify the contention raised.

4.3 Our second preliminary observation in the matter is that if information sourced from another wing of the Department, as was the case, *inter alia*, in *ITO v. Purushottam Das Bangur*[1997] 224 ITR 362 (SC);*Central Provinces Manganese Ore Co. Ltd. v. ITO* [1991] 191 ITR 662 (SC); *Brij Mohan Agarwalv. Asst. CIT* [2004] 268 ITR 400 (All), or any reliable source for that matter (*Phool Chand Bajrang Lal v. ITO* [1993] 203 ITR 456 (SC);*IAC v. VIP Industries Ltd.* [1991] 191 ITR 661 (SC)), could be a valid basis/ground for reopening an assessment, what we wonder in law prevents the assessing authority to initiate reassessment proceedings on the basis of a finding by an appellate authority, the domain and scope of whose power in the matter of assessment is plenary. No doubt, we hasten to add, that reassessment proceedings would have to be, on challenge, shown to satisfy the basis of 'reason to believe', and our reference here is only to the challenge to the jurisdiction of the first appellate authority in directing the assessing authority for taking remedial action for years other than that under appeal.

4.4 In the facts of the case in*Manmohan Das (Decd.)* (supra), the Income Tax Officer (ITO), in making the assessment (for AY 1950-51), declared that the loss computed for that year could not be carry forward to the next year under section 24(2) (of the Income Tax Act, 1922) as it was not a business loss. The same was not challenged by the assessee. For the subsequent year (AY 1951-52), the Revenue challenged the assessee's right to claim the set off in view of the said

finding (i.e., as regards non-carry forward of loss) in computing/returning income, raising the following ground: -

"Whether the assessee could claim a set off of the loss suffered by him in the preceding year 1950-51 against his profits in the year under consideration, i.e., 1951-52, having failed to prefer an appeal against the refusal by the ITO making the assessment for the year 1950-51 to allow the assessee to carry forward the loss under section 24(2) of the Act."

The Hon'ble Apex Court clarified as follows:

"It is for the ITO dealing with the assessment in the subsequent year to determine whether the loss of the previous year may be set off against the profits of that year. A decision recorded by the ITO who computes the loss in the previous year under section 24(3) of the Act that the loss cannot be set off against the income of the subsequent year is not binding on the assessee."

In other words, the non-preference of appeal by the assessee for AY 1950-51 would not in any manner impact it's right to claim the set off of *assessed loss* for that year in AY 1951-52, i.e., the year in which the actual denial of set-off takes place. This, it may be noted, is precisely what the Tribunal had held in the first instance.

4.5 The direction by the ld. CIT(A) to the AO in the facts of the instant case, on the contrary, is not, as is being construed, for making a disallowance for any other year (i.e., other than AY 2011-12, the year under appeal before him), but only to, given his factual findings, consider taking remedial course by reopening the assessments for the years impacted by the assessee's claim for UAD for the earlier years. The reopening for those years is liable to be challenged, and would have to be justified, both on facts and in law, on the anvil of 'reason to believe'. The impugned direction, being based on findings by the ld. CIT(A) for the current year, could even otherwise, i.e., in the absence of such a direction, be taken cognizance or judicial notice of by the AO for causing the reopening of the assessments for those years. That is, does not prejudice the assessee in any manner inasmuch as the AO could, even independent of such a specific direction, proceed in the matter of initiation of reassessment proceedings. There is no 'enhancement' by the ld.CIT(A),

as is being regarded by the assessee. There is even otherwise no gain-saying that his powers are coterminous with the assessing authority (*CIT v. Kanpur Coal Syndicate*[1964] 53 ITR 225 (SC)), and is rather duty bound to correct all errors – of fact or law, in assessment that may come to his notice (*Kapurchand Shrimal vs. CIT* [1981] 131 ITR 451 (SC)). The ld. CIT(A) has, rather than enhancement – which could though only be for the year under appeal, allowed part relief in the instant case. That is, there is no basis for the assessee to contend so.

4.6 Continuing further, the disallowance for the current year, confirmed by the ld. CIT(A), was surely liable to be contested by the assessee. This is particularly relevant as, where successfully done, the same may operate to remove the very basis on which the AO, taking notice thereof, issues notices for reassessment for those years. Indeed, it is liable to be challenged on merits even for other years. This is as non-eligibility to claim depreciation for one year would not by itself translate into non-eligibility for the subsequent year; the twin conditions for a valid claim of depreciation – 'ownership' and 'put to use', being required to be satisfied for each year to justify a claim for that year. The Tribunal in the first round found nothing on record to disturb the said findings. Though it's order was contested before the Hon'ble High Court, there is, even in the second round, even as afore-noted, no dispute or challenge to those findings. Though in view of the open set aside by the Hon'ble Court, the assessee was not obliged to restrict it's challenge to the directions by the ld. CIT(A) *qua* remedial action for other years as being in excess of jurisdiction, it has chosen to do so. In fact, we observe the same to be the case even before the Hon'ble Court; the assessee-appellant only raising the issue of the said directions by the ld. CIT(A) as being an excess of jurisdiction. Though therefore not required to, we consider ourselves obliged to, in view of the observation by the Hon'ble Court that the Tribunal had not considered all the questions raised and arising, allowing it liberty to look into the issue afresh, i.e., as only proper in the facts and circumstances of the case, to place on record our endorsement of the findings by the Tribunal in the first round, i.e., on the merits of

the findings of the ld. CIT(A). He has made an exhaustive study of the matter, to none of which the assessee responded. There is nothing on record to show that the assets of the company on which depreciation is being claimed, even the details of which, much less their operative status, are conspicuous by their absence, were (being) kept in a state of readiness for being used so as to qualify, assuming so, for an allowance of depreciation. The argument of ready-to-use state, which has factual and legal aspects to it, is understandable in a scenario of a temporary disruption of business, justifying keeping them in a ready-to-use state. The assessee having discontinued it's business, maintaining, if at all, skeletal staff, it's claim is both paradoxical and dichotomous, wholly inconsistent with the factual matrix of the case. Though strictly speaking not required to in view of the non-challenge to the findings by the first appellate authority, much less with any credible material, as observed by the Bench during hearing, much less in a state of readiness, given the non-incurring of any expenditure for the purpose, i.e., on their regular maintenance and upkeep, even the existence of the assets is extremely doubtful. The same would need to be, in view of the defunct status which, in the absence of any reasonable prospect for resumption of business, continues even after a decade, satisfactorily proved for each of the assets on which depreciation is being claimed. This state of readiness cannot be in isolation, and has to necessarily form part of the overall state of readiness to commence business, only for which are the assets to be put to use, and of which there is even no claim. Each of the decisions cited by the AO (refer para 2) are relevant. The Revenue's case remains wholly uncontroverted, while that of the assessee, who changed it's business, adopting a new name to represent the same, as without any factual basis. The findings of the ld. CIT(A), which we thus strongly endorse, we my though clarify, are surely liable to be relied upon by the Revenue, i.e. for the relevant years, and without doubt, equally liable to be contested by the assessee.

4.7 We may, next, for the sake of completeness of our order, which is appealable, discuss the matter from the standpoint of the first appellate authority

issuing a finding and, accordingly, directing the AO for an addition (adjustment) to the income for another year, not under appeal before him. The Hon'ble Apex Court was seized with this issue in *ITO vs. Murlidhar Bhagwan Das*[1964] 52 ITR 335 (SC) in the context of whether such a direction would be saved by the second *proviso* to section 34(3) of the 1922 Act, corresponding to section 150 of the Act. In the facts of that case, the assessing authority brought interest income to tax for AY 1949-50. In appeal, the first appellate authority held that in-as-much as income was received in a previous accounting year, the same cannot be assessed for the current year and, accordingly, directed for its deletion, as well its inclusion for AY 1948-49. The Hon'ble Apex Court explained that under the Act the year was the unit of assessment, reiterated by it recently in *Dy. CIT v. Ace-Multi Axes System Ltd*. [2018] 400 ITR 141 (SC). Further, that the decision of the assessing authority for a particular year did not operate as *res judicata* in the matter of assessment of the subsequent years. The jurisdiction of the first appellate authority was strictly confined to the assessment order for the year under appeal. The jurisdiction of the Tribunal, in the hierarchy created by the Act, was no higher than that of the ITO, i.e., also confined to the year of assessment. It further went on to explain and dilate on the concept of 'finding' and 'direction' in section 34(3) of the said Act. It is only a 'finding' necessary for the disposal of the appeal in respect of an assessment for a particular year that can be regarded as such. And, accordingly, the direction to give effect thereto as the direction under contemplation u/s. 34(3), which the appellate authority was therefore empowered to give. It may be, it noted, that the assessing authority may, on evidence, hold that the income shown by the assessee was not the income for the relevant year and thereby exclude that income for the assessment of that year. The finding in that context was that the income did not belong to that year. The incidental finding that the income belonged to another year, being not necessary for the disposal of the appeal in respect of the year of assessment, could not therefore be regarded as a finding within the meaning of section 34(3). The notice under section 34(1)(a) (corresponding section 148(1) of the Act) for bringing

the escaped assessment to tax for AY 1948-49, i.e., as directed by the first appellate authority, was not saved by the second *proviso* to section 34(3), and was accordingly barred by limitation. The said decision, representing the majority view, holds the field to date, having been since applied in several decisions, viz.*Hungerford Investment Trade Ltd. vs. ITO*[1998] 231 ITR 175 (SC) and *CIT vs. Amy Colabawala* [2000] 243 ITR 19 (Ker).

4.8 It is thus manifestly clear that an appellate authority cannot issue any direction for any year other than the year under appeal, unless of course a finding *qua* the said year is necessary and, accordingly, forms an integral part of the disposal of the appeal for the year under appeal. The question in all the cases, i.e., where such a direction stands issued, *absent in the instant case* (para 4.5),would therefore be if the relevant finding/observation/s by the appellate authority forms the basis of his decision, i.e., in disposing the appeal under reference, either allowing or, as the case may be, not allowing the relief prayed for. It is patent in the instant case that the non-allowance of set off of depreciation claim by the ld. CIT(A) was based on his finding of the assets under reference as being not in the state of readiness for being put to use for the earlier years (AYs. 1998-99 to 2009-10), disentitling the assessee for claim of depreciation ascribed to the said years and, consequently, for carry forward thereof for being set off as part of the current year's depreciation. This was inferably also the case for the earlier and subsequent years, i.e., AY 2010-11 and AY 2012-13 onwards, disentitling, similarly, the assessee for claim of UAD ascribed to the said years.There is, in fact, nothing to show that the depreciation was actually allowed, i.e., either in regular assessment or u/s. 143(1) of the Act, for the earlier years, so as to claim carry forward of depreciation for the earlier years, i.e., AYs. 1998-99 to AY 2009-10, on account of it being unabsorbed for the said years. We find no specific claim for depreciation by the assessee in any of these intervening years, whose claim for depreciation for the current year, even as observed by the ld. CIT(A), is guided only by the availability of profits and gains of the new business. The same, on one hand,

explains the observation and the direction by the ld. CIT(A) for the other years. On the other, it makes it abundantly clear that even the satisfaction of the conditions for the claim of depreciation on the assets of the erstwhile business for the current year, i.e., where they were actually put to use for any business carried out during the year, or kept in a state of readiness for the same, would imply a claim on the basis of the obtaining written down value of the relevant assets, i.e., actual cost less the depreciation actually allowed. Further still, while, it is true that the assessee is not impacted or prejudiced thereby, i.e., non-allowance of claim of carry forward of unabsorbed depreciation, which would, as explained in *Manmohan Das(Decd.)* (supra), stand to be disputed in the year of non-allowance of set off, the moot point is if there is indeed a claim of depreciation for the earlier years inasmuch as the question of carry forward of unabsorbed depreciation would arise only in that case. *That is, the question of set-off of unabsorbed loss or depreciation is unfounded, which would stand to arise only where the depreciation had indeed been claimed and determined for an earlier year, being for AYs. 1998-99 to 2009-10*. The whole exercise is rendered academic, and of little consequence, where, as is patently the case, there has been no claim for depreciation for the intervening years, depreciation allowance u/s. 32(1) for which is being sought to be set-off u/s. 32(2) as part of the current year's depreciation. This, we may clarify, is quite apart from the fact that the occasion to dispute the non-carry forward of claim, as clarified by the Apex Court, arises only where the assessee-appellant is prejudiced by the non-set off of the brought forward claim, which inherently implies existence and, further, determination of a claim for an earlier year, absent in the instant case. That is, much less a direction for considering reopening of assessment, even the consequent denial of claim for set-off, would, in the absence of any claim for the earlier years, which only could be brought forward due to inadequacy of profit, stands to be justified. This, incidentally, also explains the caution by the ld. CIT(A) to the AO to examine if the assessee had filed his returns for the preceding years in time. This is as 'loss' is liable to be carried

forward only where it stands claimed per a return of income for the relevant year u/s. 139(1) (s. 139(3)). The same may not impact a claim for carry forward of UAD.

In sum

5. We may finally capsule our findings and observations. The assessee made a claim of unabsorbed depreciation for AYs. 1996-97 to 2009-10 in the sum of Rs. 188.52 lakhs. In assessment, the AO found that there was no business in existence during the previous years relevant to AYs. 1998-99 to 2009-10. There was thus no factual or legal basis for the claim of depreciation for those years, which could be claimed to be carried forward and set off in the subsequent years. His factual and legal findings, toward which he relied on binding decisions, remains un-rebutted at any stage. He, however, disallowed the claim for UAD in full, i.e., including for AYs. 1996-97 and 1997-98, amounting to Rs.62.65 lakhs, which though stood allowed in first appeal, where at the matter was considered at length and dilated upon by the ld. CIT(A), to again find no basis – factual or legal, to claim carry forward of UAD for the earlier years, i.e., AY 1998-99 onwards. Direction was accordingly issued by him to the AO to initiate reassessment proceedings for disallowance of the said claim from AY 2010-11 – from which year the claim of UAD was preferred by the assessee, onwards, save of course the current year. The same stands challenged before us as without jurisdiction, being limited only to the year under appeal. Valid in principle, we find the assessee's challenge without any factual or legal basis. True, unless a finding involving another year is necessary for the disposal of the issue before him, an appellate authority has no jurisdiction to issue directions for another year, i.e., other than that under appeal before him. Where, however, one may ask, is question of carry forward of any claim (for an earlier year) when there is no claim, much less an assessment or determination, for an earlier year? *A carry forward of a claim, subject to the conditions therefor being satisfied, could only be where the same stands assessed and determined for an earlier year in the first place*? That is, there is no claim for the earlier year/s which, on account of it not being able to be given effect

to on account of inadequacy of profits, could be carried forward to a subsequent year. *This in fact is the AO's case in substance* (refer para 2). Rather, as we observe, even if the claim for depreciation on the assets of the erstwhile business were to hold, as where there has been a resumption of the aqua farm culture business – of which there is though no whisper, the same would only be on the basis of the closing WDV for AY 1998-99, i.e., as on 31.3.1998. That is, there is no question of any claim for depreciation for the earlier years, so as to claim its carry forward to a later year. We state this as a matter of abundant caution, even as there is no case for resumption of the said business, nor indeed of the assets thereof having been deployed and put to use for the property development business.

Further still, the ld. CIT(A) did not issue any direction for disallowance for the other years, which, where given effect to, is liable to be assailed for those years, but only directed for, in view of absence of any factual or legal basis, taking remedial course of reassessment for disallowing the set off of claim of UAD for AY 1998-99 onwards in the assessments for the years for which the claim had been made by the assessee. *How, pray, could that be faulted with*? The assessee's challenge is wholly without merit. His findings, which we endorse, as was by the Tribunal in the first round, again remain unassailed. The claim of the assets being kept in a ready-to-use state for the intervening years is no more than a bogey, without any factual basis, and sufficiently impugned by the ld. CIT(A), whose findings remain uncontroverted before the Tribunal, both in the first and second round. The same in fact conforms to the undisputed facts of the case.

The answer to the question arising, as delineated in para 4.1 above, in one word, is: 'No'. The ld. CIT(A) is clearly within his rights to require the AO to take remedial action for the other years. We have already noted an absence of any challenge before us on the merits of the decision by the ld. CIT(A), even as we have, as a matter of abundant caution, expressed our opinion thereon.

We decide accordingly.

6. In the result, the appeal by the assessee is dismissed.

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 on 24th April 2023

Sd/-	Sd/-
(Sandeep Gosain)	(Sanjay Arora)
Judicial Member	Accountant Member

Dated: 24th April, 2023

Copy to:

1. The Appellant
2. The Respondent
3. The Pr.CIT - 1, Cochin
4. The Sr. DR, ITAT, Cochin
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By Order

Assistant Registrar
ITAT, Cochin

n.p.