

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

**BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI SANDEEP SINGH KARHAIL, JM**

**ITA Nos. 1007 to 1009/Coch/2024
Assessment Years: 2013-14 to 2015-16**

Muhammedali Suhara Appellant
Cholakkal House, Down Hill, Malappuram 676519
[PAN: CNRPS5386K]

vs.

ACIT, Central Circle-1 Respondent
Kozhikode

Appellant by: Shri C.B.M. Warriar, CA
Respondent by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 26.03.2025
Date of Pronouncement: 27.03.2025

ORDER

Per: Inturi Rama Rao, AM

These appeals filed by the assessee are directed against different orders of the Commissioner of Income-tax (Appeals)-3, Kochi ["CIT(A)" for short] confirming penalty u/s.271(1)(c) of the Income-tax Act, 1961 ("the Act" hereinafter).

2. Since identical facts and issues are involved in all these appeals, they were heard together and are being disposed of vide consolidated order. For the sake of clarity and convenience, the facts

relating to appeal bearing ITA No.1007/Coch/2024 in case of Muhammedali Suhara are stated hereunder.

3. The brief facts of the case are that the appellant is an individual. The original return of income for the assessment year 2013-2014 was filed on 27.12.2014 declaring total income of Rs.45,43,290/-. Subsequently, during the course of search and seizure proceedings in the case of one Malabar Group of Companies conducted u/s.132 of the Act on 26.02.2019, it was stated that certain incriminating material relating to the appellant was stated to have been found and seized. Based on such incriminating material, the Assessing Officer ("the AO" hereinafter) issued notice u/s.153C of the Act on 10.05.2021. In response to the notice issued u/s.153C of the Act was issued, the appellant filed return of income on 23.02.2022 declaring total income of Rs.49,99,290/-.

3. Against the said return of income, the assessment was completed by the AO vide order dated 15th March, 2022 passed u/s.143(3) r.w.s. 153C of the Act accepting the returned income at Rs.49,99,290/-. Thereafter, the AO initiated penalty proceedings u/s.271(1)(c) of the Act vide show cause notice dated 15th March, 2022. In response to the show cause notice, it is submitted that the disclosure of additional income in response to notice u/s.153C of the Act is voluntary and is not based on the seized material, and therefore, the appellant is not in guilty of concealing any particulars

of income, and therefore, the penalty was not exigible u/s.271(1)(c) of the Act. It is further contented that merely because the appellant is agreed to the additional income, it cannot be presumed that the appellant had concealed particulars of income, by placing reliance on the judgment of the Hon'ble Supreme Court in the case of Sir Shadilal Sugar & General Mills Ltd. v. CIT. The AO rejecting the above explanation of the appellant and placing the decision of the Hon'ble Supreme Court in the case of MAK Data Private Limited v. CIT held that the appellant is guilty of concealing particulars of income and levied penalty of Rs.1,37,196 vide order dated 22nd September, 2022.

4. Being aggrieved by the above order, an appeal was filed before the CIT(A), who vide the impugned order confirmed the penalty levied u/s.271(1)(c) of the Act.

5. Being aggrieved by the above order of the CIT(A), the appellant is before us in the present appeal.

6. We heard rival submissions and perused the material available on record. On a mere reading of the orders of the authorities below, it would be clear that the lower authorities had failed to discuss the evidences found as a result of search and seizure in the case of Malabar Group of companies, which led to the unearthing of the undisclosed income in the hands of the appellant. The AO also not

discussed as to how the seized material led to unearthing of the undisclosed income and how the seized material in the case of Malabar Group of companies has relation to the appellant herein. Merely because the appellant has disclosed additional income in response to notice u/s.153C of the Act, it cannot led to the conclusion that the appellant is guilty of concealing the particular of income or guilty of concealment of income. It is the case of assessment made u/s.153C of the Act, pursuant to the initiation of search and seizure in the case of a third person. In the above circumstances, we remit the matter back to the file of the CIT(A) for de novo disposal of the appeal in accordance with law after affording a reasonable opportunity of being heard to the assessee.

7. In the result, the appeals filed by the assesseees are allowed for statistical purposes.

Order pronounced in the open court on 27th March, 2025.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 27th March, 2025

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin