

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

BEFORE SHRI INTURI RAMA RAO, AM

**ITA Nos. 251 to 253/Coch/2025
Assessment Year: 2013-14 to 2015-16**

Kummoli Shareef Appellant
Mummoli House, Iringath, Payyoli
Koyilandy, Kozhikode 673523
[PAN: BWUPS7653A]

vs.

Asst. Commissioner of Income Tax Respondent
Central Circle - 2, Kozhikode

Appellant by: Smt. Divya Ravindran, Advocate
Respondent by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 28.04.2025
Date of Pronouncement: 29.04.2025

ORDER

These appeals filed by the assessee are directed against separate orders of the Commissioner of Income Tax (Appeals)-3, Kochi [CIT(A)], dated 25.10.2024 & 10.12.2024 for assessment years (AYs) 2013-14 to 2015-16.

2. Since identical issues are involved in all these appeals, they are heard together and disposed vide this common order.

3. For the sake of convenience and clarity the facts relevant to the appeal bearing ITA No. 251/Coch/2025 for AY 2013-14 are stated herein.

4. Brief facts of the case are that that appellant is an individual. The return of income for AY 2013-14 was filed on 11.09.2014 declaring income of Rs.2,62,800/-. Subsequently, during the course of search and seizure proceedings under the provisions of section 132 of the Income Tax Act, 1961 (the Act) in the case of Malabar Group of concerns, the AO of the said group recorded satisfaction that the assessee received undisclosed income from the said Malabar group of companies in the form of return on investment based on the entries found in the second set of books of account maintained by one Mr. Prajeesh in his hard disk and one Mr. Sameer in his pen drive. Accordingly, based on this information contained in the seized material found in the case of Malabar group of companies, the AO issued a notice u/s. 153C of the Act on 08.05.2021. The appellant also filed return of income in response to the notice issued u/s. 153C disclosing the same income as shown in the original return of income filed u/s. 139 of the Act.

5. Against the said return of income, the assessment was completed by the ACIT, Central Circle-2, Kozhikode (hereinafter called "the AO") vide order dated 09.03.2022 passed u/s. 153C of the Act at a total income of Rs. 3,59,100/-. While doing so, the AO brought to tax a sum of Rs. 1,32,300/- by holding that the appellant had not shown the income received from Malabar group of concerns.

6. Being aggrieved, an appeal was filed before the CIT(A) contending that there was no evidence to show that the appellant had

received income of Rs. 1,32,300/- on investment made with Malabar Group. It is further contended that the appellant has been offering the income on receipt basis and no income can be taxed based on the entries found in the books of third party. It is further contended that in the absence of any conclusive evidence brought on record by the Department, no addition can be made based merely on the entries found in the books of third party. The learned CIT(A), however, dismissed the appeal by confirming the action of the AO.

7. Being aggrieved, the appellant is in appeal before the Tribunal in the present appeal.

8. It is contended that the CIT(A), without adverting to the grounds of appeal filed by the assessee and the statement of facts, had merely dismissed the appeal and, therefore, the matter may be remanded to the file of the CIT(A).

9. On the other hand, the CIT-DR did not raise any serious objection.

10. I heard the rival contentions of both the parties and perused the material available on record. From the ground of appeal filed before the CIT(A), it is clear that the appellant laid serious challenge on the very validity of the assessment made u/s. 143(3) r.w.s. 153C of the Act by alleging that without recording satisfaction by the AO of the searched person, and as well as the AO of the appellant, a notice u/s. 153C of the Act was issued. From para 5 of the order of

the CIT(A) it is clear that the CIT(A) merely returns finding by observing as under: -

5. The grounds raised by the appellant have been carefully considered. One of the contentions of the appellant is that the assessment made u/s.153C r.w.s. 144 was done without recording satisfaction and the assessment was not supported by any evidence. In this regard, it is observed that as per records, notice u/s.153C was issued after recording due satisfaction by the AO. Hence, this argument of the appellant is not acceptable. Further, the appellant has also contended that the assessment made by the AO was not supported by any evidence. As it can be seen from the assessment order, during the course of the search on MGC of which the appellant is a shareholder, evidence regarding undisclosed dividend/interest payment were found and seized. The particulars of the evidence seized during the course of search is also mentioned in the body of the assessment order. Therefore, this argument of the appellant is also not acceptable.”

11. However, the CIT(A), without referring to the satisfaction note recorded by the AOs of both the searched party as well as the appellant, merely recorded this finding. It must be made clear that the assessment order also is totally silent with regard to recording of satisfaction by the AO as well as the AO of the searched person. Furthermore, what evidence was gathered during the course of search and seizure proceedings in the case of Malabar group of concerns indicate payment of interest on investment made by the appellant, was not made available to the appellant. From reading of the assessment order, it is not clear whether the name of the appellant figured in the seized material. Thus, the CIT(A) also,

without adverting to the seized material and discussing the evidence gathered by the AO, merely confirmed the addition. In these circumstances, I am of the considered opinion that the matter requires remand to the file of the CIT(A) for fresh adjudication in accordance with law after affording reasonable opportunity of hearing to the appellant reasonable opportunity of hearing to the assessee. I make it clear that all the contentions made by the assessee are kept open before the CIT(A).

12. In the result, the appeals filed by the assessee stand allowed for statistical purposes.

Order pronounced in the open court on 29th April, 2025.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 29th April, 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