

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

**BEFORE SHRI GEORGE GEORGE K., VP
AND SHRI INTURI RAMA RAO, AM**

**ITA Nos. 1101 to 1104 /Coch/2024
Assessment Years: 2013-14 to 2016-17**

Tharayil Aboobacker Appellant
Tharayil House, Kalampadi, Mappuram 676505
[PAN: AMWPA1179J]

vs.

ACIT, Central Circle -2, Kozhikode Respondent

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

Date of Hearing: 03.04.2025
Date of Pronouncement: 13.05.2025

ORDER

Per: Inturi Rama Rao, AM

These appeals filed by the assessee are directed against separate orders of the Commissioner of Income Tax (Appeals)-3, Kochi [CIT(A)], dated 15.10.2024.

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 No1101/Coch/2024 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 03.03.2023 declaring income of Rs.4,32,300/-. 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 24.08.2022. The appellant also filed return of income in response to the notice issued u/s. 153C disclosing the income at 4,32,300/-.

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 24.03.2023 passed u/s. 153(C) r.w.s. 144 of the Act at a total income of Rs. 10,80,000/-. While doing so, the AO brought to tax a sum of Rs. 6,47,700/- 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. 6,47,700/- 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 us 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. We have 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. 153(C) r.w.s. 144 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.

5.1 The other argument of the appellant is that the assessment u/s.153C of the Act is barred by limitation. It is observed that the assessment has been completed by the AO following the provisions of the Act. The contention made by the appellant is without any basis. The ground taken by the appellant in this regard is not acceptable and therefore rejected.

5.2 The appellant has raised another argument that the amount purported to be received by him has never been acknowledged by him or reflected in the return of income filed by him and therefore, the AO has made the assessment without adequate evidence. In this regard, it needs to be stated that the appellant himself is a shareholder of MGC. The evidence seized from the premises of MGC conclusively proved that MGC has made undisclosed dividend/interest payments to the appellant. That being the case, the appellant cannot feign ignorance about such receipts. Further, the argument that the appellant has not

acknowledged receipt of such undisclosed payments would only be self-serving argument as it cannot be expected that receipts will be issued for such undisclosed payments. Considering the above facts, the above argument of the appellant is not acceptable. Similarly, the argument of the appellant regarding non deduction of TDS for undisclosed interest payments would also fail since the payment itself is not reflected in the books of MGC. Considering the above facts, the above argument of the appellant is rejected.

5.3 The appellant has further argued that the undisclosed payments/receipts are not supported by any agreement between the shareholders and MGC and therefore the existence of such payments cannot be validated. With regard to the above, it needs to be stated that the entire set of payments are done outside the books of accounts and hence logic would not support the existence of proper documentation for such payments. MGC at no point of time has questioned the genuineness/validity of the material seized from its premises. That being the case, the appellant who himself is a shareholder of MGC cannot take a stand that the payments, as reflected in the seized material was ever made. Without prejudice to the above, it also needs to be noted that there are a number of shareholders of MGC who subsequent to the search conducted at MGC have admitted such undisclosed interest/dividend payment made by MGC as income in their respective individual Income Tax Returns and paid applicable taxes. That being the case, the argument raised by the appellant in this regard lacks credibility and hence not sustainable.

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, we are 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 appellant. We make it clear that all the contentions made by the assessee are kept open before the CIT(A).

12. In the result, all the appeals filed by the assessee stand partly allowed.

Order pronounced in the open court on 13th May, 2025.

Sd/-
GEORGE GEORGE K.
VICE PRESIDENT

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 13th May, 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