

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

**BEFORE SHRI INTURI RAMA RAO, AM  
AND SHRI SOUNDARARAJAN K., JM**

**ITA Nos. 463/Coch/2016 & 102/Coch/2023  
Assessment Year: 2007-08**

Mohammed Sherief ..... Appellant  
Koncheril Vegetables, Karunagapally  
[PAN: ANBPS7771G]

vs.

Dy Commissioner of Income Tax ..... Respondent  
Cental Circle, Kollam

Appellant by: Shri Rajakannan, Advocate  
Respondent by: Shri Suresh Sivanandan, CIT-DR

Date of Hearing: 12.03.2025  
Date of Pronouncement: 14.05.2025

**ORDER**

**Per: Inturi Rama Rao, AM**

This appeal, ITA No. 463/Coch/2016, is restored by the Hon'ble Kerala High Court in ITA No. 2 of 2019 dated 02.11.2022 with the following directions:

*“9. The decisions excerpted above, lay down clearly that recording of satisfaction by the officer searching the premises before making over the material to the officer having jurisdiction on the person to whom the material relates to is necessary, and secondly, the satisfaction must conform to the principle laid down by the judgments noted above. We may at*

*this stage of our consideration notice that the satisfaction, filed as Annexure-C cannot provide an answer to the requirement of the searching officer recording a satisfaction. We hasten to add that we do not wish to observe either way on the extent to which the said Annexure -C could be relied on by the assessee and Revenue. Both from a plain reading of Sections 132(4A) and 153C and the principles laid down by the Supreme Court in the judgments referred supra, we conclude that the assessee has been agitating on the omission in recording satisfaction as required by Section 153C of the Act. The finding of fact recorded by the Commissioner of Income Tax (Appeals) is not on this aspect of the matter. As already excerpted, the Tribunal examined yet another circumstance and recorded a finding in the common order impugned in the appeal. We are persuaded with the argument of Adv. Navneeth N. Nath that the Tribunal being the final fact-finding court may be called upon to examine the issue. Therefore, the substantial questions are answered in favour of the assessee and against Revenue, and the matter remitted to the Tribunal for consideration and disposal afresh in accordance with law. In the circumstances of the case, we deem it appropriate on being satisfied that a few other findings of fact recorded by the Tribunal which again do not take note of precedents relied on by the assessee, other findings of Tribunal are set aside, and the matter is remitted in its entirety for reconsideration by the Tribunal. The assessee if so advised is given the liberty to raise additional ground within eight weeks from the date of receipt of copy of the judgment.”*

2. Brief facts of the case are that the appellant is an individual engaged in the business of dealing in vegetables under the name and style of “Koncheril Vegetables”. The return of income for AY 2007-08 was filed on 30.05.2008 disclosing a total income of Rs. 4,45,340/-. Subsequently a survey operation u/s. 133A of the Income

Tax Act, 1961 (the Act) was conducted at the business premises of the appellant on 02.08.2006 stated to be in connection with the search operations conducted on the same date in the case of one Mr. E. Shemsudeen. It is stated that certain incriminating documents relating to daily transaction of the appellant were seized from the business premises of Shri Shemsudeen during the course of search operations. Against the said return of income, the assessment was completed by the DCIT, Central Circle, Kollam (hereinafter called "the AO") vide order dated 30.12.2008 passed u/s. 153A r.w.s 143(3) of the Act at a total income of Rs. 10,84,720/-. While doing so, the AO made addition, while computing income under the head 'profits and gains of business' of Rs.20,952/-, telephone charges of Rs. 8,686/-, discount of Rs. 16,165/- and on account of low GP of Rs. 5,93,581/-. It is significant to note that the above additions were made based on the seized documents found relating to the assessee in the case of search proceedings of Shri E. Shemsudeen. Therefore, the assessment order was framed based on the satisfaction note recorded by the AO of the searched person. Therefore, recording or non-recording on non-satisfaction as envisaged u/s. 153C of the Act had no relevance for the year under consideration.

3. Being aggrieved, an appeal was filed before the CIT(A), who vide the impugned order dismissed the appeal of the assessee.

4. On further appeal before this Tribunal in ITA No. 469 & 463 for AYs 2003-04 and 2007-08, the Tribunal dismissed the appeal for 2007-08.

5. Being aggrieved by this order the appellant preferred an appeal before the Hon'ble Kerala High Court. The Hon'ble High Court restored the matter to the file of the ITAT in terms of the directions extracted supra. Recording or non-recording of satisfaction u/s. 153C of the Act has no relevance to decide the issue in appeal before us, inasmuch as, the subject additions were not made on the basis of incriminating material found relating to the assessee during the course of search and seizure operations on Shri E. Shemsudeen. Therefore, we proceed to dispose of the grounds of appeal raised by the assessee as under.

6. Ground of appeal No. 1 is not pressed and dismissed as such.

7. Ground of appeal No. 2 challenges the addition made by the AO on account of low gross profit. The appellant submits that the AO cannot resort to estimation of profit without rejecting the books of account placing reliance on the decision of the Hon'ble Karnataka High Court in the case of CIT v Anil Kumar & Co. [2016] 386 ITR 702 (Ker) and Hon'ble Delhi High Court in the case of CIT v. Paradise Holidays [2010] 325 ITR 13.

8. On the other hand, the learned CIT-DR raised no serious objection.

9. We have heard the rival contentions and perused the material available on record. We had carefully perused the assessment order and find that the AO had not given any finding as to how the aggregate profit can be deduced from the books of account maintained by the appellant. The mere fact that there was lower rate of gross profit declared by the assessee as compared to the previous year would not by itself be sufficient to justify the addition. Nor does it lead to an inference that there was inflation of expenditure or suppression of receipts. The reliance for this proposition is placed on the decision of the Hon'ble Bombay High Court in the case of R.B. Bansilal Abirchand Spg. Wvg. Mills v. CIT [1970] 75 ITR 260 and on the decision of the Hon'ble Gauhati High Court in the case of Aluminium Industires (P) Ltd. v. CIT [1995] 80 Taxman 184.

10. In the light of the above discussion we delete the addition of Rs. 5,93,581/- made on account of lower profit ratio. In the result, ground of appeal No. 2 stands allowed.

11. Ground of appeal No. 3 challenges the disallowance on account of repairs charges of Rs. 20,952/-. It is stated that the claim made for deduction on repair charges of Rs. 42,419/- was debited to the Profit & Loss A/c. relates to business assets which are not held

as income from house property. Therefore, the AO made the addition on wrong assumptions that the repair charges are in relation to house property. Since the learned CIT-DR has not controverted the above submission made by the appellant, we direct the AO to delete the addition of Rs. 20,952/-.

12. Accordingly the appeal filed by the assessee stands allowed.

**ITA No. 102/Coch/2023**

13. The appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-3, Kochi dated 22.07.2022 for AY 2007-08 confirming the levy of penalty.

14. Brief facts of the case are that the appellant is an individual. The return of income for AY 2007-08 was filed on 30.05.2008 disclosing a total income of Rs. 4,45,340/-. Subsequently a survey operation u/s. 133A of the Income Tax Act, 1961 (the Act) was conducted at the business premises of the appellant on 02.08.2006 stated to be in connection with the search operations conducted on the same date in the case of one Mr. E. Shemsudeen. It is stated that certain incriminating documents relating to daily transaction of the appellant were seized from the business premises of Shri Shemsudeen during the course of search operations. Against the said return of income, the assessment was completed by the DCIT, Central Circle, Kollam (hereinafter called "the AO") vide order

dated 30.12.2008 passed u/s. 153A r.w.s 143(3) of the Act at a total income of Rs. 10,84,720/-. While doing so, the AO made addition while computing income under the head 'profits and gains of business' of Rs.20,952/-, telephone charges of Rs. 8,686/-, discount of Rs. 16,165/- and on account of low GP of Rs. 5,93,581/-. It is significant to note that the above additions were made no based on the seized documents found relating to the assessee in the case of search proceedins of Shri E. Shemsudeen. Therefore, the assessment order was framed based on the satisfaction note recorded by the AO of the searched person. The AO also initiated penalty proceedings u/s. 271(1)(c) of the Act issuing show notice u/s. 274 r.w.s. 271(1)(c) of the Act. In response to the show cause notice the appellatnt file an explanation. However, the AO had proceeded with the levy of penalty of Rs. 2,08,3326/- vide order dated 28.03.2018 passed u/s. 271(1)(c) of the Act.

15. Being aggrieved, an appeal was filed before the CIT(A), who vide the impugned order confirmed the action of the AO.

16. Being aggrieved, the appellatnt is in appeal before us in the present appeal.

17. In the quantum appeal this Tribunal has deleted the additions made on account of lower GP rate of Rs. 5,93,581/- and also disallowance on account or repairs and maintenance charges.

Therefore, in terms of the provisions of section 271(1)(a) of the Act we restore the matter back to file of the AO to pass an order in terms of the order of the Tribunal.

18. In the result, ITA No. 463/Coch/2016 is allowed and ITA No. 102/Coch/2023 is partly allowed.

Order pronounced in the open court on 14<sup>th</sup> May, 2025.

Sd/-  
**(SOUNDARARAJAN K.)**  
**JUDICIAL MEMBER**

Sd/-  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

Cochin, Dated: 14<sup>th</sup> May, 2025

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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