IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

Before Shri N.R.S. Ganesan (JM) and Shri Chandra Poojari (AM)

I.T.A No. 802/Coch/2013
(Assessment year 2008-09)

M/s Orchid Marine Anwar Palace, Chandiroor Cherthala, Alappuzha PAN : AAAFO7939C (Appellant)	vs	ITO, Wd.3 Alappuzha (Respondent)

Appellant by	:	Shri CBM Warrier
Respondent by	:	Shri M Anil Kumar, CIT / Smt. Latha V Kumar, Jr DR
Date of hearing	:	05-08-2014
Date of pronouncement	:	24-09-2014

O R D E R

Per N.R.S. Ganesan (JM)

This appeal of the assessee is directed against the order of the CIT(A)-IV, Kochi and pertains to assessment year 2008-09.

2. The first ground of appeal is with regard to disallowance of Rs.1,42,772 u/s 40(a)(ia) of the Act.

3. Shri CBM Warrier, the ld.representative for the assessee submitted that the assessing officer disallowed Rs.1,42,772 u/s 40(a)(ia) in respect of payment for consumption testing fees. According to the ld.representative, the assessing officer found that the assessee had to deduct tax u/s 194J of the Act. The CIT(A) rejected the claim of the assessee on the ground that the assessee admitted the disallowance. The ld.representative explained that merely because the assessee admitted before the assessing officer that cannot be a reason to confirm the order of assessing officer. The CIT(A) has to adjudicate the issue on merit. On a query from the bench whether the assessee admitted for the disallowance during the course of assessment proceedings before the assessing officer, the ld.representative for the assessee submitted that he is not aware of the exact thing. The assessee may by ignorance have admitted for disallowance. We heard Shri M. Anil Kumar, the ld.DR.

4. The assessing officer disallowed the claim of the assessee on the ground that the assessee could not offer any explanation for failure to deduct tax u/s 194J in respect of payment made for consumption testing fee. The CIT(A) found that the assessee agreed for disallowance and admitted that he would not prefer any appeal on that ground. Though the ld.counsel for the assessee claims that he could not confirm whether the assessee admitted for disallowance, he explained that even after it was

admitted before the assessing officer because of ignorance that cannot be a reason to confirm the order of the assessing officer. It is well settled principles of law that once the assessee admitted for disallowance before the assessing officer on facts, the same cannot be reagitated before the appellate authorities. If it is not admitted, then, it is open to the assessee to file an affidavit before the appellate forum explaining the circumstances and on that basis the appellate forum may call for explanation from the concerned officer as to how he recorded a finding that the assessee admitted for disallowance. In this case, no such affidavit is filed. The ld.representative for the assessee also has a doubt whether such admission was made or not? In the absence of any details and the affidavit from the assessee, this Tribunal do not find any infirmity in the order of lower authority. Accordingly, the same is confirmed.

5. The next ground of appeal is with regard to disallowance of Rs. 17,01,500 u/s 40A(3) of the Act.

6. Shri CBM Warrier, the ld.representative for the assessee submitted that the assessing officer found that the assessee made cash purchases exceeding Rs.20,000 to the extent of Rs.17,01,500 from seven parties. The assessee explained before the assessing officer that there is a huge demand for seafood items partly for various varieties of fishes. When the

assessee was facing exceptional demand for fish products the assessee was forced to make cash purchases from the fishermen. The ld.representative for the assessee further submitted that CBDT in circular No.10/2008, clarified that the payment to headman of fishermen who is colloquially known as moopan, vallakaar, headman, tharakan, etc. are to be treated as payment made to fisherman. According to the ld.representative, the payment was made to the person / headman who sort the fish at the sea shore. The assessing officer asked the assessee to produce seven parties from whom the fish was purchased on cash payment. The assessee explained that production of the parties was beyond its control. Merely because the assessee could not produce the fishermen from whom the fish was purchased, according to the ld.representative, there cannot be any disallowance. The ld.representative placed reliance on the judgment of the Kerala High Court in Interseas Seafood Exporters (2010) 188 Taxman 343 (Ker). The assessee filed copy of the judgment. The ld.representative has also placed reliance on the circular issued by the CBDT in circular No.10/2008 dated 05-12-2008, copy of which is available at page 18 of the paper book.

7. On the contrary, Shri M Anil Kumar, the ld.DR submitted that the assessee purchased fish from middlemen, who are known as Tharakans. According to the ld.DR, from the very same Tharakan the assessee

purchased fish to the extent of Rs. 1,66,59,325 and made the payment by cheque during the year under consideration. Therefore, nothing prevented the assessee from paying this amount of Rs.17,01,500 also through account payee cheque. The assessee also could not produce the party for examination to find out whether they were producers or traders or they were middlemen. From the explanation of the assessee, according to the ld.DR, the fish was purchased from middlemen / tharakan, therefore, the payment made to tharakan was rightly disallowed u/s 40A(3).

8. We have considered the rival submissions on either side and also perused the material available on record. Admittedly, the assessee purchased fish by paying cash exceeding Rs.20,000. We have carefully gone through the circular issued by CBDT in circular No.10/2008 dated 05--12-2008 which reads as follows:

"**CLARIFICATION REGARDING THE MEANING OF THE EXPRESSION 'FISH OR FISH PRODUCTS' USED IN SUB-CLAUSE (iii) OF CLAUSE (f) OF RULE 6DD OF THE INCOME-TAX RULES, 1962**

Circular no.10/2008, DATED 05-12-2008

Representations have been received from various quarters regarding problems being faced by the seafood exporters mainly on account of provisions of Section 40A(3) of the Income-tax Act, 1961.

2. Disallowance of expenditure under the provisions of sub-section (3) of Section 40A of the I.T. Act, 1961 is made in the computation of income in a case where a payment or aggregate of payments exceeding twenty thousand rupees is made to a person in a day, otherwise than by an account payee cheque drawn on a bank or by an account payee bank draft exceeding twenty thousand rupees does not attract the aforesaid disallowance in certain circumstances as prescribed under rule 6DD of the Income-tax Rules, 1962. Such exceptions, inter-alia, refer to payment made to the producer for the purchase of 'fish or fish products' under sub-clause (iii) of clause (e) of rule 6DD. [Clause (f) of rule 6DD prior to coming into effect of the I.T. (Eighth Amendment) Rules, 2007 w.e.f. A.Y. 2008-09].

3. The following clarifications are, therefore, being issued for proper implementation of rule 6DD of the Income-tax Rules, 1962:-

(i) The expression 'fish or fish products' used in ruler 6DD(e)(iii) would include 'other marine products such as shrimp, prawn, cuttlefish, squid, crab, lobster etc.".

(ii) The 'producers' of 'fish or fish products' for the purpose of rule 6DD(e) of I.T. Rules, 1962 would include, besides the fishermen, any headman of fishermen, who sorts the catch of fish brought by fishermen from the sea, at the sea shore itself and then sells the fish or fish products to traders, exporters etc.

> 4. It is further clarified that the above exception will not be available on the payment for the purchase of fish or fish products from a person who is not proved to be a 'producer' of these goods and is only a trader, broker or any other middleman, by whatever name called."

9. It is obvious from the circular that producer of the fish or fish products would include, besides the fishermen, any headman of fishermen, who sorts the catch of fish brought by fishermen from the sea at the sea shore itself and then sells the fish or fish products to traders, exporters etc. The CBDT has also clarified that the exemption will not be available to trader, broker or any other middlemen by whatever name called. The assessee now claims that the payment was made to a headman / tharakan. A tharakan is commonly known as a broker or a middleman who facilitate finalization of the price between the seller and purchaser. A tharakan also known as Agent who would act either on behalf of seller or purchaser as the case may be. However, headman of fishermen is part of fishermen who will sort the fish catch and sell the fish on behalf of fishermen. Therefore, it is necessary to find out the exact role played by the person to whom the payment was made by cash. Merely because the assessee has paid Rs.1,66,59,325 by cheque to the very same person that cannot alone be a reason to disallow the claim of the assessee. When the assessee claims that the payment was made to a headman who sorts the

fish catch, the assessing officer shall find out the exact role played by the person who received payment by cash. When the very same person received huge payment by cheque, it may not be difficult for the assessing officer to summon them and examine the actual role played by him. Had the assessee claimed that the fish or fish products are purchased from fisherman or producers the matter would stand on different footing. Since the fish was admittedly purchased from a person other than fisherman or producers the exact role of that middleman has to be examined in view of the circular issued by CBDT.

10. Accordingly, the orders of the lower authorities are set aside and the issue is remanded back to the file of the assessing officer. The assessing officer shall bring on record the exact role played by the person who received the payment in cash. The assessing officer shall re-examine the matter in the light of the circular issued by CBDT and the judgment of the High Court in Interseas Seafood Exporters (supra) and thereafter decide the same in accordance with law after giving sufficient opportunity to the assessee.

11. The next ground of appeal is with regard to disallowance of Rs.3,02,754 u/s 40(a)(ia) of the Act towards shipping charges.

12. Shri CBM Warrier, the ld.representtive for the assessee submitted that the assessee has paid Rs.64,12,589 towards freight charges. According to the ld.representative, the assessee has paid the entire mount without deducting tax. Since the amount has already been paid, according to the ld.representative, the provisions of section 40(a)(ia) is not applicable. Similarly, the assessee has also paid Rs.10,17,204 towards clearing and forwarding charges without deducting tax. Since the entire amount was paid towards shipping / freight charges and clearing & forwarding charges before the end of the financial year, according to the ld.representative, the provisions of section 40(a)(ia) are not applicable. The ld.representative submitted that the provisions of section 40(a)(ia) are applicable only in respect of amounts remaining to be paid at the end of the financial year. The ld.representative relied upon the decision of the Visakhapatnam Special Bench of this Tribunal in Merlyn Shipping & Transports vs Addl CIT (2012) 70 DTR 81 (Vizag). The ld.representative has also placed reliance on the judgment of the Allahabad High Court in CIT vs M/s Vector Shipping Services (P) Ltd I.T.A. No.122 of 2013. The ld.representative submitted that the judgment of the Allahabad High Court in M/s Vector Shipping Services (P) Ltd (supra) was confirmed by the Apex Court by dismissing the Special Leave Petition filed by the department. The ld.representative has also placed reliance on the decision of the Chennai Bench of this Tribunal for the proposition that when two views are

possible, one favourable to the assessee has to be followed. We heard the ld.DR also.

13. The only contention of the assessee is that the amount has already been paid and that provisions of section 40(a)(ia) is applicable only in respect of the amount remains to be paid. No doubt, in the case of Merlyn Shipping & Transports (supra), the Special Bench of this Tribunal found that the amount remains to be paid at the year end alone is hit by provisions of section 40(a)(ia) of the Act and in respect of the amount already paid the provisions of section 40(a)(ia) cannot be applied.

14. We have also carefully gone through the judgment of the Allahabad High Court in CIT vs M/s Vector Shipping Services (P) Ltd (supra), copy of which is filed by the assessee. The Allahabad High Court, after reproducing the relevant paragraph from the order of CIT(A) and referring to the decision of the Special Bench of this Tribunal in Merilyin Shipping & Transports (supra) found that the Tribunal has not committed an error. It is obvious that there is no discussion about the correctness or otherwise of the decision rendered by the Special Bench of this Tribunal in Merilyn Shipping & Transports (supra). However, we find that the Gujarat High Court in the case of CIT vs Sikandarkhan N Tunvar ITA Nos 905 of 2012, 709 & 710 of 2012, 333 of 2013, 832 of 2012, 857 of 2012, 894 of 2012,

928 of 2012, 12 of 2013, 51 of 2013, 58 of 2013 and 218 of 2013 judgment dated 02-05-2013 considered the decision of the Special Bench of this Tribunal in Merilyn Shipping & Transports (supra) and specifically disagreed with the principles laid down by the Special of this Tribunal in Merilyn Shipping & Transports (supra). The Calcutta High Court also in the case of Crescent Exports Syndicate & Another in ITAT 20 of 2013 and GA 190 of 2013 judgment dated 03-04-2013 considered elaborately the judgment of the Special Bench of this Tribunal in Merilyn Shipping & Transports (supra) and found that the decision rendered by the Special Bench of this Tribunal is not the correct law. It is well settled principles of law that when different High Courts expressed different opinions on a point of law, then, normally, the benefit of doubt under the taxation law would go to the assessee. It is also equally settled principles of law that the judgment which discusses the point in issue elaborately and gives an elaborate reasoning has to be preferred when compared to the judgment which has no reasoning and discussion. Admittedly, the Calcutta High Court and Gujarat High Court have discussed the issue elaborately and elaborate reasons have also been recorded as to why the Special Bench is not correct. Therefore, this Tribunal is of the considered opinion that the judgments of the Calcutta High Court in Crescent Exports Syndicate & Another (supra) and Gujarat High Court in Sikandarkhan N Tunvar (supra) have to be preferred when compared to the Allahabad High Court in M/s

Vector Shipping Services (P) Ltd (supra). Moreover, the Mumbai Bench of this Tribunal in ACIT vs Rishti Stock & Shares P Ltd in ITA No.112/Mum/2012.

15. For the purpose of convenience we reproducing below the observations made by the Calcutta High Court in Crescent Exports Syndicate & Another (supra) and Gujarat High Court in Sikandarkhan N Tunvar (supra):

Calcutta High Court in Crescent Exports Syndicate & Another (supra)

> *" Before dealing with the submissions of the learned Counsel appearing for the assessees in both the appeals we have to examine the correctness of the majority views in the case of Merilyn Shipping.*
>
> *We already have quoted extensively both the majority and the minority views expressed in the aforesaid case. The main thrust of the majority view is based on the fact "that the Legislature has replaced the expression "amounts credited or paid" with the expression 'payable' in the final enactment.*
>
> *Comparison between the pre-amendment and post amendment law is permissible for the purpose of ascertaining the mischief sought to be remedied or the object sought to be achieved by an amendment. This is precisely what was done by the Apex Court in the case of CIT Vs. Kelvinator reported in 2010(2) SCC 723. But the same comparison between the*

draft and the enacted law is not permissible. Nor can the draft or the bill be used for the purpose of regulating the meaning and purport of the enacted law. It is the finally enacted law which is the will of the legislature.

The Learned Tribunal fell into an error in not realizing this aspect of the matter.

The Learned Tribunal held "that where language is clear the intention of the legislature is to be gathered from the language used". Having held so, it was not open to seek to interpret the section on the basis of any comparison between the draft and the section actually enacted nor was it open to speculate as to the effect of the so-called representations made by the professional bodies.

The Learned Tribunal held that "Section 40(a)(ia) of the Act creates a legal fiction by virtue of which even the genuine and admissible expenses claimed by an assessee under the head "income from business and profession": if the assessee does not deduct TDS on such expenses are disallowed".

Having held so was it open to the Tribunal to seek to justify that "this fiction cannot be extended any further and, therefore, cannot be invoked by Assessing Officer to disallow the genuine and reasonable expenditure on the amounts of expenditure already paid"? Does this not amount to deliberately reading something in the law which is not there?

We, as such, have no doubt in our mind that the Learned Tribunal realized the meaning and purport of Section 40(a)(ia) correctly when it held that in case of omission to deduct tax even the genuine and admissible expenses are to be disallowed. But they sought to remove the rigour of the law

by holding that the disallowance shall be restricted to the money which is yet to be paid. What the Tribunal by majority did was to supply the casus omissus which was not permissible and could only have been done by the Supreme Court in an appropriate case. Reference in this regard may be made to the judgment in the case of Bhuwalka Steel Industries vs. Bombay Iron & Steel Labour Board reported in 2010(2) SCC 273.

'Unprotected worker' was finally defined in Section 2(11) of the Mathadi Act as follows:-

''unprotected worker' means a manual worker who is engaged or to be engaged in any scheduled employment."

The contention raised with reference to what was there in the bill was rejected by the Supreme Court by holding as follows:

"It must, at this juncture, be noted that in spite of Section 2(11), which included the words "but for the provisions of this Act is not adequately protected by legislation for welfare and benefits of the labour force in the State", these precise words were removed by the legislature and the definition was made limited as it has been finally legislated upon. It is to be noted that when the Bill came to be passed and received the assent of the Vice-President on 05-06-1969 and was first published in the Maharashtra Government Gazette Extraordinary, Part IV on 13-06-1969, the aforementioned words were omitted. Therefore, t his would be a clear pointer to the legislative intent that the legislature being conscious of the fact and being armed with all the Committee reports and also being armed with the factual data, deliberately avoided

those words. What the appellants are asking was to read in that definition, these precise words, which were consciously and deliberately omitted from the definition. That would amount to supplying the casus omissus and we do not think that it is possible, particularly, in this case. The law of supplying the casus omissus by the courts is extremely clear and settled that though this Court may supply the casus omissus, it would be in the rarest of the rate case and thus supplying of this casus omissus would be extremely necessary due to the inadvertent omission on the part of the legislature. But, that is certainly not the case here.

We shall now endeavour to show that no other interpretation is possible.

The key words used in Section 40(a)(ia), according to us, are "on which tax is deductible at source under Chapter XVII-B". If the question is "which expenses are sought to be disallowed?" The answer is bound to be "those expenses on which tax is deductible at source under Chapter XVII-B. Once this is realized nothing turns on the basis of the fact that the legislature used the word 'payable' and not 'paid or credited'. Unless any amount is payable, it can neither be paid nor credited. If n amount has neither been paid nor credited, there can be no occasion for claiming any deduction.

The language used in the draft was unclear and susceptible to giving more than one meaning. By looking at the draft it could be said that the legislature wanted to treat the payments made or credited in favour of a contractor of sub-contractor differently than the payments on account of interest, commission or brokerage, fees for professional services or

fees for technical services because the words "mounts credited or paid" were used only in relation to a contractor of sub-contractor. This differential treatment was not intended. Therefore, the legislature provided that the amounts, on which tax is deductible at source under XVII-B payable on account of interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services or to a contractor of sub-contractor shall not be deducted in com putting the income of an assessee in case he has not deducted, or after deduction has not paid within the specified time. The language used by the legislature in the finally enacted law is clear and unambiguous whereas the language used in the bill was ambiguous.

A few words are now necessary to deal with the submission of Mr. Bagchi and Ms. Roychowdhuri. There can be no denial that the provision in question is harsh. But that is no ground to read the same in a manner which was not intended by the legislature. This is our answer to the submission of Mr. Bagchi. The submission of Mr. Roychowdhuri that the second proviso sought to become effective from 1st April, 2013 should be held to have already become operative prior to the appointed date cannot also be acceded to for the same reason indicated above. The law was deliberately made harsh to secure compliance of the provisions requiring deductions of tax at source. It is not the case of an inadvertent error.

For the reasons discussed above, we are of the opinion that the majority views expressed in the case of Merilyn Shipping &

Transports are not acceptable. The submissions advanced by learned advocates have already been dealt with and rejected."

Gujarat High Court in Sikandarkhan N Tunvar(supra)

"23. Despite this narrow interpretation of section 40(a)(ia), the question still survives if the Tribunal in case of ***M/s Merilyn Shipping & Transpors vs. ACIT*** *(supra) was accurate in its opinion. In this context, we would like to examine two aspects. Firstly, what would be the correct interpretation of the said provision. Secondly, whether our such understanding of the language used by the legislature should waver on the premise that as propounded by the Tribunal, this was a case of conscious omission on the part of the Parliament. Both these aspects we would address one after another. If one looks closely to the provision, in question, adverse consequences of not being able to claim deduction on certain payments irrespective of the provisions contained in Sections 30 to 38 of the Act would flow if the following requirements are satisfied:-*

(a) There is interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to resident or amounts payable to a contractor or sub-contractor being resident for carrying out any work.

(b) These amounts are such on which tax is deductible at source under XVIII-B.

(c) Such tax has not been deducted or after deduction has not been paid on or before due date specified in sub-Section (1) of Section 39.

For the purpose of current discussion reference to the proviso is not necessary.

24. What this Sub-Section, therefore, requires is that there should be an amount payable in the nature described above, which is such on which tax is deductible at source under Chapter XVII-B but such tax has not been deducted or if deducted not paid before the due date. This provision nowhere requires that the amount which is payable must remain so payable throughout during the year. To reiterate the provision has certain strict and stringent requirements before the unpleasant consequences envisaged therein can be applied. We are prepared to and we are duty bound to interpret such requirements strictly. Such requirements, however, cannot be enlarged by any addition or subtraction of words not used by the legislature. The term used is interest, commission, brokerage etc. ***is payable*** *to a resident or amounts payable to a contractor or sub-contractor for carrying out any work. The language used is not that such amount must continue to remain payable till the end of the accounting year. Any such interpretation would require reading words which the legislature has not used. No such interpretation would even otherwise be justified because in our opinion, the legislature could not have intended to bring about any such distinction nor the language used in the section brings about any such meaning. If the interpretation s advanced by the assessees is accepted, it would lead to a situation where the assessee though was required to deduct the tax at source but no such deduction was made or more flagrantly deduction though made is not paid to the Government, would escape the*

consequence only because the amount was already paid over before the end of the year in contrast to another assessee who would otherwise be in similar situation but in whose case the amount remained payable till the end of the year. We simply do not see any logic why the legislature would have desired to bring about such irreconcilable and diverse consequences. We hasten to add that this is not the prime basis on which we have adopted the interpretation which we have given. If the language used by the Parliament conveyed such a meaning, we would not have hesitated in adopting such an interpretation. We only highlight tht we would not readily accept that the legislature desired to bring about an incongruous and seemingly irreconcilable consequences. The decision of he Supreme Court in the case of ***Commissioner of Income-Tax, Gujarat vs. Ashokbhai Chimanbhai*** *(supra), would no6t alter this situation. The said decision, of course, recognizes the concept of ascertaining the profit and loss from the business or profession with reference to a certain period i.e. the accounting year. In this context, last date of such accounting period would assume considerable significance. However, this decision nowhere indicates that the events which take place during the accounting period should be ignored and the ascertainment of fulfilling a certain condition provided under the statute must be judged with reference to last date of the accounting period. Particularly, in the context of requirements f Section 40(a)(ia) of the Act, we see no warrant in the said decision of the Supreme Court to apply the test of payability only as on 31st March of the year under consideration. Merely because, accounts are closed on that*

date and the computation of profit and loss is to be judged with reference to such date, does not mean that whether an amount is payable or not must be ascertained on the strength of the position emerging on 31t March.

25. This brings us to the second aspect of this discussion, namely, whether this is a case of conscious omission and therefore, the legislature must be seen to have deliberately brought about a certain situation which does not require any further interpretation. This is the fundamental argument of the Tribunal in the case of ***M/s Merilyn Shipping & Transports vs. ACIT (supra)*** *to adopt a particular view.*

26. While interpreting a statutory provision the Courts have often applied Hyden's rule or the mischief rule and ascertained what was the position before the amendment, what the amendment sought to remedy and what was the effect of the changes.

27 to 36……..

37. In our opinion, the Tribunal committed an error in applying the principle of conscious omission in the present case. Firstly, as already observed, we have serious doubt whether such principle can be applied by comparing the draft presented in Parliament and ultimate legislation which may be passed. Secondly, the statutory provisions is amply clear.

38. In the result, we are of the opinion that Section 40(a)(ia) would cover not only to the amounts which are payable as on 31st March of a particular year but also which are payable at any time during the year. Of course, as long as the other requirement of the said provision exist. In that context, in our

opinion the decision of the Special Bench of the Tribunal in the case of ***M/s Merilyn Shipping & Transports vs ACIT*** *(supra), does not lay down correct law."*

16. By following the judgments of the Calcutta High Court in Crescent Export Syndicate (supra) and the Gujarat High Court in Sikandarkhan N Tunvar (supra), this Tribunal is of the considered opinion that the decision of the Special Bench of this Tribunal in the case of M/s Merilyn Shipping & Transports (supra) and the judgment of the Allahabad High Court in Vector Shipping Services (P) Ltd (supra) are not applicable to the facts of the case under consideration whereas the judgments of the Calcutta High Court in Crescent Export Syndicate (supra) and the Gujarat High Court in Sikandarkhan N Tunvar (supra) are squarely applicable to the facts of the case. The dismissal of SLP by Apex Court is not a declaration of law under Article 141 of the Constitution of India. Therefore, mere dismissal of SLP by Apex Court does not mean that the Apex Court declared any law on the subject. Moreover, the Mumbai Bench of the Tribunal in ACIT vs Rishti Stock & Shares P Ltd in ITA No.112/Mum/2012 held the judgment of the Allahabad High Court in Vector Shipping Services (P) Ltd (supra) is *obiter dicta*. Therefore, the decision of the Chennai Bench of this Tribunal is also not of any assistance to the assessee. Respectfully following the judgments of the Calcutta High Court in Crescent Export Syndicate (supra) and the Gujarat High Court in Sikandarkhan N Tunvar (supra), we

do not see any infirmity in the orders of the lower authorities. Accordingly, the orders of the lower authorities are confirmed.

17. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on this 24th September, 2014.

Sd/-	sd/-
(Chandra Poojari)	(N.R.S. Ganesan)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Cochin, Dt : 24th September, 2014
pk/-

copy to:
1. M/s Orchid Marine, Anwar Palace, Chandiroor, Cherthala, Alappuzha
2. The ITO, Wd.3, Alappuzha
3. The Commissioner of Income-tax, Kottayam
4. The Commissioner of Income-tax(A)-IV, Kochi
5. The DR

(True copy) By order

Asstt. Registrar, Income-tax Appellate Tribunal, Cochin Bench