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. 39/Coch/2014
(Assessment year 2006-07)

M/s Mathewsons Exports & Imports Pvt Ltd, Mathewsons Bldgs Kaloor, Kochi 682 017 PAN : AACCM1889Q	vs	ACIT, Cir.1(3) Ernakulam
(Appellant)		(Respondent)

Appellant by	:	Shri K.P. Paulson
Respondent by	:	Shri M Anil Kumar, CIT
Date of hearing	:	06-08-2014
Date of pronouncement	:	21-10s-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)-II, Kochi dated 22-10-2013 and pertains to assessment year 2006-07.

2. The only issue arises for consideration is non deduction of tax for payment of ship charter hire charges.

3. Shri K.P. Paulson, the ld.representative for the assessee submitted that the assessee is engaged in the business of import and export of merchandise goods. According to the ld.representative, the assessee exports goods mainly to Maldives. The ld.representative further submitted that for the purpose of export of goods the assessee hired a vessel named "M.V. Thekkady' from Lots International Ltd, Dubai on the basis of a time charter agreement dated 07-05-2005 for a period of three months. According to the ld.representative, the assessee has to pay hire charges of USD 725 per day. The charter agreement was also renewed for a further period of three months by another agreement dated 03-08-2005. According to the ld.representative, the owner of the vessel, viz. Lots International Ltd is a company incorporated in Dubai. According to the ld.representative, what was paid by the assesee is hire charges for hiring the vessel to run the same in the international waters. However, the assessing officer found that what was paid by the assessee is royalty. Therefore, the assessee had to deduct tax u/s 195 of the Act. According to the ld.representative, what was paid by the assessee is not royalty. A fully operational vessel with necessary permits and trained crew was hired by the assessee for use of the same for transportation of goods in the international waters. The owner of the vessel / recipient of the payment is a non resident Indian (NRI) based in Dubai, UAE. Therefore, according to the ld.representative, the Double Taxation Avoidance Agreement (DTAA)

between the two sovereign countries, viz. Government of India and Government of UAE would come into operation. According to the ld.representative, the royalty arising in a contracting state and paid to the recipients of the other contracting state shall be taxed in the other contracting state. Referring to Article 12(4) of DTAA, the copy of which is available at page 9 to 23 of the paper book, the ld.representative submitted that the payment received by the NRI has to be treated as business income, therefore, it cannot be treated as royalty. According to the ld.representative, the NRI had no permanent establishment in India, therefore, no income accrued to the NRI in India on the payment of hire charges for the charter of vessel for operating the same in international water. According to the ld.representative, the provisions of section 195 would apply only in case the payment was received or deemed to be received in India. In this case, the payment was not received in India and not deemed to be received in India. Therefore, according to the ld.representative, the assessing officer is not justified in disallowing the claim of the assessee.

4. The ld.representative further submitted that DTAA between the two sovereign countries would override the provisions of Indian Income-tax Act insofar as it is more beneficial to the assessee. According to the ld.representative, Article 8 of the DTAA clearly says that the profit derived

by an enterprise of a contracting state from the operation of ships in international water shall be taxable only in that state. Therefore, in view of the specific clause in the DTAA, more particularly, Article 8, the income received by the NRI has to be taxed only in the other contracting state, viz. UAE. On a query from the bench only if the ship was operated in the international traffic / waters then only the profit was taxable in the other contracting state, then how can the assessee substantiate claim that the vessel was operated in the international waters, the ld.representative by placing several documents issued by Tuticorin Port Trust and Customs (C Cargo) submitted that the vessel 'M.V. Thekkadi' arrived to Tuticorin Port from foreign country without any load / material / goods. Therefore, it is obvious that empty vessel sailed all the way from Maldives to Tuticorin. After loading goods at Tuticorin Port, the vessel M.V. Thekkadi sailed to Maldives which is obvious from the documents issued by the customs' authorities (C-Cargo) at Tuticorin Port. No domestic sailing of the ship was undertaken at any point of time. The vessel, M.V. Thekkadi sailed between Tuticorin Port to Maldives Port. Therefore, the operation of vessel M.V. Thekkadi is only in the international waters / traffic, therefore, according to the ld.representative, Article 8 of the DTAA would come into operation. Article 8 of the DTAA would override the provisions of section 9 of the I.T. Act since admittedly, Article 8 is more beneficial to the assessee.

5. Referring to Article 2 of the DTAA between India and UAE, the ld.representative for the assessee submitted that specific provision would override the general provisions in the DTAA. Charter and rental charges of the shipping business are specifically referred to in Article 8 of the DTAA. According to the ld.representative, the taxation of the rental / hire charges of the vessel M.V. Thekkadi has to be considered on the basis of the DTAA between Government of India and Government of UAE. Since, admittedly, the hire charges was paid for operating the vessel in the international waters from Tuticorin to Maldives more particularly at Mali Port, according to the ld.representative, the hire charges is not taxable in India.

6. Referring to the circular issued by the CBDT in circular No.333 dated 02-04-1982, the ld.representative submitted that CBDT clarified that whenever there is a specific provision made in the DTAA that provision has to prevail over the general provisions in the Income-tax Act. Section 90 of the Income-tax Act also provides for giving preferential treatment to the DTAA. Since the payment received by NRI is not taxable in India in view of the DTAA, according to the ld.representative, the assessee is not liable to deduct tax, therefore, the provisions of section 195 / 194J is not applicable in the present case. The ld.representative placed his reliance

on the decision of the Mumbai Bench of this Tribunal in Essar Oil Ltd vs DCIT (2006) 102 TTJ (Mum) 61.

7. The other part of the issue pertains to non deduction of tax from audit fee to the extent of Rs.50,508. The ld.representative submitted that he is not pressing this issue. The ld.representative has made an endorsement to that effect on the file.

8. On the contrary, Shri M Anil Kumar, the ld.DR submitted that the assessee has paid an amount of Rs.36,92,214 for charter hire of ships to M/s Lots International Ltd, a company incorporated in UAE. According to the ld.DR, the charter hire was paid @USD 725 per day. According to the ld.DR, the assessee a shipping agent, used to take the ships on charter hire and used the same for its business at their convenience. Referring to section 9(1)(vi) of the Income-tax Act, the ld.DR submitted that any income by way of royalty payable by a person, who is a resident except where the royalty is payable in respect of any right, property or information used or services utilized for the purposes of a business or profession carried on by the assessee outside India shall be deemed to accrue or arise in India, therefore, it is chargeable to Income-tax under the Indian Income-tax Act in India. According to the ld.DR, any consideration paid for use or right to use any industrial, commercial or scientific equipment would fall within the

definition of royalty under Explanation 2(iva) to section 9(1)(vi) of the Income-tax Act. The ld.DR further submitted that the vessel, M.V. Thekkadi is admittedly owned by an NRI, therefore, the payment made by the assessee being royalty has to be subjected to TDS.

9. Referring to the order of the CIT(A), the ld.DR submitted that the CIT(A) called for remand report from the assessing officer on the copy of the charter agreement filed by the assessee before the CIT(A). The assessing officer found that the commercial operation of the vessel, M.V. Thekkadi is completely under the control of the assessee. The assessee was using the entire vessel. Referring to Explanation 2 to sub section (vi) of section 9 of the Act, the ld.DR submitted that royalty would include the consideration paid in respect of any right, property or information. Referring to the agreement between the parties, the ld.DR submitted that under the time charter, the trade limits is Tuticorin – Cochin range and the place of re-delivery of the vessel is also Tuticorin – Cochin range. Referring to the DTAA, the ld.DR submitted that royalty of any kind is taxable @10% in the source country. Since the time charter agreement is in the nature of royalty and the payment made by the assessee to the non resident is liable to be taxed in India being a source country, the assessee has to deduct tax. According to the ld.DR, time charter is not covered by Article 8 of the DTAA. According to the ld.DR, the assessee is having

control over the vessel. The assessee has also right to use the vessel for a particular period. Therefore, the right to use the vessel remains exclusively with the assessee in view of the charter agreement. Therefore, the assessee has to necessarily deduct tax at the time of making payment. Hence, the assessing officer has rightly disallowed the claim of the assessee to the extent of Rs.36,92,214. The ld.DR relied on the following judgments:

(1) Kanchangaga Sea Foods Ltd vs CIT (2004) 136 Taxman 8 (P)

(2) Poompuhar Shippinbg Corportion Ltd vs ITO, Intl Taxation (2013) 38 taxmann.com 150 (Mad)

10. We have carefully gone through the materials available on record and given our thoughtful consideration to the arguments advanced on both sides. The assessee, admittedly, entered into an agreement with Lots International Ltd, a company incorporated in Dubai, UAE for time charter of a vessel by name, M.V. Thekkadi. The copy of the charter agreement dated 07-05-2005 and 03-08-2005 are available on pages 25 to 33 and 34 to 43 of the paper book. As per this agreement, the owner of the ship is Lots International, Dubai. The assessee took the vessel, M.V. Thekkadi on charter for a period of three months. It is not in dispute that the assessee is a shipping agent. The assessee obtained goods from various persons for transporting the same to Maldives. As per clause 20 of the Charter

agreement, the hire charges / payment has to be made in US dollar to Emeritus Bank International, Mankhool, Dubai, United Arab Emirates, Swift Code – EBILAEAD to the account of Lots International Ltd, Dubai. The assessee being a charter has to pay for fuel, oil, port charges, etc. The charter further provides for payment of hire charges in every fifteen days in advance. On expiration of the charter period, the assessee has to re-deliver the vessel to the owner. The assessee has also furnished the details of voyages undertook by vessel M.V. Thekkady (paper book pages 56 to 82).

11. The question now arises for consideration is whether the payment made by the assessee is a royalty and whether it is taxable in India. We have carefully gone through the provisions of Indian Income-tax Act more particularly section 9 of the Act. Section 9(1)(vi) reads as follows:

> "9. (1) The following income shall be deemed to accrue or arise in India:-
> (i) to (v) xxxxxxxxxxxxxxxxxxxxx
> (vi) income by way of royalty payable by –
> (a) the Government; or
> (b) a person who is a resident, except where the royalty is payable in respect of any right, property or information used or services utilized for the purposes of a business or profession carried on by such

person outside India or for the purposes of making or earning any income from any source outside India; or

(c) a person who is a non-resident, where the royalty is payable in respect of any right, property or information used or services utilized for the purposes of a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India;

Provided that nothing contained in this clause shall apply in relation to so much of the income by way of royalty as consists of lump sum consideration for the transfer outside India of, or the imparting of information outside India of, in respect of, any data, documentation, drawing or specification relating to any patent, invention, model, deign, secret formula or process or trade mark or similar property, if such income is payable in pursuance of an agreement made before the 1st day of April, 1976, and the agreement is approved by the Central Government;

Provided further that nothing contained in this clause shall apply in relation to so much of the income by way of royalty as consists of lump sum payment made by a person, who is a resident, for the transfer of all or any rights (including the granting of a licence) in respect of computer software supplied by a non-resident manufacturer along with computer or computer-based equipment under any scheme approved under the Policy on Computer Software Export, Software

Development and Training, 1986 of the Government of India.

Explanation 1.- For the purposes of the first proviso, an agreement made on or after the 1st day of April, 1976, shall be deemed to have been made before that date if the agreement is made in accordance with proposals approved by the Central Government before that date; so, however, that, where the recipient of the income by way of royalty is a foreign company, the agreement shall not be deemed to have been made before that date unless, before the expiry of the time allowed under sub-section (1) or sub-section (2) of section 139 (whether fixed originally or on extension) for furnishing the return of income for the assessment year commencing on the 1st day of April, 1977, or the assessment year in respect of which such income first becomes chargeable to tax under this Act, whichever assessment year is later, the company exercises an option by furnishing a declaration in writing to the Assessing Officer (such option being final for that assessment year and for every subsequent assessment year) that the agreement may be regarded as an agreement made before the 1st day of April, 1976.

Explanation 2.-For the purposes of this clause, “royalty” means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head “Capital gains”) for –

(i) the transfer of all or any rights (including the granting of a licence) in respect of a patent, invention, model, design, secret formula or process or trade mark or similar property;

(ii) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trade mark or similar property;

(iii) the use of any patent, invention, model, design, secret formula or process or trade mark or similar property;

(iv) the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill;

(iva) the use r right to use any industrial, commercial or scientific equipment but not including the amounts referred to in section 44BB;

(v) the transfer of all or any rights (including h granting of a licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, but not including consideration for the sale, distribution or exhibition of cinematographic films; or

(vi) the rendering of any services in connection with the activities referred to in sub-clauses (i) to (iv), (iva) and (v).

> Explanation 3.- For the purposes of this clause, "computer software" means any computer programme recorded on any disc, tape, perforated media or other information storage device and includes any such programme or any customized electronic data;"

12. The assessing officer by referring to section 9(1) (vi) Explanation 2(iva) came to the conclusion that any payment made for use or right to use in industrial, commercial or scientific equipment would fall within the term "royalty". No doubt, a vessel is an instrument / equipment; therefore, the payment made by the assesee for use or right to use such instrument / equipment would fall within the provisions of section 9(vi) Explanation 2(iva) of the Act. At the very same time, there is an agreement between the two sovereign countries, viz. Government of India and Government of UAE. The copy of the agreement is filed by the assessee in the paper book. The DTAA between the two countries defines royalty as per Article 12 therein. For the purpose of convenience, we are reproducing Article 12 of the DTAA:

> "Article 12
> ROYALTIES
> 1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 10 per cent of the gross amount of such royalties.
3. The term “royalties” s used in this Article means payment of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience but do not include royalties or other payments in respect of the operation of mines or quarries or exploitation of petroleum or other natural resources.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of the m and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the lastmentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement."

13. The royalty shall be taxed at 10% of the gross amount in the contracting state in which they arise. A specific provision was made in respect of shipping in Article 8 of the DTAA which reads as follows:

"Article 8

SHIPPING

1. Profits derived by an enterprise of a Contracting State from the operation by that enterprise of ships in international traffic shall be taxable only in that State.
2. For the purposes of this Article, profits from the operation of ships in international traffic shall mean profits derived by an enterprise described in paragraph 1 from the transportation by sea of passengers, mail, livestock or goods and shall include:
   a. The charter or rental of ships incidental to such transportation;
   b. The rental of containers and related equipments used in connection with the operation of ships in international traffic;
   c. The gains derived from the alienation of ships, containers and related equipments owned and operated by the enterprise in international traffic.
3. For the purposes of this Article, interest on funds connected with the operation of ships in international traffic shall be regarded s profits derived from the operation of such ships and the provisions of Article 11 shall not apply in relation to such interest.
4. The provisions of paragraphs 1, 2 and 3 shall apply to profits from the participation in a pool, a joint business or an international operating agency."

From the above, it could be seen that the profit derived from an enterprise of a contracting state from operation of ship in international traffic shall be taxed only in that contracting state. The profit received on charter or rental of ship is considered to be profit from operation of the ship.

14. The DTAA has a specific provision for royalty and shipping. Whenever, there is a specific provision with regard to a particular subject, the specific provision will override the general provision. Therefore, in respect of shipping business, Article 8 will override Article 12 of the DTAA. In other words, Article 8 will prevail over Article 12 of the DTAA; hence, only Article 8 of the DTAA would be applicable in respect of shipping business.

15. The question now arises for consideration is when there is a conflict between the Indian Income-tax Act and the DTAA, which provision will prevail over the other?

16. We have carefully gone through the provisions of the Income-tax Act. Section 90 clearly says that when Government of India enters into an agreement with Government of other countries outside India, then, in relation to an assessee to whom such agreement applies, the provisions of the Income-tax Act would apply to the extent they are more beneficial to

the assessee. In view of section 90 of the Indian Income-tax Act, it is obvious that if the provisions in the DTAA are more beneficial to the assessee, then the provisions in the DTAA would prevail over the Indian Income-tax Act. Therefore, this Tribunal is of the considered opinion that Article 8 of the DTAA between government of India and Government of UAE would be applicable to the facts of the case, since it is more beneficial to the assessee. Article 8 of the DTAA, more particularly, sub clause 2 clearly says that the profit from operation of the ship in international traffic will also include the charter or rental of ships incidental to such transportation. Therefore, this Tribunal is of the considered opinion that the profit arising to the non resident company on charter of the vessel M.V. Thekkadi has to be taxed only in the UAE in view of the DTAA between Government of India and Government of UAE, more particularly, Article 8(1) of the DTAA. The material filed by the assessee clearly shows that the vessel M.V. Thekkadi was operated between Tuticorin Port to Mali Port in Maldives. Therefore, it operates in international traffic / waters.

17. This bench of the Tribunal in ACIT vs Kinship Services (India) Pvt Ltd (2010) 128 TTJ 108 had an occasion to consider an identical issue. This Tribunal found that charter hire payments by the assessee company to non resident company are not a royalty, therefore, not taxable in India;

hence, the assessee is not required to deduct tax. In fact, the Tribunal observed as follows at page 114 & 115:

> "14. The assessing authority has treated the payments made by the assessee-company under the category of royalty. Royalty means consideration for the transfer of all or any rights in respect of a patent, invention, model, design, secret formula or processes or trade mark or similar property. A plain reading makes it clear that the charter ship hire payments made by the assessee do not fall under the above category. The royalty also means consideration for imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trade mark or similar property. The payments made by the assessee do not have any of these characteristics, design, secret formula or process or trade mark or similar property. The payments made by the assessee do not have any of these characteristics. The expression 'royalty' further means the use of any patent , invention, model, design, secret formula or process or trade mark or similar property. The meaning of the word "property" should be read in the company of the words like patent, invention, model, etc. The principle of interpretation of ejusdem generis applies here. The assessee has not made the payments for the purpose of any such property.
>
> 15. Therefore, it is very clear that the payments made by the assessee company were in the nature of simple payments

for chartering ships on hire for doing the business outside India. Therefore, the payments do not satisfy the test laid down in s.9 of the IT Act, 1961. When s. 9 is not satisfied, there cannot be a case that income is deemed to accrue or arise in India as a result of hire payments made by the assessee-company to foreign ships.

16. The liability under s.195 is cast on the assessee only when the payment is made to a non-resident, which is chargeable under the provisions of the IT Act. Here, the payments made by the assessee do not fall under s.9 and the payments do not take the character of any sum chargeable to tax under this Act. Therefore, s.195 does not come into operation.

17. When s.195 does not apply to the present case, there is no violation of that section and consequently invoking of s.40(a)(i) does not arise. Therefore, we find that the CIT(A) is justified in deleting the disallowance made by the AO. This issue is decided against the Revenue."

This decision of the Tribunal is distinguished by the CIT(A) on the ground that it is only for charter hire payment and not specifically to the time charter; in this case what is paid by the assessee is a charter hire charges. Therefore, the CIT(A) is not justified in interpreting the fact as if it is a time charter. The charter agreement clearly says that it is a charter payment for hiring the vessel for three months @725 USD per day. The payment had

to be made in Dubai to the account of Lots International Ltd with Emeritus Bank International. Therefore, the distinction made by the CIT(A) between the charter hire and time charter is unwarranted. Since the material filed by the assessee discloses that the vessels were operated between India and Maldives in the international traffic, merely because there was a clause that the vessel would be delivered at Tuticorin Cochin Range after the expiry of the charter period in the agreement, that cannot justify for application of Explanation 5(c) to section 9(1)(vi) of the Act. The CIT(A) placed reliance on the Explanation 5 to section 9 of Indian Income-tax Act. Since the DTAA between Government of India and Government of UAE, is more beneficial to the assessee, this Tribunal is of the considered opinion that the provisions of section 9(1)(vi) Explanation 5 is not applicable to the facts of the case.

18. We have also carefully gone through the decision of the Andhra Pradesh High Court in Kanchangaga Sea Foods Ltd (supra). In the case before the Andhra Pradesh High Court, the assessee company was engaged in sale and export of seafoods. In order to exploit the fishing rights in Exclusive Economic Zone of India, the assessee entered into an agreement chartering two fishing vessels with a non resident company. As per the agreement, the assessee ought to pay 85 per cent of fish catch to non resident company towards payment of hire charges. The assessing

officer found that the payment was made by the assessee to the non resident company as profit as contemplated in section 195 of the Act, therefore, liable to deduct tax. The CIT(A) confirmed the view of the assessing officer. The Tribunal and the High Court confirmed the disallowance made by the lower authorities on the ground that the assessee is liable to make deduction. In this case, the High Court had no occasion to examine the provisions of the DTAA. From the judgment of the High Court, it is not known whether any DTAA was in existence between India and the country from which the fishing vessel was hired. Since the DTAA was not examined by the Andhra Pradesh High Court, this Tribunal is of the considered opinion that the judgment of the Andhra Pradesh High Court is not applicable to the facts of the case.

19. We have also carefully gone through the judgment of the Madras High Court in Poompuhar Shipping Corporation Ltd (supra). In the case before the Madras High Court, the assessee company engaged in the business of transporting coal from various parts of India to Tamil Nadu Electricity Board, Chennai. The assessee chartered a foreign ship vessel by entering into a charter agreement. While making remittance to the charter payment, the assessee did not deduct tax at source. The High Court found that the movement of vessel was on the coastal lines of Indian shores. In fact, the assessee used the vessel for transport of coal from

various places in India to Chennai. Therefore, the High Court found that the vessel was not been operated in international traffic / water. Therefore, the assessee's contention was not accepted. In this case, the vessel was not operated in the Indian coastal lines. The vessel was operated between Tuticorin to Maldives. Therefore, it is obvious that the vessel, M.V. Thekkadi was operated in international traffic / waters; hence, the profit arising from such operation is taxable only in the contracting state, viz. UAE. Therefore, this judgment of the Madras High Court in the case of Poompuhar Shipping Corporation Ltd (supra) is not of any assistance to the revenue.

20. In view of the above discussion, this Tribunal is unable to uphold the order of the lower authorities. Accordingly, the orders of the lower authorities are set aside and the addition made by the assessing officer is deleted.

21. The assessee has raised one more issue with regard to non deduction of tax on the audit fee of Rs. 50,508. Admittedly, the tax was not deducted, therefore, this Tribunal is of the considered opinion that the assessing officer has rightly made the addition which was confirmed by the CIT(A). Moreover, the ld.representative for the assesee has not pressed

this issue by making endorsement on the file. Hence, this ground is rejected.

22. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on this 21st October, 2014.

Sd/- sd/-

(Chandra Poojari) (N.R.S. Ganesan)
ACCOUNTANT MEMBER JUDICIAL MEMBER

Cochin, Dt : 21st October, 2014
pk/-
copy to:

1. M/s Mathewsons Exports & Imports Pvt Ltd, Mathewsons Buildings, Kaloor, Kochi 682 017
2. The ACIT, Cir.1(3), Ernakulam
3. The Commissioner of Income-tax, Kochi
4. The Commissioner of Income-tax(A)-II, Kochi
5. The DR

(True copy) By order

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