

<b>IN THE INCOME TAX APPELLATE TRIBUNAL</b>
<b>COCHIN BENCH, COCHIN</b>
<b>BEFORE S/SHRI CHANDRA POOJARI, AM &amp; GEORGE GEORGE K., JM</b>

I.T.A. Nos.545 to 549/Coch/2018
Assessment Years : 2002-03 & 2005-06 to 2008-09

Shri S. Mohanan Nair, "Mohanam", TC 55/294, Kaimanam, Trivandrum. [PAN:AJOPP 2959E]	<b>Vs.</b>	The Assistant Director of Income- tax (Inv.), Trivandrum.
<b>(Assessee -Appellant)</b>		<b>(Revenue-Respondent)</b>

<b>Assessee by</b>	Shri T.M. Sreedharan, Sr. Adv.
<b>Revenue by</b>	Smt. A.S. Bindhu, Sr. DR

<b>Date of hearing</b>	24/09/2019
<b>Date of pronouncement</b>	01 <sup>st</sup> /10/2019

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### **ORDER**

Per GEORGE GEORGE K. JM:

These appeals filed at the instance of the assessee is directed against various orders of the CIT(A), Trivandrum. The relevant assessment years are 2002-03, 2005-06 to 2008-09. The orders of the CIT(A) arise out of the assessments passed u/s. 153A r.w.s. 144 of the I.T. Act for the assessment years 2002-03, 2005-06 to 2007-08. Whereas for the assessment year 2008-09, the assesment order was passed u/s. 144 of the I.T. Act.

2. The brief facts of the case are as follows:

The assessee is an individual. There was search in the business premises of i) M/s. Parthas Infopark Ltd., Trivandrum, ii) the assessee and iii) two others. During the course of search, documents were found which disclosed certain payments made by M/s. Parthas Infopark Ltd. to the assessee. In pursuant to the search, notice u/s. 153A of the I.T. Act was issued to the assessee. In the absence of any return being filed, in response to the notice issued u/s. 142(1) of the I.T. Act, assessments were completed under section 144 of the I.T. Act for assessment years 2002-03, 2005-06 to 2008-09.

3. Aggrieved by the assessment orders passed for the assessment years 2002-03, 2005-06 to 2008-09, appeals were filed to the first appellate authority. Before the first appellate authority, it was submitted by the assessee that he could not appear during the course of the assessment proceedings and file necessary evidence for deleting the additions made in the assessment orders. It was stated that the assessee had fallen sick during the course of assessment proceedings. The assessee had also produced medical certificate stating that he was ill during the course of assessment proceedings. The CIT(A) called for report from the Assessing Officer on the written submissions filed by the assessee. The Assessing Officer and the Range Head submitted their reports. In the reports of the Assessing Officer and the Range Head, it was stated that the issue may be decided on merits. Accordingly, the CIT(A) disposed of the appeals of the assessee. The CIT(A) partly allowed the appeals filed by the assessee.

4. The assessee being aggrieved by the orders of the CIT(A), has filed these appeals before the Tribunal. The Ld. Counsel for the assessee submitted that the assessee could not produce the documentary evidence to show that the additions are not warranted in these cases as he fell ill during the course of assessment proceedings. It was submitted that as a last chance, one more opportunity may be granted to produce the necessary documentary proof to explain the source of investments/deposits and the matter may be remanded to the Assessing Officer for consideration of the issues raised in these appeals afresh.

5. The Ld. DR relied on the orders passed by the lower authorities.

6. We have heard the rival submissions and perused the record. It is claimed by the assessee that he had fallen sick during the course of assessment proceedings. The reasons adduced by the assessee for not responding to the notice issued by the Assessing Officer is reproduced below:

“In August 2005, I got infection of chickunguniya. On getting almost relief from the infection, I am affected with severe body pain, pain in major and minor joints, Poly Athiritis and Kidney diseases. Further on 10/09/2007, I am admitted to Government Ayurveda Hospital, Poojapura, Trivandrum and during the time of survey by the income tax Department officials, I was admitted in Kerala Government Ayurveda Research Centre, Poojapura. That severe treatment extended 32 months continuously bedridden etc. Still I am in medical treatments with various specialists. During the time the assessing authority issued several notices but I was unable to attend on the dates and the consultants who were authorized were also not furnished the reply in due dates. It is occurred only because I was bedridden, by which the documents related were not

properly arranged or made available. The copies of Medical Certificates/Admission Card/related treatment records are enclosed herewith

6.1 The Ld. AR submitted during the course of hearing that he had documentary proof to explain the source for investments/deposits and therefore, requested to restore the issue to the Assessing Officer for fresh consideration. In the interest of justice and equity, the matter needs to be considered afresh by the Assessing Officer since the assessee could not properly represent his case during the course of assessment proceedings. For the above said purpose, we restore the appeals filed by the assessee to the Assessing Officer for de novo consideration. The assessee shall co-operate with the department and Assessing Officer shall pass an order expeditiously after affording reasonable opportunity of hearing to the assessee.

6.2 We make it clear that in the absence of Department's appeal before the Tribunal, the income to be determined by the Assessing Officer subsequent to the remand made by us shall not exceed the income already determined in giving effect to the impugned orders of the first appellate authority for the assessment years 2002-03, 2005-06 to 2008-09. It is ordered accordingly.

7. In the result, the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open Court on this 1<sup>st</sup> October, 2019

sd/-  
(CHANDRA POOJARI)  
ACCOUNTANT MEMBER

sd/-  
(GEORGE GEORGE K.)  
JUDICIAL MEMBER

Place: Kochi

Dated: 1<sup>st</sup> October, 2019

GJ

Copy to:

1. Shri S. Mohanan Nair, "Mohanam", TC 55/294, Kaimanam, Trivandrum.
2. The Assistant Director of Income-tax (Inv.), Trivandrum.
3. The Commissioner of Income-tax(Appeals), Trivandrum.
4. The Pr. Commissioner of Income-tax, Trivandrum.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)  
I.T.A.T., Cochin