

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

**Before Shri Satbeer Singh Godara, Judicial Member &
Shri Amarjit Singh, Accountant Member**

ITA Nos.808 to 810/Coch/2023
Asst.Years : 2018-19, 2019-20 & 2020-21

Mr. Hareendran Nair Janardhanan Nair, Kasturi, Poovachal, Kattakada, Trivandrum, Kerala – 695 575 PAN : ABHPN5933D	v.	The DCIT, Central Circle, Thiruvananthapuram.
(Appellant)		(Respondent)

Appellant by : Smt. Sandhya Arti, CA
Respondent by : Dr. S. Pandian, CIT-DR

Date of Hearing : 16.08.2024	Date of Pronouncement : 06.11. 2024
-------------------------------------	--

ORDER

Per Bench :

These assessee's three appeals ITA Nos.808 to 810/Coch/2023 for assessment years 2018-19, 2019-20 & 2020-21 arise from the separate orders of the Commissioner of Income-tax (Appeals)/NFAC vide DIN & Order Nos. ITBA/APL/S/250/ 2023-24/1056637825(1), ITBA/APL/S/250/2023-24/1056637174(1), ITBA/APL/S/250/2023-24/1056636460(1), dated 28.09.2023, respectively, in proceedings u/s.250 of the Income-tax Act, 1961; in short "the Act" hereinafter.

Heard both the parties at length. Case files perused.

2. It emerges at the outset with the able assistance coming from both sides on the basis that the assessee's instant three appeals ITA Nos.808 to 810/Coch/2023; involving section 153A r.w.s.143(3) assessments, arise from the department's search action dated 10.03.2020 in M/s.Pankajakasthuri group wherein he happens to be one of the director(s). All these case files further indicate that the income-tax authorities had found/seized incriminating documents based on which the Assessing Officer framed the impugned assessments making various additions which form subject matter of our apt adjudication.

3. Both the learned representatives next submit that the assessee's instant three appeals raise almost identical substantive grounds. His first and foremost grievance in all these appeals challenges the learned lower authorities action assessing Rs.23,48,652/-, Rs.2,98,26,731/- and Rs.2,17,64,531/-, assessment year-wise, respectively, representing withdrawals from M/s.PKHL, as his unaccounted/undisclosed income, used for investment in setting up "Neyyar Medicity" project. Ms. Arti invited our attention to the assessee's detailed paper book in tune with his pleadings in ground No.6 herein that the said company M/s. PKHL has already declared the foregoing sum as its undisclosed income in "settlement" proceedings and therefore, it amounts to double addition in assessee's hands. Faced

with this situation, we are of the considered view that the instant issue requires to be adjudicated afresh by the CIT(A) as per law after verification of all necessary facts subject to a rider that it shall be taxpayer's risk and responsibility only to plead and prove all the relevant facts within three effective opportunities in consequential proceedings. It is further made clear that in case the assessee pleads and proves before the CIT(A)'s that the abovesaid "settlement" proceedings are not finalized yet the issue shall be kept in abeyance till then so as to avoid double addition. Ordered accordingly.

4. The assessee's identical second substantive ground in A.Y. 2018-19 and A.Y. 2020-21 and third substantive ground in A.Y. 2019-20 seeks to reverse both the lower authorities action assessing amount of Rs.14,36,550/-, Rs.25,80,607/- and Rs.20,81,486; assessment year-wise, respectively, representing sale of specialized medicines through "OPD". Learned counsel submits that M/s. PKHHT has already offered the very sums in its hands and therefore, it amounts to double addition in assessee's hands. We find merit in the assessee's arguments to this limited extent and restore the instant issue back to the CIT(A) in very terms as imposed in the preceding paras.

5. Lastly comes the assessee's second substantive ground in A.Y. 2019-20 challenging both the lower authorities action making 2(22)(e) deemed dividend addition of Rs.39,75,762/-,

in the course of assessment as upheld in the CIT(A) findings. Learned counsel's only case is that the assessee and the said company had been having a current running account containing various contra entries and therefore, case law(s) CIT Vs. Creative Dyeing and Printing Pvt. Ltd. 318 ITR 476 (Delhi) & Pradip Kumar Malhotra Vs. CIT 338 ITR 538 (Cal); already goes against the department on the very issue as such sum(s) could not be terms as either loans or advances; as the case may be.

6. The Revenue on the other hand has chosen to place strong reliance on the impugned addition made in both the lower proceedings. Faced with this situation, we are of the considered view that the instant last issue of deemed dividend also requires the CIT(A)/NFAC's fresh adjudication and factual verification to the limited extent to examine the assessee's plea of current account entries maintained with the company M/s. Pankaja Kasthuri Herbals (India) Pvt. Ltd. with a rider that it shall the taxpayer's risk and responsibility to plead and prove all the relevant facts within three effective opportunities. Ordered accordingly.

7. We accordingly reject the Revenue's vehement contention to this limited extent in foregoing terms.

8. These assessee's three appeals ITA Nos. 808 to 810/Coch/2023 are allowed for statistical purposes in above terms. A copy of this common order be placed in the respective files.

Order pronounced in the open court on this 6th day of November, 2024.

**Sd/-
(Amarjit Singh)
ACCOUNTANT MEMBER**

**Sd/-
(Satbeer Singh Godara)
JUDICIAL MEMBER**

Cochin ; Dated : 6th November, 2024.
Satish

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT Concerned.
4. The DR, ITAT, Cochin.
5. Guard File.

Asst.Registrar/ITAT, Cochin