

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

**Before Shri George George K, Vice-President
&
Shri Inturi Rama Rao, Accountant Member**

ITA No.645/Coch/2024 :Asst.Year 2015-2016

Sri.Shaji Ayyapan Villa No.2, Mystic Bells Near Kaniyampuzha Bridge Eroor PO Ernakulam – 682 306. PAN : AGZPA8725B.	v.	The Income Tax Officer Corporate Ward – 2(2) Kochi.
(Appellant)		(Respondent)

Appellant by : Ms.Krishna K, Advocatae

Respondent by : Smt.Leena Lal, Sr.AR

Date of Hearing :02.04.2025	Date of Pronouncement : 08.04.2025
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ORDER

Per Inturi Rama Rao, AM :

This appeal at the instance of the assessee is directed against National Faceless Assessment Centre / Commissioner of Income-tax (Appeals) [“CIT(A)”] order dated 11.08.2023 passed u/s.250 of the Income-tax Act, 1961 [“the Act”] for the assessment year 2015-2016.

2. The appellant is an individual. The return of income for the assessment year 2015-2016 was filed on 16th March, 2016 disclosing total income of Rs.18,93,650. Against the said return of income, the assessment was completed by the Assessing Officer (“AO”) vide order dated 22.12.2017 passed u/s.143(3) of the Income-tax Act, 1961 (“the

Act”). During the course of assessment proceedings, the AO noticed that the appellant received loan of Rs.3,34,73,880 from the company, namely, Shwas Homes Private Limited, in which the assessee was the managing director holding shares of more than 10%. The AO also observed that the said company has got accumulated profit of Rs.1,49,98,596, therefore, the AO considered it as deemed dividend u/s.2(22)(e) and accordingly, the same was assessed to tax.

3. Being aggrieved by the assessment order, appellant filed an appeal before the CIT(A) , who wide the impugned order, dismissed the appeal for non-prosecution.

4. Being aggrieved by the order the CIT(A), the appellant is in appeal before us in the present appeal. At the outset, we find tht there is a delay of 289 days in filing the appeal before the Tribunal. The appellant filed a condonation petition accompanied by an affidavit seeking condonation of delay on the ground that it had no knowledge of the order passed by the CIT(A) till 11th August, 2023, when the order was downloaded from the web portal of the Income-tax Portal. Thus, he prayed that the delay in filing the appeal may be condoned.

5. The learned Senior DR opposed the condonation of delay by stating that the explanation offered by the appellant for the delay is general in nature.

6. We heard the rival submissions and perused the material available on record. The explanation of the appellant that it had no knowledge of the order passed by the CIT(A) till 11th August, 2023, cannot be

disbelieved in the absence of any evidence to the contrary. Therefore, we are of the considered opinion that it is a fit case to condone the delay. Accordingly, we condone the delay and admit the appeal for adjudication on merits.

7. We heard the rival submissions and perused the material available on record. We find that the CIT(A) dismissed the appeal *in limine* for non prosecution. It is the settled position of law that the CIT(A), even while disposing of the appeal *ex parte*, is duty bound to dispose of the appeal on merits. Reliance in this regard can be placed on the decision of the Hon'ble Bombay High Court in the case of *PCIT v. Premkumar Arjundas Luthra 279 CTR 614*. Therefore, in the light of the above legal position, we are of the considered view that the matter requires to be remanded to the file of the CIT(A), with a direction to dispose of the appeal *de novo* on merits after affording reasonable opportunity of being heard to the assessee.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 08th day of April, 2025.

Sd/-
(George George K)
VICE-PRESIDENT

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

Cochin; Dated : 08th April, 2025.
Devadas G*

Copy to :

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

Asst.Registrar/ITAT, Cochin