

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH****BEFORE SHRI INTURI RAMA RAO, AM
AND SONJOY SARMA, JM****ITA No.880, 888 & 881/Coch/2024
Assessment Years: 2004-05, 2006-07 & 2007-08**

Nellikote Kunhipari Mohammedali Appellant
6/1183, Kunhipari Buildings, Cherootty Road,
Calicut-673032.
PAN: ADTPM0491P

vs.

ACIT Respondent
Circle-1(1),
Kozhikode.

Appellant by: Shri Surendranath Rao, CA
Respondent by: Sri Suresh Sivanandan, CIT-DR

Date of Hearing: 03.06.2025
Date of Pronouncement: 15.07.2025

ORDER**Per: Inturi Rama Rao, AM**

These are three different appeals filed by the assessee directed against the different orders of the National Faceless Appeal Centre, Delhi confirming vide orders dated 30/08/2024 for the Assessment Year (AY) 2004-05, 2006-07 and 2007-08.

2. Since the identical facts and issues are involved in these three appeals, they were heard together and disposed of vide this common order.

3. For the sake of clarity and convenience, the facts involved in ITA No. 880/Coch/2024 (AY 2004-05) are stated herein under.

4. Briefly the facts of the case are that the appellant is an individual and a Director and Shareholder in the Parrison Group of Companies. The return of Income for the AY 2004-05 was filed on 16/02/2005 declaring a total income of Rs. 91,14,030/- and agricultural income of Rs. 48,000/-. Against the said return of income, the assessment was completed by the ACIT, Circle-1(1), Kozhikode (hereinafter referred as "AO") vide order dated 22/03/2006 accepting the returned income.

5. Subsequently, The Commissioner of Income Tax (Central)-1, Kozhikode has set-aside the assessment order in exercise of the power vested with him U/s. 263 of the Act and the consequential order U/s. 143(3) r.w.s 263 of the Income Tax Act, 1961 (in short "the Act") was passed after making an addition of Rs. 30,00,000/- on account of gifts received. However, the revision order passed U/s. 263 was set-aside by the Tribunal vide order dated 30/01/2009 in ITA Nos. 957 to 951/Coch/2007. Subsequently, based on the information unearthed during the course of the search and seizure operation in the case of M/s Parisons Group of companies that the appellant received loans and advances from the companies namely (1) Parrisons Agrotech Pvt Ltd (Rs. 88,37,365/-); (2) M/s. Parrisons Roller Flour Mills Pvt Ltd (Rs.

12,08,13,153/-) and (3) Kadandaram Roller Flour Mills Pvt Ltd (Rs. 10,49,802/-) in which the appellant is holding shares of more than 10%, the AO formed an opinion that the income escaped assessment to tax and accordingly issued a notice U/s. 148 of the Act. In response to the notice U/s. 148, the appellant filed the Return of Income on 27/10/2012 declaring an income of Rs. 91,14,030/-. Against the said return of income, the assessment was completed by the AO vide order dated 28/12/2011 U/s. 143(3) r.w.s 147 of the Income Tax Act, 1961 (in short "the Act") at a total income of Rs. 6,52,19,870/-. While doing so, the AO made an addition of Rs. 5,60,57,835/- U/s. 2(22)(e) of the Act by treating the loans received from M/s. Parrisons Roller Flour Mills Pvt Ltd (Rs.5,50,08,033/-) and Kadandaram Roller Flour Mills Pvt Ltd (Rs. 10,49,802/-).

6. Brief facts leading to the above addition are that during the course of the assessment proceedings, the AO found that the appellant had received loans from the following concerns (1) Parrisons Agrotech Pvt Ltd (Rs. 88,37,365/-); (2) M/s. Parrisons Roller Flour Mills Pvt Ltd (Rs. 12,08,13,153/-) and (3) Kadandaram Roller Flour Mills Pvt Ltd (Rs. 10,49,802/-). It is also found that during the previous year relevant to the assessment year under consideration, the appellant received loans aggregating to Rs. 12,08,13,153/- from M/s. Parrisons Roller Flour Mills Pvt Ltd wherein the appellant is holding more than 10% of the shareholding in the said company and the said company is having accumulated profits. Therefore, the AO had held that the transactions of loans are in the nature of deemed

dividend and hit by the provisions of section 2(22)(e) of the Act. When the appellant was called upon to explain as to why the said transaction of loans cannot be treated as a deemed dividend, it was contended that the transactions are in the nature of trading transactions and the provisions of section 2(22)(e) of the Act have no application placing reliance on the decision of the Hon'ble Delhi High Court in the case of CIT vs. Creative Dyeing and Printing (P) Ltd 318 ITR 476 (Delhi). The said contention was rejected by the AO and proceeded to hold that the transaction is in the nature of deemed dividend and taxed the same to the extent of accumulated profit available in hands of the lender companies. However, the addition was made under the protective basis as the substantive addition was made in the case of firm - N.K. Mohammed Ali and Brothers.

7. Being aggrieved, an appeal was filed before the CIT(A) contending that the reassessment proceedings are invalid in law as there was no failure on the part of the assessee to disclose the material facts truly and fully necessary for the assessment proceedings. On merits of the case, it is submitted that the appellant does not hold shares more than 10% in the said companies and the advance was received for the purpose of business consideration, therefore, the provisions of section 2(22)(e) of the Act had no application. Considering the above submissions of the appellant, the CIT(A) while passing a reasoned order however, concluded that the addition is required to be made in the hands of the persons who is the shareholder not in the hands of the concerns

from which the loans received. Accordingly, the CIT(A) confirmed the addition on the substantive basis in the hands of the appellant.

8. Being aggrieved, the assessee is in appeal before us in the present appeal.

9. It is contended that the re-assessment proceedings initiated against the appellant are bad in law as the re-assessment proceedings were initiated on 19/11/2010 after expiry of the period of Four Years, there was no failure on the part of the assessee to disclose truly and fully all the material facts necessary for assessment proceedings. It is further submitted that re-assessment proceedings initiated for the purpose of making the protective addition cannot be made in the eyes of law placing reliance on the decision of the Hon'ble Bombay High Court in the case of DHFL Venture Capital Fund vs. ITO (358 ITR 471) (Bombay); decision of the Hon'ble Gujarat High Court in the case of Sagar Enterprises vs. ACIT (257 ITR 335) (Guj.). It is further submitted that there was no fresh material brought on record to suggest that the income escaped assessment to tax and the re-assessment proceedings were initiated merely based on change of opinion and in support of his contention reliance was placed on the following decisions:

- (i) ACIT vs. Marico Limited (2020) (117 taxmann.com 244) (SC)
- (ii) DcIT vs. Financial Software and Systems Private Limited (447 ITR 370)(SC)
- (iii) CIT vs. Kelvinator of India Ltd (320 ITR 561) (SC)

(iv) CIT vs. Malayala Manorama Limited (95 Taxmann.com 136)(Kerala)

(v) Arun Gupta vs. CIT (371 ITR 394) (Allahabad.)

10. On the other hand, the Ld. CIT-DR vehemently opposed the above submissions and supported the orders of the lower authorities.

11. We heard the rival submissions and perused the material available on record. The Grounds of Appeal No.1 goes to the very root of the matter, we shall first take up the Grounds of Appeal challenging the very validity of the re-assessment proceedings. It is contended that the re-assessment proceedings were sought to be reopened after expiry of Four Years from the end of the relevant assessment year. The assessment year under consideration is AY 2004-05. The notice U/s.148 of the Act was issued on 19/11/2010 i.e., after expiry of period of Four Years from the end of the relevant assessment year. The reasons recorded for issuance of notice U/s. 148 are read as under:

“As requested by you vide reference cited above the reasons for reopening the assessment are given as under:

It is noticed that in the case of M/s. Parisons Agrotech Pvt Ltd and Parisons Roller Flour Mills P Ltd for the AY 2004-05 the firm namely M/s. N.K. Mohammed Ali & Bros has received advances of Rs. 88,37,365/- and Rs. 12,08,13,153/- respectively during the Financial Year 2003-04, in which you are a Director holding more than 10% voting power. The said companies had accumulated profits. In the AY 2006-07 addition was made in the hands of the assessee firm on account of deemed dividend U/s. 2(22)(e) of the Act and the firm has challenged the order in appeal stating that deemed dividend may be taxed only in the hands of the share holders. Since the partners of the firm are also shareholders in the companies the conditions specified in Section 2(22)(e) are applicable in the case of the assessee. The advances have to be taxed as deemed dividend in the case of the assessee. As such there is reason to believe that income liable to tax has escaped assessment within the meaning of section 147 of the Income Tax Act, 1961.”

12. On a perusal of the above reasons recorded, it is very clear that there was no allegation that the appellant had failed to disclose truly and fully all the material facts necessary for assessment proceedings which is condition precedent U/s. 149 of the Act. Therefore, in our considered opinion, the re-assessment proceedings initiated are bad in law as it lacks jurisdiction as held the series of judgements of various High Courts ie., judgment of the Hon'ble Bombay High Court in the case of Nirmal Bang Securities Ltd vs. ACIT (2016) 382 ITR 93 (Bom.); Sabharwal Properties Industries P. Ltd vs. ITO (2016) 382 ITR 547 (Delhi.) and Kerala High Court judgment in the case of ITO vs. M/s. Digital Mesh Softech India (P) in WAs No. 286 & 252 of 2024, dated 13/03/2024. Therefore, we are of the considered opinion that the ratio laid down in the above judgments of the Hon'ble High Court (supra) is squarely applicable to the facts of the case. Therefore, the re-assessment proceedings are bad in law as the AO had failed to satisfy the condition precedent laid down U/s. 149 of the Act. Accordingly, the re-assessment proceedings are quashed. The all other contentions raised by the appellant challenging the validity of the re-assessment for other reasons, as well as on merits are kept open.

13. In the result, appeal filed by the assessee stands allowed.

14. In respect to ITA No. 888/Coch/2024 and ITA No.881/Coch/2024 for the AYs 2006-07 and 2007-08 respectively, since the facts and the issues raised in these appeals are identical to that of the facts and issues of the assessee's appeal in ITA No. 880/Coch/2024 for the AY 2004-05, which is

adjudicated in the above paragraphs of this order, our decision given therein mutatis mutandis applies to the assessee's appeals for the AYs 2006-07 and 2007-08 also.

15. In the result, the two appeals filed by the assessee for the AYs 2006-07 and 2007-08 stand allowed.

16. Ex-consequenti, all the three appeals filed by the assessee are allowed.

Order pronounced in the open court on 15th July, 2025.

Sd/-

(SONJOY SARMA)
JUDICIAL MEMBER

Sd/-

(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 15th July, 2025

okk sps

Copy to:

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

Assistant Registrar
ITAT, Cochin