

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

**BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI PRAKASH CHAND YADAV, JM**

**ITA No. 606/Coch/2023
Assessment Year: 2010-11**

Ponnamparambath Ashique Appellant
Koyenco House, West Hill, Kozhikode 673005
[PAN: ACMPA5569N]

vs.

ACIT, Circle- 1(1) & TPS, Kozhikode Respondent

Appellant by: Smt. Parvathy Ammal, CA
Respondent by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 30.05.2025
Date of Pronouncement: 27.06.2025

ORDER

Per: Inturi Rama Rao, AM

This appeal filed by the assessee is directed against the order of the National Faceless Appeal Centre, Delhi [CIT(A)] dated 19.06.2023 for Assessment Year (AY) 2010-11.

2. Brief facts of the case are that the appellant is an individual deriving income under the head 'Salary' and also Managing Director of M/s. Platino Classic Motors Pvt. Ltd. The return of income for AY 2010-11 was filed on 17.09.2010 declaring total income of Rs. 25,18,810/-. There was no scrutiny assessment. Subsequently the AO received information that the appellant is holding shares of 25%

in M/s. Koyenco Autos (P) Ltd. and holding 62% shares in Platino Classic Motors (P) Ltd. The company Platino Classic Motors (P) Ltd. advanced a loan of Rs. 1,39,39,841/- to the appellant. The said company also advanced a loan of Rs. 1,00,09,869/- to a company called Koyenco Autos (P) Ltd., in which the appellant had 25% shareholdings. According to the AO, the loans so advanced fall within the definition of section 2(22)(e) the Income Tax Act, 1961 (the Act). Accordingly formed an opinion that income escaped assessment to tax and issued a notice u/s. 148 of the Act on 28.03.2016 calling upon the appellant to file return of income. In response to the notice u/s. 148 the appellant filed return of income on for AY 2010-11 on 10.06.2016 declaring income of Rs. 25,18,810/-. Against the said return of income, the assessment was completed by the ACIT, Circle-1(1), Kozhikode (hereinafter called "the AO") vide order dated 24.11.2016 passes u/s. 143(3) r.w.s. 147 of the Act at a total income of Rs. 1,66,13,650/-. While doing so, the AO brought to tax an amount of Rs. 1,39,39,841/- as deemed dividend in the hands of the assessee.

3. Being aggrieved, an appeal was filed before the CIT(A), contending that the company Platino Classic Pvt. Ltd. made the advance payment of Rs. 1,39,39,841/- to the appellant for the purpose of purchase of land and similarly the advance paid to Koyenco Autos Pvt. Ltd. is towards leasing of building. Thus, it is submitted that the loans were advanced for business purposes of the respective companies, therefor, cannot be treated as deemed

dividend. However, the CIT(A) confirmed the addition by holding that the appellant had failed to prove that it had purchased land on behalf of the company. However, directed the AO to delete the addition to the extent of Rs. 21,50,016/- by holding that the sum to this extent does not form part of the accumulated income.

4. Being aggrieved, the appellant is in appeal before this Tribunal in the present appeal.

5. The learned counsel for the assessee contended that the loans were received by the appellant towards business purposes of the company is a commercial advance and, therefore, it cannot be terms as deemed dividend and placed reliance on the following decisions:-

- i) CIT v. Arvind Kumar Jain [2011] (9) TMI 363 Delhi High Court
- ii) CIT v. Raj Kumar [2009] 318 ITR 462 (Del)
- iii) CIT vs. Atul Engineering Udyog [2014] (10 TMI 41, Allahabad High Court

The appellant also filed additional evidences in support of this submission.

6. Having regard to the circumstances made in the application for admission of additional evidences, it is a fit case for admitting the additional evidences. Therefore, we remand the matter back to the file of the AO to decide afresh the applicability of provisions of section 2(22)(e) of the Act in respect of the loans/advances received by the appellant from the said two companies.

7. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 27th June, 2025.

Sd/-
(PRAKASH CHAND YADAV)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 27th June, 2025

n.p.

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

Assistant Registrar
ITAT, Cochin