

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

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

**ITA No. 855/Coch/2024
Assessment Year: 2016-17**

Binoy John Appellant
TC 2/391, Puthnveetil, Ulloor, Medical
College P.O., Thiruvananthapuram 695011
[PAN: ACP PJ3562K]

vs.

Pr. Commissioner of Income Tax Respondent
Central, Cochin

Appellant by: Shri R. Krishnan, CA
Respondent by: Shri Sundarasan S., CIT-DR

Date of Hearing: 21.05.2025
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 Principal Commissioner of Income Tax (Central), Cochin (Pr. CIT) dated 25.03.2024 for Assessment Year (AY) 2016-17.

2. Brief facts of the case are that the appellant is a doctor deriving income under the head 'salary' and also a Director in the company Credence Hospital Pvt. Ltd., Thiruvananthapuram. No regular return of income for AY 2016-17 was filed by the appellant. Subsequently, based on the information received from the ACIT,

Circle-1(1), Thiruvananthapuram that the company called Credence Hospital Pvt. Ltd., in which the appellant was interested as a Director made an advance of Rs. 3.42 crores to the appellant which amounts to deemed dividend within the meaning of provisions of section 2(22)(e) of the Income Tax Act, 1961 (the Act), the AO formed an opinion that income escaped assessment to tax. Accordingly, a notice u/s. 148 of the Act was issued on 31.03.2021. In response to the notice u/s. 148 the appellant filed return of income on 28.09.2021. Against the said return of income, the assessment was completed by the National Faceless Appeal Centre, Delhi (hereinafter called "the AO") accepting the returned income. Subsequently, on review of the assessment order the Id. Pr.CIT, Central, Kochi formed an opinion that the assessment order is erroneous and prejudicial to the interests of Revenue for the failure of the AS to examine the issue of deemed dividend u/s. 2(22)(e) of the Act in respect of loan amount of Rs. 22.5 lakhs received from the company, Credence Hospital Pvt. Ltd. Accordingly, a show cause notice was issued to the appellant u/s. 263 of the Act. In response to the show cause notice, the appellant filed a detailed explanation stating that this issue was examined during the course of original assessment proceedings. However, the Pr. CIT, after considering the submission made, set aside the assessment order with a direction to the AO to redo the assessment in accordance with law after affording reasonable opportunity of hearing to the appellant.

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

4. At the outset we find that there is a delay of 130 days in filing the present appeal. The appellant filed a petition along with an affidavit seeking condonation of delay in filing the appeal stating as under: -

“2) That I received the order of the Hon. Principal Commissioner of Income Tax (Central), Kochi under section 263 of the Income Tax Act 1961 on 28-03-2024 directing the learned assessing officer to revise his original assessment order on the grounds described in the order u.s. 263 for the assessment year 2016-17.

3) That I am aggrieved by the order of the Hon. Principal Commissioner of Income Tax (Central), Kochi, which I firmly believes to be non-tenable.

4) That I am a Cardiologist working as a consultant in different hospitals in Chennai for the last many years. My family and the Company in which I am director are located at Trivandrum. Since I had come across such an order for the first time, I was not conversant with the further proceedings and its timelines.

5) I was completely pre-occupied with my profession and its pressing commitments, that could not be postponed and hence there was delay in communication with my Company and family Chartered Accountant and lawyers who are stationed in Trivandrum. I could not contact and communicate fully to the above mentioned professionals to consult after receipt of the Order u.s.263 due to the reasons beyond my control.

6) That in consultation taken place towards the end of September 2024, I was advised by the legal consultant to file an appeal before the Hon'ble ITAT for relief but the appeal has already become barred by time limitation. Nevertheless the

appeal is getting filed before this Hon'ble ITAT on date 04-10-2024 accompanied by an application for condonation of delay as provided under section 5 of the Limitation Act, 1963.

7) That in this way there is a delay of 130 days for which an application under Section 5 of the Limitation Act has been filed along with memorandum of appeal.

8) That delay in filing the appeal is because of the pre-occupation and commitments I had in my medical profession.

9) That I had no intention to jeopardize the interest of the revenue by delaying the filing of the appeal.”

5. On a mere reading of the above affidavit it would be clear that the appellant is pleading ignorance of the procedure to pursue remedy against the order passed u/s. 263 of the Act. It is very clear that the appellant is a Doctor and not a rustic villager and the appellant is also Director in a company running a hospital engaging services of Chartered Accountants. Therefore, the explanation offered by the appellant for the delay is not bona fide. Hence, we are of the considered opinion that it is not a fit case to condone the delay.

6. In the result, the appeal filed by the assessee is dismissed on grounds of delay and laches.

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.

Copy to:

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

By Order

Assistant Registrar
ITAT, Cochin