

IN THE INCOMETAX APPELLATE TRIBUNAL
COCHIN BENCH

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, JUDICIAL MEMBER**

I.T.A. No.231/COCH/2025

Assessment Year: 2016-17

Shafi Musaliar Sainalabdeen MusaliarAppellant
Shafi Cashew Industries, Kilikolloor,
Kollam – 691004.
[PAN:AAWPM1241K]

vs.

ITO, Ward-2, KollamRespondent

S.A. No.44/COCH/2025

Assessment Year: 2016-17

Shafi Musaliar Sainalabdeen MusaliarAppellant
Shafi Cashew Industries, Kilikolloor,
Kollam – 691004.
[PAN: AAWPM1241K]

vs.

ITO, Ward-2, KollamRespondent

Appearances by:

Sri Sabu, CA, appeared on behalf of the assessee.

Shri Suresh Sivanandan, IRS appeared on behalf of the Revenue.

Date of concluding the hearing: June 05, 2025

Date of pronouncing the order: August 14, 2025

ORDER

Per Sonjoy Sarma, Judicial Member:

This appeal by the assessee and the stay application arise from the order of the Commissioner of Income Tax (Appeals), NFAC, Delhi, for the assessment year 2016–17. Since the stay application is connected with the same appeal, both were heard together and are disposed of by this consolidated order.

2. The appeal is delayed by eight days. The assessee filed a petition explaining the reasons for the delay. After considering the submissions,

we are satisfied that the delay was due to reasonable cause. Accordingly, the delay is condoned, and the appeal is admitted for adjudication on merits.

3. Brief facts of the case are that the assessee, late Shafi Musaliar Sainalabdeen Musaliar ("the deceased"), was engaged in the business of trading in cashew and cashew products in the name of Safi Cashew Industries, Kollam, Kerala, including local purchases/sales, inter-State transactions, import and export. The Income-tax Department issued notice under section 148 of the Act on the ground that the assessee had not filed the return of income for the year under consideration and had cash deposits amounting to Rs. 15,18,058 in his ICICI Bank account, export turnover of Rs. 1,50,21,297, import of Rs. 47,30,181, and receipt of remittances from non-residents of Rs. 1,60,85,569 during the relevant year. In response, the assessee filed the return of income along with the audit report before the Assessing Officer. During assessment proceedings, the Assessing Officer rejected the books of account under section 145(3) citing various defects and proceeded to make additions. The AO determined the total income at Rs. 24,47,12,646/- as against returned income, making substantial additions under different heads. During the course of proceedings, the assessee passed away on 13.06.2023. The legal heirs informed the Department of this fact vide letter dated 26.08.2023 along with death certificate and sought substitution in terms of the Act and it was on 28.08.23, approval was granted and on approved copy of the same furnished at page no. 182 of paper book. Despite this, the Assessing Officer proceeded to complete the assessment on 19.03.2024 in the name of the deceased, without issuing notice to the legal heirs.

4. Aggrieved by the above order, the assessee went in appeal before the Id. CIT(A). The CIT(A) partly allowed the appeal of the assessee, granting certain reliefs.

5. Dissatisfied with the above order the assessee is in appeal before this tribunal. at the time of hearing the learned AR submitted that the assessment framed in the name of a deceased person is null and void, relying on the judgment of the Hon'ble Supreme Court in Principal CIT vs. Maruti Suzuki India Ltd. [2019] 416 ITR 613 (SC), wherein it was held that an assessment made on a non-existent person is invalid in law as it is against the person who does not exist in the eyes of law.

6. On the other hand, the Id. DR supported the order of the authority below.

7. We have considered the rival contentions and perused the material available on record. In the present case, it is an undisputed fact that the assessee expired on 13.06.2023 the AO was informed about the death before completion of assessment. No notice under section 148 or 143(2) was issued in the name of legal heirs and the assessment order was passed solely in the name of the deceased. The Hon'ble Supreme Court in Maruti Suzuki (supra) held that once it is found that the assessment order is passed in the name of a non-existent entity/person, the same is void ab initio and liable to be quashed. The defect is not curable under section 292B of the Act. Respectfully following the above binding precedent, we hold that the assessment order passed in the present case is invalid in law and liable to be quashed. Accordingly, the assessment order dated 19.03.2024 is set aside as null and void. In view of our decision quashing the assessment, the grounds on merits are rendered academic and are not adjudicated.

8. Since the main appeal is allowed, the stay application becomes infructuous and is dismissed as such.

9. In the result, the appeal of the assessee is allowed and the stay application is dismissed as infructuous.

the 14th August, 2025.

Sd/-

[Inturi Rama Rao]

लेखा सदस्य/Accountant Member

Sd/-

[Sonjoy Sarma]

न्यायिक सदस्य/Judicial Member

Dated: 14.08.2025.

Copy of the order forwarded to:

1. Appellant -
2. Respondent -`
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar/Sr. PS, Cochin Benches